

FIRE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

8. The Act covers various aspects of the fire and rescue services and is in 5 Parts:
- (a) Part 1 – Fire and Rescue Authorities: this Part determines the bodies which are the fire and rescue authorities (section 1); provides schemes for the creation, variation and revocation of joint fire and rescue boards and supplementary provision (sections 2, 3, 4 and 5) and provides a meaning of “relevant authority” (section 6).
 - (b) Part 2 – Fire and Rescue Services (10 Chapters): sets out the requirement for a Chief Officer to be appointed (section 7); sets out the principal functions of relevant authorities (sections 8 to 11); sets out ancillary functions (sections 12 to 16); determines responsibilities for the supply of water for use by relevant authorities (sections 17 to 24); sets out the powers of employees of relevant
 - (c) authorities and constables (sections 25 to 32); provides for reinforcement schemes (sections 33 and 34); provides for assistance other than from relevant authorities (section 35); enables arrangements to be made for the carrying out of functions by others (sections 36 and 37); provides for the amendment of the Emergency Workers (Scotland) Act 2005 (section 38); provides for offences in connection with the assault or impediment of employees discharging certain functions (section 39); provides for the preparation of a fire and rescue framework for Scotland (sections 40 to 42); provides for the appointment of Inspectors of Fire and Rescue Authorities to inquire into the operation of relevant authorities (sections 43 and 44); provides for the supervision and support of fire and rescue authorities (sections 45 to 48); deals with arrangements for negotiating the conditions of service of those employed by relevant authorities (sections 49 and 50); prohibits the employment of police (section 51) and provides an interpretation of certain terms used in Part 2 (section 52).
 - (d) Part 3 – Fire Safety (5 Chapters): this Part consolidates and rationalises much of the existing fire safety legislation in respect of the duties of employers to their employees and in relation to premises (sections 53 and 54); sets out considerations about the taking of fire safety measures (section 55); the general duties of employees (section 56); sets out a power for the Scottish Ministers to make regulations in relation to risk assessments, fire safety and securing the safety of fire-fighters (sections 57 to 59); suspends fire safety duties in certain limited circumstances (section 60); determines the enforcing authorities and sets out the duties of the enforcing authorities (section 61); sets out the powers of enforcement officers (section 62); details the notice, appeals and dispute determination procedures (sections 63 to 67); establishes a duty not to charge employees for anything done or provided by an employer in pursuance of his duties in relation to fire safety (section 68) and sets out provisions in relation to civil liability for breach of statutory duty (section 69); disapplies, generally, Part I of the Health and Safety at Work etc. Act 1974 in respect of certain fire safety matters, while preserving its operation where an enforcing authority under that Part is also an enforcing authority under Part 3 of the Act (section 70); suspends

*These notes relate to the Fire (Scotland) Act 2005
(asp 5) which received Royal Assent on 1 April 2005*

the terms and conditions of licences dealing with matters under Part 3 (section 71); creates offences related to Part 3 (sections 72 and 73); makes provision where the commission of an offence is due to the fault of another person (section 74); makes provision excluding defences available to an employer (section 75); provides for service of documents (section 76); sets out Crown application (section 77); and addresses the interpretation of terms used in Part 3 (sections 78 and 79).

Part 3 is intended to continue the implementation, and provide for implementation by subordinate legislation, of the provisions of 6 EU Directives on health and safety at work:

- Council Directive [89/391/EEC](#) on the introduction of measures to encourage improvements in the safety and health of workers at work (“the Framework Directive”);
- Council Directive [91/383/EEC](#) supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;
- Article 6 of, together with paragraphs 4 and 5 of the annexes to, Council Directive [89/654/EEC](#) concerning the minimum safety and health requirements for the workplace;
- Articles 6 and 7 of Council Directive [94/33/EC](#) on the protection of young people at work;
- Council Directive [98/24/EC](#) on the protection of the health and safety of workers from the risks related to chemical agents at work; and
- Council Directive [99/92/EC](#) on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres, in so far as these provisions relate to matters within devolved competence, general fire safety measures to be taken by employers and in so far as more specific legislation does not make appropriate provision.

((e) Part 4 – Miscellaneous: details the provisions in relation to inquiries (sections 80 and 81); addresses the issue of pre-commencement consultation (section 82); enables payments in respect of advisory bodies (section 83); provides for the abolition of the Scottish Central Fire Brigades Advisory Council (section 84); sets out the offence that may be committed in relation to false alarms (section 85); and sets out the power of relevant authorities to sell or dispose of land (section 86).

((f) Part 5 – General: this Part covers general provisions such as the making of orders and regulations and minor and consequential amendments and repeals. In particular it provides powers for the Scottish Ministers to make ancillary provision (section 87); makes provision in relation to orders and regulations (section 88); introduces schedules 3 and 4 which deal with minor and consequential amendments and repeals (section 89); covers commencement of the Act (section 90); and sets out the short title of the Act (section 91).