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## CIVIL CONTINGENCIES BILL 2020

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## CIVIL CONTINGENCIES BILL 2020

A **BILL** to make fresh provision about civil contingencies; and for connected purposes.

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**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Civil Contingencies Act 2020.

#### 2 Commencement

- (1) This Act, apart from section 1 and this section, comes into operation on such day or days as the Cabinet Office may by order appoint.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Cabinet Office to be necessary or expedient.

#### 3 Interpretation of this Act

- (1) In this Act “emergency” means —
  - (a) an event or situation which threatens serious damage to human welfare anywhere in the Island,
  - (b) an event or situation which threatens serious damage to the environment anywhere in the Island,
  - (c) an event or situation which threatens serious damage to the economy of the Island, or
  - (d) war, or terrorism, which threatens serious damage to the security of the Island or the United Kingdom.
- (2) For the purposes of subsection (1)(a) an event or situation “threatens serious damage to human welfare” only if it involves, causes or may cause —
  - (a) loss of human life,
  - (b) human illness or injury,
  - (c) homelessness,

- (d) damage to property,
  - (e) disruption of a supply of money, food, water, energy or fuel,
  - (f) disruption of a system of communication,
  - (g) disruption of facilities for transport, or
  - (h) disruption of services relating to health.
- (3) For the purposes of subsection (1)(b) an event or situation “threatens serious damage to the environment” only if it involves, causes or may cause —
- (a) contamination of land, water or air with biological, chemical or radio-active matter, or
  - (b) disruption or destruction of animal, marine or plant life.
- (4) In this Act—
- (a) a reference to the Island includes a reference to its territorial sea;
  - (b) “terrorism” has the meaning given by section 1 of the *Anti-Terrorism and Crime Act 2003*;
  - (c) “war” includes armed conflict.
- (5) Nothing in this Act, or done under it, is to be taken impliedly to repeal or revoke a provision of or made under another Manx enactment, but this subsection does not preclude express repeal or revocation.
- (6) The Cabinet Office may by order —
- (a) provide that a specified event or situation, or class of event or situation, is to be treated—
    - (i) as falling within any of paragraphs (a) to (c) of subsection (1), or
    - (ii) as not falling within any of those paragraphs;
  - (b) amend subsection (2) so as to provide that in so far as an event or situation involves or causes disruption of a specified supply, system, facility or service —
    - (i) it is to be treated as threatening serious damage to human welfare, or
    - (ii) it is no longer to be so treated.
- Tynwald procedure – laying only.
- (7) The event or situation mentioned in subsection (1) may occur or be inside or outside the Island.

## **PART 2 – EMERGENCY POWERS - FUNCTIONS OF THE COUNCIL OF MINISTERS**

### **4 Functions in relation to emergency planning**

The Council of Ministers is to co-ordinate the planning, organization and implementation generally of measures which are designed to guard against, prevent, reduce, mitigate or overcome the effects or possible effects of any emergency happening.

## 5 Exercise of functions by the Council of Ministers

- (1) Any power or function conferred under this Act on the Council of Ministers is exercisable by any two or more Ministers.
- (2) Where by virtue of subsection (1) a power or function is exercised by less than a majority of the Council of Ministers, its exercise must be notified (for the purposes of ratification) to the next meeting of the Council of Ministers at which a majority of its members are present.
- (3) The meeting referred to in subsection (2) must take place within 7 days of the exercise of the power or function referred to in subsection (1).
- (4) Where subsection (2) applies, if the Council of Ministers decides not to ratify the exercise of the power or function, its exercise shall cease from the beginning of the day following the meeting of the Council of Ministers referred to in subsection (3).
- (5) Non-ratification of the exercise of the power or function does not affect the validity of anything done or omitted to be done before that time.

## PART 3 - EMERGENCY REGULATIONS

### DIVISION 1: PRELIMINARY

## 6 Interpretation for the purposes of this Part

- (1) In this Part —

“**function**” means any power or duty whether conferred by virtue of an enactment or otherwise;

“**public functions**” means —

- (a) functions conferred or imposed by or by virtue of an enactment,
- (b) functions of the Governor, the Governor in Council, the Council of Ministers, a Department or a Statutory Board,
- (c) functions of persons holding office under the Crown, and
- (d) functions of employees of the Public Services Commission;

“**serious delay**” has the meaning given by section 7(3).

- (2) In this Part a reference to the Island includes a reference to its territorial sea.

### DIVISION 2: EMERGENCY REGULATIONS

## 7 Power to make emergency regulations

- (1) The Cabinet Office may make emergency regulations if satisfied that the conditions in section 8 are satisfied.
- (2) Regulations under this section must be prefaced by a statement by the Cabinet Office —
  - (a) specifying the nature of the emergency in respect of which the regulations are made, and

- (b) declaring that the person making the regulations —
  - (i) is satisfied that the conditions in section 8 are met,
  - (ii) is satisfied that the regulations contain only provision which is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made,
  - (iii) is satisfied that the effect of the regulations is in due proportion to that aspect or effect of the emergency, and
  - (iv) is satisfied that the regulations are compatible with the Convention rights (within the meaning of section 1 of the *Human Rights Act 2001*).
- (3) In this Part “serious delay” means a delay that might—
  - (a) cause serious damage, or
  - (b) seriously obstruct the prevention, control or mitigation of serious damage.

## 8 Conditions for making emergency regulations

- (1) This section specifies the conditions mentioned in section 7.
- (2) The first condition is that an emergency has occurred, is occurring or is about to occur.
- (3) The second condition is that it is necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.
- (4) The third condition is that the need for provision referred to in subsection (3) is urgent.
- (5) Provision which is the same as that already exists in an enactment (“the existing provision”) may be made under section 7 if it is necessary to do so.
- (6) For the purposes of subsection (5) it is necessary to make provision under section 7 if, in particular —
  - (a) the existing provision cannot be relied upon without the risk of serious delay,
  - (b) it is not possible without the risk of serious delay to ascertain whether the existing provision can be relied upon, or
  - (c) the existing provision might be insufficiently effective.
- (7) Provision which could be made under an enactment other than section 7 (“the current legislation”) may be made under section 7 where it is necessary to do so.
- (8) For the purposes of subsection (6) it is necessary to make provision under section 7 if, in particular —
  - (a) the provision cannot be made under the current legislation without the risk of serious delay,
  - (b) it is not possible without the risk of serious delay to ascertain whether the provision can be made under the current legislation, or
  - (c) the provision might be insufficiently effective if made under the current legislation.

## 9 Scope of emergency regulations

- (1) Emergency regulations may make any provision which the Cabinet Office is satisfied is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made.
- (2) In particular, emergency regulations may make any provision which the Cabinet Office is satisfied is appropriate for the purpose of —
  - (a) protecting human life, health or safety;
  - (b) treating human illness or injury;
  - (c) protecting or restoring property;
  - (d) protecting or restoring a supply of money, food, water, energy or fuel;
  - (e) protecting or restoring a system of communication;
  - (f) protecting or restoring facilities for transport;
  - (g) protecting or restoring the provision of services relating to health;
  - (h) protecting or restoring the activities of banks or other financial institutions;
  - (i) preventing, containing or reducing the contamination of land, water or air;
  - (j) preventing, reducing or mitigating the effects of disruption or destruction of animal, marine or plant life;
  - (k) protecting or restoring activities of Tynwald;
  - (l) protecting or restoring the performance of public functions.
- (3) Emergency regulations may make provision of any kind that could be made by Act of Tynwald: in particular, regulations may —
  - (a) confer a function on a Minister, a Department, a local authority or on any other specified person and a function conferred may, in particular, be —
    - (i) a power, or duty, to exercise a discretion;
    - (ii) a power to give directions or orders, whether written or oral;
  - (b) provide for or enable the requisition or confiscation of property (with or without compensation);
  - (c) provide for or enable the destruction of property, animal, marine or plant life (with or without compensation);
  - (d) prohibit, or enable the prohibition of, movement to or from a specified place;
  - (e) require, or enable the requirement of, movement to or from a specified place;
  - (f) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times;
  - (g) prohibit, or enable the prohibition of, travel at specified times;
  - (h) provide for the detention of any mode of transport;
  - (i) close the Island's borders;
  - (j) provide for the use of fixed penalty notices;

- (k) prohibit, or enable the prohibition of, other specified activities;
  - (l) create an offence of —
    - (i) failing to comply with a provision of the regulations;
    - (ii) failing to comply with a direction or order given or made under the regulations;
    - (iii) obstructing a person in the performance of a function under or by virtue of the regulations;
  - (m) disapply or modify an enactment or a provision made under or by virtue of an enactment;
  - (n) require a person or body to act in performance of a function (whether the function is conferred by the regulations or otherwise and whether or not the regulations also make provision for remuneration or compensation);
  - (o) make provision (which may include conferring powers in relation to property) for facilitating any deployment of Her Majesty's armed forces;
  - (p) confer jurisdiction on a court or tribunal (which may include a tribunal established by the regulations);
  - (q) make provision which has effect in relation to, or to anything done in the territorial sea;
  - (r) make provision which applies generally or only in specified circumstances or for a specified purpose;
  - (s) make different provision for different circumstances or purposes.
- (4) In subsection (3) —
- “fixed penalty notice” means a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for an offence by payment of a fixed penalty to a specified payee;
- “specified” means specified by, or to be specified in accordance with, the regulations.
- (5) A person making emergency regulations must have regard to the importance of ensuring that Tynwald and the High Court are able to conduct proceedings in connection with —
- (a) the regulations, or
  - (b) action taken under the regulations.

## 10 Limitations of emergency regulations

- (1) Emergency regulations may make provision only if and in so far as the person making the regulations is satisfied —
  - (a) that the provision is appropriate for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency in respect of which the regulations are made, and
  - (b) that the effect of the provision is proportionate to that aspect or effect of the emergency.
- (2) If they are not to apply to the whole of the Island, emergency regulations must specify the part (or parts) of the Island to which the regulations apply.

- (3) Emergency regulations may not —
  - (a) require a person, or enable a person to be required, to provide military service, or
  - (b) prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action.
- (4) Emergency regulations may not—
  - (a) create an offence other than one which is triable only before a court of summary jurisdiction,
  - (b) create an offence which is punishable —
    - (i) with custody for a period exceeding 6 months, or
    - (ii) with a fine exceeding level 5 on the standard scale, or
  - (c) alter procedure in relation to criminal proceedings, other than to permit parties and their advocates to participate in the proceedings by means of electronic communications (within the meaning of the *Electronic Transactions Act 2000*).
- (5) Emergency regulations may not amend —
  - (a) this Part of this Act, or
  - (b) the *Human Rights Act 2001*.

## **11 Duration: general**

- (1) Emergency regulations —
  - (a) come into operation immediately after they are made;
  - (b) must be laid without undue delay after they have been made;
  - (c) must specify the date on which they are to cease, subject to first being approved by Tynwald, to have effect.
- (2) Emergency regulations that have been laid cease to have effect unless approved at a sitting of Tynwald within the period of 7 days of their being made (“initial approval”).
- (3) If Tynwald is not due to sit during the period referred to in subsection (2)—
  - (a) the Cabinet Office must inform the President of Tynwald; and
  - (b) the President of Tynwald must summon Tynwald to meet on a day specified by the President of Tynwald within that period.

## **12 First continuation approval**

- (1) This section applies where regulations have been approved under section 11 and their specified cessation date, in accordance with paragraph (c) of that section, is a date falling more than 30 but less than 60 days after the date on which they were made.
- (2) Such regulations shall cease to have effect unless approved for continuation by Tynwald (first continuation approval) within a period of 30 days beginning with the date on which they were made.
- (3) If Tynwald is not due to sit during the period referred to in subsection (2)—
  - (a) the Cabinet Office must inform the President of Tynwald; and

- (b) the President of Tynwald must summon Tynwald to meet on a day specified by the President of Tynwald within that period.

### **13 Subsequent continuation approvals**

- (1) This section applies where regulations have been approved under section 11 and their specified cessation date, in accordance with paragraph (c) of that section, is a date 60 or more days after the date on which the regulations were made.
- (2) Such regulations shall cease to have effect unless —
  - (a) approved for continuation by Tynwald within the period of 30 days beginning with the date on which they were made (first continuation approval), and
  - (b) further approved for continuation by Tynwald within the period of 30 days beginning with the date of the first continuation approval and, if necessary, at 30 day intervals thereafter (subsequent continuation approval).
- (3) If Tynwald is not due to sit during the period referred to in subsection (2)(a) or (b)—
  - (a) the Cabinet Office must inform the President of Tynwald; and
  - (b) the President of Tynwald must summon Tynwald to meet on a day specified by the President of Tynwald within that period.

### **14 Tynwald references**

In sections 11 to 13 a reference to the President of Tynwald includes a reference to a person authorised by the Standing Orders of Tynwald to act in place of the President of Tynwald.

### **15 Tynwald scrutiny of emergency regulations**

Section 31 of the *Legislation Act 2015* (Tynwald procedure – affirmative) applies to emergency regulations, but as if the words “or the next subsequent sitting” were omitted.

### **16 Effect of lapse**

Where emergency regulations lapse, cease to have effect or are amended under this Act —

- (a) nothing prevents the making of new emergency regulations;
- (b) their lapse, cessation or amendment does not affect anything done under them before that event.

### **17 Status of emergency regulations**

Emergency regulations are to be treated for the purposes of the *Human Rights Act 2001* as subordinate legislation and not primary legislation (whether or not they amend primary legislation).

**18 Repeal**

The *Emergency Powers Act 1936* is repealed.