



# Fire (Scotland) Act 2005

## 2005 asp 5

### PART 2

#### FIRE AND RESCUE SERVICES

### CHAPTER 5

#### POWERS OF EMPLOYEES AND CONSTABLES

##### *Powers in emergencies*

#### **25 Powers of authorised employees in relation to emergencies**

- (1) An employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) and on duty may—
- (a) if the employee reasonably believes that a fire has broken out, do anything the employee reasonably believes to be necessary for the purpose of—
    - (i) extinguishing the fire; or
    - (ii) protecting life or property;
  - (b) if the employee reasonably believes that a road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of—
    - (i) rescuing people; or
    - (ii) protecting them from serious harm;
  - (c) if the employee reasonably believes that an emergency other than a fire or road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of carrying out any function conferred on the authority in relation to the emergency; and
  - (d) do anything the employee reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from action taken as mentioned in paragraph (a), (b) or (c).
- (2) An authorised employee may in particular under subsection (1)—
- (a) enter premises or a place (by force if necessary);

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- (b) move a vehicle without the consent of its owner;
- (c) force open and enter a lockfast vehicle;
- (d) close a road;
- (e) stop and regulate traffic;
- (f) restrict the access of persons to premises or a place.

## **26 Powers of constables in relation to fires**

- (1) A constable may—
- (a) if the constable reasonably believes that a fire has broken out, do anything the constable reasonably believes to be necessary for the purpose of—
    - (i) extinguishing the fire; or
    - (ii) protecting life or property; and
  - (b) do anything the constable reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from anything done as mentioned in paragraph (a).
- (2) A constable may in particular under subsection (1)—
- (a) enter (by force if necessary) premises or a place;
  - (b) move a vehicle without the consent of its owner;
  - (c) force open and enter a lockfast vehicle;
  - (d) restrict the access of persons to premises or a place.

### *Obtaining information*

## **27 Powers of authorised employees in relation to obtaining information**

- (1) Subject to subsection (2) an employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) may at any reasonable time enter premises for the purpose of obtaining information needed for the carrying out of the authority’s functions under section 9, 10 or 11.
- (2) An authorised employee may not under subsection (1)—
- (a) enter premises by force; or
  - (b) demand admission to premises occupied as a private dwelling unless 24 hours’ notice in writing has first been given to the occupier of the dwelling.
- (3) If, on the application of an authorised employee, a sheriff or justice of the peace is satisfied—
- (a) that—
    - (i) it is necessary for the employee to enter premises for the purposes of subsection (1); and
    - (ii) the employee is unable to do so, or is likely to be unable to do so, otherwise than by force,
 the sheriff or justice may issue a warrant authorising the employee to enter the premises by force at any reasonable time; or
  - (b) that it is necessary for the employee to enter premises for the purposes of subsection (1) without giving notice as required by subsection (2)(b), the sheriff or justice may issue a warrant authorising the employee to enter the premises at any time (by force if necessary).

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- (4) If an authorised employee exercises a power of entry by virtue of this section, the employee may—
- (a) take onto the premises—
    - (i) such other persons; and
    - (ii) such equipment,as the employee considers necessary; and
  - (b) require any person present on the premises to provide the employee with any—
    - (i) facilities, information, documents or records; or
    - (ii) other assistance,that the employee may reasonably request.
- (5) An authorised employee exercising a power of entry by virtue of this section shall, if so required, produce the items mentioned in subsection (6)—
- (a) before entering the premises; or
  - (b) at any time before leaving the premises.
- (6) Those items are—
- (a) evidence of the employee’s authorisation for the purpose of this section; and
  - (b) any warrant under subsection (3)(a) or (b).

## **28 Giving of notices required by section 27**

- (1) The notice required by section 27(2)(b) may be given—
- (a) by delivering it to the occupier of the dwelling;
  - (b) by leaving it for that person at the dwelling; or
  - (c) by sending it by post to that person at the dwelling.
- (2) If the name or address of the person to whom notice under section 27(2)(b) is required to be given cannot be ascertained after reasonable inquiry, the notice may be given—
- (a) by leaving it in the hands of a person who is, or appears to be, resident in the dwelling; or
  - (b) by leaving it fixed to a conspicuous part of the dwelling.

## **29 Powers of authorised employees in relation to investigating fires**

- (1) An employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) may, at any reasonable time (by force if necessary), enter premises in which there has been a fire for the purpose of investigating—
- (a) what caused the fire; or
  - (b) why it progressed as it did.
- (2) If an authorised employee exercises the power mentioned in subsection (1) the employee may—
- (a) take onto the premises—
    - (i) such other persons; and
    - (ii) such equipment,as the employee considers necessary;

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- (b) inspect and copy any documents or records on the premises or remove them from the premises;
  - (c) carry out any inspections, measurements and tests in relation to—
    - (i) the premises; or
    - (ii) an article or substance found on the premises,
 that the employee considers necessary;
  - (d) take samples of an article or substance found on the premises (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the investigation);
  - (e) dismantle an article found on the premises (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the investigation);
  - (f) take possession of an article or substance found on the premises and retain it for as long as is necessary for the purpose of—
    - (i) examining it and doing anything the employee has power to do under paragraph (c) or (e);
    - (ii) ensuring that it is not tampered with before the employee’s examination of it is completed; or
    - (iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the investigation;
  - (g) require a person present on the premises to provide the employee with any—
    - (i) facilities, information, documents or records; or
    - (ii) other assistance,
 that the employee may reasonably request.
- (3) An authorised employee exercising the power mentioned in subsection (1) shall, if so required, produce evidence of the employee’s authorisation for the purpose of this section—
- (a) before entering the premises; or
  - (b) at any time before leaving the premises.
- (4) If an authorised employee exercises the power in subsection (2)(d) the employee shall—
- (a) leave a notice at the premises with a responsible person (or, if that is impracticable, fixed in a prominent position) giving particulars of the article or substance and stating that the employee has taken a sample of it; and
  - (b) if it is practicable to do so, give such a person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (5) If an authorised employee exercises the power in subsection (2)(f) the employee shall leave a notice at the premises (either with a responsible person or if that is impracticable fixed in a prominent position) giving particulars of the article or substance and stating that the employee has taken possession of it.
- (6) This section shall apply in relation to vehicles as it applies in relation to premises; but subject to the following modifications—
- (a) the power conferred by subsection (1) includes power to enter premises in which a vehicle in which there has been a fire is being kept;
  - (b) the power conferred by paragraph (a) of subsection (2) includes power to take persons and equipment to the place where a vehicle is; and

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- (c) references to premises in subsections (2)(g) and (3) to (5) include references to premises in which vehicles are kept.

(7) In this section “premises” includes land.

### **30 Exercise of powers under sections 27 and 29: securing of premises**

An employee of a relevant authority who, by virtue of section 27 or 29, enters premises—

- (a) which are unoccupied; or
- (b) from which the occupier is temporarily absent,

and who is authorised to do so by virtue of those sections shall on departure leave the premises as effectively secured against unauthorised entry as the employee found them.

### **31 Sections 27 and 29: offences**

- (1) If, without reasonable excuse, a person fails to comply with any requirement under section 27(4)(b) or 29(2)(g), the person shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Use of information*

### **32 Use of commercially sensitive information**

- (1) If, without reasonable excuse, a person—
  - (a) makes use of; or
  - (b) discloses,any commercially sensitive information obtained by the person while on premises entered in exercise of a power conferred by virtue of section 25, 26, 27 or 29, the person shall be guilty of an offence.
- (2) In subsection (1) “commercially sensitive information” means information with regard to any—
  - (a) manufacturing process; or
  - (b) trade secret.
- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months.