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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 457**

**FIRE SAFETY**

**The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No. 2) Order 2006**

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|--|---------|---------------------------|
| <i>Made</i>                                | - - - - | <i>5th September 2006</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>7th September 2006</i> |
| <i>Coming into force</i>                   | - -     | <i>1st October 2006</i>   |

The Scottish Ministers, in exercise of powers conferred by sections 87(1) and 88(2)(a) of the Fire (Scotland) Act 2005<sup>(1)</sup>, and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation and commencement**

1. This Order may be cited as the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No. 2) Order 2006 and shall come into force on 1st October 2006.

**Consequential amendments and revocations**

2.—(1) The instruments referred to in Schedule 1 are modified in accordance with that Schedule.  
(2) The instruments specified in the first and second columns of the table in Schedule 2 are revoked to the extent specified in the corresponding entry in the third column of that table.

**Saving provision for the Fire Precautions (Workplace) Regulations 1997**

3. To the extent that regulation 3(6)(c) of the Fire Precautions (Workplace) Regulations 1997<sup>(2)</sup> operates so as to disapply the provisions of regulations 12, 13 and 16(1) of the Fire Safety (Scotland) Regulations 2006<sup>(3)</sup> to emergency workers, that regulation remains in force.

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(1) [2005 asp 5](#).

(2) [S.I. 1997/1840](#); relevant amendments were made by S.I. [1999/1877](#).

(3) [S.S.I. 2006/456](#).

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St Andrew's House,  
Edinburgh  
5th September 2006

*HUGH HENRY*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Article 2(1)

### MODIFICATION OF STATUTORY INSTRUMENTS

#### *The Safety Representatives and Safety Committees Regulations 1977 (S.I. 1977/500)*

1. In regulation 4A of the Safety Representatives and Safety Committees Regulations 1977(4) (employer's duty to consult and provide facilities and assistance), in paragraph (1)(b) for "or regulation 4(2)(b) of the Fire Precautions (Workplace) Regulations 1997" substitute "or regulation 12(3)(b) of the Fire Safety (Scotland) Regulations 2006".

#### *The Dangerous Substances in Harbour Areas Regulations 1987 (S.I. 1987/37)*

2. In paragraph (1) of Regulation 30 of the Dangerous Substances in Harbour Areas Regulations 1987(5) (storage tanks) for "the appropriate relevant authority (as defined in section 6 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#))" substitute—

- "(i) the appropriate enforcing authority (as defined in section 61(9) of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#)) where Part 3 of that Act applies to the harbour or harbour area within which the storage tank is situated; or
- (ii) in any other case, the appropriate relevant authority (as defined in section 6 of the [Fire \(Scotland\) Act 2005](#)) for the area in which the harbour or harbour area is situated,".

#### *The Health and Safety (Consultation with Employees) Regulations 1996 (S.I. 1996/1513)*

3. In regulation 3 of the Health and Safety (Consultation with Employees) Regulations 1996(6) (duty of employer to consult), in paragraph (b) for "or regulation 4(2)(b) of the Fire Precautions (Workplace) Regulations 1997" substitute "or regulation 12(3)(b) of the Fire Safety (Scotland) Regulations 2006(7)".

#### *The Construction (Health, Safety and Welfare) Regulations 1996 (S.I. 1996/1592)*

4. For regulation 33 of the Construction (Health, Safety and Welfare) Regulations 1996(8) (enforcement in respect of fire) substitute—

##### **"Enforcement in respect of fire**

**33.—**(1) Subject to paragraph (2), the enforcing authority as defined in section 61 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) is the enforcing authority as regards—

- (a) regulations 19 and 20 in so far as those regulations relate to fire; and
- (b) regulation 21,

in respect of a construction site which is contained within, or forms part of, premises which are occupied by persons other than those carrying out the construction work or any activity arising from such work.

(2) Paragraph (1) only applies in respect of premises to which Part 3 of the [Fire \(Scotland\) Act 2005](#) applies."

(4) S.I. 1977/500; relevant amendments were made by S.I. 1997/1840 and 1999/3242.

(5) S.I. 1987/37; relevant amendments were made by S.I. 2005/344.

(6) S.I. 1996/1513; relevant amendments were made by S.I. 1997/1840 and 1999/3242.

(7) S.I. 2006/456.

(8) S.I. 1996/1592; relevant amendments were made by S.I. 2005/344.

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*The Residential Establishments – Child Care (Scotland) Regulations 1996 (S.I. 1996/3256)*

**5.**—(1) Regulation 9 of the Residential Establishments – Child Care (Scotland) Regulations 1996<sup>(9)</sup> is amended as follows.

(2) In paragraph (1)–

- (a) at the beginning, insert “Subject to paragraph (4),”; and
- (b) omit “a” where it first occurs.

(3) In paragraph (2) at the beginning insert “Subject to paragraph (4),”.

(4) After paragraph (3) insert–

“(4) Where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies in relation to any residential establishment, paragraphs (1) and (2) shall not apply.”.

## MODIFICATION OF SCOTTISH STATUTORY INSTRUMENTS

*The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (S.S.I. 2002/114)*

**6.** In regulation 19 of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002<sup>(10)</sup> (records), after paragraph (3) insert–

“(3A) Where Part 3 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) applies in relation to premises in which providers are providing services–

- (i) paragraph (3)(b) shall apply as if “an” was substituted for “a fire or other”; and
- (ii) paragraph (3)(c) shall apply as if “fire drills and” were omitted.”.

## SCHEDULE 2

Article 2(2)

### REVOCATIONS

| <i>Title</i>  | <i>Reference</i>               | <i>Extent of revocation</i>                                     |
|---|--------------------------------|---|
| The Fire Certificates (Special Premises) Regulations 1976         | S.I. <a href="#">1976/2003</a> | The whole Regulations.  |
| The Electrical Luminous Tube Signs (Scotland) Regulations 1990    | S.I. <a href="#">1990/683</a>  | The whole Regulations.  |
| The Health and Safety (Safety Signs and Signals) Regulations 1996 | S.I. <a href="#">1996/341</a>  | Regulation 7(a)(i).   |
| The Fire Precautions (Workplace) Regulations 1997                 | S.I. <a href="#">1997/1840</a> | The whole Regulations, subject to the saving made in article 3. |
| The Fire Precautions (Workplace) (Amendment) Regulations 1999     | S.I. <a href="#">1999/1877</a> | The whole Regulations.  |

<sup>(9)</sup> S.I. [1996/3256](#); relevant amendments were made by [S.S.I. 2005/344](#).

<sup>(10)</sup> [S.S.I. 2002/114](#); to which there are amendments not relevant to this Order.

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| <i>Title</i>   | <i>Reference</i>               | <i>Extent of revocation</i>  |
|--|--------------------------------|--|
| The Management of Health and Safety at Work Regulations 1999 | S.I. <a href="#">1999/3242</a> | <p>In each of regulations 1(2), 3(1), 7(1), 11(1)(a), 11(1)(b), 12(1)(b) the words “and by Part II of the Fire Precautions (Workplace) Regulations 1997”.</p> <p>In regulation 10(1)(c) from “and the measures” to “Regulations 1997”.</p> <p>In regulation 10(1)(d) from “and regulation” to “Regulations 1997”.</p> <p>In regulations 11(2) and 12(2) the words in brackets.</p> <p>Regulation 28.</p> |

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order modifies and revokes secondary legislation in consequence of Part 3 of the Fire (Scotland) Act 2005 (“the 2005 Act”). Part 3, and regulations made by virtue of that Part, consolidates existing fire safety legislation as it applies to non-domestic premises. It imposes fire safety duties on employers, employees, and others in control of relevant premises.

The modifications made in this Order to secondary legislation remove references to existing fire safety legislation, insert references to the new fire safety regime, and ensure that fire safety matters are dealt with under Part 3 of the 2005 Act (and related regulations) where it applies.

Article 2(1) and Schedule 1 set out modifications to subordinate legislation.

Article 2(2) and Schedule 2 set out revocations of subordinate legislation.

Article 3 makes a saving for regulation 3(6)(c) of the Fire Precautions (Workplace) Regulations 1997. That regulation disapplies requirements of those Regulations where they would hinder emergency workers from carrying out their duties. It will be necessary to make an affirmative order under the 2005 Act to replicate that provision. In order to provide for the period before that order is laid, article 3 of this Order keeps regulation 3(6)(c) in force.