



# Fire (Scotland) Act 2005

## 2005 asp 5

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 23rd February 2005 and received Royal Assent on 1st April 2005**

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives [89/391/EEC](#), [89/654/EEC](#), [91/383/EEC](#), [94/33/EC](#), [98/24/EC](#) and [99/92/EC](#); to make other provision in relation to fire safety in certain premises; and for connected purposes.

VALID FROM 02/08/2005

### PART 1

#### FIRE AND RESCUE AUTHORITIES

##### *Fire and rescue authorities*

#### **1 Fire and rescue authorities**

- (1) The council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) for a local government area shall be the fire and rescue authority for that area.
- (2) In subsection (1), “local government area” has, subject to subsection (3), the same meaning as in that Act.
- (3) If a local government area extends into the sea, its seaward boundary shall, for the purpose of subsection (1), be the low water mark.

*Status: Point in time view as at 15/06/2005. This version of this Act contains provisions that are not valid for this point in time.*

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## *Joint fire and rescue boards*

### **2 Schemes to constitute joint fire and rescue boards**

- (1) Where it appears to the Scottish Ministers that, for the purposes of this Act, it would be in the interests of greater economy, efficiency and effectiveness that the areas of two or more fire and rescue authorities be combined, they may by order make an amalgamation scheme for that combined area.
- (2) An amalgamation scheme is a scheme constituting, for the combined area of the fire and rescue authorities specified in it (the “constituent authorities”), a joint fire and rescue board consisting of such number of members, being members of the constituent authorities, as are specified in the scheme.
- (3) An amalgamation scheme may include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate.
- (4) Provision that may be made under subsection (3) may include in particular provision with respect to—
  - (a) the proceedings of the board;
  - (b) its funding and financial arrangements, including in particular—
    - (i) provision for the payment of its expenses out of a combined fire and rescue service fund maintained by the constituent authorities;
    - (ii) provision about the carrying-forward from one financial year to the next of any money received by the board in respect of the first year from the constituent authorities under provision made under paragraph (b)(i) and remaining unspent at the end of the first year;
  - (c) the transfer to the board of any property, rights and liabilities of the constituent authorities;
  - (d) the transfer to the board of any staff of the constituent authorities;
  - (e) officers of the board;
  - (f) the supply of services or facilities by the constituent authorities to the board;
  - (g) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the board.
- (5) Before making an amalgamation scheme, the Scottish Ministers shall consult—
  - (a) the fire and rescue authorities in respect of which the scheme is proposed;
  - (b) such other fire and rescue authorities as appear to them likely to be affected; and
  - (c) such other persons as they consider appropriate.

### **3 Schemes under section 2: amendment and revocation**

- (1) An order amending or revoking an amalgamation scheme made under section 2(1) may include provision for the transfer of staff, property, rights and liabilities from the joint fire and rescue board constituted by the scheme to—
  - (a) any fire and rescue authority; or
  - (b) any other such board.
- (2) Before making an order such as is mentioned in subsection (1), the Scottish Ministers shall consult—
  - (a) the joint board constituted by the scheme;

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- (b) the fire and rescue authorities specified in the scheme; and
- (c) such other—
  - (i) fire and rescue authorities; and
  - (ii) joint fire and rescue boards,as appear to them likely to be affected.

#### **4 Joint fire and rescue boards: supplementary provision**

Schedule 1, which makes provision about joint fire and rescue boards constituted by schemes made under section 2(1), shall have effect.

#### **5 Existing joint fire boards**

- (1) An administration scheme under section 36 of the Fire Services Act 1947 (c. 41) or section 147 of the Local Government (Scotland) Act 1973 (c. 65) which is in force immediately before the repeal of those sections by this Act shall continue to have effect notwithstanding that repeal.
- (2) A scheme such as is mentioned in subsection (1) shall be taken to be a scheme made under section 2(1); and a joint fire board constituted by such a scheme in respect of an area shall be taken to be a joint fire and rescue board constituted by the scheme for that area.
- (3) The Scottish Ministers may by order make provision for and in relation to the transfer to a joint fire and rescue board constituted by a scheme made under section 2(1) of—
  - (a) any property, rights or liabilities of a joint fire board (“an existing board”) constituted by a scheme such as is mentioned in subsection (1); and
  - (b) any staff of an existing board.

*Meaning of “relevant authority”*

#### **6 Meaning of “relevant authority”**

In this Act “relevant authority” means—

- (a) a fire and rescue authority which is not specified in a scheme made under section 2(1); or
- (b) a joint fire and rescue board constituted by such a scheme.

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## PART 2

### FIRE AND RESCUE SERVICES

VALID FROM 02/08/2005

#### CHAPTER 1

##### APPOINTMENT OF CHIEF OFFICER

#### 7 Appointment of Chief Officer

- (1) Each relevant authority shall appoint a person to be known as a Chief Officer.
- (2) A Chief Officer shall be responsible to the relevant authority for the discharge of the functions conferred on the authority by virtue of this Act by any person employed by the authority for the purpose of discharging those functions.

#### CHAPTER 2

##### PRINCIPAL FIRE AND RESCUE FUNCTIONS

VALID FROM 02/08/2005

#### 8 Fire safety

- (1) Each relevant authority shall make provision for the purpose of promoting fire safety in its area.
- (2) In making provision under subsection (1) a relevant authority shall in particular, to the extent that the authority considers it reasonable to do so, make arrangements for—
  - (a) the provision of information, publicity and encouragement in respect of the steps to be taken to prevent—
    - (i) fires; and
    - (ii) death or injury by fire;
  - (b) the giving of advice, on request, about—
    - (i) how to prevent fires and restrict their spread in buildings and other property; and
    - (ii) the means of escape from buildings and other property in the event of fire.

VALID FROM 02/08/2005

#### 9 Fire-fighting

- (1) Each relevant authority shall make provision for the purpose of—

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- (a) extinguishing fires in its area; and
  - (b) protecting life and property in the event of fires in its area.
- (2) In making provision under subsection (1) a relevant authority shall in particular—
- (a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;
  - (b) secure the provision of training for personnel;
  - (c) make arrangements for—
    - (i) dealing with calls for help; and
    - (ii) summoning personnel,in the event of fire;
  - (d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;
  - (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

VALID FROM 02/08/2005

## 10 Road traffic accidents

- (1) Each relevant authority shall make provision for the purpose of—
- (a) rescuing persons in the event of road traffic accidents in its area; and
  - (b) to the extent that it considers it reasonable to do so, protecting persons from serious harm in the event of road traffic accidents in its area.
- (2) In making provision under subsection (1) a relevant authority shall in particular—
- (a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;
  - (b) secure the provision of training for personnel;
  - (c) make arrangements for—
    - (i) dealing with calls for help; and
    - (ii) summoning personnel,in the event of road traffic accidents;
  - (d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;
  - (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

## 11 Conferral of functions in relation to other emergencies

- (1) The Scottish Ministers may by order (an “additional function order”) confer on a relevant authority (the “specified authority”) a function relating to an emergency of a kind specified in the order (the “additional function”).
- (2) An additional function order may not specify as a kind of emergency—
- (a) a fire; or

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- (b) a road traffic accident,  
in the area of the specified authority.
- (3) An additional function order may make provision for or in connection with—
- (a) requiring the additional function to be carried out by the specified authority outwith its area;
  - (b) specifying what the specified authority shall or may do for the purpose of the additional function;
  - (c) requiring or authorising the specified authority—
    - (i) to secure the provision of personnel, services and equipment;
    - (ii) to secure the provision of training for personnel;
    - (iii) to make arrangements for dealing with calls for help and summoning personnel;
    - (iv) to make arrangements for obtaining information required or likely to be required for the purpose of carrying out the function;
    - (v) to make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from carrying out the function.

#### Commencement Information

- II** S. 11 wholly in force at 2.8.2005; s. 11 not in force at Royal Assent see s. 90; s. 11 in force for certain purposes at 6.4.2005 by [S.S.I. 2005/207](#), [art. 3](#); s. 11 in force at 2.8.2005 in so far as not already in force by [S.S.I. 2005/392](#), [art. 2\(b\)](#)

## CHAPTER 3

### ANCILLARY FUNCTIONS

VALID FROM 02/08/2005

#### **12**      **Emergency directions**

- (1) The Scottish Ministers may issue a direction (an “emergency direction”) requiring a relevant authority to—
  - (a) take such action; or
  - (b) refrain from taking such action,
 in relation to a fire, or emergency of another kind, as is specified in the direction.
- (2) An emergency direction may require an authority to act outwith its area.
- (3) An emergency direction may be varied or revoked by a further such direction.

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VALID FROM 02/08/2005

### **13 Power to respond to other eventualities**

- (1) A relevant authority may take any action it considers appropriate—
  - (a) in response to an event or situation that causes or is likely to cause—
    - (i) a person to die, be injured or become ill; or
    - (ii) harm to the environment (including the life and health of plants and animals and the fabric of buildings); or
  - (b) for the purpose of enabling it to take action in response to such an event or situation.
- (2) The power conferred by subsection (1)—
  - (a) includes power to secure the provision of equipment; and
  - (b) may be exercised by an authority within or outwith its area.

VALID FROM 02/08/2005

### **14 Provision of other services**

- (1) A relevant authority may provide—
  - (a) the services of any persons employed by it; or
  - (b) any equipment maintained by it,to any person for any purpose that appears to the authority to be appropriate.
- (2) An authority may provide services or equipment under this section within or outwith its area.

VALID FROM 02/08/2005

### **15 Provision of centres for education and training**

A relevant authority may establish and maintain one or more centres for providing education and training in matters in relation to which relevant authorities have functions.

### **16 Charging**

- (1) The Scottish Ministers may by order (a “charging order”) authorise a relevant authority to charge a person of a description specified in the order for any action so specified taken by the authority.
- (2) A charging order may authorise a charge to be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority.
- (3) A charging order may authorise charging for—
  - (a) extinguishing fires;

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- (b) protecting life; or
  - (c) protecting property in the event of fires,  
 only in respect of action taken by the authority at sea (or, if the authority's area extends to the low water mark, action taken at sea outwith its area).
- (4) Where a relevant authority authorised by a charging order to charge for taking action of a particular description decides to do so—
- (a) the amount of the charge shall be set by the authority;
  - (b) different amounts may be charged in different circumstances (and the authority may charge nothing).
- (5) In setting the amount of a charge, a relevant authority shall secure that, taking one financial year with another, the authority's income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed.
- (6) In subsection (5) “financial year” means the period of 12 months ending on 31 March.

#### Commencement Information

- I2** S. 16 wholly in force at 2.8.2005; s. 16 not in force at Royal Assent see s. 90; s. 16 in force for certain purposes at 6.4.2005 by [S.S.I. 2005/207](#), [art. 3](#); s. 16 in force at 2.8.2005 in so far as not already in force by [S.S.I. 2005/392](#), [art. 2\(b\)](#)

VALID FROM 02/08/2005

#### [<sup>F1</sup>16A Exercise of powers at sea: further provision

- (1) Subsection (2) applies where a relevant authority has power to act, or is required to act, at sea.
- (2) The power may be exercised or the duty carried out—
- (a) at sea in that part of the territorial sea of the United Kingdom which is not adjacent to Scotland; and
  - (b) at sea beyond the territorial sea of the United Kingdom.]

#### Textual Amendments

- F1** S. 16A inserted (2.8.2005 in accordance with art. 1(2)(b) of the amending S.I.) by [The Fire \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/2060\)](#), [art. 2\(3\)](#); [S.S.I. 2005/392](#), [art. 2\(c\)\(d\)](#) and said inserted provision expressed to be commenced on 1.10.2006 by [S.S.I. 2006/458](#), [art. 2\(a\)](#) (subject to [art. 3](#))



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VALID FROM 02/08/2005

## CHAPTER 4

### WATER SUPPLY

#### *Supply and use of water*

#### **17 Duty to secure water supply**

- (1) A relevant authority shall take all reasonable measures for securing that an adequate supply of water will be available for the authority's use for the purposes mentioned in subsection (2).
- (2) Those purposes are—
  - (a) extinguishing fires in the area of the authority;
  - (b) protecting life and property in the event of fires in its area;
  - (c) rescuing people in the event of road traffic accidents in its area;
  - (d) protecting people from serious harm in the event of road traffic accidents in its area;
  - (e) carrying out any function conferred on the authority by an order under section 11; and
  - (f) fulfilling any requirement made of the authority by a direction given to it under section 12.

#### **18 Use of water**

- (1) Subject to—
  - (a) an agreement under section 19(1); and
  - (b) section 9A of the Water (Scotland) Act 1980 (c. 45) (charging for emergency use of water),a relevant authority may use any suitable supply of water for the purposes mentioned in section 17(2).
- (2) A relevant authority shall pay reasonable compensation for water used by virtue of subsection (1).

#### **19 Agreements in relation to water supply**

- (1) For the purposes of section 17, a relevant authority may—
  - (a) enter into an agreement with Scottish Water; or
  - (b) enter into an agreement to—
    - (i) secure the use of water under the control of a person other than Scottish Water;
    - (ii) improve access to any such water;
    - (iii) lay and maintain pipes and carry out other works in connection with the use of such water.

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- (2) Subject to section 9A of the Water (Scotland) Act 1980 (c. 45) (charging for emergency use of water), an agreement mentioned in subsection (1)(a) may include terms as to payment to be made to Scottish Water.
- (3) Scottish Water shall not unreasonably refuse to enter into an agreement mentioned in subsection (1)(a) which is proposed by a relevant authority.
- (4) Any question whether Scottish Water has unreasonably refused to enter into an agreement mentioned in subsection (1)(a) shall be determined by the Scottish Ministers.

## **20 Emergency supply by Scottish Water**

- (1) If a relevant authority requests Scottish Water to provide a supply or pressure of water for a purpose mentioned in section 17(2) that is greater than it would otherwise provide, it shall take all necessary steps in order to do so.
- (2) For the purposes of complying with its obligation under subsection (1) Scottish Water may shut off the water from the mains and pipes in any area.
- (3) Scottish Water (and any other person) shall not be liable to any penalty or claim arising because of anything done by Scottish Water in complying with its obligation under subsection (1).
- (4) If, without reasonable excuse, Scottish Water fails to take any step which it is obliged to take under subsection (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Fire hydrants*

## **21 Fire hydrants: provision etc.**

- (1) Sections 19 to 22 of Schedule 4 to the Water (Scotland) Act 1980 (c. 45) (requirement to provide fire hydrants etc.) shall apply to Scottish Water.
- (2) Scottish Water shall cause the location of every fire hydrant provided by it to be clearly indicated by—
  - (a) a notice; or
  - (b) a distinguishing mark.
- (3) Scottish Water may place such a notice or mark on a wall or fence adjoining a road or public place.
- (4) The expenses incurred by Scottish Water under subsection (2) in relation to a hydrant shall be borne by the relevant authority in whose area the hydrant is located.
- (5) The Scottish Ministers may make regulations providing for uniformity in—
  - (a) fire hydrants provided by Scottish Water; and
  - (b) notices or marks indicating locations of such hydrants.
- (6) Where a fire hydrant provided by Scottish Water is damaged as the result of any use made of it with the authority of Scottish Water (other than use for the purposes of fire-fighting or any other purposes of a relevant authority) the relevant authority in whose area the hydrant is located shall not be liable for the cost of repairing or replacing it.

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## **22 Fire hydrants: recovery of costs**

- (1) Schedule 4 to the Water (Scotland) Act 1980 (c. 45) (provisions incorporated in orders relating to water undertakings) shall be amended as follows.
- (2) After section 21 insert—

The Scottish Ministers may by regulations make provision as to—

- (a) the persons (other than Scottish Water) from whom; or
- (b) the circumstances in which,

fire authorities may recover costs defrayed under section 21 of this Schedule.”.

- (3) In section 22, for the words “the last but one foregoing section” substitute “section 20 of this Schedule”.

## **23 Fire hydrants: offences**

- (1) A person who—
  - (a) uses a fire hydrant provided by Scottish Water otherwise than for a purpose mentioned in subsection (2); or
  - (b) damages or obstructs such a fire hydrant otherwise than in consequence of use for such a purpose,shall be guilty of an offence.
- (2) Those purposes are—
  - (a) fire-fighting;
  - (b) any other purpose of a relevant authority;
  - (c) any purpose authorised by Scottish Water.
- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### *Works affecting supply and hydrants*

## **24 Notice of works affecting water supply and fire hydrants**

- (1) A person who proposes to carry out works for the purpose of supplying water to any part of the area of a relevant authority shall give the relevant period's notice in writing to the authority.
- (2) In subsection (1) the “relevant period” is—
  - (a) in the case where the works are proposed to be carried out to comply with a requirement imposed under any enactment other than the Water (Scotland) Act 1980 (c. 45), 14 days;
  - (b) in any other case, 6 weeks.
- (3) A person who proposes to carry out works affecting a fire hydrant shall give at least 7 days' notice in writing to the relevant authority in whose area the hydrant is situated.

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- (4) If it is not practicable for a person to give notice as required by subsection (1) or (3), the person shall be regarded as having given such notice if it is given as soon as practicable.
- (5) A person who, without reasonable excuse, fails to give notice as required by subsection (1) or (3) shall be guilty of an offence.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

VALID FROM 23/06/2006

#### **[<sup>F2</sup>24A Use of electronic communication**

- (1) In section 24(1) and (3), the reference to the giving of notice in writing shall include the giving of notice by means of a document, the text of which—
  - (a) is received in legible form;
  - (b) is capable of being used for subsequent reference; and
  - (c) is sent by an electronic communication within the meaning of section 15(1) of the Electronic Communications Act 2000 (c. 7).]

#### **Textual Amendments**

- F2** S. 24A inserted (23.6.2006) by [The Electronic Communications \(Scotland\) Order 2006 \(S.S.I. 2006/367\)](#), [arts. 1\(1\)](#) {8}

VALID FROM 02/08/2005

## **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;

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- (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);
  - (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

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- (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).
- (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.

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## **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;
  - (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

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- (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
  - (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



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(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.

VALID FROM 02/08/2005

## CHAPTER 6

### MUTUAL ASSISTANCE ETC.

#### *Assistance in discharge of functions*

#### **33 Reinforcement schemes**

- (1) Each relevant authority shall, so far as practicable, enter into a reinforcement scheme with other relevant authorities.
- (2) A reinforcement scheme is a scheme for securing mutual assistance as between the relevant authorities participating in it for the purpose of carrying out the functions conferred by virtue of sections 9 to 11 on any of them.
- (3) A reinforcement scheme may make provision for apportioning between the participating authorities any expenses incurred in taking measures to secure the efficient operation of the scheme.
- (4) The participating authorities shall notify the Scottish Ministers of—
  - (a) the making of the scheme;
  - (b) any variation of the scheme; and
  - (c) the revocation of the scheme.
- (5) The participating authorities shall give effect to the scheme.

#### **34 Directions about reinforcement schemes**

- (1) Where subsection (2) applies, the Scottish Ministers may direct two or more relevant authorities to make a reinforcement scheme in the terms specified in the direction.
- (2) This subsection applies where—
  - (a) one of the authorities has asked the other (or others) to agree to the making of the scheme;
  - (b) the authorities are unable to agree as to—
    - (i) that matter; or
    - (ii) the terms proposed for the scheme; and
  - (c) one of them asks the Scottish Ministers to make such a direction.
- (3) Where subsection (4) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to vary the scheme in the terms specified in the direction.

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- (4) This subsection applies where—
- (a) one of the authorities has asked the other (or others) to agree to the variation of the scheme;
  - (b) the authorities are unable to agree as to that matter; and
  - (c) one of them asks the Scottish Ministers to make such a direction.
- (5) Where subsection (6) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to revoke the scheme.
- (6) This subsection applies where—
- (a) one of the authorities has asked the other (or others) to agree to the revocation of the scheme;
  - (b) the authorities are unable to agree as to that matter; and
  - (c) one of them asks the Scottish Ministers to make such a direction.
- (7) Before giving a direction under this section, the Scottish Ministers—
- (a) shall give the authorities concerned an opportunity to make representations; and
  - (b) may cause an inquiry to be held.
- (8) A direction given under this section may be varied or revoked by a further such direction.
- (9) In this section “reinforcement scheme” has the meaning given by section 33(2).

### **35 Assistance other than from relevant authorities**

- (1) A relevant authority may enter into arrangements with a relevant person for securing the provision by that person of assistance for the purpose of the carrying out by the authority of a function conferred on it by virtue of any of sections 8 to 11, 13 and 61.
- (2) In subsection (1) “relevant person” means a person who—
- (a) is not a relevant authority; and
  - (b) in the case of arrangements for the securing of assistance for the purpose of extinguishing fires—
    - (i) employs fire-fighters; or
    - (ii) is approved for that purpose by the Chief Officer of a relevant authority.
- (3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which assistance is to be provided.

#### *Performance of functions by others*

### **36 Arrangements for carrying out of functions by others**

- (1) A relevant authority may enter into arrangements with a relevant person for the carrying out by that person of a function conferred on the authority by virtue of any of sections 8 to 11, 13 and 61.
- (2) In subsection (1) “relevant person” means—

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- (a) in the case of arrangements in relation to the authority's function of extinguishing fires—
    - (i) another relevant authority; or
    - (ii) any other person who employs fire-fighters;
  - (b) in any other case—
    - (i) another relevant authority; or
    - (ii) any other person.
- (3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which any function is to be carried out.

### **37 Section 36: directions**

- (1) The Scottish Ministers may—
- (a) direct two relevant authorities to enter into arrangements under section 36; or
  - (b) direct two relevant authorities who have entered into such arrangements—
    - (i) to vary the arrangements in the terms specified in the direction; or
    - (ii) to terminate the arrangements.
- (2) Before giving a direction under this section, the Scottish Ministers—
- (a) shall give the authorities concerned an opportunity to make representations; and
  - (b) may cause an inquiry to be held.
- (3) The Scottish Ministers may give a direction under this section only where, after considering—
- (a) any representations made under subsection (2)(a); and
  - (b) the report of any person by whom any inquiry under subsection (2)(b) is held,
- they consider it expedient to do so with a view to securing greater economy, efficiency and effectiveness.
- (4) A direction given under this section may be varied or revoked by a further such direction.

VALID FROM 02/08/2005

## **CHAPTER 7**

### **ASSAULTING OR IMPEDING EMPLOYEES AND OTHERS**

### **38 Amendment of Emergency Workers (Scotland) Act 2005**

- (1) The Emergency Workers (Scotland) Act 2005 (asp 2) shall be amended as follows.
- (2) For paragraph (b) of section 1(3) substitute—
- “(zb) that of a person employed by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5)) while discharging any of the authority's functions under any of sections 9 to 13 (fire-fighting, road traffic accidents, other emergencies,

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emergency directions and other eventualities), 25, 27 and 29 (powers of authorised employees in relation to emergencies, obtaining information and investigating fires) of that Act;

- (b) that of a person providing assistance under arrangements made by virtue of section 35 (assistance other than from relevant authorities) or 36 (arrangements for carrying out of functions by others) of the Fire (Scotland) Act 2005 other than assistance given to a relevant authority (as defined in section 6 of that Act) for the purpose of carrying out any of the authority's functions conferred on the authority by section 8 or 61 of that Act;”.

### **39 Assaulting or impeding employees discharging certain functions**

- (1) A person who assaults, obstructs or hinders another person who is—
- (a) an employee of a relevant authority; and
  - (b) discharging any of the functions conferred on the authority under section 8, 17 or 61,
- commits an offence.
- (2) A person who assaults, obstructs or hinders another person who is providing assistance to a relevant authority under arrangements made by virtue of section 35 for the purpose of the carrying out by that authority of any of the functions conferred on it by virtue of section 8 or 61 commits an offence.
- (3) A person who assaults, obstructs or hinders another person who is by virtue of section 36 carrying out a function conferred on a relevant authority by virtue of section 8 or 61 commits an offence.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 4 on the standard scale.

## **CHAPTER 8**

### CENTRAL SUPERVISION AND SUPPORT

#### *Fire and Rescue Framework for Scotland*

### **40 Framework document**

- (1) The Scottish Ministers shall prepare a document—
- (a) setting out priorities and objectives for relevant authorities in connection with the carrying out of their functions; and
  - (b) containing—
    - (i) such guidance in connection with the carrying out of any of those functions; and
    - (ii) such other matters relating to those authorities or those functions, as the Scottish Ministers consider appropriate.
- (2) The Scottish Ministers—

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- (a) shall keep the document prepared under subsection (1) under review; and
  - (b) may from time to time revise it.
- (3) The Scottish Ministers shall carry out the functions conferred on them by subsection (1) and (2) in the manner and to the extent that appears to them to be best calculated to promote—
  - (a) public safety;
  - (b) the efficiency and effectiveness of fire and rescue authorities; and
  - (c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.
- (4) The document prepared under subsection (1), and any revision of it which appears to the Scottish Ministers to be significant, shall have effect only when brought into effect by the Scottish Ministers by order.
- (5) In preparing—
  - (a) the document mentioned in subsection (1); and
  - (b) any revision of it which appears to them to be significant,the Scottish Ministers shall consult the persons mentioned in subsection (6).
- (6) Those persons are—
  - (a) each relevant authority or such persons as the Scottish Ministers consider represent those authorities; and
  - (b) such persons as the Scottish Ministers consider represent employees of those authorities.

#### Commencement Information

- I3** S. 40 wholly in force at 2.8.2005; s. 40 not in force at Royal Assent see s. 90; s. 40 in force for certain purposes at 6.4.2005 by [S.S.I. 2005/207](#), [art. 3](#); s. 40 in force at 2.8.2005 in so far as not already in force by [S.S.I. 2005/392](#), [art. 2\(f\)](#)

VALID FROM 02/08/2005

#### 41 Adherence

- (1) In carrying out their functions, relevant authorities shall have regard to the document prepared under section 40(1).
- (2) Subsections (3) and (4) apply where the Scottish Ministers consider that a relevant authority is failing, or is likely to fail, to act in accordance with the document prepared under section 40(1).
- (3) The Scottish Ministers may cause an inquiry to be held into the matter.
- (4) Subject to subsection (5), the Scottish Ministers may, for the purpose of securing that the authority acts in accordance with the document, by order require the authority—
  - (a) to take; or
  - (b) to refrain from taking,such action as is specified in the order.

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- (5) The Scottish Ministers may make an order under subsection (4) only where they consider that it would promote—
  - (a) public safety;
  - (b) the efficiency and effectiveness of the authority; or
  - (c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.
- (6) Before making an order under subsection (4), the Scottish Ministers shall consult the authority in respect of which it is proposed to be made.
- (7) Where the document prepared under subsection (1) of section 40 has been revised under subsection (2)(b) of that section, the references in this section and section 42 to that document shall be taken to refer to that document as revised.

VALID FROM 02/08/2005

## 42 Reporting

- (1) The Scottish Ministers shall report to the Scottish Parliament on—
  - (a) the extent to which relevant authorities are acting in accordance with the document prepared under section 40(1); and
  - (b) any steps taken by them for the purpose of securing that relevant authorities so act.
- (2) The first report under subsection (1) shall be made before the expiry of the period of two years starting on the date when the document prepared under section 40(1) is brought into effect.
- (3) Every subsequent such report shall be made before the expiry of the period of two years starting on the date on which the last such report was made.

VALID FROM 02/08/2005

### *Inspection*

## 43 Inspectors of Fire and Rescue Authorities

- (1) Her Majesty may by Order in Council appoint—
  - (a) a Chief Inspector of Fire and Rescue Authorities; and
  - (b) such number of Inspectors of Fire and Rescue Authorities as the Scottish Ministers may determine.
- (2) The Scottish Ministers may appoint Assistant Inspectors of Fire and Rescue Authorities.
- (3) The Scottish Ministers shall pay to the persons appointed under this section such remuneration as the Scottish Ministers may determine.

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- (4) A person who, immediately before the coming into force of this section, is by virtue of appointment under section 24 of the Fire Services Act 1947 (c. 41)—
- (a) the Chief Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(a);
  - (b) an Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(b);
  - (c) an Assistant Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (2).

#### **44 Functions of Inspectors of Fire and Rescue Authorities**

- (1) The Scottish Ministers may direct a person appointed under section 43 to—
- (a) inquire into a matter mentioned in subsection (2); and
  - (b) to submit to them a written report on that matter by a date specified by them.
- (2) Those matters are—
- (a) the state and efficiency of relevant authorities generally;
  - (b) the manner in which—
    - (i) a relevant authority is carrying out any of its functions under this Act; or
    - (ii) relevant authorities are carrying out such functions generally;
  - (c) technical matters relating to a function of a relevant authority under this Act.
- (3) The Scottish Ministers shall lay a copy of each report submitted to them under subsection (1)(b) on the matter mentioned in subsection (2)(a) before the Scottish Parliament.

VALID FROM 02/08/2005

#### *Equipment, facilities and services*

#### **45 Directions for public safety purposes**

- (1) Where the Scottish Ministers consider it necessary to do so for public safety purposes, they may make an order (a “property and facilities order”) giving general or specific directions to a relevant authority (or two or more such authorities) about the use or disposal of property or facilities.
- (2) A direction under subsection (1) given to an authority may in particular include provision—
- (a) about the use or disposal by the authority of property or facilities belonging to it or under its control;
  - (b) about the use by the authority of property or facilities belonging to or under the control of—
    - (i) another relevant authority; or
    - (ii) a person who has made, or is willing to make, the property or facilities available;
  - (c) requiring payments to be made by the authority to—

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- (i) another relevant authority; or
  - (ii) any other person,
- in respect of the use of property or facilities.

- (3) In subsection (2)(b) a reference to property or facilities belonging to a person includes a reference to land occupied by the person.

#### **46 Requirements concerning equipment and services**

The Scottish Ministers may make an order requiring a relevant authority (or two or more such authorities)—

- (a) to use and maintain equipment—
  - (i) specified in the order; or
  - (ii) of a description so specified; or
- (b) to use services—
  - (i) so specified; or
  - (ii) of a description so specified.

#### **47 Provision of equipment etc.**

- (1) The Scottish Ministers may—
- (a) provide and maintain any equipment, facilities and services;
  - (b) contribute to the provision and maintenance of any equipment, facilities and services;
  - (c) establish and maintain any organisations; or
  - (d) contribute to the establishment and maintenance of any organisations,
- they consider appropriate for promoting the economy, efficiency and effectiveness of relevant authorities.
- (2) Subject to subsection (3), charges may be imposed for the use of equipment, facilities and services—
- (a) provided by the Scottish Ministers under subsection (1)(a); or
  - (b) provided by an organisation established or maintained by the Scottish Ministers under subsection (1)(c).
- (3) Any such charge shall not exceed the costs reasonably incurred in providing the equipment, facility or service to which it relates.

VALID FROM 02/08/2005

### *Training*

#### **48 Central institution and other centres for education and training**

- (1) The Scottish Ministers may establish and maintain a central training institution for one or more of the purposes mentioned in subsection (2).
- (2) Those purposes are—



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- (a) the provision of education and training to employees of relevant authorities;
  - (b) the provision of advice and assistance to relevant authorities in connection with the provision of such education and training;
  - (c) the supervision and regulation of the provision of such education and training;
  - (d) the provision of education and training to persons who provide (or are to provide) such education and training;
  - (e) the provision of education or training to persons who are not employees of relevant authorities in matters in relation to which relevant authorities have functions;
  - (f) the provision of advice and assistance in connection with the provision of such education and training.
- (3) The Scottish Ministers may make arrangements with a relevant authority for a centre established under section 15 to be used for one or more of the purposes mentioned in subsection (2).

VALID FROM 02/08/2005

## CHAPTER 9

### EMPLOYMENT

#### *Negotiation of conditions of service*

#### **49 Statutory negotiation arrangements**

- (1) The Scottish Ministers may by order make provision for the establishment of a body of persons (a “statutory negotiation body”), or two or more such bodies, for the purpose of negotiating the conditions of service of employees of relevant authorities.
- (2) An order under subsection (1) shall provide for the statutory negotiation body established by it to be composed of—
  - (a) persons representing the interests of some or all relevant authorities;
  - (b) persons representing the interests of some or all employees of relevant authorities; and
  - (c) a person who does not fall within subsection (3), who shall chair the body.
- (3) A person falls within this subsection if the person is—
  - (a) a member or employee of a relevant authority;
  - (b) a member or employee of a body representing the interests of some or all employees of relevant authorities; or
  - (c) an office-holder in, or a member of the staff of, the Scottish Administration.
- (4) The reference in subsection (2)(b) to persons representing the interests of some or all employees of relevant authorities includes trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)) whose membership consists of or includes employees of relevant authorities.

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- (5) A statutory negotiation body may make arrangements for the purpose of enabling conditions of service of employees of relevant authorities to be negotiated at local level (“local negotiation arrangements”).
- (6) Local negotiation arrangements may in particular include provision as to—
  - (a) the—
    - (i) persons; or
    - (ii) descriptions of person,
 by whom, or by means of whom, negotiations are authorised to be carried out at local level;
  - (b) the conditions of service and descriptions of conditions of service authorised to be negotiated at local level.
- (7) Local negotiation arrangements may be made by a statutory negotiation body in respect of employees of a particular description only if the statutory negotiation body includes persons representing the interests of employees of that description.
- (8) Where there is a statutory negotiation body which includes persons representing the interests of employees of a particular description, an agreement as to the conditions of service of employees of that description which is made by or on behalf of a relevant authority and by or on behalf of employees of the description concerned is a legally enforceable contract only where the terms of the agreement were negotiated—
  - (a) by means of the statutory negotiation body; or
  - (b) in accordance with local negotiation arrangements made by the statutory negotiation body in respect of employees of that description.

## 50 Guidance

- (1) A relevant negotiation body shall, in negotiating the conditions of service of employees of relevant authorities, have regard to any guidance given by the Scottish Ministers in connection with that matter.
- (2) In subsection (1) “relevant negotiation body” means—
  - (a) a body established by virtue of section 49(1); or
  - (b) any other body of persons which—
    - (i) includes both persons representing the interests of some or all relevant authorities and persons representing the interests of some or all employees of relevant authorities; and
    - (ii) is constituted in accordance with what appear to the Scottish Ministers to be appropriate arrangements for the negotiation of the conditions of service of employees of relevant authorities.
- (3) The reference in subsection (2)(b)(i) to persons representing the interests of some or all employees of relevant authorities includes trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)) whose membership consists of or includes employees of relevant authorities.

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### Supplementary

#### 51 Prohibition on employment of police

A relevant authority may not employ a constable for the purpose of carrying out any of the functions conferred on the authority by virtue of this Act.

VALID FROM 02/08/2005

## CHAPTER 10

### INTERPRETATION

#### 52 Interpretation of Part 2

In this Part, unless the context otherwise requires—

“emergency” means an event or situation that causes or is likely to cause—

- (a) a person to die;
- (b) a person to suffer serious—
  - (i) injury; or
  - (ii) illness; or
- (c) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings);

“extinguishing”, in relation to a fire, includes containing and controlling;

“road” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (c. 22).

## PART 3

### FIRE SAFETY

#### CHAPTER 1

##### FIRE SAFETY DUTIES

VALID FROM 01/10/2006

### Duties

#### 53 Duties of employers to employees

- (1) Each employer shall ensure, so far as is reasonably practicable, the safety of the employer's employees in respect of harm caused by fire in the workplace.

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- (2) Each employer shall—
- (a) carry out an assessment of the workplace for the purpose of identifying any risks to the safety of the employer's employees in respect of harm caused by fire in the workplace;
  - (b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).
- (3) Where under subsection (2)(a) an employer carries out an assessment, the employer shall—
- (a) in accordance with regulations under section 57, review the assessment; and
  - (b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).
- (4) Schedule 2 makes provision as to the fire safety measures.

#### **54 Duties in relation to relevant premises**

- (1) Where a person has control to any extent of relevant premises the person shall, to that extent, comply with subsection (2).
- (2) The person shall—
- (a) carry out an assessment of the relevant premises for the purpose of identifying any risks to the safety of relevant persons in respect of harm caused by fire in the relevant premises; and
  - (b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in respect of harm caused by fire in the relevant premises.
- (3) If a person falls within subsection (1) other than by virtue of—
- (a) having control to any extent of relevant premises in connection with the carrying on by the person (whether for profit or not) of an undertaking; or
  - (b) owning relevant premises,
- the person who owns the relevant premises shall also comply with subsection (2).
- (4) A person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to—
- (a) the maintenance or repair of—
    - (i) relevant premises; or
    - (ii) anything in relevant premises; or
  - (b) safety in respect of harm caused by fire in relevant premises,
- shall also comply, to the extent of the obligation, with subsection (2).
- (5) Where under subsection (2)(a) a person carries out an assessment, the person shall—
- (a) in accordance with regulations under section 57, review the assessment; and
  - (b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in respect of harm caused by fire in the relevant premises.

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## **55 Taking of measures under section 53 or 54: considerations**

- (1) Subsection (2) applies where under section 53(2)(b) or (3)(b) or 54(2)(b) or (5)(b) a person is required to take any fire safety measures.
- (2) The person shall implement the fire safety measures on the basis of the considerations mentioned in subsection (3).
- (3) Those considerations are—
  - (a) avoiding risks;
  - (b) evaluating risks which cannot be avoided;
  - (c) combating risks at source;
  - (d) adapting to technical progress;
  - (e) replacing the dangerous with the non-dangerous or the less dangerous;
  - (f) developing a coherent overall fire prevention policy which covers technology, organisation of work and the influence of factors relating to the working environment;
  - (g) giving collective fire safety protective measures priority over individual measures; and
  - (h) giving appropriate instructions to employees.

## **56 Duties of employees**

Each employee shall while at work—

- (a) take reasonable care for the safety in respect of harm caused by fire of—
  - (i) the employee; and
  - (ii) any other relevant person who may be affected by acts or omissions of the employee; and
- (b) in relation to any requirement imposed by virtue of this Part on the employee's employer, co-operate with the employer in so far as is necessary for the purpose of enabling the employer to comply with the requirement.

## *Regulations*

## **57 Risk assessments: power to make regulations**

- (1) The Scottish Ministers may make regulations about the carrying out of assessments and reviews under sections 53 and 54.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) specifying matters which persons must take into account when carrying out assessments and reviews in relation to substances specified in the regulations;
  - (b) specifying other matters which persons must take into account when carrying out assessments and reviews;
  - (c) requiring persons to carry out assessments and reviews before employing persons of a description so specified;
  - (d) requiring persons in such circumstances as may be so specified to keep records of such information as may be so specified; and
  - (e) specifying circumstances in which reviews must be carried out.

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#### Commencement Information

- I4** S. 57 wholly in force at 1.10.2006; s. 57 not in force at Royal Assent see s. 90; s. 57 in force for certain purposes at 6.4.2005 by [S.S.I. 2005/207](#), [art. 3](#); s. 57 in force at 1.10.2006 in so far as not already in force by [S.S.I. 2006/458](#), [art. 2\(c\)](#)

## 58 Scottish Ministers' power to make regulations about fire safety

- (1) The Scottish Ministers may by regulations make provision about fire safety in relevant premises.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
- (a) precautions that must be taken or observed;
  - (b) imposing requirements on persons (including requirements about the enforcement of any provision included in the regulations);
  - (c) the provision, maintenance and keeping free from obstruction of any means of escape in case of fire;
  - (d) the provision and maintenance of means for securing that any means of escape can be safely and effectively used at all material times;
  - (e) the provision and maintenance of means for fighting fire and means for giving warning in the event of fire;
  - (f) the internal construction of premises and the materials used in that construction;
  - (g) prohibiting the presence or use in relevant premises of equipment of a description specified in the regulations, or prohibiting its presence or use unless standards, or conditions, so specified are complied with;
  - (h) where relevant premises form part of a building, enabling arrangements to be entered into with owners or occupiers of other parts of the building for the purpose of enabling persons who are subject to duties imposed by virtue of this Part to comply with them;
  - (i) securing that employees receive appropriate instruction or training in what to do in the event of fire;
  - (j) securing that, in circumstances so specified, numbers of attendants so specified are stationed in parts of the relevant premises so specified;
  - (k) the keeping of records of instruction or training given, or other things done, in pursuance of the regulations; and
  - (l) the giving of assistance or information by any person concerned in the enforcement of requirements imposed by virtue of this Part to any other person so concerned for the purposes of any such requirement.

#### Commencement Information

- I5** S. 58 wholly in force at 1.10.2006; s. 58 not in force at Royal Assent see s. 90; s. 58 in force for certain purposes at 6.4.2005 by [S.S.I. 2005/207](#), [art. 3](#); s. 58 in force at 1.10.2006 in so far as not already in force by [S.S.I. 2006/458](#), [art. 2\(c\)](#)

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VALID FROM 01/10/2006

## 59 Power to make further provision for protection of fire-fighters

- (1) This section applies where regulations under section 58(1) make provision for or in connection with the maintenance of premises, facilities or equipment with a view to securing the safety of fire-fighters (whether employees of relevant authorities or otherwise) in the event of a fire in relevant premises (“safeguarding provision”).
- (2) The Scottish Ministers may by regulations apply, subject to any modifications (specified in the regulations) that they consider necessary, the safeguarding provision to common areas of private dwellings.
- (3) In subsection (2), “common area” includes, where a stair, passage, garden, yard, garage, outhouse or other appurtenance of a private dwelling is used in common by the occupants of more than one private dwelling, that stair, passage, garden, yard, garage, outhouse or other appurtenance.

VALID FROM 01/10/2006

### *Special case*

## 60 Special case: temporary suspension of Chapter 1 duties

- (1) If in relation to any relevant premises the application of any of the Chapter 1 duties would prevent a person who falls within subsection (2) from carrying out the person's operational duties, the Chapter 1 duty (or, as the case may be duties) in question shall be deemed not to apply in relation to those relevant premises during the period when the person is carrying out those duties.
- (2) A person falls within this subsection if the person is—
  - (a) a member of—
    - (i) the armed forces of the Crown; or
    - (ii) a visiting force;
  - (b) a constable; or
  - (c) of such other description as the Scottish Ministers may by regulations prescribe.
- (3) A person subject to the Chapter 1 duty (or duties) which, by virtue of subsection (1) is (or are) deemed not to apply in relation to relevant premises shall, during the period mentioned in that subsection, ensure so far as is possible the safety of relevant persons in respect of harm caused by fire in those premises.
- (4) For the purposes of this section, “operational duties”, in relation to a person falling within subsection (2), means anything done—
  - (a) while the person is at work in the capacity in which the person falls within that subsection; and
  - (b) which the person is required to do by virtue of being at work in that capacity.

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**Modifications etc. (not altering text)**

- C1 S. 60(1) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(i\)](#)
- C2 S. 60(3) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(i\)](#)

VALID FROM 01/10/2006

## CHAPTER 2

### ENFORCEMENT

#### 61 Enforcing authorities

- (1) Each enforcing authority shall enforce the Chapter 1 duties.
- (2) In carrying out the duty imposed by subsection (1), an enforcing authority shall have regard to any guidance given by the Scottish Ministers.
- (3) For the purpose of carrying out the duty imposed by subsection (1), an enforcing authority may appoint enforcement officers.
- (4) If the enforcing authority is the person appointed under section 43(1)(a), the authority may, subject to subsection (5), appoint under subsection (3) a person who has been appointed under subsection (3) as an enforcement officer by a relevant authority.
- (5) A person may be appointed by virtue of subsection (4) only if—
  - (a) the appointment is made with the consent of the relevant authority concerned; and
  - (b) the appointment is made in writing.
- (6) Subsection (1) does not authorise an enforcing authority to institute proceedings for an offence.
- (7) A relevant authority may make arrangements with the Health and Safety Commission for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the Health and Safety Executive in relation to a workplace so specified.
- (8) A relevant authority may make arrangements with a person prescribed in regulations by the Scottish Ministers for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the person in relation to a workplace so specified.
- (9) In this section, “enforcing authority” means—
  - (a) in relation to relevant premises which are—
    - (i) a sports ground designated in an order under section 1 of the Safety of Sports Grounds Act 1975 (c. 52) (safety certificates for large sports stadia);



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- (ii) a sports ground to which Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c. 27) applies; or
    - (iii) a regulated stand within the meaning of section 26(5) of that Act of 1987 (safety certificates for stands at certain sports grounds),the local authority in whose area the relevant premises are situated;
  - (b) in relation to relevant premises in respect of which—
    - (i) the Crown; or
    - (ii) the United Kingdom Atomic Energy Authority,is subject to any of the Chapter 1 duties, the person appointed under section 43(1)(a);
  - (c) in relation to any other relevant premises, the relevant authority in whose area the relevant premises are, or are to be, situated.
- (10) The Scottish Ministers may by regulations modify subsection (9).

## 62 Powers of enforcement officers

- (1) An enforcement officer may do anything necessary for the purpose mentioned in section 61(3).
- (2) An enforcement officer may in particular under subsection (1)—
  - (a) at any reasonable time (or, in a situation which in the opinion of the officer is or may be dangerous, at any time), enter relevant premises and inspect the whole or part of the relevant premises and anything in them;
  - (b) take onto the relevant premises—
    - (i) such other persons; and
    - (ii) such equipment,as the officer considers necessary;
  - (c) require a person on the relevant premises who is subject to any of the Chapter 1 duties to provide the officer with any—
    - (i) facilities, information, documents or records; or
    - (ii) other assistance,which relate to those duties and which the officer may reasonably request;
  - (d) inspect and copy any documents or records on the relevant premises or remove them from the relevant premises;
  - (e) carry out any inspections, measurements and tests in relation to—
    - (i) the relevant premises; or
    - (ii) an article or substance found on the relevant premises,that the officer considers necessary;
  - (f) take samples of an article or substance found on the relevant premises for the purpose of ascertaining its fire resistance or flammability;
  - (g) if an article found on the relevant premises appears to the officer to have caused or to be likely to cause danger to the safety of a relevant person in respect of harm caused by fire, dismantle the article (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the inspection); and
  - (h) take possession of an article or substance found in the relevant premises and retain it for as long as is necessary for the purpose of—

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- (i) examining it and doing anything the officer has power to do under paragraph (e) or (g);
  - (ii) ensuring that it is not tampered with before the officer's examination of it is completed;
  - (iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the inspection.
- (3) An enforcement officer exercising the power mentioned in subsection (2)(a) shall, if so required, produce evidence of the officer's authority to do so—
- (a) before entering the premises; or
  - (b) at any time before leaving the premises.
- (4) If an enforcement officer exercises the power in subsection (2)(f), the officer shall—
- (a) leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that the officer has taken a sample of it; and
  - (b) if it is practicable to do so, give such a person at the relevant premises a portion of the sample marked in a manner sufficient to identify it.
- (5) Before exercising the power mentioned in subsection (2)(g), an enforcement officer shall consult such persons as appear to the officer to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the officer proposes to do under that power.
- (6) If requested to do so by a person present in the relevant premises who is subject to any of the Chapter 1 duties in relation to the relevant premises, an enforcement officer shall cause—
- (a) anything which the officer proposes to do on the relevant premises under the power mentioned in paragraph (d) or (e) of subsection (2); or
  - (b) anything which the officer proposes to do under the power mentioned in paragraph (g) of that subsection,
- to be done in the presence of that person.
- (7) If an enforcement officer exercises the power in subsection (2)(h), the officer shall leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that the officer has taken possession of it.
- (8) An enforcement officer who, by virtue of this section, enters relevant premises—
- (a) which are unoccupied; or
  - (b) from which the occupier is temporarily absent,
- shall on departure leave the relevant premises as effectively secured against unauthorised entry as the officer found them.

**Modifications etc. (not altering text)**

- C3** S. 62 modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(a\)\(ii\)](#)

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- C4 S. 62(2)(c) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)
- C5 S. 62(4)(a) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)
- C6 S. 62(6) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)
- C7 S. 62(7) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)

## 63 Prohibition notices

- (1) Where subsection (2) applies in relation to relevant premises, an enforcing authority may serve a prohibition notice on the occupier of the relevant premises.
- (2) This subsection applies where having regard in particular to the matter mentioned in subsection (3), the enforcing authority considers that use of the relevant premises involves or will involve a risk to relevant persons so serious that use of the relevant premises ought to be prohibited or restricted.
- (3) The matter is anything affecting relevant persons' escape from the relevant premises in the event of fire.
- (4) A prohibition notice is a notice—
  - (a) stating that the enforcing authority considers that subsection (2) applies;
  - (b) specifying the matters which the enforcing authority considers give rise or, as the case may be, will give rise to the risk;
  - (c) directing that until those matters have been remedied the use to which the prohibition notice relates is—
    - (i) prohibited; or
    - (ii) restricted to such extent as may be specified in the notice; and
  - (d) subject to subsection (5), specifying when the notice shall take effect.
- (5) An enforcing authority may specify that a notice shall take effect on service of the notice only if the authority considers that, in consequence of the matters specified under subsection (4)(b), there is or, as the case may be, will be an imminent risk of serious personal injury to relevant persons.
- (6) A prohibition notice may specify steps which may be taken to remedy the matters specified in the notice.
- (7) If relevant premises fall within paragraph (a) of subsection (5) of section 78, the enforcing authority shall, before serving the prohibition notice and if it is practicable to do so, notify the local authority in whose area the relevant premises are situated of—
  - (a) the enforcing authority's intention to serve a prohibition notice; and
  - (b) the use which it is intended to prohibit or, as the case may be, restrict.
- (8) Where an enforcing authority serves a prohibition notice on the occupier of relevant premises, the authority may, by notice in writing to the occupier, withdraw the prohibition notice.

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## **64 Enforcement notices**

- (1) Where an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, the authority may serve an enforcement notice on the person.
- (2) An enforcement notice is a notice—
  - (a) stating that the enforcing authority considers that the person on whom the notice is served has failed to comply with the Chapter 1 duty specified in the notice;
  - (b) specifying why the authority considers that the person has failed to comply with the duty in question; and
  - (c) requiring the person, before the expiry of the period specified in the notice (being a period of at least 28 days), to take the action so specified.
- (3) Where—
  - (a) an enforcing authority (the “first enforcing authority”) proposes to serve an enforcement notice on a person; and
  - (b) the first enforcing authority considers that the person has failed to comply with any of the Chapter 1 duties in relation to—
    - (i) a workplace in relation to which some other authority is the enforcing authority; or
    - (ii) employees who work in such a workplace,
 any enforcement notice served by the first enforcing authority may include requirements relating to that workplace or those employees.
- (4) Before serving an enforcement notice including a requirement such as is mentioned in subsection (3) the first enforcing authority shall consult the other enforcing authority.
- (5) Before serving an enforcement notice including a requirement to make an alteration to relevant premises, the enforcing authority shall consult—
  - (a) subject to subsection (6), the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier in relation to those premises;
  - (b) if the notice relates to a workplace in relation to which the authority responsible to any extent for enforcing Part I of the Health and Safety at Work etc. Act 1974 (c. 37) and the existing statutory provisions is—
    - (i) the Health and Safety Executive; or
    - (ii) by virtue of Part I of that Act or the existing statutory provisions, any other authority,
 the Executive or, as the case may be, that other authority; and
  - (c) any other person whose consent to the alteration would be required by virtue of any enactment.
- (6) If the local authority in whose area the relevant premises are situated is also in relation to those premises—
  - (a) the enforcing authority; and
  - (b) the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier,
 the enforcing authority need not consult the local authority.
- (7) Failure to comply with subsection (4) or (5) shall not affect the validity of an enforcement notice.

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- (8) Where an enforcing authority serves an enforcement notice on a person, the authority may—
- (a) before the expiry of the period specified in the notice, by notice in writing to the person withdraw the enforcement notice;
  - (b) except where an application under section 66 has been made and not determined, extend, or further extend, the period specified in the enforcement notice.
- (9) In subsection (5)(b), “existing statutory provisions” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c. 37).
- (10) For the purposes of this section, “Chapter 1 duties” does not include the duty imposed by section 56.

**Modifications etc. (not altering text)**

- C8** S. 64 modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(a\)\(iii\)](#)
- C9** S. 64(1) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iv\)](#)
- C10** S. 64(2)(a) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iv\)](#)
- C11** S. 64(3)(b) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iv\)](#)
- C12** S. 64(10) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iv\)](#)

**65 Alterations notices**

- (1) Where subsection (2) or (3) applies in relation to relevant premises, the enforcing authority may serve an alterations notice on the appropriate person.
- (2) This subsection applies where there would be a serious risk to relevant persons in respect of harm caused by fire in the relevant premises.
- (3) This subsection applies where—
- (a) subsection (2) does not apply; but
  - (b) if any of the changes mentioned in subsection (5) were made, it is likely that subsection (2) would apply.
- (4) An alterations notice is a notice requiring the appropriate person where—
- (a) it is proposed that a change mentioned in subsection (5) be made to the relevant premises; and
  - (b) if made, the change would constitute a serious risk to relevant persons in respect of harm caused by fire in the relevant premises,
- to notify the enforcing authority of the change before it is made.
- (5) Those changes are—
- (a) a change to the relevant premises;
  - (b) a change to the services, fittings or equipment on the relevant premises;

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- (c) an increase in the quantities of dangerous substances which are present on the relevant premises; and
  - (d) a change in the use to which the relevant premises are put (or, where they are put to more than one use, a use to which they are put).
- (6) An enforcing authority may include in an alterations notice provision requiring the appropriate person—
- (a) to keep records of such information as, by virtue of paragraph (d) of subsection (2) of section 57, is specified in regulations under subsection (1) of that section;
  - (b) to keep records of arrangements made, in accordance with regulations under section 58(1), for the planning, organisation, control, monitoring or review of the fire safety measures;
  - (c) if notifying the authority of a proposed change, to give the authority—
    - (i) a copy of the assessment carried out under section 53 or, as the case may be, 54; and
    - (ii) a summary of the changes the appropriate person proposes to make to the fire safety measures.
- (7) Where an enforcing authority serves an alterations notice on an appropriate person, the authority may, by notice in writing to the appropriate person, withdraw the alterations notice.
- (8) In this section, “appropriate person”, in relation to relevant premises, means a person subject to a requirement under section 53 or 54 in relation to the relevant premises.

## 66 Appeals

- (1) On the application of the person on whom a relevant notice is served or, if the relevant notice is a prohibition notice, a person who in relation to the relevant premises to which the notice relates is subject to the duties imposed by section 53 or 54, the sheriff may make an order—
- (a) revoking the notice;
  - (b) varying it in such manner as may be specified in the order; or
  - (c) confirming the notice.
- (2) Any application under this section shall be made before the expiry of the period of 21 days beginning with the service of the relevant notice to which the application relates.
- (3) If the application relates to—
- (a) an enforcement notice; or
  - (b) an alterations notice,
- the notice shall be suspended during the relevant period.
- (4) If, pending the making of an order under subsection (1), the sheriff makes an order suspending a prohibition notice (a “suspension order”) the suspension order shall be effective only from its making.
- (5) If not recalled by the sheriff, a suspension order shall cease to have effect on—
- (a) the making of an order under subsection (1); or
  - (b) the abandonment of the application under this section.
- (6) An application under this section shall be made by summary application.

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(7) In this section—

“relevant notice” means—

- (a) a prohibition notice;
- (b) an enforcement notice; or
- (c) an alterations notice; and

“relevant period” means the period beginning with the making of an application under this section and ending with—

- (a) the making of an order under subsection (1); or
- (b) the abandonment of the application.

## 67 Determination of disputes

(1) Where—

- (a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties; but
- (b) in relation to the duty in question the person and the enforcing authority cannot agree on the action that requires to be taken to comply with the duty,

the person and the authority may, subject to subsection (2), refer the matter to the person appointed under section 43(1)(a) for determination.

(2) If the enforcing authority is the person appointed under section 43(1)(a), the matter may be referred to the Scottish Ministers for determination.

(3) The Scottish Ministers may by regulations make provision about references under this section.

(4) Subject to subsection (5), where a determination is made by virtue of subsection (1) or (2), the enforcing authority may not—

- (a) serve an enforcement notice; or
- (b) include in such a notice directions,

if the notice or, as the case may be, the directions would conflict with the determination.

(5) Subsection (4) shall not apply if, after the date of the determination, the risk to relevant persons significantly increases because a change is made to—

- (a) the relevant premises; or
- (b) the use to which they are put.

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### Modifications etc. (not altering text)

**C13** S. 67(1)(a) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(v\)](#)

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VALID FROM 01/10/2006

### CHAPTER 3

#### MISCELLANEOUS

#### **68 Prohibition on charging employees**

No employer shall charge, or permit the charging of, any employee of the employer in respect of anything done or provided in pursuance of any of the Chapter 1 duties.

#### **69 Civil liability for breach of statutory duty**

- (1) Subject to subsection (2), nothing in this Part shall be construed as conferring a right of action in any civil proceedings (other than proceedings for recovery of a fine).
- (2) Breach of a duty imposed on an employer by virtue of this Part shall, in so far as it causes damage to an employee, confer a right of action on that employee in civil proceedings.

#### **70 Consequential restriction of application of Part I of Health and Safety at Work etc. Act 1974**

- (1) Except as respects its application in relation to the aspects of fire safety set out in paragraph (b) of the sentence on interpretation in Section H2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46) (reserved matters), Part I of the Health and Safety at Work etc. Act 1974 (c. 37) (“the 1974 Act”) and any regulations and orders made under it shall not apply in relation to fire safety.
- (2) Nothing in subsection (1) affects the operation of Part I of the 1974 Act or any such regulations or orders where an enforcing authority is also, for the purposes of that Part or, as the case may be, the regulations or order, an enforcing authority (as defined in section 18(7)(a) of the 1974 Act).

#### **71 Suspension of terms and conditions of licences dealing with same matters as this Part**

- (1) This section applies where—
  - (a) an enactment provides for the licensing of—
    - (i) premises; or
    - (ii) a person in respect of premises;
  - (b) the authority responsible for issuing licences under such an enactment (the “licensing authority”) is required or authorised to impose terms, conditions or restrictions in connection with the issue of such licences; and
  - (c) such a licence is required in respect of relevant premises.
- (2) A term, condition or restriction imposed in connection with the issue under such an enactment of the licence shall be of no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of this Part.



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- (3) References in this section to the issue of licences include references to their renewal, transfer or variation.
- (4) References in this section to licensing include references to certifying and registering; and “licence” shall be construed accordingly.
- (5) This section does not apply where the licensing authority is also (other than by virtue of paragraph (c) of subsection (9) of section 61) the enforcing authority.

VALID FROM 01/10/2006

## CHAPTER 4

### OFFENCES

#### 72 Offences

- (1) If—
  - (a) a person fails to carry out a duty to which the person is subject by virtue of—
    - (i) section 53;
    - (ii) section 54; or
    - (iii) section 55; and
  - (b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,the person shall be guilty of an offence.
- (2) If—
  - (a) an employee fails to carry out a duty to which the employee is subject by virtue of section 56; and
  - (b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,the employee shall be guilty of an offence.
- (3) If—
  - (a) a person fails to comply with a requirement or prohibition to which the person is subject by virtue of regulations made under section 57 or 58; and
  - (b) the failure to comply with the requirement or prohibition in question puts a relevant person at risk of death, or serious injury, in the event of fire,the person shall be guilty of an offence.
- (4) It shall be an offence for a person—
  - (a) to fail, without reasonable excuse, to comply with a requirement imposed by an enforcement officer under section 62(2)(c);
  - (b) falsely to pretend to be an enforcement officer;
  - (c) intentionally to obstruct an enforcement officer in the carrying out of the officer's functions under this Part;
  - (d) intentionally to obstruct a person taken by virtue of section 62(2)(b) onto relevant premises;

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- (e) to fail to comply with a restriction or prohibition imposed by a prohibition notice;
  - (f) to fail to comply with a requirement imposed by—
    - (i) an enforcement notice; or
    - (ii) an alterations notice;
  - (g) to contravene section 68;
  - (h) to make in any register, book, notice or other document required by virtue of this Part to be kept, served or given an entry which the person knows to be false in a material particular;
  - (i) to give any information which the person knows to be false in a material particular, or recklessly to give any information which is false in a material particular, where the information is given in purported compliance with a requirement to give information imposed by virtue of this Part.
- (5) A person guilty of an offence under subsection (1), (3) or (4)(e) or (f) shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (6) A person guilty of an offence under subsection (2) shall be liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
  - (b) on conviction on indictment, to a fine.
- (7) A person guilty of an offence under subsection (4)(a), (c), (d), (g), (h) or (i) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) A person guilty of an offence under subsection (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Subject to subsection (10), it shall be a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (10) Subsection (9) shall not apply in relation to—
- (a) an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection;
  - (b) an offence under subsection (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition.
- (11) In any proceedings for an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.
- (12) In any proceedings for an offence under subsection (3) in respect of a failure to comply so far as is practicable with a requirement or, as the case may be, a prohibition, the onus of showing that it was not practicable to do more than was done shall be on the accused.
- (13) In any proceedings for an offence under subsection (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.

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### **73 Offences by bodies corporate and partnerships**

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a relevant person, the relevant person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a relevant person.
- (3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) In this section, “relevant person”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

### **74 Offence due to fault of other person**

- (1) Where the commission by any person (“A”) of an offence under this Part is due to the act or default of some other person (“B”), B shall be guilty of the offence.
- (2) B may be charged with and convicted of an offence by virtue of subsection (1) whether or not proceedings are taken against A.

### **75 Employee's act or omission not to afford employer defence**

Nothing in this Part shall be construed as affording an employer a defence in any proceedings in pursuance of section 72 or 73 by reason only of any act or omission of—

- (a) an employee of the employer; or
- (b) a person of a description specified in regulations made by the Scottish Ministers on whom duties are imposed by virtue of section 58(1).

## **CHAPTER 5**

### **GENERAL**

VALID FROM 01/10/2006

### **76 Service of documents**

- (1) Any document required or authorised by virtue of this Part to be served on any person may be served—
  - (a) by delivering it to the person or by leaving it at the person's proper address or by sending it by post to the person at that address;

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- (b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary or clerk of the body;
  - (c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or
  - (d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) (service of documents by post) (“the Order”) in its application to this section, the proper address of any person on whom a document is to be served shall be the person's last known address, except that—
- (a) in the case of service on a body corporate (other than a limited liability partnership), its secretary or clerk, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;
  - (c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.
- (3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outwith the United Kingdom or of a partnership carrying on business outwith the United Kingdom is its principal office within the United Kingdom.
- (4) Subsection (5) applies if a person who is to be served by virtue of this Part with any document by another has specified to that other an address within the United Kingdom other than the person's proper address (as determined under subsection (2)) as the one at which the person or someone on the person's behalf will accept documents of the same description as that document.
- (5) In relation to that document, that address shall be treated as the person's proper address for the purposes of this section and paragraph 4 of Schedule 1 to the Order in its application to this section, instead of that determined under subsection (2).
- (6) The Scottish Ministers may by regulations make provision for or in connection with specifying procedures which must, or may, be followed when serving documents required or authorised by virtue of this Part to be served on any person.

## 77 **Crown application**

- (1) The provisions of this Part, and of regulations made under it, shall bind the Crown.
- (2) No contravention by the Crown of any provision of this Act or of any regulations made under it shall make the Crown criminally liable; but the Court of Session may, on the application of an enforcing authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.

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- (3) Notwithstanding subsection (2), the provisions of this Part and of regulations made under it shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) Nothing in this Part authorises the entry of any relevant premises occupied by the Crown.
- (5) Nothing in this section affects Her Majesty in Her private capacity.
- (6) This Part shall apply in relation to relevant premises owned or occupied by the Parliamentary corporation as it applies in relation to relevant premises owned or occupied by the Crown.

VALID FROM 22/07/2005

**[<sup>F3</sup>77A Application to visiting forces etc.**

The provisions of this Part, and of regulations made under it, shall apply in relation to a visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c. 5) to the same extent that they bind the Crown where the enforcing authority in relation to relevant premises is the fire service maintained by the Secretary of State for Defence.]

**Textual Amendments**

**F3** S. 77A inserted (22.7.2005 in accordance with art. 1(2)(e) of the amending S.I.) by [The Fire \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/2060\)](#), **art. 2(7)** and said inserted provision expressed to be commenced on 1.10.2006 by [S.S.I. 2006/458](#), **art. 2(d)** (subject to [art. 3](#))

**Modifications etc. (not altering text)**

**C14** S. 77A modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(a)(v)**

**78 Meaning of “relevant premises”**

- (1) In this Part, “relevant premises” means any premises other than those mentioned in subsection (2).
- (2) Those premises are—
  - (a) domestic premises;
  - (b) <sup>F4</sup>... ships and hovercraft, mines and offshore installations;
  - (c) <sup>F5</sup>.....
  - (d) borehole sites to which the Borehole Sites and Operations Regulations 1995 (S.I. 1995/2038) apply;
  - (e) premises occupied solely for the purposes of the armed forces of the Crown;
  - (f) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c. 5);

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- (g) premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;
  - (h) if the undertaking carried on in premises is agriculture or forestry, any land other than buildings which is situated away from the undertaking's buildings.
- (3) For the purposes of subsection (1), “premises” includes in particular—
- (a) any place;
  - (b) any installation on land;
  - (c) any tent or movable structure; and
  - (d) vehicles other than those mentioned in subsection (6).
- (4) In paragraph (a) of subsection (2), “domestic premises” means premises occupied as a private dwelling (including a stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is used in common by the occupants of more than one such dwelling); but does not include premises such as are mentioned in subsection (5).
- (5) Those premises are—
- (a) a house as respects which the giving of permission to occupy it is an activity for which a licence under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (S.S.I. 2000/177) is required;
  - (b) premises used for the provision of a care home service (as defined in subsection (3) of section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8));
  - (c) premises used for the provision of a school care accommodation service (as defined in subsection (4) of that section);
  - (d) premises used for the provision of an independent health care service (as defined in subsection (5) of that section);
  - (e) premises used for the provision of a secure accommodation service (as defined in subsection (9) of that section);
  - (f) premises which would fall within paragraph (a) but for there being in force in respect of them a control order under section 178 of the Housing (Scotland) Act 1987 (c. 26); and
  - (g) premises which would fall within paragraph (a) but for there being in force in respect of them a management control order granted by virtue of section 74 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
- (6) The vehicles referred to in subsection (3)(d) are—
- (a) any aircraft, locomotive, rolling stock, trailer or semi-trailer used as a means of transport;
  - (b) any vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 (c. 22);
  - (c) any vehicle which is exempt from duty under that Act.
- (7) References in this Part to relevant premises include references to a part of relevant premises.
- (8) The Scottish Ministers may by regulations modify subsections (1) to (6).
- (9) Where the Scottish Ministers exercise the power in subsection (8), they may by regulations make any modifications of this Part in its application, in consequence of

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the exercise of that power, to relevant premises specified in the regulations under that subsection that they consider necessary or expedient.

#### Textual Amendments

- F4** Words in s. 78(2)(b) omitted (15.6.2005) by virtue of [The Fire \(Scotland\) Act 2005 \(Relevant Premises\) Regulations 2005 \(S.S.I. 2005/352\)](#), [reg. 2\(a\)](#)
- F5** S. 78(2)(c) omitted (15.6.2005) by virtue of [The Fire \(Scotland\) Act 2005 \(Relevant Premises\) Regulations 2005 \(S.S.I. 2005/352\)](#), [reg. 2\(b\)](#)

#### Commencement Information

- I6** S. 78 wholly in force at 1.10.2006; s. 78 not in force at Royal Assent see s. 90; s. 78 in force for certain purposes at 6.4.2005 by [S.S.I. 2005/207](#), [art. 3](#); s. 78 in force at 1.10.2006 in so far as not already in force by [S.S.I. 2006/458](#), [art. 2\(e\)](#)

## 79 Interpretation of Part 3

(1) In this Part, unless the context otherwise requires—

“Chapter 1 duties” means—

- (a) the duties imposed by sections 53, 54, 55 and 56; and
- (b) any duties imposed by regulations made under section 57 or 58;

“employee” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c. 37); and related expressions shall be construed accordingly;

“enforcement officer” means an enforcement officer appointed under section 61(3);

“enforcing authority” has the meaning given by section 61(9);

“fire safety measures” shall be construed in accordance with schedule 2;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

“operational task” means—

- (a) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 9;
- (b) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 10; or
- (c) a function such as is mentioned in an order under section 11(1);

“public road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c. 54);

“relevant person”, in relation to premises, means—

- (a) any person who is, or may be, lawfully in the premises; or
- (b) any person—
  - (i) who is, or may be, in the immediate vicinity of the premises; and
  - (ii) whose safety would be at risk in the event of fire in the premises;

but does not include an employee of a relevant authority who is engaged in the performance of an operational task and, in its application to section 54, a person such as is mentioned in subsection (2);

“work” and “at work” shall be construed in accordance with section 52 of the Health and Safety at Work etc. Act 1974 (c. 37);

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“workplace”, in relation to an employer and the employer's employees, means any relevant premises which are used for the purposes of an undertaking carried on by the employer and made available to an employee of the employer as a place of work; and includes—

- (a) any part of those premises to which an employee of the employer has access while at work;
  - (b) any relevant premises (other than a public road)—
    - (i) which are a means of access to or egress from the place of work; or
    - (ii) where facilities are provided for use in connection with the place of work.
- (2) The person is, where the person (“the employer”) subject to the requirement to carry out an assessment (or a review) under section 54 is also subject to the requirement to carry out an assessment (or a review) under section 53, any employee of the employer.
- (3) For the purposes of section 56 references in the definition of “relevant person” in subsection (1) to premises shall be construed as references to the workplace.

## PART 4

### MISCELLANEOUS

#### *Consultation requirements*

#### **82 Pre-commencement consultation**

Where—

- (a) consultation is required to take place under a provision of this Act; and
- (b) before the provision comes into force, consultation takes place which would have satisfied the requirements of the provision to any extent if it had been in force,

those requirements shall be taken to have been satisfied to that extent.

VALID FROM 02/08/2005

#### *Advisory bodies*

#### **83 Payments in respect of advisory bodies**

- (1) The Scottish Ministers may make any payments they consider appropriate in respect of the expenses of a body established for the purpose of advising them on any matter in relation to which provision is made by this Act.
- (2) The Scottish Ministers may make a payment under this section—
  - (a) to any person; and
  - (b) subject to any conditions, they consider appropriate.



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#### **84 Abolition of Scottish Central Fire Brigades Advisory Council**

The Scottish Central Fire Brigades Advisory Council is hereby abolished.

VALID FROM 02/08/2005

#### *False alarms*

#### **85 False alarms**

- (1) A person who knowingly gives or causes to be given to a person acting on behalf of a relevant authority a false alarm of—
  - (a) fire;
  - (b) a road traffic accident; or
  - (c) an emergency of another kind,shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale;
  - (b) to imprisonment for a term not exceeding 3 months; or
  - (c) to both.

VALID FROM 02/08/2005

#### *Disposal of land*

#### **86 Disposal of land**

A relevant authority may sell or dispose of any land vested in it which is no longer required by it.

### **PART 5**

#### **GENERAL**

#### **87 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.
- (2) An order under subsection (1) may modify any enactment, instrument or document.

**Status:** Point in time view as at 15/06/2005. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Fire (Scotland) Act 2005 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## 88 Orders and regulations

- (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations shall be exercisable by statutory instrument.
- (2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—
  - (a) may be exercised so as to make different provision for different purposes; and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.
- (3) A statutory instrument containing an order or regulations made under this Act (other than an order under section 90) shall, subject to subsection (4), be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) A statutory instrument containing—
  - (a) an order under section 2(1) or section 5(3);
  - (b) an order under section 87(1) modifying an enactment; or
  - (c) regulations under section 60(2)(c), 61(10), 78(8) or (9) or 81,
 shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

VALID FROM 02/08/2005

## 89 Minor and consequential amendments and repeals

- (1) Schedule 3, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.
- (2) The enactments mentioned in the first column of schedule 4 (which include enactments that are spent) are repealed to the extent set out in the second column.

## 90 Commencement

This Act, other than this section and section 88, shall come into force on such day as the Scottish Ministers may by order appoint.

### Subordinate Legislation Made

- P1** S. 90 power partly exercised: 6.4.2005 appointed for specified provisions by {S. I. 2005/207}, art. 3; 2.8.2005 for specified provisions by {S.S.I. 2005/392}, art. 2; 1.10.2006 for specified provisions by {S.S.I. 2006/458}, art. 2

VALID FROM 02/08/2005

## 91 Short title

This Act may be cited as the Fire (Scotland) Act 2005.

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VALID FROM 08/08/2012

VALID FROM 02/08/2005

## SCHEDULE 1

(introduced by section 4)

### JOINT FIRE AND RESCUE BOARDS: SUPPLEMENTARY PROVISION

.....

VALID FROM 01/10/2006

## SCHEDULE 2

(introduced by section 53(4))

### FIRE SAFETY MEASURES

1 Subject to paragraph 2, the fire safety measures are—

- (a) measures to reduce the risk of—
  - (i) fire in relevant premises; and
  - (ii) the risk of the spread of fire there;
- (b) measures in relation to the means of escape from relevant premises;
- (c) measures for securing that, at all material times, the means of escape from relevant premises can be safely and effectively used;
- (d) measures in relation to the means of fighting fires in relevant premises;
- (e) measures in relation to the means of—
  - (i) detecting fires in relevant premises; and
  - (ii) giving warning in the event of fire, or suspected fire, in relevant premises;
- (f) measures in relation to the arrangements for action to be taken in the event of fire in relevant premises (including, in particular, measures for the instruction and training of employees and for mitigation of the effects of fire); and
- (g) such other measures in relation to relevant premises as may be prescribed by the Scottish Ministers by regulations.

2 Nothing in paragraph 1 shall be construed as including process fire precautions.

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VALID FROM 02/08/2005

**SCHEDULE 3**

*(introduced by section 89(1))*

**MINOR AND CONSEQUENTIAL AMENDMENTS**

.....

VALID FROM 02/08/2005

**SCHEDULE 4**

*(introduced by section 89(2))*

**REPEALS**

.....

**Status:**

Point in time view as at 15/06/2005. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

Fire (Scotland) Act 2005 is up to date with all changes known to be in force on or before 07 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.