

EXECUTIVE NOTE

THE FIRE SAFETY (SCOTLAND) REGULATIONS 2006 (SSI/2006/456)

Introduction

1. The Fire Safety (Scotland) Regulations 2006 (“the Regulations”) are to be made in exercise of the powers conferred by sections 57, 58, 59(2), 61(8), 75(b), 76(6) and 88(2) of the Fire (Scotland) Act 2005, as amended (“the 2005 Act”). They are subject to negative resolution procedure under s88(3) of the 2005 Act.

Policy Objectives

2. The policy objective of the regulations is to make provision in connection with the carrying out, and review, of assessments to identify risks in respect of harm caused by fire. They also make provision about fire safety in premises which fall within the scope of Part 3 of the 2005 Act (“relevant premises” as defined in section 78 of the 2005 Act), implementing a number of provisions from 6 EC Council Directives relating to general fire safety.

Background

3. The Regulations form part of the reform of fire safety law in Scotland under the 2005 Act. A similar reformed regime will commence for England and Wales on 1 October 2006 under the Regulatory Reform (Fire Safety) Order 2005. The Regulations have 4 Parts. Part I consists of citation, commencement and interpretation provisions. Part II sets out further requirements in respect of fire safety risk assessments. Part III details specific duties in relation to fire safety in relevant premises and Part IV contains a number of miscellaneous provisions (maintenance of measures provided in relevant premises for the protection of fire-fighters; maintenance of measures provided in the common areas of private dwellings for the protection of fire-fighters; arrangements with the Office of Rail Regulation; nominated person’s act or omission not to afford employer defence; service of documents; and disapplication of certain provisions).

4. The 2005 Act was passed on 23 February and Royal Assent gained on 1 April 2005. The main provisions of the Act (Parts 1, 2, 4 and 5 and schedules 1, 3 and 4) have already commenced. Part 3 and schedule 2, which relate to fire safety, are to be commenced on 1 October 2006.

5. Part 3 of the 2005 Act introduces a new fire safety regime for the majority of non-domestic premises in Scotland and houses in multiple occupation subject to licensing. The new regime is based on the principles of risk assessment (similar to some existing fire safety legislation).

6. The majority of the Regulations (4 to 23) are based on many of the general fire safety provisions in existing legislation, primarily the Fire Precautions (Workplace) Regulations 1997 (as amended), the Management of Health and Safety at Work Regulations 1999 and the Dangerous Substances and Explosive Atmospheres Regulations 2002. These pieces of UK legislation in turn transposed a number of fire safety provisions required by Council Directives 89/391/EEC (“the Framework Directive”); 91/383/EEC (“the Temporary Workers’ Directive”); 89/654/EEC (“the Workplace Directive”); 94/33/EC (“the Young Persons’

Directive”); 94/82/EC (“the Chemical Agents Directive”); and 99/92/EC (“the Explosive Atmospheres Directive”).

7. These provisions were previously limited to workplaces, but Part 3 of the 2005 Act extends them to the majority of non-domestic premises and to houses in multiple occupation subject to licensing (“relevant premises” as defined by section 78 of the 2005 Act). Non-domestic premises excluded from the 2005 Act include ships in respect of normal ship-board activities; aircraft; locomotives; rolling stock; trailers or semi-trailers; licensed vehicles; mines; offshore installations; borehole sites; agricultural and forestry land.

8. Regulation 24 is a new provision, not previously covered by general fire safety legislation. It extends the protection provided by Regulation 23 in respect of fire safety measures introduced for, or used by, fire-fighters to the maintenance of such measures provided in the common areas of private dwellings. This is the only provision which extends beyond non-domestic premises to all domestic premises but is an important contribution to securing the safety of fire-fighters. Failure to comply with this requirement is an offence under section 72(3) of the 2005 Act.

9. Regulation 25 prescribes the Office of Rail Regulation as a body with whom fire and rescue authorities/joint fire and rescue boards (“relevant authorities” as defined under section 6 of the 2005 Act) may make arrangements for the carrying out of fire safety legislation enforcement duties.

10. Regulation 26 provides that persons nominated under the Regulations to assist in the fire safety measures are specified persons within the meaning of section 75 of the 2005 Act, thereby preventing an employer relying on a nominated person’s act or omission as a defence in proceedings for an offence under section 72 or 73 of the 2005 Act.

11. Section 76 of the 2005 Act sets out requirements in respect of the service of documents and Regulation 27 makes further provision relating to the person to whom a notice may be addressed and the method by which it may be issued, including electronic transmission.

12. Regulation 28 makes provision for the disapplication of Regulations in particular circumstances: regulations 4, 5 and 18(2) in relation to occasional work or short term work (except where the work is regulated as being harmful, damaging or dangerous to young people in a family undertaking); regulations 6, 11, 15, 18(3) and 21(2) in relation to means of transport regulated by international agreements and EC Directives (except for any means of transport intended for use in a potentially explosive atmosphere); regulation 13(2)(f) in relation to the whole, or part of, a prison, remand centre, young offenders’ institution or part of a prison or any other premises used for keeping persons in lawful custody or detention.

Consultation

13. Draft Regulations were presented to the Justice 2 Committee early last year to assist its members with their consideration of the Fire (Scotland) Bill. The draft Regulations were also issued to a number of key stakeholders for initial comments. Following this pre-consultation, the draft regulations were amended to reflect some of the feedback received and were subsequently the subject of a 12 week consultation later in the year. All the responses received were considered and while the majority of responses related to issues outwith the

scope of the consultation, the relevant issues were discussed as necessary with colleagues within the Scottish Executive, the Department for Communities and Local Government (formerly the Office of the Deputy Prime Minister) and the Health and Safety Executive.

Financial Effects

14. A draft Regulatory Impact Assessment was prepared last year and included with the consultation material distributed. The Assessment has been finalised and accompanies the Regulations.

Scottish Executive
September 2006

FIRE SAFETY LEGISLATION IN SCOTLAND

REGULATORY IMPACT ASSESSMENT (2003/56)

15. Title of proposal

15.1 Fire Safety (Scotland) Regulations 2006. These regulations are made under sections 57, 58, 59(2), 61(8), 75(b), 76(6), and 88(2) of the Fire (Scotland) Act 2005, as amended. Part 3 of the Act and these regulations give effect in Scotland to articles of the following EC Directives in so far as these provisions relate to matters within devolved competence, general fire safety measures to be taken by employers and in so far as more specific legislation does not make appropriate provision (a full list of the relevant articles is available in the Transposition Note accompanying the regulations): 89/391/EEC; 91/383/EEC; 89/654/EEC; 94/33/EC; 98/24/EC; and 99/92/EC.

16. Purpose and intended effect

Objectives

16.1 The objectives of the regulations are to contribute to the overall aim of reducing avoidable fires, and consequently death, injury and loss of property by :

- creating a single regime applying to all premises, with the exception of private dwellings, which can be better understood and administered by businesses and the relevant enforcing authorities;
- creating a regime clearly based on risk assessment and fire prevention and mitigation measures; and
- ensuring that fire safety facilities and equipment are maintained.

Background

16.2 Existing fire safety legislation has developed in a piecemeal fashion with the result that it is scattered over many pieces of legislation. At present, many non-domestic premises are subject to:

- the Fire Precautions Act 1971 – a regime focussing on measures to ensure that occupants can evacuate the premises safely. It is based around inspection and certification; and
- the Fire Precautions (Workplace) Regulations 1997 (as amended) – which makes an employer responsible for assessing fire risks and taking reasonable precautions.

16.3 Some workplaces are also subject to the Fire Certificate (Special Premises) Regulations 1976. In addition, a number of other regimes encompass fire within their wider application. Examples are:

- Liquor licensing under the Licensing (Scotland) Act 1976; and
- Care service registration under the Regulation of Care (Scotland) Act 2001

- 16.4 The existence of different regimes, each with a very different focus, is confusing for all who have to deal with them. This impacts on compliance, because employers and others cannot easily understand what is required of them and it makes administration and enforcement unnecessarily complex.
- 16.5 The Fire Safety (Scotland) Regulations 2006 will apply in Scotland. Separate legislation has been made for England and Wales: the Regulatory Reform (Fire Safety) Order 2005.

Rationale for government intervention

- 16.6 Without reform of fire safety legislation, the risk is that there will be continued confusion among businesses and other organisations with regard to their responsibilities which could lead to non-compliance with fire safety legislation; contribute to business failure; and present a disincentive to start-up (especially for small businesses).

17. Consultation

Within government

- 17.1 The following Government Departments and Agencies have been consulted:

Department of Communities and Local Government (formerly the Office of the Deputy Prime Minister);
Scottish Fire Services College;
Health and Safety Executive;
Scottish Environment Protection Agency;
Maritime and Coastguard Agency;
Scotland Office;
National Assembly for Wales;
Northern Ireland Executive;
Audit Scotland;
Historic Scotland;
Health Protection Scotland; and
Scottish Commission for the Regulation of Care.

Public consultation

- 17.2 The consultation received a good response rate from stakeholders (the majority of whom were from the local government sector) with 51 responses received in total. However, many of the issues raised by respondents fell outwith the scope of the draft legislation but were relevant to awareness and understanding of the new legislation, such as the availability of guidance documents and the need for a publicity campaign. These comments have been considered and have helped inform the design of a publicity campaign, dedicated website and guidance documents.
- 17.3 The issues raised about the content of the draft regulations included requests for clarification of a number of provisions, such as nomination of competent persons. Where possible, we have amended the regulations for clarity while in other cases, such

as nomination of competent persons, additional information is available in guidance documents.

18. Options

18.1 Three options have been identified:

18.2 Option 1: do nothing – continue with the existing legislative framework which comprises the two main pieces of specific fire safety legislation - the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997 as amended - along with other regimes.

18.3 Option 2: limited reform - remove the overlapping regimes which apply by virtue of the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997. This could be done by repealing the Fire Precautions Act 1971 and replacing the Fire Precautions Workplace (Regulations) 1997 with legislation which would provide a single risk based fire safety regime. However, this option would still leave some premises with multiple fire safety regimes as a result of other legislation with fire safety provisions.

18.4 Option 3: full rationalisation of general fire safety legislation including fire safety provisions in other legislation where possible, by means of new primary legislation and associated subordinate legislation, along with

- clarification of the protection required in respect of premises operated by the self-employed, the voluntary sector and charities where fire protection may currently only be considered within wider duties required by health and safety legislation;
- provision for enforcing authorities, in most cases the fire and rescue authorities and joint fire and rescue boards, to take action directly against those who have failed to comply with their fire safety duties under the Act and related regulations; and
- provision for enforcing authorities to require the maintenance of measures provided for the protection of fire-fighters.

18.5 It is anticipated that very little of this will constitute a new burden - there will be some costs involved in familiarisation with the new arrangements but these should not be resource intensive.

19. Costs and benefits

Sectors and groups affected

19.1 Generally all sectors of business (including the self-employed, the voluntary sector and charities) will be covered by the new single fire safety regime. The legislation will apply to workplaces (regardless of the number of employees) but will generally not apply to private dwellings (with the exception of some maintenance requirements in respect of fire-fighting equipment located in the common areas of private dwellings).

The legislation will, however, apply to Houses in Multiple Occupation which are subject to a licence.

19.2 It is important to note that the existing Fire Precautions (Workplace) Regulations 1997 as amended, already provide for a risk assessment based approach to fire safety in virtually all places where people are employed to work. Accordingly, there is little by way of new burdens. Even in premises where people are not employed to work, under existing health and safety legislation there are already duties of care which require safety risks to be assessed, and this should include the assessment of risk from fire. So the operator of the premises should already be carrying out risk assessments which include fire risks. This mainly refers to:

- non-domestic premises used by self-employed people, and
- the voluntary sector where there are no employees.

Issues of Equity and Fairness

19.3 The new fire safety legislation will enhance equity and fairness by applying a single unified regime to all employers for the first time.

19.4 The new legislation and related guidance and publicity campaign may mean that some employers who were previously unaware of their duties are now made aware of them, and consequently face costs in complying with fire safety requirements. However, these responsibilities would not be new, merely clarified, and therefore any costs incurred by the employers meeting their statutory responsibilities with regard to the protection of employees and the public, is considered to be a reasonable outlay for the protection of employees and the public.

20. Quantifying and Valuing Potential Benefits

Option 1

20.1 Option 1 continues with the existing legislative framework. This will have no perceived benefits and if ad hoc amendments and piecemeal revisions continue, this will make the various regimes even more complex and will risk reducing compliance further.

Option 2

20.2 Option 2 is a limited reform, removing the requirement for fire certification and the associated costs, moving instead to a risk assessment regime. It will not fully rationalise all fire safety related legislation and will leave some disadvantages as at option 1, duplication of effort and lack of clarity within the system.

Removal of obligation to obtain a fire certificate

- 20.3 Under the Fire Precautions Act 1971, the owners or occupiers of premises are obliged to obtain a fire certificate if the premises are used in certain ways. A fire certificate must be obtained for:
- Hotels and boarding houses with sleeping accommodation (for staff or guests)
 - for more than 6 persons, or
 - any above the first floor, or
 - any below the ground floor.
 - Factories, offices, shops or railway premises (including aggregation of numbers in different premises) with:
 - more than 20 persons at work at any one time; or
 - more than 10 persons at work at any one time elsewhere other than on the ground floor.
 - Factories with highly flammable or explosive materials.
- 20.4 The fire certificate is prepared and issued by the fire and rescue authority/joint fire and rescue board (other than for Crown premises), once it has inspected the premises and is satisfied that the means of escape in case of fire; the means with which the building is provided for securing that the means of escape can be safely used at all times; the means for fighting fire; and the means for giving warning in case of fire, are such as may reasonably be required.
- 20.5 Data received from fire and rescue authorities and joint fire and rescue boards indicates that at the end of the financial year 2004/05, there were 24,658 fire certificates in force in Scotland. Over that year, 264 fire certificates were issued across the country. In addition to this, 761 fire certificates were amended or re-issued over that period.
- 20.6 Each of the eight Scottish fire and rescue authorities and joint fire and rescue boards charge for the issuing, amending or replacing of fire certificates. Data from each authority reveals that they received £135,000 in income from issuing and amending fire certificates in 2004/05. They received £203,000 in 2001/02, £188,000 in 2002/03 and £164,000 in 2003/04. Therefore the average income over the period is £172,500 per year. If it is assumed that the average income in future follows this trend, removing the obligation for owners and occupiers to obtain fire certificates would result in **savings of £172,500 per year to owners and occupiers of premises. If we assume a ten year period and discount the future benefits to obtain the net present value of those benefits¹, this results in a net present benefit of £1,485,000 to owners/occupiers of premises.**
- 20.7 There will also be a saving to owners/occupiers of premises in terms of time. This represents a resource that can be directed towards other, more productive, uses. It is difficult to identify the precise length of time that owners/occupiers have to spend on completing the necessary procedures, as it can involve preparing plans, organising and

¹ Discounting over a 10 year period is standard practice in evaluation. It allows for comparisons of future and current consumption by expressing costs and benefits in money from the same time period. A discount rate of 3.5 per cent is used, in accordance with the Treasury's Green Book. This rate reflects the long run growth rate of the UK economy, a measure of risk and individuals' preferences for current consumption.

attending meetings, showing fire and rescue service officers around the premises and so forth. It has therefore been assumed that the obligation to obtain a fire certificate requires a manager to work for between 8 hours (1 day) and 16 hours (2 days) in order to complete the necessary procedures in respect of a new issue or amended fire certificate. Given that a manager earns £23.34² per hour on average, each certificate incurs a resource cost of between £186.72 and £373.44 for the owners and occupiers of the premises. In total, removal of the obligation to obtain a fire certificate would **release resources of between £191,000 and £383,000 for the owners and occupiers of premises**, assuming that broadly the same number of certificates were issued and amended each year. **Over a ten year period, this results in a yield of potential benefits of between £1,647,000 and £3,295,000.** In total, the regulatory change should yield a benefit of between £3,132,000 and £4,780,000 to owners and occupiers of premises over a ten year period.

	Net Present Benefits to Owners/Occupiers
Removal of Obligations	+ £1,485,000
Time Savings	+ £1,647,000 to + £3,295,000
Total	+ £3,132,000 to + £4,780,000

Savings in cost of fire

20.8 It is estimated that the overall economic consequential cost of fire in Scotland is £88m (see Table 1 in the Annex). For the purposes of calculating potential savings as a result of simplified legislation and user-friendly guidance, the Office of the Deputy Prime Minister's figure of £34,400³ has been used as the average economic consequential cost of fire to the commercial sector including property losses, fatalities, injuries and lost business. Although it is not possible to forecast the reduction in fires and cost savings which might be delivered as a result of the legislative change, it is estimated **that a reduction in the number of fires of 1%, 5% and 10% would achieve annual savings of £0.88m, £4.4m and £8.8m respectively** (see Table 2 in the Annex). **Over a ten year period and after discounting, there would be a benefit of £7,575,000 if the number of fires had reduced by 1%; £37,960,000 if reduced by 5%; and £75,920,000 if reduced by 10%.**

	Savings to owners/occupiers
Cost of fire	+ £7,575,000 to + £75,920,000
Total	+ £7,575,000 to + £75,920,000

20.9 However, the savings in terms of economic costs is only one part of the picture; statistics cannot reflect the costs of fire in terms of the emotional distress of victims,

² Labour cost figures are based on the average hourly earnings statistics for Scotland published in the Annual Survey of Hours and Earnings 2004 plus an allowance of 25% to account for superannuation and National Insurance contributions on the part of the employer.

³ "Economic Cost of Fire, Estimates for 2004" ODPM, April 2006

families, friends and communities where fire causes loss of property, trauma, injury or death.

20.10 There may also be wider impacts than those taken into account in calculating the cost of fire when, for example, a factory or office is destroyed and jobs are lost in a local community. Fires may also damage the natural or built environment and cause the loss of historic artefacts or rare habitats.

20.11 The negative impact of fire is much broader than can be conveyed by the economic cost alone.

Targeting of Resources

20.12 The new regime will also bring a resource saving to the fire and rescue authorities and joint fire and rescue boards, which could be reallocated to other areas of fire and rescue service work. In 2004/05, 10,374 inspections associated with fire certification were carried out in Scotland, taking a total of 17,854 hours of officers' time. Given that responsible officers⁴ will earn around £15.03 per hour on average, removing the obligation for owners and occupiers of premises to obtain fire certificates will **generate benefits of around £268,000 per year** for the service in Scotland. **Over a ten year period and after discounting, there will be a benefit of £2,310,000.**

	Net Present Benefits to Fire Service
Time Savings	+ £2,310,000
Total	+ £2,310,000

20.13 The move away from a system based on certification of prescribed classes or uses of building will give fire and rescue authorities and joint fire and rescue boards the freedom to develop their inspection programmes on the basis of risk. The Integrated Risk Management process is well underway, the main objective of which is to improve community safety, reduce the risks of fire and achieve the most productive use of fire and rescue service resources. It is not anticipated that there will be any new staffing implications arising from the legislation: fire and rescue authorities and joint fire and rescue boards will have the flexibility to use their staff as they best see fit having used the Integrated Risk Management approach when planning the provision of their service and their response to a range of emergencies. They are also required to consult publicly on the production of Integrated Risk Management Plans. These plans will be based on local knowledge and expertise and improve service provision where it is needed the most, with the focus and priority on people rather than property.

Reduction in false alarms

20.14 Approximately a third of all false alarms in Scotland are the result of faulty apparatus. A reduction in the number of false alarms would not only reduce the costs to the fire and rescue service of responding to these calls and therefore freeing up resources for other work, but would reduce the costs of lost business and the

⁴ Assumed to be a Watch Manager B (competent)

disruption/nuisance element of false alarms to occupiers of, and neighbours to, the premises.

- 20.15 It is estimated that the average call-out cost due to faulty apparatus is around £418⁵. If as a result of increased awareness of responsibilities, the volume of false alarms could be reduced by 1%, 5%, or 10% the **annual savings would be £0.1m, £0.7m, £1.3m** respectively (see Table 3 in the Annex). **Over a ten year period and after discounting, there would be a benefit of £861,000 if the number of false alarms had reduced by 1%; £6,025,000 if reduced by 5%; and £11,190,000 if reduced by 10%.**

	Savings to the fire and rescue services
Reduction in false alarms	+ £861,000 to + £11,190,000
Total	+ £861,000 to + £11,190,000

- 20.16 These resources could then be better utilised within the fire and rescue service.

Option 3

- 20.17 Option 3 is a full rationalisation of all fire safety legislation. This has significant benefits over option 2 in terms of simplification, clarity and compliance. While it is anticipated that very little will arise in respect of new burdens, it is hoped that the new legislation will improve compliance as a result of the clarity achieved through rationalisation, the related publicity campaign and the guidance to be issued.

- 20.18 In addition to the benefits identified under option 2 above, the creation of a single regime will deliver much greater clarity about the responsibilities of employers, owners, occupiers and others exercising control of non-domestic premises occupied by small businesses, voluntary organisations and charities. This will be supported by a publicity campaign and a series of guidance documents and we hope that these measures will increase awareness of fire safety measures which should be undertaken and improve compliance with fire safety legislation

21. **Potential Costs of the Proposed Legislation**

Option 1

- 21.1 Option 1 continues with the existing legislative framework. This will have no perceived costs in respect of administrative costs. However, this option will adversely affect the policy aim of reducing the number of avoidable deaths as there will continue to be confusion over responsibilities as a result of overlapping fire safety regimes.

Option 2

- 21.2 Option 2 is a limited reform, removing the requirement for fire certification and the associated costs, moving instead to a risk assessment regime. There would be some policy and administrative costs associated with this option. With regards to policy costs, while this option will streamline fire safety legislation to a limited extent, there

⁵ The Economic Cost of Fire: Estimates for 2000, ODPM, June 2003

will continue to be confusion over responsibilities and the overlap with health and safety legislation in respect of fire safety.

21.3 The administrative costs of this option are detailed below:

Costs of new guidance and familiarisation

21.4 Under the new legislation, responsibility for fire safety may be imposed on a number of individuals. Employers have a duty to ensure, so far as is reasonably practicable, the safety of their employees in respect of harm caused by fire in the workplace. Additionally, where a person has control of premises to any extent, they must carry out an assessment to identify fire safety risks to certain persons in the event of fire. A number of people may therefore have duties in respect of the same premises. In the case of multiple occupancy premises (such as shopping centres or commercial office buildings), responsibility may therefore be borne by employers (where there are employers), the occupier, the owner and any other person who to any extent exercises control over the premises in question. The new legislation will apply to the majority of premises which are not private dwellings and which are used or operated by employers, the self-employed and the voluntary sector. There will be a small number of exceptions (including certain means of transport, boreholes, agricultural land, mines and offshore installations).

21.5 However, it is assumed here that most of the persons having duties under Part 3 of the Fire (Scotland) Act 2005, as amended operate in premises that are already covered by existing fire safety legislation. Employers should be familiar with their existing duties under the Fire Precautions (Workplace) Regulations 1997 as amended, and the fire precautions elements of the Management of Health and Safety at Work Regulations 1999. This makes it relatively unlikely that those who now bear the responsibility for fire safety will have had no contact with fire safety matters before.

21.6 According to the Scottish Corporate Sector Statistics 2004, there are approximately 270,430 enterprises in Scotland. This figure includes the self employed. There are an estimated 42,345 voluntary organisations which will also be required to familiarise themselves with the guidance⁶. Fire safety will now become the responsibility of the employers and other persons in control of the premises. These individuals will be required to familiarise themselves with their responsibilities. All organisations have been sent a fire safety guidance booklet and more detailed guidance is available online at no charge.

21.7 A number of hourly values have been used to calculate the resource cost for all organisations. The average manager's hourly rate of £23.34 has been used to calculate the cost for the 94,205 enterprises with employees. For the estimated 176,225 self employed businesses, an average hourly rate of £8.70⁷ has been used and for the 42,345

⁶ SCVO estimate that there are around 50,000 voluntary organisations in Scotland. 7,655 not for profit bodies with employees which appear within the Corporate Sector Statistics have been subtracted from this figure to avoid double counting.

⁷ The Survey of Personal Income 2003/04 estimates that £67.8m was received by 4.5m individuals. This translates as £15,000 average annual income which assuming a 46 working week year and 37.5 hours per week works out at £8.70.

voluntary organisations, an average hourly value of £4.88⁸ has been applied to estimate the cost of accessing and reading the new guidance.

21.8 The analysis also assumes that larger businesses (with more than 10 employees) will spend 2 hours accessing and familiarising themselves with the guidance and smaller businesses and self employed people 1 hour. For the voluntary organisations this process is estimated to take around 1 hour.

21.9 The total resource cost of all enterprises familiarising themselves with the new guidance is estimated to be £6m. The figure for voluntary organisations is estimated to be £210,000. When a sensitivity analysis of these average totals is undertaken with an allowance of +/- 10%, the estimated cost for enterprises ranges from £5.4m to £6.6m and the cost for voluntary organisation ranges from £190,000 to £230,000. **Overall, it is estimated that familiarisation with the new guidance will cost between £5.59m and £6.83m.**

21.10 It is important to recognise that costs and familiarisation time may be reduced in some cases, where large organisations will rework the guidance specifically for their managers and issue it across the organisation, or charge management teams with ensuring compliance in each of their branches. We also implicitly assume full take-up of the new guidance.

	Net Present Cost to Persons with fire safety duties
Costs of Familiarisation for Enterprises	- £5,400,000 to - £6,600,000
Costs of Familiarisation for Voluntary Sector	- £190,000 to - £230,000
Total	- £5,590,000 to - £6,830,000

21.11 It is important to recognise that some persons with fire safety duties may incur significant extra costs, on top of those involved in obtaining and becoming familiar with the guidance, as a result of non-compliance with existing fire safety legislation. However, it should be noted that these compliance costs do not represent a **new** burden on employers.

Loss of Income to Fire and Rescue Service

21.12 Under the proposed changes, the fire and rescue authority/joint fire and rescue board will lose the income it receives from fire certificates. This is precisely the amount that the owners and occupiers will save under the new legislation. **The loss of income will therefore be approximately £1,485,000.**

	Net Present Cost to Fire and Rescue Services
Loss of income from fire certificates	- £1,485,000
Total	- £1,485,000

⁸ The Department of Transport (2004) estimated that the value of non-working time in 2002 was £4.46. Up-rating this figure in line with income, the 2006 figure is estimated to be £4.88.

Option 3

21.13 Option 3 is a full rationalisation of fire safety legislation, including clarifying responsibilities for those in small business, voluntary organisations and charities occupying non-domestic premises. It therefore fully meets the policy objectives set out in section 2. With regard to administrative costs, in addition to the costs detailed under option 2, the following costs will also be incurred:

Raising awareness, increasing compliance

21.14 Consolidation of fire safety requirements and responsibilities in respect of devolved matters into a single piece of primary legislation and associated subordinate legislation will provide clarification for employers, others who exercise control over premises, and employees. The extensive nature of the reform will require to be promoted within the relevant sectors: a publicity campaign is well underway including a new dedicated website, press articles, radio adverts, trade publications, posters and the distribution of a guidance booklet to over 162,000 organisations in Scotland. In addition, a series of guidance documents is being produced (aimed at specific business sectors e.g. Offices and Shops). These documents will explain the principles of the risk assessment approach to fire safety and assist those with responsibilities under the new legislation to understand them and undertake their duties. **We anticipate that £500,000 to £550,000 will be required for the Scottish Executive's campaign.**

	Net Present Cost to Scottish Executive
Cost of awareness campaign	- £500,000 to - £550,000
Total	- £500,000 to - £550,000

22. **Small/Micro Firms' Impact Test**

22.1 Small businesses with employees should already be familiar with fire safety legislation as they are currently required to comply with the Fire Precautions (Workplace) Regulations 1997 as amended. The requirements of the new legislation should be no more onerous than those required under the existing regime and should therefore not constitute a new burden to these businesses.

22.2 However, it is anticipated that some micro businesses which currently do not have any employees and therefore do not currently have any statutory responsibilities in respect of fire safety, will have some responsibilities under the new regime. Recent statistics published by the Scottish Executive⁹ estimate that in November 2004, there were 176,225 businesses in Scotland without any employees.

22.3 In order to test some of the assumptions relating to small businesses, a number of consultations have been carried out in conjunction with the Federation of Small Businesses. Consultation data has been used to inform the cost calculations. In addition to the costs of reading and familiarising themselves with the new guidance, self employed people (not working from home and with no employees) will also be

⁹Scottish Executive National Statistics Publication: Scottish Corporate Sector Statistics, June 2005

required to undertake a risk assessment and implement any fire safety measures subsequently identified as necessary.

Implementation costs to self employed

- 22.4 For the first time, self employed businesses will be required under the new fire safety regime to undertake fire safety risk assessments. The extent of the time required will depend on the level of control that they have over their working environment.
- 22.5 The Labour Force Survey estimates that 20.3% of self employed businesses ‘work from home or the same grounds’, 34% ‘would use home as a base’ and 45.1% work ‘somewhere quite separate from home’¹⁰. The first group will not be affected by the new legislation, if their home remains a private dwelling. It is assumed that the 34% of self employed using home as a base are likely to have no other regular work place and therefore will have fairly limited control over their working environment. It is therefore estimated that there are around 62,000 self employed businesses with low control, each spending around one hour each year on fire safety risk assessments .
- 22.6 For the 45% of self employed working somewhere quite separate from home (usually meaning their own premises), these businesses are likely to have a greater control and greater responsibility over their working premises. It is estimated that there are around 79,000 self employed businesses with high control each spending around two hours on fire safety risk assessments.
- 22.7 Based on an average hourly value of £8.70, the combined resource cost for self employed businesses to undertake fire risk assessments is estimated to be £1.9m. With an allowance of +/- 10%, the estimated cost ranges from £1.7m to £2.1m.
- 22.8 The regulations also require that fire risks are assessed whenever there is a substantive change to the premises. The extent of this ongoing assessment is likely to be more limited than the initial assessment, but will represent some further costs. This is only likely to be the case for self employed people with a high level of control and that this amounts to 0.5 hours each year. Over ten years this represents 397,000 hours. Valuing this time at £8.70 an hour gives a total of £3.5m which, after discounting at 3.5% over 10 years, equates to a net present cost of approximately £3.0m. Again using an allowance of +/- 10%, the estimated cost ranges from £2.7m to £3.3m. **Overall, the additional costs to the self employed are estimated to be between £4.4m to £5.4m.**

	Net Present Cost to Self Employed with fire safety duties
Costs of Undertaking Fire Risk Assessments for Self Employed	- £1,700,000 to - £2,100,000
Annual Costs of Updating Fire Risk Assessments	- £2,700,000 to - £3,300,000
Total Implementation Costs to Self Employed (after discounting)	- £4,400,000 to - £5,400,000

¹⁰ Scottish Executive analysis of the Labour Force Survey, 2004

Impact on small/ micro businesses summary

- 22.9 The main additional burden will fall on the self employed businesses with no employees. Although businesses with employees will be encouraged to read the guidance in order to familiarise themselves with the legislation, they will not incur implementation costs as they should already be complying with the existing regime. In practice the simplification of regulations is expected to encourage greater compliance amongst this group but these costs cannot be attributed to the change in legislation.
- 22.10 For many small businesses the savings in not having to invest time and money in purchasing fire certificates will offset the small amount of time required to carry out the risk assessments. In summary, those businesses that currently require fire certificates will be better off as a result of the new regulations, while the self employed will be slightly worse off. All other businesses, with employees, will invest between 1.5 and 2.5 hours in reading and familiarising themselves with the guidance, but will not need to take any more action than is currently required. The cost of this time is estimated to be around £3.7m.
- 22.11 The resource costs to businesses by all sizes is shown below.

Business size	Number	Access and familiarisation	Implementation	Total
0 employees	176,225	£2.3m	£4.9m	£7.2m
1-4 employees	58,925	£2.0m	£0	£2.0m
5-9 employees	16,140	£0.6m	£0	£0.6m
10-49 employees	13,415	£0.8m	£0	£0.8m
50+ employees	5,540	£0.3m	£0	£0.3m
Total business	270,245	£6.0m	£4.9m	£10.9m

23. Voluntary Sector Impact Test

- 23.1 As with businesses, all voluntary organisations with employees are already covered through the existing fire safety regime and the new legislation will not add any new burden. It is only among those which do not have employees that there will be additional costs. The Scottish Council for Voluntary Organisations (SCVO) estimates that there are around 50,000 voluntary organisations in Scotland. Whilst there is no data held by SCVO on the proportion of voluntary organisations without employees, a recent survey of the voluntary sector in the Highlands estimated that 55% of organisations did not have any employees¹¹. Assuming this ratio is representative of Scotland as a whole, this would indicate that around 27,500 voluntary organisations do not have employees.

¹¹ Audit of the Social Economy, for Highlands & Islands Enterprise – SQW Ltd, 2001

23.2 In order to test some of the assumptions relating to voluntary organisations, a number of consultations have been carried out in conjunction with SCVO. Consultation data has been used to inform the cost calculations.

Implementation costs to voluntary sector

23.3 Voluntary organisations without employees will be required to carry out fire risk assessments which again will vary according to the level of control over their premises.

23.4 A recent briefing paper on the voluntary sector in Falkirk indicated that 12% of all organisations own premises¹². At a Scotland level, this would represent 6,000 voluntary organisations with their own premises. If this number was split evenly between those with and without employees, this would result in a 2,700:3,300 split. It is more likely that organisations with employees will have their own premises and consequently it has been estimated that around 2,000 of organisations without employees will be likely to have their own premises. These organisations are therefore assumed to have higher control over their premises and are estimated to spend one hour each year undertaking their risk assessment.

23.5 It is assumed that for the remaining 25,500 voluntary organisations, where the level of control is lower (using premises owned by others), the risk assessment will be relatively short, an estimated 0.5 hours in total over one year.

23.6 Based on an average hourly value of £4.66, the combined cost for voluntary organisations undertaking fire risk assessments is estimated to be around £70,000. When a sensitivity analysis is undertaken with an allowance of +/- 10%, the estimated cost for voluntary organisations ranges from £65,000 to £79,000.

23.7 In addition, any changes to the premises used by voluntary organisations will require some reassessment of risk. An on-going investment of time, of a further half hour each year, has been assumed for all voluntary organisations without employees. This amounts to around £580,000 over a ten year period after discounting. Again, after using an allowance of +/- 10%, the ongoing costs for voluntary organisations are estimated to be between £520,000 and £635,000. **Overall, the additional costs to voluntary organisations are estimated to be between £585,000 and £714,000.**

	Net Present Cost to Voluntary Organisations with fire safety duties
Costs of Undertaking Fire Risk Assessments for Voluntary Organisations	- £65,000 to - £79,000
Annual Costs of Updating Fire Risk Assessments	- £520,000 to - £635,000
Total Implementation Costs to Voluntary Sector (after discounting)	- £585,000 to - £714,000

¹² Falkirk's Voluntary Sector, CVS Falkirk and District, 2004

24. **“Test run” of business forms**

24.1 While some businesses will be required to record the action taken as a result of the fire safety risk assessment carried out, the format of the record will not be prescribed by the Scottish Executive. However, general guidance on fire safety risk assessments will be available in the series of sector-specific guides produced to complement the new legislation. These guides will be the subject of consultation in due course.

25. **Competition Assessment**

25.1 We do not anticipate that the proposed legislation will have any impact on competition in the broader business sector. The legislation should assist in removing confusion and uncertainty over legal requirements. It should also have no effect on standards of manufacture of fire related safety products or the competition within this market.

25.2 However, it may assist in opening up competition in the services sector through the possibility of employment of competent persons to fulfil obligations not hitherto complied with, including the carrying out of risk assessments and the installation, maintenance and testing of fire safety measures.

25.3 The competition filter test questions have been considered in respect of all 3 options (option 1 being do nothing) and the responses are below.

Competition filter test questions

Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

25.4 All sectors and therefore all firms (regardless of market) which operate from non-domestic premises will be affected by the new legislation. It is on this basis i.e. all

markets are similarly affected that the above questions have been considered and answered.

- 25.5 There are no new burdens anticipated as a direct result of the new legislation for those who were affected by previous fire safety legislation.
- 25.6 Whilst the self-employed and organisations with no employees will have to comply with fire legislation for the first time, both of these groups will be similarly affected by the new regime. These groups exist across a range of markets and cannot be assigned to specific sectors. In order to meet their requirements under the legislation, these groups may have to take into account expenditure on fire safety measures when considering production and service commitments.
- 25.7 New firms or organisations entering markets would not be affected any differently from existing firms and organisations as the regime covers all markets operating from non-domestic premises.
- 25.8 Consequently, the new legislation is not considered to affect the current nature of competition within the market place.

26. **Enforcement, Sanctions and Monitoring**

- 26.1 Fire and rescue authorities and joint fire and rescue boards will be the principal enforcing authority in respect of the new fire safety legislation, their powers are contained in the Fire (Scotland) Act 2005, as amended.
- 26.2 There are a number of other enforcing authorities including the Health and Safety Executive (in respect of some high risk premises) and the Fire Service maintained by the Secretary of State for Defence (in respect of premises on military bases). In addition Scottish Ministers will be empowered to modify the enforcing authorities appointed in respect of particular premises. Enforcing authorities will be expected to enforce the law in accordance with the Cabinet Office's Enforcement Concordat.
- 26.3 The new regime is based on the principle that employers and people responsible for activities giving rise to risk have the responsibility for the fire safety of their premises and the people who use them.
- 26.4 It is expected that most minor breaches will be dealt with informally, for example with verbal or written advice. The enforcing authority will deal with more serious breaches by issuing an enforcement notice, specifying why and how the authority feels that the person with fire safety duties has failed to comply and requiring action to be taken to rectify the breach of the law.
- 26.5 Other powers are available to enforcing authorities. An 'alterations notice' can be served in respect of premises and this requires that any proposed alteration that might increase risk is reported to the authority. 'Prohibition notices' can be issued to restrict or prohibit the use of premises if it is considered that the use of those premises involves a risk so serious that such action should be taken.

26.6 We intend to track the operation of the new legislation principally through monitoring and evaluation of performance statistics and data collection from fire and rescue authorities and joint fire and rescue boards.

27. Implementation and delivery plan

Activity	By	Timing
Launch of dedicated fire safety legislation website	Scottish Executive	Mid July 2006
Publicity campaign to promote awareness of new legislation including local and national press, radio, trade publications	Scottish Executive	Phase 1 – July/Aug Phase 2 – Sept/Oct
Distribution of guidance booklet to over 156,000 organisations in Scotland	Scottish Executive	August
Guidance documents and roadshow event for Fire and Rescue Service personnel	Scottish Executive	August/Sept
Publication of series of sector specific guidance documents to complement the new legislation	Scottish Executive	August onwards
Part 3 of the Fire Scotland Act 2005 (as amended) and related subordinate legislation comes into force	Scottish Executive/Scottish Parliament	October

28. Post-implementation review

28.1 HM Fire Service Inspectorate collects data annually from fire and rescue authorities about fire safety inspections and number of notices served on premises. The first full year in which data relating to inspections and notices served under the new legislation will be collected will be 2007-08 and this data will be due to be forwarded to Inspectorate in the summer of 2008. This data will provide helpful feedback on awareness of, and compliance with, the new legislation within the various sectors.

28.2 The legislation provides for a third party determination process in the event of a dispute between those with fire safety responsibilities under the new legislation and the enforcing authority (which will be the Fire and Rescue Service in most cases) as to action needing to be taken to comply with a fire safety duty. The third party will be either HM Chief Inspector of Fire and Rescue Authorities or, where the enforcing authority is HM Fire Service Inspectorate, Scottish Ministers. The frequency of use of this process within the first 2-3 years will provide an indication of the clarity and appropriateness of the legislation.

28.3 In addition, the Scottish Executive liaises regularly with the fire and rescue authorities on all matters relating to the provision of a Fire and Rescue Service in Scotland.

Following the introduction of the new fire safety regime for non-domestic premises in Scotland, these meetings/forums/correspondence will often include consideration of the impact of the new legislation.

29. Summary and recommendation

29.1 Of the 3 options considered, option 3 is recommended as a full rationalisation of all general fire safety legislation will help deliver much greater clarity about the responsibilities of employers, owners, occupiers and others exercising control of non-domestic premises occupied by small businesses, voluntary organisations and charities. With the support of an extensive publicity campaign and a series of guidance documents, awareness of fire safety should improve, compliance with fire safety legislation should improve, and the number of fires should reduce.

30. Summary costs and benefits table

30.1 The benefits to persons with fire safety duties and the benefits to the fire and rescue authorities and joint fire and rescue boards can be set against costs incurred by the owners/occupiers. The benefits and costs discounted over a 10 year period are:

	Owners/Occupiers	New legislation dutyholders	Fire and rescue services	Scottish Executive
Removal of Obligations	+ £1,485,000			
Time Savings	+ £1,647,000 to + £3,295,000		+ £2,310,000	
Savings in cost of fire	+ £7,575,000 to + £75,920,000			
Savings in reduction of false alarms			+ £861,000 to + £11,190,000	
Total Benefits	+ £10,707,000 to + £80,700,000		+ £3,171,000 to + £13,500,000	
Costs of Familiarisation		- £5,590,000 to - £6,830,000		
Implementation costs to self employed		- £4,400,000 to - £5,400,000		
Implementation costs to voluntary sector		- £585,000 to - £714,000		
Loss of Income			- £1,485,000	
Raising awareness				- £500,000 to - £550,000
Total Costs		- £10,575,000 to - £12,944,000	- £1,485,000	- £500,000 to - £550,000
Net Balance	+ £10,707,000 to + £80,700,000	- £10,575,000 to - £12,944,000	+ £1,686,000 to + £12,015,000	- £500,000 to

				- £550,000
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30.2 Overall, the data suggests that the new legislation will have an impact **ranging between a net cost of £1,101,000 and a net benefit of £81,640,000** (discounted over a 10 year period). The extent to which the change in regulation will result in a net benefit is largely dependent upon the anticipated savings in cost of fire. These savings have been calculated based upon reasonable assumptions and are achievable with improved awareness of the new legislation. The change in regulation is of benefit to both the fire and rescue authorities and joint fire and rescue boards and to those having duties in respect of premises. However, it represents a cost to the latter group of persons in respect of familiarisation with the new regime and to organisations previously unaffected by the fire safety regime. It is possible that this change may impact on rental incomes, but it is outwith the scope of this analysis to assess that.

30.3 The scale of the impact is sensitive to the assumptions made in the analysis. It is assumed that the legislative change will be able to ensure full compliance with new and existing regulations among those with fire safety duties in respect of premises. However, this may be unrealistic, given that there will be levels of non-compliance.

31. **Declaration and publication**

31.1 I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Table 1 - Consequential cost of fire. Scotland. 2004.

Premises type	Number of Fires in 2004 ¹³	Average Consequential Cost per fire (2004) ¹⁴ (£)	Total Consequential Cost (£ million)
Agricultural	106	32,000	3.4
Construction Industry	35	34,700	1.2
Other Industrial	228	34,700	7.9
Retail distribution	452	34,600	15.6
Hotels, boarding houses, hostels etc	208	34,600	7.2
Restaurants, cafes, public houses etc	265	34,600	9.2
Education	253	32,700	8.3
Hospitals	166	32,700	5.4
Recreational and other cultural	256	32,700	8.4
Other	700	30,900	21.6
Totals	2669		88.2

¹³ Fire Statistics Scotland, 2004: Scottish Executive Statistical Bulletin, February 2006

¹⁴ The Economic Cost of Fire: Estimates for 2004: ODPM April 2006

Table 2 - Cost savings of reducing the number of fires. Scotland. 2004

Premises type	Average cost saving of a reduction in the number of fires		
	(£m)		
	1%	5%	10%
Agricultural	0.03	0.17	0.34
Construction Industry	0.01	0.06	0.12
Other Industrial	0.08	0.40	0.79
Retail distribution	0.16	0.78	1.56
Hotels, boarding houses, hostels etc	0.07	0.36	0.72
Restaurants, cafes, public houses etc	0.09	0.46	0.92
Education	0.08	0.41	0.83
Hospitals	0.05	0.27	0.54
Recreational and other cultural	0.08	0.42	0.84
Other	0.22	1.08	2.16
Totals	0.88	4.41	8.82

Table 3 – False alarms due to faulty apparatus. Scotland. 2003 and 2004

	2003		2004		
	Levels ¹⁵	Total cost (£m) ¹⁶	Levels ¹⁷	Total cost (£m)	
	30,300	12.7	33,200	13.9	
Reduction					
1%	29997	12.5	32868	13.7	
5%	28785	12.0	31,540	13.2	
10%	27,270	11.4	29,880	12.5	
Benefits		£m		£m	2 year average (£m)
1%	303	0.1	332	0.1	0.1
5%	1,515	0.6	1,660	0.7	0.7
10%	3,030	1.3	3,320	1.4	1.3

¹⁵ Fire Statistics Scotland 2003: Scottish Executive Statistical Bulletin, March 2005

¹⁶ The Economic Cost of Fire: Estimates for 2000: ODPM, June 2003 (the unit cost of false alarms due to faulty apparatus estimated at £418)

¹⁷ Fire Statistics Scotland 2004: Scottish Executive Statistical Bulletin, February 2006