



Fire (Scotland) Act 2005

2005 asp 5

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.
- (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.

Status: Point in time view as at 15/06/2005.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

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

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.

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;

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- (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.

Commencement Information

- II** 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;

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- (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

- I2** 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\(c\)](#)

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

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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.

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\(3\)\(b\)\(i\)](#)

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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);
 - (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,

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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—
 - (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—

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- (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\(3\)\(a\)\(ii\)](#)
- 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\(3\)\(b\)\(iii\)](#)

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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.

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

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- (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.
- (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).

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- (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;
 - (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;

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- (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.
- (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

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(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.

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\(3\)\(b\)\(v\)](#)

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.

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

*Changes to legislation: There are currently no known outstanding effects
for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)*

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.
- (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.

*Status: Point in time view as at 15/06/2005. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects
for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)*

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;
 - (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;

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

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

- (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.

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.

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

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

- (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;
 - (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

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

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

- (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.
- (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.

Status: Point in time view as at 15/06/2005. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

- (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

[^{F1}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

- F1** 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) ^{F2} ... ships and hovercraft, mines and offshore installations;
 - (c) ^{F3}
 - (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);
 - (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—

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

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

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

Status: Point in time view as at 15/06/2005. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

Textual Amendments

- F2** 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\(a\)](#)
- F3** 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

- I3** 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);

“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

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

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3. (See end of Document for details)

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.

Status:

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

Changes to legislation:

There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Part 3.