

In March 2020 the Coronavirus 2020 Act was passed as a piece of emergency legislation in response to the Covid-19 pandemic. The Act was created with the aim of reducing the transmission and mortality rate of the pandemic. The legislation was fast-tracked and received royal assent 6 days after being introduced to parliament. The Act expanded beyond the scope of the 1984 Public Health Act, broadening the government's powers to close educational establishments as well as restrict or prohibit gatherings and events. Additionally, police and immigration officials were given the authority to test, isolate and detain someone who they have reasonable grounds to believe could be infectious. Provisions are also made within the Act for disruption to national security as a result of Covid-19.

The Coronavirus 2020 Act was created as the Public Health Act 1984 did not contain powers which are wide enough. The Civil Contingencies Act 2004 was also set aside due to its lack of flexibility. In the 2004 Act, more substantial safeguards against the infringement of civil liberties are found than in the Coronavirus Act. Regulations made under the 2004 Act expire after 30 days, meaning that the government requires approval from parliament in order to extend a regulation beyond this period. Regulations introduced under the Civil Contingencies Act 2004 must be congruous with the Human Rights Act 1998 and are not able to prohibit strikes or industrial action.

Regulations under the Act also cannot oblige a person to provide military service. Although a criminal offence cannot be made within a regulation, breach of the regulation can itself constitute an offence. A proportionate response to the emergency is also required in the 2004 Act, notably absent from the 2020 Act. The allowance for the adaptation of criminal proceedings is also found in the 2020 Act, with the 2004 Act specifically ruling out the possibility of changes of this kind.

Emergency powers were also enacted in the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 Act which requires certain businesses to either close or change the nature of their services as well as imposing movement restrictions. As part of these emergency powers, any instructions by a minister which relate to potentially infectious people and to the restriction of events and gatherings are not required to be put before parliament. Measures besides these must require parliamentary approval. The provisions of the 2020 Act are temporary and will last two years, unless the time period is shortened or lengthened by six months at ministerial discretion.

WHAT ARE EMERGENCY POWERS?

The premise of emergency powers is that they enable the government to respond quickly and effectively to a public emergency. Emergency powers allow temporary measures to be introduced which would not otherwise be permissible, such as measures which impinge on human rights and liberty. In these exceptional circumstances, legislation is often fast-tracked. A bill can pass through all the usual stages of passage, yet at an accelerated speed. Emergency powers have been evoked in war-times, strikes, and can be accredited for much of the legislative response to the Covid-19 pandemic.

THE DEVELOPMENT OF EMERGENCY POWERS

The power to declare a state of emergency in order to secure public safety was first established in the 1914 Defence of the Realm Act and further developed in the Emergency Powers Act 1920. The 1920 Act was created in order to facilitate the creation of 'exceptional provisions for the protection of the community in case of emergency'. Under the Act, the monarch can declare a state of emergency if the government interprets 'that the essential services of the country are threatened'. The executive has the authority to suspend or amend all laws, with the only restrictions under the 1920 Act being:

- 1) No regulation shall introduce compulsory military service nor industrial conscription - if not for the declaration of a state of war.
- 2) It is not an offence to take part in a strike.
- 3) Existing procedures in criminal cases cannot be altered.

The Act has been evoked in times of industrial action, such as the 1926 General Strike. The Emergency Powers (Defence) Act 1939 related to the declaration of a 'state of war'. Any regulations passed under the 1939 Act were designated Defence Regulations and automatically came into force without parliamentary approval. Furthermore, the 1939 Act stipulated that 'any act of Parliament may be amended, suspended or applied with or without modification.'

In the Emergency Powers Act 1964, two central amendments were made to the 1920 Act. The 1964 Act broadened what constituted a state of emergency, defined as an event having occurred, or about to occur, which would disrupt the life of the community. Beyond this, it made permanent the clause within the Defence (Armed Forces) Regulations 1939 Act which permits the use of the armed forces in direct employment in 'urgent work of national importance' such as agricultural work or distribution. Following the 1964 amendment to the Emergency Powers Act, sector-specific legislation was established in the subsequent decades.

The Public Health (Control of Disease) Act 1984 included powers with which the government could approach public health emergencies. The Act determined that regulations can be introduced in order to manage an infection which presents 'significant harm to human health' or has the potential to pose this harm. This Act was amended by the Health Protection Act 2008, and provides powers to detain individuals as well as restrict gatherings in order to manage the spread of infectious disease.

The Civil Contingencies Act 2004 repealed the Emergency Powers Act 1920 and enabled ministers to trigger emergency powers in the case of an 'catastrophic emergency'. This facilitates a swift introduction of powers by the government in order to handle an emergency situation. The cabinet office guidance makes clear that the 2004 Act should only be triggered in the highest level of emergency (category three) and only as a fallback. The Act provides examples of such emergencies, including a Chernobyl-scale industrial accident or a major natural disaster. These emergency powers under the Act have never been used.