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Section II

II. EMERGENCY POWERS - PROCLAMATION OF A STATE OF EMERGENCY

Note:

This chapter deals with the powers available under the Emergency Powers Acts 1920 and 1964 and the procedure for making a proclamation of emergency. Some further emergency powers are available under other enactments (eg The Energy Act 1976, see Section 1 chapters on Coal and on Oil, paragraphs 11) and such powers may be used independently of or in conjunction with those under the Emergency Powers Acts.

THE EMERGENCY POWERS ACTS 1920 and 1964

1. Section 1 of the Emergency Powers Act 1920, as amended by the Emergency Powers Act 1964, provides that, if at any time it appears to Her Majesty that there have occurred or are about to occur events of such a nature as to be calculated, by interfering with the supply and distribution of food, water, fuel or light, or with the means of locomotion, to deprive the community or a substantial portion of the community, of the essentials of life, Her Majesty may, by proclamation, declare that a state of emergency exists.

2. Section 1(2) of the 1920 Act requires the proclamation of emergency to be communicated to Parliament forthwith. If Parliament is adjourned at the time, a further proclamation has to be made for the recall of Parliament within 5 days of the date on which the state of emergency is proclaimed.

3. Section 2 of the 1920 Act provides that when a proclamation of emergency has been made, Her Majesty may, by Order in Council, make Regulations for securing the essentials of life to the community. The Regulations have to be laid before Parliament and lapse 7 days after laying unless their continuance is approved by resolution of each House of Parliament.

4. A proclamation of emergency may not remain in force for more than one month and any Emergency Regulations made while the proclamation has been in force lapse at the same time. If the need for emergency powers continues a fresh proclamation and another set of Emergency Regulations must be made within the month, and the Regulations confirmed by further resolution of both Houses of Parliament.

PROCEDURE FOR PROCLAIMING A STATE OF EMERGENCY

5. A decision to proclaim a state of emergency and to make Emergency Regulations does not require prior Parliamentary approval. It is for the Government to decide at what stage Her Majesty in Council should be asked to proclaim a state of emergency and to make Emergency Regulations. In practice it is likely that both steps would be taken at the same meeting of the Privy Council since the purpose of proclaiming an emergency is usually to enable the Government to take powers they would not otherwise have. If a proclamation for the recall of Parliament were also needed, it would be likely to be dealt with at the same time.

6. When the Government has taken a decision to seek emergency powers the Home Office is responsible for taking appropriate administrative action for the proclamation of emergency and the making of Emergency Regulations and for the necessary Parliamentary procedures to be set in train.

TIMING OF DECISIONS

7. In some circumstances (such as a serious industrial dispute) it is likely that Ministers would wish to leave the decision to take emergency powers until the last possible moment in order to allow them to take account of developments in the situation. In such circumstances once a decision had been taken it would be necessary for the action required to be taken very quickly.

8. It has been customary for Emergency Regulations to come into effect at midnight on the day on which they are made. This generally enables copies to be laid before Parliament before the Regulations come into force, and for them to be published by the following morning. If circumstances made it essential for the powers to be immediately available it would be possible for the Regulations to be made to come into effect immediately on signing.

9. The timing of the various steps would depend upon a number of factors which could be determined only in relation to the particular circumstances - such as whether Parliament were sitting normally at the time, and whether the Sovereign were in London. It is likely that the announcement of the taking of emergency powers would be of prime importance. If Parliament were in normal session The Queen's messages informing Parliament of the proclamation of emergency should be made known to both Houses before a public announcement could be made. It might not be possible to interrupt normal Parliamentary business, and the statements would therefore have to be either at 3.30 pm or at 10.00 pm or later on a normal day. The later time would be inconvenient from the publicity point of view, and there would be much to be said for aiming for a Privy Council in the morning and the making of statements to both Houses at the beginning of public business at about 3.30 pm. This implies that the decision on emergency powers would have to be taken at the latest on the afternoon or evening of the preceding day, and even earlier warning given to the Privy Council Office.

10. If Parliament were not sitting, the date of its recall would have to be decided at the same time as it was decided to take emergency powers, and advance warning given in confidence to the appropriate quarters; the proclamation for the recall of Parliament would have to be made at the same Privy Council as the proclamation of emergency.

FACTORS AFFECTING TIME AND PROCEDURE

11. At a weekend or during a Parliamentary recess it might be possible to announce the emergency measures publicly as soon as the proclamation and Regulations had been signed. If the Queen were away from London, it would take longer to arrange a meeting of the Privy Council and to deliver the signed Proclamation and Messages to Parliament in London.

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12. A number of different combinations of circumstances are possible and expeditious action could be ensured only by keeping those concerned informed as early as possible of the probably course of events. Important factors would be the need for at least a day's notice to the Privy Council Office before a meeting of the Council, and the incidence of public holidays which might require special arrangements to be made to ensure the availability of key staff.

13. For the proclamation of emergency a typed, rather than printed, copy could if necessary be provided for signature by Her Majesty. For the Emergency Regulations printed proof copies, with dates completed in typescript could be used.

14. The text of the Emergency Regulations to be made under the 1920 Act is reviewed annually. The 'insides' - the bulk of the text - are preprinted and stored at HMSO ready for binding with the outside page, the order for printing which can be given only when the dates of making and coming into effect are known. HMSO would need at least one clear working day after the order is given to produce copies of the Regulations for public distribution.

15. Arrangements would normally be made if possible for the Regulations to be laid before Parliament before they come into effect (ie usually on the day they were made - this could be done if Parliament were adjourned but not prorogued provided that the Clerks were available to receive them). But if the Regulations had to be made to come into effect before they could be so laid (paragraph 8 above) notification would have to be sent forthwith to the Lord Chancellor and the Speaker of the House of Commons drawing attention to the fact that copies had yet to be laid and explaining why they were not laid before they came into effect - Section 4(1) of the Statutory Instruments Act 1946.

16. Section 3(2) of the same Act provides that it is a defence to any prosecution of an offence created by a statutory instrument that the instrument had not been published by HMSO at the time of the alleged offence, unless it is proved that reasonable steps had been taken to bring the purport of the instrument to the notice of the public or the accused. These requirements would probably be satisfied by giving wide publicity to the restrictions imposed by the emergency powers as soon as they came into effect. The important factor may be that the emergency powers should be available by the target time (eg to permit requisitioning of, say, vehicles) rather than that the prosecution of offences should be practicable forthwith.

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III. SERVICEMEN AS SUBSTITUTE LABOUR

Military Aid to the Civil Ministries (MACM) - General considerations affecting the use of Servicemen as substitute labour during industrial disputes (See also Appendix C to Section 1).

GENERAL

1. As a last resort during an industrial dispute Ministers may decide to use Servicemen (under the appropriate Emergency Powers Act) to maintain essential supplies and services. A number of general considerations apply whenever a Civil Department contemplates requesting the use of Servicemen in this way during an industrial dispute and the most important of these are set out below as background for the Civil Contingencies Unit (CCU), so that Departments are clear about the circumstances in which Servicemen might be used and the implications of using them.

EFFECTS ON A DISPUTE

2. The introduction of Servicemen into any industrial dispute is always likely to produce an unfavourable reaction from the unions. This may range from reluctant acceptance, when it is plain that the public interest demands intervention, to explicit hostility leading to a worsening of the situation and widening of strike action. Service assistance should therefore only be used in industrial disputes in a grave emergency and as a final resort when the totality of available civilian resources is inadequate.

CAPABILITY OF THE SERVICES

3. While men of the three Services represent a significant potential contribution in terms of manpower, the actual assistance the Services may be able to offer is likely to be restricted by the fact that relatively few Servicemen have received the type of training enabling them to carry out specific civil tasks, especially those of a complicated or technical nature. Again military equipment is not necessarily compatible with the civil equivalent. Furthermore, in the majority of cases, the continuing presence and co-operation of the appropriate supervisory and managerial staff is a pre-requisite of Service help.

4. When Servicemen are employed on civil tasks they remain under the command and control of their normal military organisation. A military/civil interface is arranged at an appropriate level. The operational requirements of the Services are always likely to be given precedence over other calls on them.

5. MOD has drawn up a number of outline contingency plans in conjunction with Civil Departments. Inevitably there will be situations for which no plans can be prepared. Plans are drafted in general terms and can serve only as a guide in the event of intervention being considered in a particular area. There may well be a need for recasting and refinement to suit the particular circumstances of the event and MOD will need accurate, detailed and up-to-date information about a situation both before taking a decision on whether assistance can be given and before effecting any deployment. The earlier this detailed information can be given to MOD, the quicker and more efficient will be the reaction of the Services. However, it should be emphasised that the existence of a contingency plan does not guarantee the Servicemen to implement it.

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LEGAL ASPECTS

6. The legal position of Servicemen in this context does not differ from that of ordinary citizens. Servicemen are not acting in aid of the civil power. All aspects of public order remain the responsibility of the civil Police. The Emergency Powers Acts relevant to the work of Servicemen employed in MACM operations are:

a. **Emergency Powers Act 1920 and Emergency Powers (Northern Ireland) Act 1926**

A State of Emergency may be proclaimed in Great Britain under the Emergency Powers Act (EPA) 1920 when the Government considers that there have occurred or are about to occur events of such a nature as are likely to deprive the community, or a substantial proportion of it, of the essentials of life. The duration of the proclamation is one month, after which time it may be renewed if necessary. The Emergency Powers (Northern Ireland) Act (EPA(NI)) 1926 confers similar powers in Northern Ireland.

The purpose of declaring a State of Emergency under the Emergency Powers Acts 1920 and 1926 is to enable regulations to be made conferring exceptional powers necessary to maintain the supply of the essentials of life to the community. Special duties, eg non-military duties in the case of Servicemen, and powers may be imposed or conferred on persons in HM Service and these may include entering land or requisitioning vehicles. Without this specific legislation it would be an offence to interfere with the property rights of citizens.

The most recent occasion when servicemen were used following the declaration of a State of Emergency in Great Britain was during the dock strike in 1971. A State of Emergency was proclaimed in Northern Ireland during the oil tanker drivers' dispute in 1979 and Servicemen were then deployed under the EPA (NI) 1926.

b. **Emergency Powers Act 1964**

Irrespective of whether or not a State of Emergency has been proclaimed, the Emergency Powers Act 1964 empowers the Defence Council to order Servicemen to be temporarily employed in agricultural work or in other work being urgent work of national importance. The Secretary of State for Defence, who is Chairman of the Defence Council, is responsible to Parliament for its business.

The purpose of the EPA 1964 is to put beyond doubt the legality of any command given in the context of work unrelated to some military purpose. It does not confer powers to disturb individual rights.

The most recent occasion when the EPA 1964 has been invoked, and Servicemen have actually been deployed on MACM tasks were the rail transport strike 1982 and the NHS dispute in 1982 (when a very few servicemen drove ambulances in London). The EPA 1964 has also been invoked on other occasions when Servicemen have made preparations to give assistance but in the event the threatened strike has been called off or emergency services have been maintained from other sources.

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FINANCIAL ARRANGEMENTS

7. The financial arrangements which MOD would expect to apply are set out in CCU paper CCU(82) 15. The basis for these arrangements is that the "no loss costs" (previously known as extra costs) involved in providing and/or preparing to provide Services' assistance during an industrial dispute are not a proper financial charge on the Defence Budget and must therefore be reimbursed by the Department which sponsors the request. No loss costs are defined as those that would not have arisen but for the provision of the assistance. Charges will be calculated in accordance with the criteria set out in paragraphs 9-12 of the Treasury Guide to the calculation of fees and charges, and will be recovered from the civil department sponsoring the use of the Servicemen as soon as possible after they arise, ie on a monthly basis. The sponsor will also be expected to purchase (or provide directly) any essential specialist clothing and equipment not in the Military inventory and any consumable stores, including motor vehicle fuels, required for Servicemen's duties. Where the costs for an operation as a whole amount to less than £10,000, the MOD will not normally seek to recover them.

8. Military assistance is provided following a request from the sponsor Department. After such a request has been made, or when there is the imminent possibility of a request MOD will confirm that the arrangements set out in CCU(82) 15 will apply. Should circumstances not allow time for a written request and confirmation to be made, agreement by Ministers in CCU that service assistance should be provided if 'necessary would constitute financial authority for the MOD to incur expenditure and signify the sponsor Departments agreement to meet the "no loss" costs involved.

NOTICE

9. A period of warning is essential before Servicemen, who are normally at 7 days' notice, can be deployed (and where necessary trained) to undertake a MACM task. There are a number of factors to bear in mind when a request for reduction of notice is made by a sponsor department.

Preparatory Measures

10. During the warning time preparations essential to the efficient implementation of a contingency plan will be made and any arbitrary curtailing of notice may threaten the success of the operation. In the case of a large scale MACM operation the preparatory work will probably include:

- a. Finalising the contingency plan at local level.
- b. Allocating Servicemen to tasks and moving them to the areas of operation.
- c. Providing suitable accommodation and a plan for feeding and re-supply.
- d. Providing vehicles and back-up facilities.
- e. Drawing specialist equipment.
- f. Training of instructors and Servicemen.
- f. Reconnaissance.

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Reduction of Notice

11. The reduction of notice is a complicated process and sponsor Departments are advised initially to state their requirements for readiness to the MOD, who will then be able to translate the requirement into the appropriate Service notice. Once notice has been reduced, it has to be kept under constant review, and MOD and the sponsor Department need to keep in close touch to ensure that Servicemen will be available at the time required. Other considerations are the need to minimise the impact on normal Service activities and to keep down "no loss" costs. It should be noted that 72 hours notice allows the Services in general to continue their normal tasks without serious disruption, but reducing notice below the 72 hour point is likely to involve extensive movement of Servicemen and corresponding increases in "no loss" costs.

12. Sponsor Departments may find the following illustration of the possibilities helpful when considering their requirements:

- a. If a Department wants the Armed Forces to be ready to deploy at 0900 on 8 September, the units involved should receive warning by 0900 on 1st September.
- b. However, if the industrial situation is less clear, but it is apparent that matters may come to a head on 8 September, and the industry itself can maintain a service for 3 days, it would be prudent to ask for Servicemen to be brought to 72 hours notice with effect from 8 September. In this case the units involved should be warned of their likely task on 4 September, allowing 4 of their 7 days' notice to elapse before 8 September, when the remaining 3 days becomes their official notice time.
- c. If on the 8 September strike action seems to have been averted in the immediate future, then it would be in order to leave Service notice at 72 hours. However, if it is apparent that the Armed Forces will be required to deploy, then their notice has to be reduced progressively, so that on 9 September they are at 48 hours notice to meet the 11 September deadline, and so on until either a deployment is made or notice is relaxed.

Possible Exceptions to Warning Time

13. In a few instances (for example in a serious emergency where only small numbers of Servicemen are needed working in normal formed units and with their every-day equipment) it may be possible to provide for a more rapid deployment in advance of the official notice time of 7 days. This can on occasion provide a useful degree of flexibility in advance of implementing the main contingency plan. Where there is a need for arrangements of this sort the MOD will make every effort to meet the requirement but cannot guarantee a response time of less than 7 days.

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