

## **EXECUTIVE NOTE**

### **THE FIRE SAFETY (SCOTLAND) AMENDMENT REGULATIONS 2010**

#### **SSI 2010/393**

1) The above instrument was made in exercise of the powers conferred by section 58 of the Fire (Scotland) Act 2005. The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

2) The purpose of this instrument is to reapply obligations imposed by article 6(3) (b) of Council Directive 89/391/EEC the 'Framework Directive' of 12 June 1989 which were measures to encourage improvements in the safety and health of workers at work ('the Framework Directive'). Under article 6(3)(b) an employer must "where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety. This requirement is intended to ensure that all tasks are allocated to employees with the necessary skill and experience to do them safely. It applies to all tasks carried out in the course of business, not just those (such as carrying out risk assessments) which relate directly to health and safety. The provisions of this Directive were incorporated into UK legislation by regulation 13(1) of the Management of Health and Safety at Work Regulations 1999.

3) Fire safety law in non-domestic premises was reformed in 2006 with the introduction of Part 3 of the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006 (SSI 2006/456). This new regime incorporated elements of a number of EC directives in so far as they relate to general fire safety. This includes the Framework Directive on Health and Safety of Workers 89/391/EEC.

4) Section 70 of the 2005 Act, intended to avoid overlapping legislation between the fire safety regime and the Health and Safety at Work Etc Act 1974, restricts conditionally the obligations in the 1974 Act, and any regulations made under it, to premises to which the fire safety regime applies. This restriction, in so far as it disapplies regulation 13(1) of the 1999 Regulations, has had the unintended effect of removing the obligations imposed by article 6(3) (b) of the Framework Directive in respect of general fire safety, as no similar obligation is imposed in the fire safety regime.

5) There was never any intention that regulation 13(1) mentioned above should not apply regarding fire safety. These amendment regulations would simply re-impose a duty which was already on employers.

#### **Consultation**

6) As these Regulations are simply re-applying obligations, we consider that public consultation is unnecessary.

## **Impact Assessments**

7) These Regulations rectify an omission in the transposition of Framework Directive 89/391/EEC into the Fire (Scotland) Act 2005. Fire safety requirements apply equally to all non-domestic sectors and we don't consider that there would be a disproportionate impact on one particular area of equality. We therefore consider that an equality impact assessment is unnecessary as the Regulations should not have any adverse effect.

8) For similar reasons as stated above these regulations are not expected to have any adverse impact on the environment and therefore an Environmental Impact Assessment has not been carried out.

## **Financial Effects**

9) Our assessment of costs indicates that these proposals are unlikely to impact financially on businesses who must already comply with the Health and Safety at Work etc Act through the Management of Health and Safety at Work Regulations. The Fire (Scotland) Act did not intend to remove this responsibility, we are not creating a new burden on businesses, enforcers or the third sector. Fergus Ewing, Minister for Community Safety confirms that it is not necessary to conduct a BRIA.

Scottish Government  
Justice Directorate

November 2010