

FIRE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 3 – Fire Safety

Chapter 2 – Enforcement

Section 61 – Enforcing authorities

91. This section imposes an obligation on enforcing authorities to enforce the Chapter 1 duties. In most cases the enforcing authorities will be the fire and rescue authority or the joint fire and rescue board. However it is recognised that there are some special areas where it is more appropriate for another authority to enforce fire safety matters. The other enforcing authorities are: the local authority for major sports grounds; and the Chief Inspector of Fire and Rescue Authorities for Scotland (the “Chief Inspector”) for Crown owned or occupied premises generally and for the United Kingdom Atomic Energy Authority premises. Subsections (7) and (8) enable relevant authorities to make arrangements with other persons in respect of the carrying out of their functions under Part 3 in relation to particular workplaces
92. Subsection (2) requires enforcing authorities to have regard to any guidance issued by the Scottish Ministers when carrying out their duties. Subsection (3) gives enforcing authorities the power to appoint “enforcement officers”. The Chief Inspector can appoint as an enforcement officer a person who has been appointed as an enforcement officer by a relevant authority, as long as the relevant authority consents and the appointment is made in writing.

Section 62 – Powers of enforcement officers

93. Section 62 sets out the powers of enforcement officers in relation to the carrying out of the enforcing authorities’ duties. Subsection (3) provides that enforcement officers exercising powers of entry must produce evidence of their authority to exercise these powers, if required to do so.
94. These powers include a power of entry and powers to take possession of, or samples of, articles found in the premises. Subsection (2)(c) requires persons on the premises to provide the enforcement officer with information, documents or other assistance that the officer reasonably requests. Subsection (6) requires the enforcement officer to undertake any activities mentioned in subsection (2)(d), (e) or (g) in the presence of any person with Chapter 1 duties in relation to the relevant premises, if requested. Subsection (4) obliges an enforcement officer exercising the power under subsection (2) (f) to take samples to leave a notice at the premises. Similarly, subsection (7) requires an enforcement officer exercising the power under subsection (2)(h) to take possession of articles to leave a notice at the relevant premises indicating what has been removed and by whom.
95. Subsection (8) requires enforcement officers, in circumstances where they have exercised their powers of entry, to leave the premises as secure as they found them.

Section 63 – Prohibition notices

96. Where an enforcing authority considers that the use of relevant premises involves or will involve a risk to relevant persons so serious that their use ought to be prohibited or restricted, an enforcing authority may prohibit or restrict their use until such time as the matters giving rise to the risk have been remedied. This is done by the issuing of a prohibition notice. The process is similar to provisions that appear in section 10 of the [Fire Precautions Act 1971 \(c.40\)](#). Under section 66 there is an appeal against the service of a prohibition notice to the sheriff court. The sheriff can make an order suspending the operation of the prohibition notice pending the determination of the appeal. Subsection (8) provides for the withdrawal in writing of a prohibition notice by the enforcing authority.

Section 64 – Enforcement notices

97. This section provides for the issue of an enforcement notice by the enforcing authority in cases where the enforcing authority considers that there is non-compliance with the Chapter 1 duties (except the employee's duty of co-operation in section 56). The provisions are similar to equivalent provisions in section 20 of the 1974 Act and provisions that appeared in the [Fire Precautions \(Workplace\) Regulations 1997 \(S.I. 1997/1840\)](#). An enforcement notice sets out what duty has not been complied with, the reason why it is considered that the duty has not been complied with and what action should be taken within a specified time frame to remedy the position.
98. Where an enforcement notice requires the making of alterations to relevant premises, the enforcing authority must consult other bodies that have enforcement or approval responsibilities in respect of the premises prior to the issue of the notice to ensure that the measures required are appropriate in the light of other restrictions that may apply to the premises. Failure to comply with the consultation requirement does not affect the validity of the notice. Subsection (8) provides for the withdrawal in writing of an enforcement notice by the enforcing authority. Under section 66 it is possible to appeal against the service of an enforcement notice in the sheriff court. The bringing of the appeal has the effect of suspending the notice whilst the appeal is ongoing.

Section 65 – Alterations notices

99. Where relevant premises pose a serious risk to relevant persons, or it is likely that they would pose a serious risk to relevant persons in respect of harm caused by fire if changes were made to the premises, the enforcing authority can issue an alterations notice. The effect of the notice is to require the "appropriate person" (that is, the person subject to requirements in respect of the premises in terms of section 53 or 54) to notify the enforcing authority of their intentions prior to making any specified changes. The alterations notice advises recipients that where they intend to make changes of a type falling within subsection (5), and where the change or changes would constitute a serious risk to relevant persons in respect of harm caused by fire, they must notify the enforcing authority of the changes they intend to make. This enables the enforcing authority to be alerted to any potential problems and allows an intervention before changes are made which significantly increase the risk.
100. The issue of an alterations notice does not preclude the appropriate person from undertaking the changes proposed. However, it requires them to notify the enforcing authority in advance of the change or changes being made. Subsection (7) provides for the withdrawal in writing of an alterations notice by the enforcing authority.

Section 66 – Appeals

101. The rights of individuals are protected in relation to the service of prohibition notices, enforcement notices and alterations notices by rights of appeal. An application to the sheriff must be made before the expiry of 21 days beginning with the service of the notice.

Section 67 – Determination of disputes

102. This section provides a right to seek a determination where the enforcing authority considers that there has been a failure to comply with the Chapter 1 duties but there is a difference of opinion on the action that requires to be taken to rectify this. The person considered to have failed to comply with the Chapter 1 duties and the enforcing authority must jointly agree to seek such a determination. The matter will be referred to the Chief Inspector unless the enforcing authority is the Chief Inspector (in which case the matter will be referred to Scottish Ministers). The determination might avoid the need to go before the courts on appeal against an enforcement notice when the matter to be considered is purely technical– for example where the disagreement concerns the standard of fire alarm which is appropriate in the circumstances of the case.
103. Where a determination has been made, an enforcing authority may not issue an enforcement notice which conflicts with the determination. However, this provision will not apply in circumstances where a change has been made in relation to the premises or their use which significantly increases the risk posed to relevant persons.