

CROWN OFFICE CIRCULAR No 1/2007

SUBJECT: Fire Investigations No 2

FIRE (SCOTLAND) ACT 2005

INTRODUCTION

1. Part III of [The Fire \(Scotland\) Act 2005](#) (the Act) commenced on 1 October 2006, bringing the whole Act into force. In order to modernise the fire and rescue services, the Act largely replaces the Fire Services Acts of 1947 and 1959 (except those provisions relating to the Firemen's Pension Scheme).
2. The Act provides for the constitution of joint fire and rescue boards and creates;
 - new duties on employers to undertake workplace risk assessments, and to take measures to evaluate, combat and avoid risk
 - liability for relevant person(s) within a corporate body, and individual partner(s) within a partnership, in respect of failures to comply with the requirements of the Act.

OFFENCES

Parts 1 & 2 of the Act: Joint Fire & Rescue Boards

3. Parts 1 and 2 of the Act provide for the establishment of joint fire and rescue boards, and create a number of related offences, namely;
 - failure by Scottish Water, without reasonable excuse, to provide water as requested (section 20),
 - unauthorised use, damage or obstruction of fire hydrants (section 23),
 - failure, without reasonable excuse, to give notice of works affecting any water supply (section 24),
 - failure, without reasonable excuse, to provide authorised employees with facilities, information, documents, records or other assistance (section 31),
 - to use or disclose, without reasonable excuse, commercially sensitive information obtained by virtue of powers conferred under sections 25, 26, 27 or 29 of the Act (section 32),
 - assaulting, hindering or obstructing employees of the fire and rescue boards whilst they are undertaking their duties (section 39).

Part 3 of the Act: Safety Duties of Employers etc

4. Part 3 of the Act sets out the fire safety duties of employers, employees, controllers and maintainers of premises.

Failure to Comply Offences

5. Sections 72(1), (2) & (3) create a range of "failure to comply" offences in respect of the following duties;

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- employers shall carry out a workplace risk assessment, and take necessary fire safety measure to ensure the safety of employees section 53),
- controllers of relevant premises shall carry out a risk assessment of those premises and take necessary fire safety measures to ensure the safety of relevant persons (section 54),
- employers shall evaluate risk and develop a fire prevention policy (section 55),
- employees shall take reasonable care for the safety of themselves and others (section 56),
- any other regulations made by the Scottish Ministers (sections 57 and 58).

Enforcement Offences

6. Section 72(4) creates a number of enforcement offences;
 - failing without reasonable excuse to comply with a requirement imposed by an enforcement officer (section 72(4)(a)),
 - falsely pretending to be an enforcement officer (section 72(4)(b)),
 - intentionally obstructing an enforcement officer carrying out their functions (section 72(4)(c)),
 - intentionally obstructing a person taken onto premises by an enforcement officer (section 72(4)(d)),
 - failing to comply with a restriction or prohibition imposed by a prohibition notice (section 72(4)(e)),
 - failing to comply with a requirement imposed by an enforcement or alterations notice (section 72(4)(f)),
 - employers charging or permitting charging of an employee for anything done under the fire safety duties set out in Chapter 1 of Part 3 of the Act (section 72(4)(g)),
 - recording false entries in any register, book, notice or other document required under the Act (section 72(4)(h)),
 - knowingly or recklessly giving false information in purported compliance with any requirement to give information under the Act (section 72(4)(i)).

Defences (to section 72 offences)

7. Section 79(9) creates a defence for a person prosecuted under section 72 where they can prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
8. Section 72(10) limits this defence to
 - (i) employers duties under section 53, and
 - (ii) duties contained in regulations made under sections 57 and 58 concerning the duty to do something as far as is reasonably practicable.An employees act or omission does not afford an employer a defence (section75)

Corporate Bodies & Partnerships : Individual Liability

9. Section 73 provides that individual employees of a corporate body, who are found to have consented or connived in the offence, or have been individually neglectful, can be held liable for offences by the corporate body. The same liability is attributable to individual

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partners within a partnership. Acts or omissions by individual employees cannot afford an employer a defence (section 75).

10. Section 74 confirms that the act or default of another in the commission of an offence is itself an offence.

Part 4 of the Act: False Alarms

11. It is an offence under section 85 to knowingly give or cause to be given to a person acting on behalf of a relevant authority a false alarm of fire, road traffic accident or emergency of another kind.

PENALTIES/ FORUM

12. The offences contained in Parts 1, 2 and 4 of the Act may only be prosecuted on summary complaint. The offences in Part 3 are triable either way.

13. [REDACTED]

14. [REDACTED]

15. For further advice please contact the Operational Policy Team, Business and Policy Development Division, Crown Office.

**CROWN OFFICE
EDINBURGH**

20 February 2007