

FIRE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 2 – Fire and Rescue Services

Chapter 1 – Appointment of Chief Officer

Section 7 – Appointment of Chief Officer

13. This section provides for the appointment by each relevant authority of a Chief Officer who will be responsible to that authority for the discharge of the authority's functions by its employees.

Chapter 2 – Principal fire and rescue functions

Section 8 – Fire safety

14. This provision places a statutory duty on relevant authorities to make provision for the purpose of promoting fire safety. At present, fire authorities undertake community fire safety initiatives. These take various forms, for example, schools education programmes, safety information advisory sessions for community groups and attendance at public events, fetes, etc. In some cases individual home fire safety advisory visits are undertaken and advice is given to homeowners on fire prevention issues. This work is currently carried out on a discretionary basis and the effect of section 8 is to make it a statutory duty.

Sections 9 and 10 – Fire-fighting and road traffic accidents

15. **Section 9** re-enacts the existing statutory duty for a relevant authority to plan and make arrangements for fighting fires and protecting life and property from fires within its area. A relevant authority is required to secure sufficient equipment etc. and training to discharge its duty in normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions; the latter might include, for example, information about the nature and characteristics of buildings within the authority's area or availability of, and access to, water supplies.
16. **Section 10** places a duty on a relevant authority to make provision for rescuing persons from road traffic accidents and for dealing with the aftermath of such accidents. Historically, the risk of fire was the trigger for attendance at such an incident. Whilst advances in vehicle design have seen the incidence of fire following an accident decrease, calls to assist with the rescue of people from wreckage and protect them from harm caused by spillage of hazardous substances have increased dramatically. A relevant authority is required therefore to secure sufficient resources and training to discharge its duties in all normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining

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information to exercise its functions (for example, knowledge of local road and trunk road networks).

17. Under both sections 9 and 10 relevant authorities must seek to prevent or limit damage to property in exercising these statutory functions.

Section 11 – Conferral of functions in relation to other emergencies

18. This section allows the Scottish Ministers to confer on a relevant authority specified functions by order (an “additional function order”). This might relate to such matters as flooding, chemical spills and terrorist incidents.
19. The Scottish Ministers will also have the power, by additional function order, to direct relevant authorities as to how they should plan, equip for, and respond to such emergencies. This may include, for example, directions as to the deployments of mass decontamination equipment for civil resilience purposes. The intention is to ensure consistency of approach towards emergencies, particularly in response to terrorist incidents.
20. This section also allows the order to require an authority to respond to an emergency that has arisen outside its own area if, for example, it has more appropriate equipment and training than the authority in whose area the emergency has occurred.
21. The term “emergency” is defined for the purposes of Part 2 of this Act at section 52.

Chapter 3 – Ancillary functions

Section 12 – Emergency directions

22. **Section 12** gives the Scottish Ministers power to direct relevant authorities to respond to a particular fire or emergency incident, either in its own area or in that of another authority. The Scottish Ministers will also be able to direct an authority not to take any action in the event of such an emergency if, for example, another authority is better equipped to do so.

Section 13 – Power to respond to other eventualities

23. This section provides relevant authorities with discretion to equip, and respond to, events beyond its core functions provided for at sections 8 to 11 and 61. Such an authority will be free to act where it believes there is a risk to life or the environment. This would allow, for example, specialist activities such as rope rescue.

Section 14 – Provision of other services

24. **Section 14** provides a relevant authority with the power to agree to the use of its equipment or personnel for any purpose it believes appropriate wherever it so chooses. For example, an authority may agree to help pump a local pond as a service to its community.

Section 15 – Provision of centres for education and training

25. This section re-enacts provisions in the 1947 Act that allow a relevant authority to establish training centres in respect of any function conferred under these provisions.

Section 16 – Charging

26. **Section 16** allows the Scottish Ministers to authorise relevant authorities to charge for services and to specify in an order the persons who may be subject to the charge. At present fire authorities have discretionary powers to charge for exercising certain functions. However, relevant authorities will not be able to charge for action taken in respect of extinguishing fires, protecting property in the event of fires or protecting life,

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except in relation to fighting fires at sea (which, for authorities with a seaward boundary, means beyond the low water mark). In such circumstances, the relevant authority has no statutory fire-fighting duty under section 9 because the incident is outwith their area.

27. Subsection (4) maintains the existing arrangement that allows fire authorities to set their own level of charge, and to vary the charge depending on the type of service provided and the circumstances of a particular incident, or to choose not to charge at all.
28. Subsection (5) sets out that in setting the amount of any charge a relevant authority shall secure that the income from charging does not exceed the cost to the relevant authority for providing the service for which charges are levied when looked at over any particular financial year.

Chapter 4 – Water supply

Section 17 – Duty to secure water supply

29. This section re-enacts section 13 of the 1947 Act, requiring relevant authorities to take all reasonable measures to ensure an adequate supply of water and the setting out of the purposes for which they should secure that supply.

Section 18 – Use of water

30. This section allows a relevant authority to use any suitable supply of water for specified purposes. Whilst it provides for payment of reasonable compensation for water this is limited by reference to section 9A of the Water (Scotland) Act 1980, which expressly forbids charging by a water undertaker in respect of: water taken for the purpose of extinguishing fires or for any other emergency purposes; water taken for testing apparatus used for extinguishing fires; or for fire fighting training. This section re-enacts section 15(2) of the 1947 Act.

Section 19 – Agreements in relation to water supply

31. This section re-enacts section 14(1) and 15(1) of the 1947 Act and allows a relevant authority to enter into agreements with Scottish Water or with persons other than Scottish Water in order to secure the use of water; to improve access to water; or to lay and maintain pipes and to carry out other works in connection with the use of water. Subsection (2) allows for any agreement to include terms for payment, other than for the purposes covered by section 9A of the Water (Scotland) Act 1980.
32. Subsection (3) places a requirement on Scottish Water not to unreasonably refuse to enter into an agreement in relation to water supply and subsection (4) provides that Scottish Ministers may determine whether any refusal by Scottish Water to enter into an agreement under this section is unreasonable.

Section 20 – Emergency supply by Scottish Water

33. This section re-enacts sections 30(4) and (4A) of the 1947 Act. Subsection (1) places an obligation on Scottish Water to take all necessary steps to increase supply or pressure of water if requested to do so by a relevant authority for the purposes in section 17(2). Subsection (2) allows Scottish Water to shut off water from the mains and pipes in any area to enable it to comply with a request to increase supply or water pressure. Subsection (3) safeguards the relevant authority, Scottish Water or any other person from any liability for anything done by Scottish Water in complying with its obligations. Subsection (4) makes it an offence for Scottish Water, without reasonable excuse, to fail to take any steps which it is obliged to take and provides for a level 5 fine (currently £5,000) on summary conviction.

Section 21 – Fire hydrants: provision etc.

34. Subsection (1) applies sections 19 to 22 of Schedule 4 to the Water (Scotland) Act 1980 to Scottish Water. Scottish Water are therefore required, at the request of a relevant authority (see paragraph 9 of schedule 3 to this Act) to fix fire hydrants on their mains, keep them in good order and renew them. As soon as such a hydrant is complete, Scottish Water must - if required by the relevant authority – deposit a key in appropriate places. The costs incurred shall be defrayed by the relevant authority. Scottish Water must also, at the request and expense of the owner or occupier of any factory or place of business near a road, where certain requirements are fulfilled, fix a hydrant, keep it in good order and from time to time renew it.
35. Subsection (2) requires Scottish Water to mark the location of every fire hydrant with a notice or distinguishing mark and under subsection (4) the costs of doing this can be charged to the relevant authority in whose area the hydrant is situated.
36. Subsection (5) grants the Scottish Ministers power to make regulations providing for uniformity in fire hydrants and the distinguishing marks and notices indicating their location. This re-enacts section 14(6) of the 1947 Act.
37. Subsection (6) provides that, in circumstances where a hydrant is damaged as a result of authorised use which was not for the purposes of fire fighting or other relevant authority purposes, the liability for the cost of repair or replacement will not fall on the relevant authority. This re-enacts section 14(3)(b) of the 1947 Act.

Section 22 – Fire hydrants: recovery of costs

38. Section 21 of Schedule 4 to the Water (Scotland) Act 1980 provides that the cost of fire hydrants and of fixing, maintaining and renewing them is borne by the relevant authority. Section 22 amends the Water (Scotland) Act 1980 by inserting a new section 21A into Schedule 4, which provides Scottish Ministers with a power to make regulations setting out the persons (with the exception of Scottish Water) from whom, and the circumstances in which, a relevant authority may recover costs in respect of fire hydrants.

Section 23 – Fire hydrants: offences

39. This section makes it an offence for any person to use a fire hydrant provided by Scottish Water other than for fire fighting or any other purpose of a relevant authority, or other than for any purpose authorised by Scottish Water. It also makes it an offence to damage or obstruct a fire hydrant provided by Scottish Water other than as a consequence of its use for those purposes.
40. Under subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a maximum of a level 5 fine (currently £5000).
41. This section re-enacts section 14(5) of the 1947 Act.

Section 24 – Notice of works affecting water supply and fire hydrants

42. This section re-enacts sections 16(1) to (3) of the 1947 Act and requires any person who proposes to carry out any works for the purpose of supplying water to any part of the area of a relevant authority to give written notice to the authority under subsection (1). The notice period for doing so is either 14 days in a case where proposed works are to be carried out under a requirement under any enactment other than the Water (Scotland) Act 1980, or 6 weeks in any other case. A person proposing to carry out any works affecting a fire hydrant is required to give at least seven days' notice in writing.
43. Under subsection (4), if it is not practicable for written notice to be given in accordance with the timescales set out in subsections (1) and (3), the person is regarded as having given such notice if it is given as soon as practicable. It is an offence under

subsection (5), if, without reasonable excuse, a person fails to give notice as required. Under subsection (6) a person is liable on summary conviction to a maximum of a level 5 fine.

Chapter 5 – Powers of employees and constables

Section 25 – Powers of authorised employees in relation to emergencies

44. This section provides an employee of a relevant authority who has written authorisation from that authority with powers to do what he reasonably thinks necessary to deal with fires, road traffic accidents and other emergencies. It replaces section 30(1) of the 1947 Act which was limited to dealing with extinguishing or preventing the spread of fires and recognises the wider range of duties of fire fighters, including the work which fire authorities do in responding to road traffic accidents.

Section 26 – Powers of constables in relation to fires

45. This section sets out the powers of constables to do whatever he or she reasonably thinks necessary in the event that the constable reasonably believes a fire has broken out. It replicates powers under the 1947 Act.

Section 27 – Powers of authorised employees in relation to obtaining information.

46. This section allows an authorised employee of a relevant authority to enter premises to obtain information that is needed for the discharge of the core functions of fire fighting (section 9), dealing with road traffic accidents (section 10) and specified emergencies (section 11). Such entry must be at a reasonable time, cannot be forcible and 24 hours notice must be given to the occupier of a private dwelling, but these safeguards may be overridden if a warrant is obtained from a sheriff or justice of the peace.

Section 28 – Giving of notices required by section 27

47. Section 28 provides for the means by which a notice under section 27 may be served.

Section 29 – Powers of authorised employees in relation to investigating fires

48. This section allows an authorised employee of a relevant authority to enter premises where a fire has occurred (including land and premises on which there is a vehicle in which there has been a fire (such as a garage)) in order to investigate the cause and progression of the fire that has occurred there, and grants that officer powers, including the power to take samples.

Section 30 – Exercise of powers under sections 27 and 29: securing of premises

49. Section 30 obliges an authorised employee of a relevant authority who has entered a place under section 27 or 29 to leave the premises as secure against unauthorised entry as they were when found.

Section 31 – Sections 27 and 29: offences

50. Section 31 makes failure (without reasonable excuse) to comply with any requirement under sections 27(4)(b) and 29(2)(g) an offence and a person may be liable on summary conviction to a maximum of a level 4 fine (currently £2500).

Section 32 – Use of commercially sensitive information

51. Section 32 replicates the provisions of the 1947 Act which made it an offence for any person to make use of or disclose any commercially sensitive information which they obtain in the course of exercising their powers under sections 25, 26, 27 or 29. A person is liable on summary conviction to a fine not exceeding level 4 or to 3 months' imprisonment.

Chapter 6 – Mutual assistance etc.

Sections 33 and 34 – Reinforcement schemes and directions about reinforcement schemes

52. These sections re-enact the provisions of the 1947 Act on reinforcement schemes and extend them to apply to road traffic accidents and other serious emergencies (as set out by additional function order under section 11). Section 33 obliges relevant authorities to group together (so far as practicable) to provide mutual assistance. If there are cases where such authorities are unable to come to an agreement about forming such a group then, at the request of one of the authorities concerned, section 34 gives the Scottish Ministers the power to direct authorities involved to make, vary or revoke such a scheme.
53. Before giving a direction, the Scottish Ministers must give all authorities concerned the opportunity to make representations to them and may also instruct an inquiry.

Section 35 – Assistance other than from relevant authorities

54. This section will extend powers in the 1947 Act to allow fire authorities to enter into agreements with organisations including those that employ their own fire-fighters. For example, a relevant authority could arrange with an industrial company for their in-house fire-fighters to provide assistance to the authority outwith the company premises if requested and required. In addition, assistance may be provided by a non fire-fighter if approved by the Chief Officer. For example, a Chief Officer may approve a forestry worker to assist fire-fighters engaged in extinguishing a heathland fire. The cost of this assistance could be reimbursed. These arrangements can also apply to any of the authority's functions covered by sections 8 to 11, 13 and 61.
55. The arrangements under this section cannot be between two relevant authorities as this type of relationship would be covered by sections 33 and 34.

Sections 36 and 37 – Arrangements for carrying out of functions by others

56. **Section 36** extends powers in the 1947 Act to provide relevant authorities with the ability to enter into contractual arrangements with others (including other relevant authorities) to provide services in the execution of their functions (covered by sections 8 to 11, 13 and 61). An example would be an agreement where a relevant authority contracts with a local authority to promote fire safety within its schools. Another example would be where a relevant authority specialises in rope rescue and a neighbouring relevant authority contracts with it to provide some, or all, of its response to incidents requiring rope rescue.
57. However, a relevant authority can only delegate its fire-fighting functions to another authority or others that employ fire-fighters.
58. **Section 37** re-enacts provisions in the 1947 Act that provide the Scottish Ministers with the ability to require relevant authorities to enter into contractual arrangements under section 36 (or to vary or cancel any such arrangements). The Scottish Ministers can exercise the power on their own initiative, but the power must be exercised in the interests of economy, efficiency and effectiveness.
59. Before issuing a direction, the Scottish Ministers must give the relevant authorities concerned the opportunity to make representations to them and they may hold an inquiry.

Chapter 7 – Assaulting or impeding employees and others

Section 38 – Amendment of Emergency Workers (Scotland) Act 2005

60. This section makes it an offence under the Emergency Workers (Scotland) Act 2005 to assault, obstruct or hinder a person acting in the capacity of an employee of a relevant authority or someone providing assistance to them in carrying out functions under sections 9 to 13 (fire fighting, road traffic accidents, other emergencies, emergency directions and other eventualities) or exercising powers under sections 25 (powers of authorised employees in relation to emergencies), 27 (powers to obtain information) and 29 (powers in relation to investigating fires). The penalty for such an offence under the Emergency Workers (Scotland) Act 2005 is, on summary conviction, imprisonment for a period not exceeding 9 months or a fine not exceeding level 5 on the standard scale or both.

Section 39 – Assaulting or impeding employees discharging certain functions

61. **Section 39** makes it an offence to assault, obstruct or hinder an employee of a relevant authority whilst carrying out their duties under sections 8 (fire safety), 17 (duty to secure water supply) or 61 (enforcing authorities). It also covers persons providing assistance to the relevant authority by virtue of arrangements made for assistance under section 35 and those undertaking a function of the authority by virtue of arrangements made under section 36. The offence is punishable on summary conviction with a period of imprisonment not exceeding 9 months or a fine not exceeding level 4 on the standard scale.

Chapter 8 – Central supervision and support

Section 40 – Framework document

62. This section requires the Scottish Ministers to prepare and consult on a Fire and Rescue Service National Framework (“the Framework”), keep the Framework under review and consult on any significant revisions made to it. The Framework (and any significant revision) will come into effect by order.

Section 41 – Adherence

63. This section requires relevant authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if they consider an authority is failing to act in accordance with the Framework by requiring an authority, by order, to act in accordance with the Framework. They may also cause an inquiry to be held into the matter. Before making such an order, the Scottish Ministers must consult the authority.

Section 42 – Reporting

64. This section requires the Scottish Ministers to report to the Parliament on the extent to which relevant authorities are acting in accordance with the Framework and any action Scottish Ministers have taken to ensure the authorities do so.

Sections 43 and 44 – Inspectors of Fire and Rescue Authorities and functions of Inspectors of Fire and Rescue Authorities

65. **Section 43** sets out the arrangements for appointing inspectors of relevant authorities.
66. **Section 44** allows the Scottish Ministers to call for reports from inspectors on the general performance of relevant authorities and on how they are carrying out their functions under the Act. The Scottish Ministers are required to lay a copy of any report submitted on the state and efficiency of relevant authorities generally before Parliament.

Section 45 – Directions for public safety purposes

67. This section provides the Scottish Ministers with the power to give general or specific directions (a “property and facilities order”) to relevant authorities as to the use and disposal of property or facilities for the purposes of public safety. Such a direction may cover all kinds of property and facilities. An example of when this power might be used is during a period of industrial action when official relevant authority cover to deal with emergencies is insufficient to deal with local risks and, in order to ensure public safety, their equipment needs to be used by others providing emergency fire cover.

Section 46 – Requirements concerning equipment and services

68. This section confers on the Scottish Ministers the power (by order) to oblige relevant authorities to use and maintain equipment and services as specified. An example would be the new Firelink radio system where in order to ensure inter-operability between the emergency services, and to enable relevant authorities to work across their own boundaries in the event of an emergency, it is essential that all authorities use the same radio system.

Section 47 – Provision of equipment etc.

69. This section allows the Scottish Ministers to provide, contribute to and maintain equipment, facilities, organisations and services which may be used by relevant authorities. This power must be exercised in the interests of economy, efficiency and effectiveness. For example, this section will give the Scottish Ministers the specific authority to provide equipment to deal with civil resilience incidents and standardised systems for radio communications. This will help to ensure consistency of approach in the case of major emergencies such as a terrorist incident.

Section 48 – Central institution and other centres for education and training

70. This section allows the Scottish Ministers to set up and maintain a central training institution for the purposes set out in subsection (2). Some training which is best suited to local delivery may be undertaken by relevant authorities under powers in section 15 and the Scottish Ministers may make arrangements with relevant authorities for central training (for the purposes set out in subsection (2)) to be delivered at local centres.

Chapter 9 – Employment

Section 49 – Statutory negotiation arrangements

71. This section provides the Scottish Ministers with power to establish negotiating machinery in respect of the conditions of service under which employees of relevant authorities work. The power allows the Scottish Ministers to determine the number, composition and chair of such a negotiating body or bodies.
72. Subsection (2) requires that any such body include representatives of employers and employees (which may include trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992)) and an independent chair.
73. Subsections (5), (6) and (7) would allow the statutory body to make arrangements for some conditions of service to be negotiated locally either in their entirety or within nationally agreed parameters. Subsection (8) makes an agreement between a relevant authority and employees of a particular type a legally enforceable contract; but the agreement is only enforceable where it was made by means of the statutory negotiation body which contained representatives of employees of that type, or if made in accordance with the local negotiation arrangements described in section 49(5) to (7).

Section 50 – Guidance

74. Any negotiating body, whether established voluntarily or under section 49, is required by this section to have regard to any guidance given by the Scottish Ministers in connection with the negotiation of conditions of service.

Section 51 – Prohibition on employment of police

75. This section re-enacts section 32 of the 1947 Act and provides that a relevant authority may not employ a police constable as a fire#fighter. If an off-duty constable was employed by a relevant authority, for example as a fire#fighter on the retained duty system and available for response by pager call, difficulties may arise at the scene of a fire or other emergency due to confusion over which employer has the primary claim on the constable’s services.

Chapter 10 – Interpretation

Section 52 – Interpretation of Part 2

76. This section gives meanings to three terms used in Part 2 of the Act – in particular it provides a definition of “emergency”, for the purposes of this Part.