



# Fire (Scotland) Act 2005

## 2005 asp 5

### PART 3

#### FIRE SAFETY

### 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

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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—

[<sup>F1</sup>(za) in relation to relevant premises—

- (i) for which a licence is required by virtue of section 1 of the Nuclear Installations Act 1965 (c. 57) or for which a permit is required by virtue of section 2 of that Act;
- (ii) for which such a licence or permit would be required but for the fact that the premises are used by, or on behalf of, the Crown;
- (iii) which are a ship which is in the course of construction, reconstruction, conversion or repair by persons other than the ship's master and crew (or by persons including the ship's master and crew); or
- (iv) which are a workplace which is, or is on, a construction site (as defined in regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996 <sup>F2</sup>) and to which those Regulations apply (other than a construction site to which regulation 33(1) of those Regulations applies),

the Health and Safety Executive;

(zb) in relation to relevant premises which are—

- (i) occupied solely for the purposes of the armed forces of the Crown (other than premises such as are mentioned in paragraph (za)(iii));
- (ii) 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); or
- (iii) situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied (other than premises such as are mentioned in paragraph (za)(iii)),

the fire service maintained by the Secretary of State for Defence;]

<sup>F1</sup>(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;

[<sup>F3</sup>(b) in relation to relevant premises—

- (i) in respect of which the Crown is subject to any of the Chapter 1 duties (other than premises such as are mentioned in paragraph (za)(ii), (iii) or (zb)); or
- (ii) in respect of which the United Kingdom Atomic Energy Authority is subject to any of the Chapter 1 duties (other than premises such as are mentioned in paragraph (za)(ii)),

the person appointed under section 43(1)(a);]

<sup>F3</sup>(c) in relation to any other relevant premises, the relevant authority in whose area the relevant premises are, or are to be, situated.

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(10) The Scottish Ministers may by regulations modify subsection (9).

#### Textual Amendments

- F1** S. 61(9)(za)(zb) inserted (22.7.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/2060\)](#), arts. 1(2)(d)(e), **2(4)(a)**
- F2** [S.I. 1996/1592](#), to which there are amendments not relevant to this Order.
- F3** S. 61(9)(b) substituted (22.7.2005) by [The Fire \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/2060\)](#), arts. 1(2)(d)(e), **2(4)(b)**

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

- C1** S. 61(1) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(b)(ii)**
- C2** S. 61(9)(zb) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(a)(i)**
- C3** S. 61(9)(b) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(a)(i)(b)(ii)**
- C4** S. 61(9)(c) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(a)(i)**

## 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

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- 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—
- (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.

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

- C5 S. 62 modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(a\)\(ii\)](#)
- C6 S. 62(2)(c) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)
- C7 S. 62(4)(a) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)
- C8 S. 62(6) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(b\)\(iii\)](#)
- C9 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.

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- (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
  - (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,

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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).
- (10) For the purposes of this section, “Chapter 1 duties” does not include the duty imposed by section 56.

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

- C10** S. 64 modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(a)(iii)**
- C11** S. 64(1) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(b)(iv)**
- C12** 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)**
- C13** 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)**
- C14** 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—

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- (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;
  - (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



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- (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
    - (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)

C15 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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