

**EXPLANATORY MEMORANDUM TO THE
FIRE (SCOTLAND) ACT 2005 (CONSEQUENTIAL PROVISIONS AND
MODIFICATIONS) ORDER 2005**

2005 NO. 2060 (S.7)

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments.

2. Description

This order:

- applies the new fire safety regime for Scotland (laid out in the Fire (Scotland) Act 2005 – “the 2005 Act”) to ships and hovercraft in certain circumstances and to certain defence premises;
- confers the function of being an enforcing authority upon the Health and Safety Executive and the fire service maintained by the Secretary of State for Defence;
- enables fire and rescue authorities and joint fire and rescue boards in Scotland to exercise their powers beyond the territorial sea; and
- makes consequential modification of reserved legislation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This order is to be made in exercise of the powers conferred by sections 104, 112(1), 113 and 114 of the Scotland Act 1998 (“the 1998 Act”). The order is, by virtue of Schedule 7 to that Act, subject to affirmative resolution procedure in both Houses of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament; in this case, the 2005 Act.

3.2 The Scottish Parliament does not have competence under the 1998 Act to legislate in respect of the following matters:

- fire safety on ships and hovercraft (premises within the Health and Safety reservation at Section H2 of Schedule 5 to the 1998 Act);
- fire safety on defence premises (within the defence reservation in Part 1 of Schedule 5 to the 1998 Act);
- the conferral of the functions of an enforcing authority on HSE (a reserved body in terms of paragraph 3 of Part 3 of Schedule 5 to the 1998 Act) and the conferral of the same functions on the Secretary of State for Defence;
- the conferral of powers relating to areas in the territorial sea not adjacent to Scotland and beyond the UK territorial sea (reserved in terms of section 29(2)(a) of the 1998 Act); and
- amendment of reserved legislation which does not meet the test in paragraph 3(1) of Schedule 4 to the 1998 Act.

4. Legislative Background

4.1 This order applies the fire safety provisions in Part 3 of the 2005 Act to premises in Scotland on which fire safety is a reserved matter. These provisions apply to premises:

- occupied by armed forces of the Crown, visiting forces or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5) and premises situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied.
- which are ships (including hovercraft) in circumstances other than normal ship board activities (e.g. repair carried out in dry dock).

4.2 Applying the fire safety regime to the reserved premises above is achieved by deleting them from the list of reserved premises that do not form part of “relevant premises” in section 78 of the 2005 Act. Article 2(8) of the order then inserts these premises within the meaning of “relevant premises” in the 2005 Act. It does so to avoid any doubt that these premises will be covered by the new Scottish fire safety regime.

4.3 The order also confers the functions of an enforcing authority on the Health and Safety Executive (HSE) for fire safety matters on:

- premises for which a licence is required by virtue of the Nuclear Installations Act 1965;
- premises for which such a licence would be required but for the fact that the premises are used by the Crown;
- ships in the course of construction, reconstruction, conversion or repair by persons other than the ships master and crew; and
- premises which are a work place on a construction site.

The order also confers the functions of an enforcing authority for fire safety matters on premises listed in the first bullet point at 4.1 above on the fire service maintained by the Secretary of State for Defence.

4.5 The order enables the repeal and amendment by Scottish Ministers of existing fire safety legislation in relation to reserved matters (e.g. the Health and Safety (Enforcing Authority) Regulations 1998). Existing fire safety legislation currently extends to both reserved and devolved matters.

4.6 In addition, the order extends various provisions in Parts 1 and 2 of the 2005 Act so that fire and rescue authorities and joint fire and rescue boards have powers to act in the UK territorial sea not adjacent to Scotland and beyond the UK territorial sea. Powers to act outside these waters could not be conferred on the authorities and joint boards in the 2005 Act because of the territorial limits on the legislative competence of the Scottish Parliament. In connection with this, the order grants

authorities the power to charge for activities carried out at sea. Parts 1 and 2 of the 2005 Act define fire and rescue authorities and set out their functions and powers

4.7 Finally, the Government has agreed with the Scottish Executive that the order should make amendments to reserved legislation that are consequential on Parts 1 and 2 of the 2005 Act. It is expedient to make these amendments to ensure coherence in the law of Scotland relating to general fire safety, in consequence of its overhaul in the 2005 Act. If this exercise were not carried out, ships and hovercraft in Scotland, and MoD premises located in Scotland would remain subject to the old fire safety regime as set out in the Fire Precautions Act 1971 (c.40) and the Fire Precautions (Workplace) Regulations 1997 (S.I. 1997/1840).

4.8 The 2005 Act will be commenced in stages. Some minor provisions of a technical nature and provisions enabling subordinate legislation to be made have already been commenced. Part 3 of the 2005 Act will also be brought into force following SI 2005/863 (S.3), an order made under section 30(2) of the 1998 Act which modified the reservation at Section H2 of Schedule 5 to that Act. The purpose of that order was to permit the Scottish Parliament to legislate in relation to fire safety on construction sites and on premises that on 1st July 1999 were listed in Part I of Schedule 1 to the Fire Certificates (Special Premises) Regulations 1976 (SI 1976/2003).

4.9 Commencement of parts 1, 2, 4 and 5 of the 2005 Act will be subject to the making of this section 104 order, with the remainder (Part 3) commencing in April 2006. It is worth noting that Article 2(4) to (9) of this order relate to Part 3 of the 2005 Act but are being commenced now as fire safety regulations are to be prepared under sections 57 and 58 of the 2005 Act which will apply to the reserved premises that are being added to Part 3. The fire safety regulations will be made before Part 3 comes fully into force to give adequate time to those affected to prepare for their impact. In order to apply those regulations to the reserved premises, the amendments to Part 3 made by this order require to be in force. A later commencement order will bring the remainder of Part 3 into force on the same day that the regulations come into force. At present, the Scottish Executive advise they intend this to happen on the 1 April 2006.

5. Extent

Other than the amendments made in paragraphs 1 and 14 of the Schedule to the order, which have GB and UK extent respectively (and concern the Pensions (Increase) Act 1971 and the Scotland Act 1998 (Concurrent Functions) Order 1999), this order extends to Scotland only.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Fire (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 are compatible with the Convention rights”.

7. Policy background

7.1 The Fire (Scotland) Bill was passed by the Scottish Parliament on 23 February 2005 and received Royal Assent on 1 April 2005. The 2005 Act replaces the Fire Services Act 1947 (“the 1947 Act”) for Scotland and makes provision for the reform of fire services. It also reforms fire safety law in Scotland. Similar changes are underway in respect of England and Wales: the Fire and Rescue Services Act 2004 replaced the 1947 Act and provides for the modernisation of the fire service; the Regulatory Reform (Fire Safety) Order 2005 introduces a new fire safety regime based on ongoing risk assessment and is currently progressing through the UK Parliament.

7.2 The purpose of this subordinate legislation is to ensure consistency across the UK in respect of fire safety on premises which are not domestic premises; to confer power on fire and rescue authorities and joint fire and rescue boards to fight fires in the territorial sea not adjacent to Scotland and beyond the territorial sea (it will also allow them to recoup the costs associated with doing so); and to update reserved legislation to reflect the 2005 Act.

7.3 The detail of the new fire safety regime (concerning the carrying out of risk assessments and the provision of fire safety measures) will be set out in regulations made by the Scottish Ministers under sections 57 and 58 of the 2005 Act. Draft regulations will be the subject of consultation by the Scottish Executive during the summer and guidance will also be made available next year to accompany the new legislation.

7.4 The order has been prepared in consultation with and agreed by the Ministry of Defence, the Department for Transport, the Office of the Deputy Prime Minister, the Health and Safety Executive and the Scottish Executive. The Department for Work and Pensions and the Department for Culture, Media and Sport have also been consulted and agreed to the order as it makes consequential modifications to legislation for which they are responsible.

8. Impact

No Regulatory Impact Assessment has been prepared for this instrument as it does not impact on business, charities or voluntary bodies.

9. Contact

Glenn Preston at the Scotland Office (Glenn.Preston@scotland.gsi.gov.uk) can answer any queries regarding the instrument.

Scotland Office, Department for Constitutional Affairs
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