

# **FIRE (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 3 – Fire Safety**

#### *Chapter 4 – Offences*

#### *Sections 72 and 73 – Offences and offences by bodies corporate and partnerships*

109. These sections set out the offences and associated penalties in respect of the provisions contained in Part 3. The most serious offences under Part 3 are subject to a maximum penalty on summary conviction of a fine not exceeding £20,000 or on conviction on indictment to imprisonment not exceeding 2 years or to a fine, or to both. In other cases on summary conviction the statutory maximum applies (currently £5,000) and on conviction on indictment the penalty is a fine. Other less serious offences are subject to lesser maximum penalties. The offences of failing to comply with the duties under sections 53 to 56 and any requirement or prohibition under regulations apply only where the failure puts a relevant person at risk of death, or serious injury, in respect of harm caused by fire. The offence would therefore only be committed where serious consequences might result.
110. More minor contraventions might be dealt with either through informal advice or through the service of an enforcement notice (failure to comply with such a notice being an offence under section 72(4)(f)(i)). In relation to the offence under subsection (1) in respect of a failure to comply with the duty in section 53 (duty to ensure fire safety of employees so far as is reasonably practicable), subsection (11) provides that the onus of showing that it was not reasonably practicable to do more than was done is on the accused. This is similar to the provision on the burden of proof in section 40 of the 1974 Act (relating to the employer's duty in section 2 of the 1974 Act to ensure the safety of employees at work so far as is reasonably practicable). The reverse legal burden of proof set out in section 40 of the 1974 Act was considered by the Court of Appeal in **R v Davies (David Janway) [2002] EWCA Crim 2949** and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate.
111. Subsection (9) provides for a defence of due diligence but subsection (10) disapplies the due diligence defence in relation to the employer's duties under section 53 and in relation to duties contained in regulations made under sections 57 or 58 concerning the duty to do something so far as is reasonably practicable. Again, the exclusion of the employer from this defence reflects the high standards required of employers under the relevant European legislation.
112. Subsections (12) and (13) create an automatic reverse burden of proof (i.e. the onus is on the accused) whenever the regulations under section 57 or 58 impose a "so far as is practicable" or "so far as is reasonably practicable" duty or requirement, the breach of which results in an offence under section 72(3).

***Section 74 – Offence due to fault of other person***

113. This section enables the prosecution under Part 3 of a third party whose act or default has resulted in an offence being committed under Part 3 by a person with fire safety duties under that Part. This is a similar provision to that which appears in section 24 of the Fire Precautions Act 1971.

***Section 75 – Employee’s act or omission not to afford employer defence***

114. This section ensures that the acts or omissions of employees, or other persons specified in regulations, will not afford the employer a defence in relation to proceedings for any offence.