

FIRE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Fire Safety

Chapter 1 – Fire safety duties

Section 53 – Duties of employers to employees

77. *Section 53* provides that employers have a general duty to ensure so far as is reasonably practicable the safety of their employees in respect of harm caused by fire in the workplace. The formulation of this duty is very similar to that in section 2 of the *Health and Safety at Work etc. Act 1974 (c.37)* (“the 1974 Act”). In that context the words “so far as is reasonably practicable” have been considered by the Court of Appeal in **Edwards v NCB [1949] 1 All ER 743**, where the court held that it is a narrower term than “physically possible” and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk is placed in the other. If it can be shown that there is a gross disproportion between them, the risk being insufficient in relation to the sacrifice, the person on whom the burden is placed discharges the burden of proving that compliance was not reasonably practicable. This interpretation has been consistently applied by the courts in subsequent decisions.
78. Subsection (2) sets out specific duties of employers in relation to carrying out a risk assessment to identify fire safety risks, and taking the necessary fire safety measures to ensure that they comply with their general duty under subsection (1). The obligations apply whether or not the requirements relate to matters within their control. There is therefore a difference between this duty and that found in section 54, where persons who have control of premises to a certain extent, have a duty to the same extent. This reflects the high standard which is expected of employers in domestic and European legislation.
79. Fire safety measures are defined in schedule 2. Paragraph 2 of schedule 2 makes it clear that these measures do not include process fire precautions which are a reserved matter under Section H2 of Schedule 5 to the Scotland Act 1998. The term “process fire precautions” is not defined anywhere in statute but is widely used and understood as being distinct from general fire safety. Essentially, “process fire precautions”, which include risk assessment, are designed to prevent the outbreak or spread of fire from any work processes, taking into account process risk which can be perceived as the danger, due to the work process, that fire will break out. This is to be distinguished from “general fire precautions” which relate to the means of fire warning, fire fighting and escape, thereby dealing with the means to ensure people can escape safely once a fire has started.
80. Subsection (3) imposes a duty on the employer to review the risk assessment in accordance with regulations under section 57 and to take the necessary fire safety measures to ensure compliance with the general duty under subsection (1).

Section 54 – Duties in relation to relevant premises

81. **Section 54** provides that a person who has control of premises must carry out a risk assessment to identify fire safety risks to relevant persons in respect of harm caused by fire on the relevant premises. There is a definition of “relevant premises” in section 78. The person in control of the relevant premises would include the employer (where there is one), a person in control of the premises in connection with the carrying on of a trade, business or other undertaking, and the owner. For example, a shopkeeper who is a sole trader with no employees carrying out a business in leased premises would have duties under section 54 on the basis that the shopkeeper has control of the premises to an extent. In this example, the owner of the premises may also have section 54 duties. Other people, such as landlords or contractors who take responsibility for installation and maintenance of fire precautions or fire safety measures may be in a position to exercise varying degrees of control over premises and they may bear a relevant degree of responsibility under section 54.
82. The term “relevant person” is defined in section 79 and means persons who are or may be lawfully on the premises and persons in, or who may be in, the immediate vicinity of the premises whose safety would be at risk in the event of fire in the premises. Employees of fire and rescue authorities and joint boards are excluded from the definition when they are carrying out operational tasks (also defined in section 79). Where the person subject to the duty in section 54 is an employer their employees are excluded because they are already protected by the section 53 employer/employee duty. Following the risk assessment the obligation is to take such fire safety measures as would be reasonable for a person in that position to take to ensure the safety of relevant persons in respect of harm caused by fire in the premises, bearing in mind all the circumstances. Where the person in control of the premises is not the owner or a person carrying on an undertaking then the owner is also subject to the subsection (2) duties.
83. Subsection (4) imposes the subsection (2) duties on persons who have obligations under contracts or tenancies in relation to maintenance or repair or in relation to fire safety. The subsection (2) duty is imposed but only to the extent that those persons have such obligations. This would include for example contractors who take responsibility for installation and maintenance in relation to fire alarms.
84. Subsection (5) imposes an obligation on the persons subject to the subsection (2)(a) duty to review their risk assessment in line with the regulations made under section 57 and to take measures to ensure safety in line with their subsection (2)(b) duty.

Section 55 – Taking of measures under section 53 or 54: considerations

85. **Section 55** details the considerations which a person taking fire safety measures under section 53 or 54 must take into account. The measures set out in the section correspond with those set out in article 6(2) of the Framework Directive.

Section 56 – Duties of employees

86. This section places a duty on employees while “at work” to take, in respect of fire safety, reasonable care of themselves and any other relevant person who may be affected by their acts or omissions. Employees must also co-operate with their employers so far as is necessary to enable the employers to meet their obligations and duties under Part 3 of the Act.

Sections 57 and 58 – Risk assessments: power to make regulations and Scottish Ministers’ power to make regulations about fire safety

87. These sections provide the Scottish Ministers with the necessary powers to make regulations in connection with the carrying out of risk assessments, including their

review, and to make regulations in connection with fire safety in premises to which Part 3 applies.

88. It is intended that regulations will cover – among other things - duties to record fire safety arrangements in particular circumstances; duties not to employ certain types of employee before assessments are made which take into account factors relevant to, for example, young employees; the need to equip premises with fire-fighting equipment and fire detection equipment; requirements to provide safe routes to emergency exits; the standards required of such emergency exits; the need to establish appropriate safety procedures and the provision of information in connection with risks and fire safety measures in particular premises.

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

89. This provision enables Scottish Ministers to apply provisions in regulations concerning maintenance requirements in respect of measures provided for the protection of fire-fighters (e.g. rising mains), to the common areas of private dwellings.

Section 60 – Special case: temporary suspension of Chapter 1 duties

90. This section provides that in circumstances where the carrying out of the duties imposed by sections 53 to 56 and regulations under sections 57 and 58 (defined in section 79 as the “Chapter 1 duties”) would prevent a member of the armed forces of the Crown, a visiting force, a police constable or any other person of a description prescribed in regulations from carrying out their operational duties (as defined in subsection (4)), the Chapter 1 duties are temporarily suspended during that period. Subsection (3) provides that in these circumstances a person whose duties are temporarily suspended must still ensure so far as is possible the safety of relevant persons in respect of harm caused by fire.