



Fire (Scotland) Act 2005

2005 asp 5

PART 3

FIRE SAFETY

CHAPTER 5

GENERAL

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
 - (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;

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- (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) [^{F1}Subject to subsection (1A),]^{F1} the provisions of this Part, and of regulations made under it, shall bind the Crown.
- [^{F2}(1A) Where the enforcing authority in relation to relevant premises is the fire service maintained by the Secretary of State for Defence–
- (a) sections 62 and 63 shall bind the Crown only in so far as they apply in relation to relevant premises owned by the Crown but not occupied by it; and
 - (b) sections 64 to 67 and 72 to 75 shall not bind the Crown; and
 - (c) subsection (2) shall not apply.]
- ^{F2}(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.
- (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.

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Chapter 5. (See end of Document for details)

Textual Amendments

- F1** Words in s. 77(1) 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(6)(a)**
- F2** S. 77(1A) 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(6)(b)**

Modifications etc. (not altering text)

- C1** S. 77 modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), **reg. 24(3)(a)(iv)**

[^{F3}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

- F3** 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)

- C2** 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) ^{F4} ... ^{F5} ... mines and offshore installations;
 - [^{F6}(ba) ships in respect of the normal ship-board activities of a ship's crew which are carried out solely by the crew under the direction of the master;]
 - ^{F7}(c)
 - (d) borehole sites to which the Borehole Sites and Operations Regulations 1995 (S.I. 1995/2038) apply;
 - ^{F8}(e)
 - ^{F8}(f)
 - ^{F8}(g)
 - (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.

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- (3) For the purposes of subsection (1), “premises” includes in particular—
- (a) any place;
 - (b) any installation on land;
 - [^{F9}(ba) ships (other than as mentioned in subsection (2)(ba));
 - (bb) premises occupied solely for the purposes of the armed forces of the Crown;
 - (bc) 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);
 - (bd) 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;]
 - (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) [^{F10}a house or other premises which require][^{F11}to be licensed under Part 5 of the Housing (Scotland) Act 2006 (asp 1)];
 - (b) premises used for the provision of a care home service (as defined in [^{F12}paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010](asp 8));
 - (c) premises used for the provision of a school care accommodation service (as defined in [^{F13}paragraph 3 of schedule 12 to the Public Services Reform (Scotland) Act 2010 except where the service is provided as mentioned in subparagraph (1)(c)(ii) of that paragraph;]
 - (d) premises used for the provision of an independent health care service (as defined in [^{F14}section 10F(1) (a) - (d) of the National Health Service (Scotland) Act 1978]);
 - (e) premises used for the provision of a secure accommodation service (as defined in [^{F15}paragraph 6 of schedule 12 to the Public Services Reform (Scotland) Act 2010]);
 - ^{F16}(f)
 - (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);
 - [^{F17}(h) premises used for the provision of a child minding service (as defined in paragraph 12 of schedule 12 to the Public Services Reform (Scotland) Act 2010).]
- [^{F18}(5A) In subsection (2)(ba) “normal ship-board activities” includes the repair of a ship (other than repair carried out in dry dock).]
- (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;

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- (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.

Textual Amendments

- F4** 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)**
- F5** Words in s. 78(2)(b) omitted (22.7.2005) by virtue of [The Fire \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/2060\)](#), arts. 1(2)(d)(e), **2(8)(a)(i)**
- F6** S. 78(2)(ba) 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(8)(a)(ii)**
- F7** 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)**
- F8** S. 78(2)(e)-(g) omitted (22.7.2005) by virtue of [The Fire \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/2060\)](#), arts. 1(2)(d)(e), **2(8)(a)(iii)**
- F9** S. 78(3)(ba)-(bd) 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(8)(b)**
- F10** Words in s. 78(5)(a) substituted (29.11.2012) by [The Fire \(Scotland\) Act 2005 \(Relevant Premises\) Regulations 2012 \(S.S.I. 2012/332\)](#), regs. 1, **2(a)**
- F11** Words in s. 78(5)(a) substituted (31.8.2011) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), ss. 192(1), 195, **Sch. 6 para. 23** (with s. 193); [S.S.I. 2010/159](#), **art. 3** (with art. 6)
- F12** Words in s. 78(5)(b) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 2, **Sch. 1 para. 15**
- F13** Words in s. 78(5)(c) substituted (26.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) \(No. 2\) Order 2011 \(S.S.I. 2011/369\)](#), arts. 1, **2(a)**
- F14** Words in s. 78(5)(d) substituted (26.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) \(No. 2\) Order 2011 \(S.S.I. 2011/369\)](#), arts. 1, **2(b)**
- F15** Words in s. 78(5)(e) substituted (26.10.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) \(No. 2\) Order 2011 \(S.S.I. 2011/369\)](#), arts. 1, **2(c)**
- F16** S. 78(5)(f) repealed (31.8.2011) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), ss. 192(2), 195, **Sch. 7** (with s. 193); [S.S.I. 2010/159](#), **art. 3**
- F17** S. 78(5)(h) inserted (29.11.2012) by [The Fire \(Scotland\) Act 2005 \(Relevant Premises\) Regulations 2012 \(S.S.I. 2012/332\)](#), regs. 1, **2(b)**
- F18** S. 78(5A) 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(8)(c)**

Commencement Information

- I1** 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)**

Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Chapter 5. (See end of Document for details)

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;

^{F19}

“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 [^{F20}SFRS] 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);

[^{F21}“ship” includes every description of vessel used in navigation and hovercraft within the meaning of the Hovercraft Act 1968 (c. 59) (and, in section 61(9)(za) (iii), includes a ship belonging to Her Majesty which forms part of Her Majesty's Navy);]

“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 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.

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- (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.

Textual Amendments

- F19** Words in s. 79(1) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 8 Pt. 2](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))
- F20** Word in s. 79(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 68\(22\)](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))
- F21** S. 79(1): definition 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\(9\)](#)

Changes to legislation:

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