



# Fire (Scotland) Act 2005

## 2005 asp 5

### PART 3

#### FIRE SAFETY

### CHAPTER 4

#### OFFENCES

## 72 Offences

(1) If—

- (a) a person fails to carry out a duty to which the person is subject by virtue of—
  - (i) section 53;
  - (ii) section 54; or
  - (iii) section 55; and
- (b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(2) If—

- (a) an employee fails to carry out a duty to which the employee is subject by virtue of section 56; and
- (b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the employee shall be guilty of an offence.

(3) If—

- (a) a person fails to comply with a requirement or prohibition to which the person is subject by virtue of regulations made under section 57 or 58; and
- (b) the failure to comply with the requirement or prohibition in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

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*Changes to legislation: There are currently no known outstanding effects for the Fire (Scotland) Act 2005, Chapter 4. (See end of Document for details)*

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- (4) It shall be an offence for a person—
- (a) to fail, without reasonable excuse, to comply with a requirement imposed by an enforcement officer under section 62(2)(c);
  - (b) falsely to pretend to be an enforcement officer;
  - (c) intentionally to obstruct an enforcement officer in the carrying out of the officer's functions under this Part;
  - (d) intentionally to obstruct a person taken by virtue of section 62(2)(b) onto relevant premises;
  - (e) to fail to comply with a restriction or prohibition imposed by a prohibition notice;
  - (f) to fail to comply with a requirement imposed by—
    - (i) an enforcement notice; or
    - (ii) an alterations notice;
  - (g) to contravene section 68;
  - (h) to make in any register, book, notice or other document required by virtue of this Part to be kept, served or given an entry which the person knows to be false in a material particular;
  - (i) to give any information which the person knows to be false in a material particular, or recklessly to give any information which is false in a material particular, where the information is given in purported compliance with a requirement to give information imposed by virtue of this Part.
- (5) <sup>F1</sup>Subject to subsection (5A),<sup>F1</sup> a person guilty of an offence under subsection (1), (3) or (4)(e) or (f) shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- <sup>F2</sup>(5A) Where a person is guilty of an offence under subsection (1), (3) or (4)(e) or (f) in respect of relevant premises which are—
- (a) a ship;
  - (b) premises occupied solely for the purposes of the armed forces of the Crown;
  - (c) 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); or
  - (d) 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,
- paragraph (a) of subsection (5) shall apply as if for “£20,000” there were substituted level 5 on the standard scale.]
- <sup>F2</sup>(6) A person guilty of an offence under subsection (2) shall be liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
  - (b) on conviction on indictment, to a fine.
- (7) A person guilty of an offence under subsection (4)(a), (c), (d), (g), (h) or (i) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) A person guilty of an offence under subsection (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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- (9) Subject to subsection (10), it shall be a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (10) Subsection (9) shall not apply in relation to—
- (a) an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection;
  - (b) an offence under subsection (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition.
- (11) In any proceedings for an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.
- (12) In any proceedings for an offence under subsection (3) in respect of a failure to comply so far as is practicable with a requirement or, as the case may be, a prohibition, the onus of showing that it was not practicable to do more than was done shall be on the accused.
- (13) In any proceedings for an offence under subsection (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.

#### Textual Amendments

- F1** Words in s. 72(5) 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(5)(a)**
- F2** S. 72(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(5)(b)**

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

- C1** S. 72(3)(a) modified (1.10.2006) by [The Fire Safety \(Scotland\) Regulations 2006 \(S.S.I. 2006/456\)](#), [reg. 24\(3\)\(c\)](#)

## 73 Offences by bodies corporate and partnerships

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a relevant person, the relevant person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a relevant person.
- (3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

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- (4) In this section, “relevant person”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

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

- (1) Where the commission by any person (“A”) of an offence under this Part is due to the act or default of some other person (“B”), B shall be guilty of the offence.
- (2) B may be charged with and convicted of an offence by virtue of subsection (1) whether or not proceedings are taken against A.

**75 Employee's act or omission not to afford employer defence**

Nothing in this Part shall be construed as affording an employer a defence in any proceedings in pursuance of section 72 or 73 by reason only of any act or omission of—

- (a) an employee of the employer; or
- (b) a person of a description specified in regulations made by the Scottish Ministers on whom duties are imposed by virtue of section 58(1).

**Changes to legislation:**

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