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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in connection with the carrying out of assessments to identify risks in respect of harm caused by fire, and the review of those assessments. They also make provision about fire safety in relevant premises (as defined in section 78 of the [Fire \(Scotland\) Act 2005 \(asp 5\)](#) (“the 2005 Act”).

Part 3 of the 2005 Act replaces fire certification under the Fire Precautions Act 1971 with a general duty to ensure, so far as is reasonably practicable, the safety of employees, a general duty in relation to non-employees to take such fire safety measures as it is reasonable to take to ensure the safety of persons lawfully on the premises and in the vicinity in respect of harm caused by fire, and a duty to carry out an assessment to identify risks to safety in respect of harm caused by fire. These Regulations impose a number of specific duties in relation to the fire safety measures to be taken. Part 3 of the 2005 Act and these Regulations give effect in Scotland to:

- (a) Council Directive [89/391/EEC](#) on the introduction of measures to encourage improvements in the safety and health of workers at work (O.J. No. L 183, 29.6.89, p.1) (“the Framework Directive”) (except for provisions on accident reporting (article 9(1)(c) and (d) and (2)), employment protection rights (articles 7(2), 8(4) and (5) and 11(4)), and use of personal protective equipment (article 13(2)(b));
- (b) Council Directive [91/383/EEC](#) supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (O.J. No. L 206, 29.7.91, p.19) (“the Temporary Workers' Directive”) (except for provisions on the responsibility of host undertakings to temporary workers (article 8));
- (c) article 6 of, together with paragraphs 4 and 5 each of the annexes to, Council Directive [89/654/EEC](#) concerning the minimum safety and health requirements for the workplace (O.J. No. L 393, 30.12.89, p.1) (“the Workplace Directive”);
- (d) articles 6 and 7 of Council Directive [94/33/EC](#) (O.J. No. L 216, 20.8.94, p.12) on the protection of young people at work;
- (e) Council Directive [98/24/EC](#) on the protection of the health and safety of workers from the risks related to chemical agents at work (O.J. No. L 131, 05.05.98, p.11) (“the Chemical Agents Directive”); and
- (f) Council Directive [99/92/EC](#) on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres (O.J. No. L 23, 28.01.00, p.57) (“the Explosive Atmospheres Directive”),

in so far as these provisions relate to matters within devolved competence, general fire safety measures to be taken by employers and in so far as more specific legislation does not make appropriate provision.

Under section 72(3) of the 2005 Act, failure to comply with a requirement or prohibition contained within regulations 3 to 23 which puts a relevant person (defined in section 79 of the 2005 Act) at risk of death or serious injury, in the event of fire is an offence. It is a defence under section 72(9) of the 2005 Act for a person to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. However, this defence is not available in proceedings for an offence under section 72(3) where a requirement or prohibition consists of a duty to comply so far as is reasonably practicable (section 72(10)). Section 72(12) and (13) provide for a

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The Fire Safety (Scotland) Regulations 2006. (See end of Document for details)

reverse burden of proof to apply in any proceedings for an offence under section 72(3) consisting of a failure to comply with a requirement or prohibition so far as is practicable or so far as is reasonably practicable.

Part II makes provision in connection with the carrying out of assessments and reviews under sections 53 and 54 of the 2005 Act.

Part III makes provision in relation to fire safety in relevant premises. Duties are imposed on employers, on those exercising control to any extent of relevant premises, and on owners where the person exercising control of relevant premises does not have control in connection with the carrying on of an undertaking. Regulation 22 also imposes duties on employees.

Part IV provides for miscellaneous matters, including the maintenance of measures provided to secure the safety of fire-fighters in the event of a fire in relevant premises (regulation 23). Regulation 24 exercises the power in section 59(2) of the 2005 Act and extends provision made in regulation 23 to the common areas of private dwellings. Regulation 25 prescribes the Office of Rail Regulation as a person with whom a relevant authority may make arrangements for the carrying out of specified functions. Regulation 26 provides that persons nominated under the Regulations to assist in the fire safety measures are specified persons within the meaning of section 75 of the 2005 Act, thereby preventing an employer relying on a nominated person's act or omission as a defence in proceedings for an offence under section 72 or 73. Regulation 27 makes further provision as to service of documents under Part 3 of the 2005 Act. Regulation 28 makes provision for the disapplication of regulations in particular circumstances.

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