INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these are revised Explanatory Notes to accompany the Fire (Scotland) Bill, as amended at Stage 2.

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The main purpose of this Bill is to deliver modernised fire and rescue services that respond to the particular demands of the 21st Century and contribute to building a safer Scotland.

5. The Bill repeals and re-enacts many of the provisions of the Fire Services Act 1947 (c.41) (“the 1947 Act”) as they currently apply in Scotland.


7. These proposals included the reform of fire safety legislation in Scotland, which is also addressed in the Bill.

8. The consultation paper mentioned above built on the issues raised in, and the responses received to, the policy paper The Scottish Fire Service of the Future which was published in April 2002. The paper also took account of the report of the Independent Review of the Fire Service - The Future of the Fire Service: reducing risk, saving lives which was published in December 2002.
THE BILL – AN OVERVIEW

9. The Bill covers various aspects of the fire and rescue services and is in 5 Parts:

(a) Part 1 – Fire and Rescue Authorities: determines the bodies which are the fire and rescue authorities (section 1); provides schemes for the creation, variation and revocation of joint fire and rescue boards and supplementary provision (sections 2, 3, 4 and 5) and provides a meaning of ‘relevant authority’ (section 6).

(b) Part 2 – Fire and Rescue Services (10 Chapters): sets out the requirement for a Chief Officer to be appointed (section 6A); sets out the principal functions of relevant authorities (sections 7 to 10); sets out ancillary functions (sections 11 to 15); determines responsibilities for the supply of water for use by relevant authorities (sections 16 to 22); sets out the powers of employees of relevant authorities (sections 23 to 30); provides for reinforcement schemes (sections 31 and 32); provides for assistance other than from relevant authorities (section 33); enables arrangements to be made for the carrying out of functions by others (sections 34 and 35); provides for the amendment of the Emergency Workers (Scotland) Act 2005 (section 35A); provides for the preparation of a fire and rescue framework for Scotland (sections 36 to 38); provides for Inspectors of relevant authorities (sections 39 and 40); provides for the supervision and support of fire and rescue authorities (sections 41 to 44); deals with employment by relevant authorities (sections 45 and 46); prohibits the employment of police (section 47) and provides an interpretation of Part 2 (section 48).

(c) Part 3 – Fire Safety (5 Chapters): consolidates and rationalises much of the existing fire safety legislation in respect of the duties of employers to their employees and in relation to premises (sections 49 and 50); sets out considerations about the taking of fire safety measures (section 51); the general duties of employees (section 52); sets out a power for the Scottish Ministers to make regulations in relation to risk assessments, fire safety and securing the safety of fire-fighters (sections 53, 54 and 54A); suspends fire safety duties in certain limited circumstances (section 55); determines the enforcing authorities and sets out the duties of the enforcing authorities (section 56); sets out the powers of enforcement officers (section 57); details the notice and appeals procedures (sections 58 to 62); establishes a duty not to charge employees for things done or provided (section 63) and sets out miscellaneous provisions in relation to civil liability for breach of statutory duty (section 64); disapplies the Health and Safety at Work etc. Act 1974 in respect of certain fire safety matters, while preserving the operation of Part I of that Act where an enforcing authority under that Part is also an enforcing authority under Part 3 (section 65); suspends the terms and conditions of licences dealing with matters under Part 3 (section 65A); creates offences related to Part 3 (sections 67 and 68); makes provision where the commission of an offence is due to the fault of another person (section 68A); makes provision on defences available to an employer (section 69); provides for service of documents (section 70); sets out Crown application (section 71); and addresses the interpretation of terms used in Part 3 (sections 72 and 73).

Part 3 is intended to continue the implementation of, and provide for implementation by subordinate legislation of, the provisions of 6 EU Directives on health and safety at work:

• 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;
• Article 6 of, together with paragraphs 4 and 5 of the annexes to, Council Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace;
• Articles 6 and 7 of Council Directive 94/33/EC on the protection of young people at work;
• Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work; and
• Council Directive 99/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres,

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.

(d) Part 4 – Miscellaneous: details the provisions in relation to inquiries (sections 74 and 75); addresses the issue of pre-commencement consultation (section 76); enables payments in respect of advisory bodies (section 77); provides for the abolition of the Scottish Central Fire Brigades Advisory Council (section 78); sets out the offence that may be committed in relation to false alarms of fire (section 79); and sets out the power of relevant authorities to sell or dispose of land (section 79A).

(e) Part 5 – General: this part covers general provisions such as the making of orders and regulations and minor and consequential amendments and repeals. In particular it provides powers for the Scottish Ministers to make ancillary provision (section 80); makes provision for orders and regulations (section 81); addresses minor and consequential amendments and repeals (section 82); covers commencement for the Act (section 83); and the short title of the Act (section 84).

THE BILL – SECTION BY SECTION

PART 1 – FIRE AND RESCUE AUTHORITIES

Section 1 – Fire and rescue authorities

10. This section defines what is meant in the Bill by “fire and rescue authority”: the council for the local government area as constituted under section 2 of the Local Government etc. (Scotland) Act 1994 and if it extends into the sea, the low water mark shall constitute the seaward boundary.

Sections 2, 3, 4 and 5 – Joint fire and rescue boards

11. These provisions allow for the combining of fire and rescue authorities in an amalgamation scheme made by order by the Scottish Ministers on the grounds of improving efficiency, effectiveness and economy. Schemes will be subject to a power to vary or revoke
them by order. Any such scheme will constitute a joint board to carry out the functions of each authority for the combined area. Schedule 1 also relates to the powers of joint boards.

12. In all cases, the Scottish Ministers will be required to consult the existing fire authorities which will, or may be, affected and such other persons as Ministers consider appropriate. Similar schemes already exist under section 147 of the Local Government (Scotland) Act 1973. Section 5 provides that these schemes will continue to have effect despite the repeal of the Fire Services Act 1947 and section 147 of the Local Government (Scotland) Act 1973 and that they will be deemed to be section 2(1) schemes under this Bill. This section also makes provision for the transfer of property, rights, liabilities and staff from an existing board to a joint fire and rescue board constituted by a section 2(1) scheme. The orders under section 2(1) and 5(3) are subject to affirmative resolution of the Scottish Parliament.

Section 6 – Meaning of “relevant authority”

13. The term “relevant authority” is used throughout the Bill and is defined at section 6 as a fire and rescue authority as constituted under section 1 or a joint board constituted under an amalgamation scheme under section 2(1). “Relevant authority” is used throughout these Notes in the same way.

PART 2 – FIRE AND RESCUE SERVICES

Chapter A1 – Appointment of Chief Officer

Section 6A – Appointment of Chief Officer

14. This section provides for the appointment of a Chief Fire Officer who will be responsible to the relevant authority for the discharge of the authority’s functions by employees of the authority.

Chapter 1 – Principal fire and rescue functions

Section 7 – Fire safety

15. This provision places a statutory duty on relevant authorities to make provision for the purpose of promoting fire safety. At present, fire authorities undertake community fire safety initiatives. These take various forms, for example, schools education programmes, safety information advisory sessions for community groups and attendance at public events, fetes, etc. In some cases individual home fire safety advisory visits are undertaken and advice is given to homeowners on fire prevention issues. This work is currently carried out on a discretionary basis and the effect of section 7 is to make it a statutory duty.

Sections 8 and 9 – Fire-fighting and road traffic accidents

16. Section 8 re-enacts the existing statutory duty for a relevant authority to plan and provide arrangements for fighting fires and protecting life and property from fires within its area. A relevant authority is required to secure sufficient equipment etc. and training to discharge its duty in normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions; the latter
might include, for example, information about the nature and characteristics of buildings within the authority's area or availability of, and access to, water supplies.

17. Section 9 places a duty on a relevant authority to make provision for rescuing persons from road traffic accidents and for dealing with the aftermath of such accidents. Historically, the risk of fire was the trigger for attendance at such an incident. Whilst advances in vehicle design have seen the incidence of fire following an accident decrease, calls to assist with the rescue of people from wreckage and protect them from harm from spillage of hazardous substances have increased dramatically. A relevant authority is required therefore to secure sufficient resources and training to discharge its duties in all normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions (for example, knowledge of local road and trunk road networks).

18. Under both sections 8 and 9 relevant authorities must seek to prevent or limit damage to property in exercising these statutory functions.

Section 10 – Conferral of functions in relation to other emergencies

19. This section allows the Scottish Ministers to confer on a relevant authority specified functions by order (an “additional function order”). This would relate to such matters as flooding, chemical spills and terrorist incidents.

20. The Scottish Ministers will also have the power, by additional function order, to direct relevant authorities as to how they should plan, equip for, and respond to such emergencies. This may include, for example, directions as to the deployments of mass decontamination equipment for civil resilience purposes. The intention is to ensure consistency of approach towards emergencies, particularly in response to terrorist incidents.

21. This section also allows the order to require an authority to respond to an emergency that has arisen outside its own area if, for example, it has more appropriate equipment and training than the authority in whose area the emergency has occurred.

22. The term “emergency” is defined for the purposes of this Bill, at section 48.

Chapter 2 – Ancillary functions

Section 11 – Emergency directions

23. Section 11 gives the Scottish Ministers power to direct relevant authorities to respond to a particular fire or emergency incident, either in its own area or in that of another authority. The Scottish Ministers will also be able to direct an authority not to take any action in the event of such an emergency if, for example, another authority is better equipped to do so.

Section 12 – Power to respond to other eventualities

24. This section provides relevant authorities with discretion to equip, and respond to, events beyond its core functions provided for at sections 7 to 10 and 56. Such an authority will be free
to act where it believes there is a risk to life or the environment. This would allow, for example, specialist activities such as rope rescue.

Section 13 – Provision of other services
25. Section 13 provides a relevant authority with the power to agree to the use of its equipment or personnel for any purpose it believes appropriate and wherever it so chooses. For example, an authority may agree to help pump a local pond as a service to its community.

Section 14 – Provision of centres for education and training
26. This section re-enacts provisions in the Fire Services Act 1947 that allow a relevant authority to establish training centres in respect of any function conferred under these provisions.

Section 15 – Charging
27. Section 15 allows the Scottish Ministers to set out by order, following consultation, the services for which a relevant authority may charge and the persons who may be subject to the charge. At present fire authorities have discretionary powers to charge for exercising certain functions. Relevant authorities will not be able to charge for activity in extinguishing fires, protecting property in the event of fires or protecting life, except in relation to fighting fires at sea (beyond the low water mark). In other words, where the circumstances of the incident are such that there is no duty on the fire authority under section 8 because the incident is outwith their area.

28. Subsection (4) maintains the existing arrangement that allows fire authorities to set their own level of charge, and to vary the charge depending on the type of service provided and the circumstances of a particular incident, or to choose not to charge at all.

29. Subsection (5) sets out that in setting the amount of any charge a relevant authority shall secure that the income from charging does not exceed the cost to the relevant authority for providing the service for which charges are levied when looked at over any particular financial year.

Chapter 3 – Water supply

Section 16 – Duty to secure water supply
30. This section re-enacts section 13 of the Fire Services Act 1947, requiring relevant authorities to take all reasonable measures to ensure an adequate supply of water and the purposes for which they should secure that supply.

Section 17 – Use of water
31. This section allows a relevant authority to use any suitable supply of water. Whilst it provides for payment of reasonable compensation for water this is limited by reference to section 9A of the Water (Scotland) Act 1980, which expressly forbids charging by a water undertaker in respect of: water taken for the purpose of extinguishing fires or for any other emergency purposes; water taken for testing apparatus used for extinguishing fires; or for fire fighting training. This section re-enacts section 15(2) of the Fire Services Act 1947.
Section 18 – Agreements in relation to water supply

32. This section re-enacts subsections 14(1) and (4) of the Fire Services Act 1947 and allows a relevant authority to enter into agreements with Scottish Water and persons other than Scottish Water in order to secure the use of water; to improve access to water; or to lay and maintain pipes and to carry out other works in connection with the use of water. Subsection (2) allows for any agreement to include terms for payment, other than for the purposes covered by section 9A of the Water (Scotland) Act 1980.

33. Subsection (3) places a requirement on Scottish Water not to unreasonably refuse to enter into an agreement in relation to water supply and subsection (4) provides that Scottish Ministers may determine whether any refusal by Scottish Water to enter into an agreement under this section is unreasonable.

Section 19 – Emergency supply by Scottish Water

34. This section re-enacts sections 30(4) and (4A) of the Fire Services Act 1947. Subsection (1) places an obligation on Scottish Water to take all necessary steps to increase supply and pressure of water if requested to do so by a relevant authority for the purposes in section 16(2). Subsection (2) allows Scottish Water to shut off water from the mains and pipes in any area to enable it to comply with a request to increase supply and water pressure. Subsection (3) safeguards the relevant authority, Scottish Water or any other person from any liability for anything done by Scottish Water in complying with its obligations. Subsection (4) make it an offence for Scottish Water, without reasonable excuse, to fail to take any steps which it is obliged to take and provides for a level 5 fine (currently £5,000) on summary conviction.

Section 20 – Fire hydrants: provision etc.

35. Subsection (1) re-enacts the first part of section 14(3)(a) of the Fire Services Act 1947 in respect of the requirement to provide fire hydrants. Access to the water supply is by connection to a fire hydrant. Hydrants may be fitted by Scottish Water at the request of a relevant authority. Subsection (2) requires Scottish Water to mark the location of every fire hydrant with a notice or distinguishing mark and under subsection (4) the costs of doing this can be charged to the relevant authority in whose area the hydrant is situated.

36. Subsection (5) grants the Scottish Ministers power to make regulations providing for uniformity in fire hydrants and the distinguishing marks and notices indicating their location. This re-enacts section 14(6) of the 1947 Act.

37. Subsection (6) provides that, in circumstances where a hydrant is damaged as a result of authorised use which was not for the purposes of fire fighting or other relevant authority purposes, the liability for the cost of repair or replacement will not fall on the relevant authority. This re-enacts section 14(3)(b) of the 1947 Act.

Section 21 – Fire hydrants: offences

38. This section makes it an offence for any person to use a fire hydrant provided by Scottish Water other than for fire fighting or any other purpose of a relevant authority, or other than for any purpose authorised by Scottish Water. It also makes it an offence to damage or obstruct a
This document relates to the Fire (Scotland) Bill as amended at Stage 2 (SP Bill 24A)

fire hydrant provided by Scottish Water other than as a consequence of its use for fire fighting, for any other authority purpose or for any purpose other than one authorised by Scottish Water.

39. Under subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a level 5 fine. This re-enacts section 14(5) of the Fire Services Act 1947.

Section 22 – Notice of works affecting water supply and fire hydrants

40. This section re-enacts sections 16(1) to (3) of the Fire Services Act 1947 and requires any person who proposes to carry out any works for the purpose of supplying water to any part of the area of a relevant authority to give written notice to the authority under subsection (1). The notice period for doing so must be either 14 days in a case where proposed works are to be carried out under a requirement under any Act other than the Water (Scotland) Act 1980, or 6 weeks in any other case. A person proposing to carry out any works affecting a fire hydrant is required to give at least seven days notice in writing.

41. Under subsection (4), if it is not practicable for written notice to be given, the person is regarded as having given such notice if he gives it as soon as practicable. It is an offence under subsection (5), if, without reasonable excuse, a person fails to give notice as required. Under subsection (6) a person is liable on summary conviction to a maximum of a level 5 fine.

Chapter 4 – Powers of employees and constables

Section 23 – Powers of authorised employees in relation to emergencies

42. This section provides an authorised employee of a relevant authority with powers to deal with fires, road traffic accidents and other emergencies. It replaces section 30(1) of the Fire Services Act 1947 which was limited to dealing with extinguishing or preventing the spread of fires and recognises the wider range of duties of fire fighters, including the work which fire authorities do in responding to road traffic accidents.

Section 24 – Powers of constables in relation to fires

43. This section sets out the powers of constables in the event of fire breaking out and replicates powers that currently exist under the 1947 Act.

Section 25 – Powers of authorised employees in relation to obtaining information.

44. This section allows an authorised officer of a relevant authority to enter premises to obtain information that is needed for the discharge of the core functions of fire fighting (section 8), dealing with road traffic accidents (section 9) and specified emergencies (section 10). Such entry cannot be forcible and 24 hours notice must be given to the occupier of a private dwelling, unless authorised by a Sheriff or Justice of the Peace.

Section 26 – Giving of notices required by section 25

45. Section 26 provides for the means by which a notice under section 25 may be served.
Section 27 – Powers of authorised employees in relation to investigating fires

46. This section allows an authorised officer of a relevant authority to enter premises where a fire has occurred (including land and premises in which there is a vehicle in which there has been a fire (such as a garage)) in order to investigate the cause and progression of the fire that has occurred there, and grants that officer powers, including the power to take samples.

Section 28 – Exercise of powers under sections 25 and 27: securing of premises

47. Section 28 obliges an authorised employee of a relevant authority who has entered a place under section 25 or 27 to leave the premises as secure against unauthorised entry as the authorised employee found them.

Section 29 – Sections 25 and 27: offences

48. Section 29 makes failure (without reasonable excuse) to comply with any requirement under sections 25(4)(b) and 27(2)(g) an offence and a person may be liable on summary conviction to a maximum of a level 4 fine (currently £2500).

Section 30 – Use of commercially sensitive information

49. Section 30 replicates the 1947 Act provisions making it an offence for any person to make use or disclose any commercially sensitive information which they obtain in the course of exercising their powers under sections 23, 24, 25 or 27. A person is liable on summary conviction to a fine not exceeding level 4 or to 3 months’ imprisonment.

Chapter 5 – Mutual assistance etc.

Sections 31 and 32 – Reinforcement schemes and directions about reinforcement schemes

50. These sections re-enact the existing provisions of the Fire Services Act 1947 on reinforcement schemes and extend them to apply to road traffic accidents and other serious emergencies (as set out by additional function order under section 10). Section 31 obliges relevant authorities to group together (so far as practicable) to provide mutual assistance. If there are cases where such authorities are unable to come to an agreement about forming such a group then, at the request of one of the authorities concerned, section 32 gives the Scottish Ministers the power to direct authorities involved to make, vary or revoke such a scheme.

51. Before giving a direction, the Scottish Ministers will give all authorities concerned the opportunity to make representations to them and may also instruct an inquiry.

Section 33 – Assistance other than from relevant authorities

52. This section will extend existing powers in the Fire Services Act 1947 which allow fire authorities to enter into agreements with organisations that employ their own fire-fighters. For example, a relevant authority could arrange with an industrial company for their in-house fire-fighters to provide assistance to the authority outwith the company premises if requested and required. In addition, assistance may be provided by a non-fire-fighter if approved by the Chief Officer. For example, a Chief Officer may approve a forestry worker to assist fire-fighters engaged in extinguishing a heathland fire. The cost of this assistance could be reimbursed.
These arrangements can also apply to any of the authority’s functions covered by sections 7 to 10 and sections 12 and 56.

53. The arrangements under this section cannot be between two relevant authorities as this type of relationship would be covered under sections 31 and 32.

Sections 34 and 35 – Arrangements for carrying out of functions by others

54. Section 34 extends existing powers in the Fire Services Act 1947 to provide relevant authorities with the ability to enter into contractual arrangements with others (including other authorities) to provide services in the execution of their functions (covered by sections 7 to 10, 12 and 56). An example would be an agreement where a relevant authority contracts with a local authority to promote fire safety within its schools. Another example would be where a relevant authority specialises in rope rescue and a neighbouring relevant authority contracts with it to provide some, or all, of its response to incidents requiring rope rescue.

55. However, a relevant authority can only delegate its fire-fighting functions to another authority or others that employ fire-fighters.

56. Section 35 re-enacts provisions in the Fire Services Act 1947 that provide the Scottish Ministers with the ability to require relevant authorities to enter into contractual arrangements under section 34 (or to vary or cancel any such arrangements). The Scottish Ministers can exercise the power on their own initiative, but the power must be exercised in the interests of economy, efficiency and effectiveness.

57. Before issuing a direction, the Scottish Ministers must give the relevant authorities concerned the opportunity to make representations to them and they may hold an inquiry.

Chapter 5A – Assaulting or impeding employees and others

Section 35A – Amendment of Emergency Workers (Scotland) Act 2005

58. This section makes it an offence under the Emergency Workers (Scotland) Act 2005 to assault, obstruct or hinder a person acting in the capacity of an employee of a relevant authority or someone providing assistance to them in carrying out functions under sections 8 to 12 (fire fighting, road traffic accidents, other emergencies, emergency directions and other eventualities) or exercising powers under sections 23 (powers of authorised employees in relation to emergencies), 25 (powers to obtain information) and 27 (powers in relation to investigating fires). The penalty for such an offence under the 2005 Act is, on summary conviction, imprisonment not exceeding 9 months or a fine not exceeding level 5 on the standard scale or both.

Section 35B – Assaulting or impeding employees discharging certain functions

59. Section 35B makes it an offence to assault, obstruct or hinder an employee of a relevant authority or an enforcing authority whilst carrying out their duties under sections 7 (fire safety), 16 (duty to secure water supply) and 56 (enforcing authorities). The offence is punishable on summary conviction with a period of imprisonment not exceeding 9 months or a fine not exceeding level 4 on the standard scale.
Chapter 6 – Central supervision and support

Section 36 – Framework document

60. This section requires the Scottish Ministers to consult on, and prepare, a Fire and Rescue Service National Framework (“the Framework”), keep the Framework under review and consult on any significant revisions made to it. The Framework (and any significant revision) will come into effect by order.

Section 37 – Adherence

61. This section requires relevant authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if authorities fail to act in accordance with the Framework by setting out, by order, an obligation for an authority to act in accordance with the Framework where they consider that the authority is failing to do so. Before making such an order, the Scottish Ministers must consult the authority.

Section 38 – Reporting

62. This section requires the Scottish Ministers to report to the Parliament on the extent to which relevant authorities are acting in accordance with the Framework and any action they have taken to ensure the authorities do so.

Sections 39 and 40 – Inspectors of Fire and Rescue Authorities and functions of Inspectors of Fire and Rescue Authorities

63. Section 39 sets out the arrangements for appointing inspectors of relevant authorities.

64. Section 40 sets out the functions of the inspectors, including the submission of reports to the Scottish Ministers on matters arising under the Bill and on the general performance of relevant authorities. The Scottish Ministers are required to lay any report submitted on the state and efficiency of relevant authorities generally before Parliament.

Section 41 – Directions for public safety purposes

65. This section provides the Scottish Ministers with the power to give general directions (“a property and facilities order”) to relevant authorities as to the use and disposal of their property or facilities for the purposes of public safety. Such a direction may cover all kinds of property and facilities. An example of when this power might be used is during a period of industrial action when official relevant authority cover to deal with emergencies is insufficient to deal with local risks and, in order to ensure public safety, their equipment needs to be used by others providing emergency fire cover.

Section 42 – Requirements concerning equipment and services

66. This section confers on the Scottish Ministers the power (by order) to oblige relevant authorities to use and maintain equipment and services as specified. An example would be the new Firelink radio system where in order to ensure inter-operability between the emergency services, and to enable relevant authorities to work across their own boundaries in the event of an emergency, it is essential that all authorities use the same radio system.
Section 43 – Provision of equipment etc.

67. This section allows the Scottish Ministers to provide and maintain equipment, facilities, organisations and services which may be used by relevant authorities. This power must be exercised in the interests of economy, efficiency and effectiveness. For example, this section will give the Scottish Ministers the specific authority to provide equipment to deal with civil resilience incidents and standardised systems for radio communications. This will help to ensure consistency of approach in the case of major emergencies such as a terrorist incident.

Section 44 – Central institution and other centres for education and training

68. This section allows the Scottish Ministers to set up and maintain a central training institution for the purposes set out in subsection (2). Some training which is best suited to local delivery may be undertaken by relevant authorities under powers in section 14 and the Scottish Ministers may make arrangements with relevant authorities for central training (for the purposes set out in subsection (2)) to be delivered at local centres.

Chapter 7 – Employment

Section 45 – Statutory negotiation arrangements

69. This section provides the Scottish Ministers with power to establish negotiating machinery for the fire and rescue services. The power allows the Scottish Ministers to determine the number, composition and chair of such a negotiating body or bodies.

70. Subsection (2) requires that any such body include representatives of employers and employees (which may include a trade union), and an independent chair.

71. Should any negotiating body be set up under these powers, subsection (7) would prevent the body being undermined by negotiations being held in another forum. Subsections (4), (5) and (6), however, would allow the statutory body to make arrangements for some conditions of service to be negotiated locally either in their entirety or within nationally agreed parameters.

Section 46 – Guidance

72. Any negotiating body, whether established voluntarily or under section 45, is required by this section to have regard to any guidance given by the Scottish Ministers in connection with the negotiation of conditions of service.

Section 47 – Prohibition on employment of police

73. This section re-enacts section 32 of the Fire Services Act 1947 and provides that a relevant authority may not employ a police constable as a firefighter. If an off-duty constable was employed by a relevant authority, for example as a firefighter on the retained duty system and available for response by pager call, difficulties may arise at the scene of a fire or other emergency due to confusion over which employer has the primary claim on the constable’s services.
Chapter 8 – Interpretation

Section 48 – Interpretation of Part 2

74. This section gives meanings to three terms used in Part 2 of the Bill – in particular it provides a definition of ‘emergency’, for the purposes of this Part.

PART 3 – FIRE SAFETY

Chapter 1 – Fire safety duties

Section 49 – Duties of employers to employees

75. Section 49 provides that employers have a general duty to ensure so far as is reasonably practicable the safety of their employees in respect of harm caused by fire in the workplace. The formulation of this duty is very similar to that in section 2 of the Health and Safety at Work Act etc. 1974 (c.37) (“the 1974 Act”). In that context the words have been considered by the Court of Appeal in Edwards v NCB [1949] 1 All ER 743, where they held that it is a narrower term than “physically possible” and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk is placed in the other. If it can be shown that there is a gross disproportion between them, the risk being insufficient in relation to the sacrifice, the person on whom the burden is placed discharges the burden of providing that compliance was not reasonably practicable. This interpretation has been consistently applied by the courts in subsequent decisions.

76. Subsection (2) sets out specific employer duties in relation to carrying out a risk assessment to identify fire safety risks, and taking the necessary fire safety measures to ensure that they comply with their general duty under subsection (1). The obligations apply whether or not the requirements relate to matters within their control. There is therefore a difference between this duty and that found in section 50, where persons who have control of premises to a certain extent, have a duty to the same extent. This reflects the high standard which is expected of employers in domestic and European legislation.

77. Fire safety measures are defined in schedule 2. Paragraph 2 of schedule 2 makes it clear that these measures do not include process fire precautions which are a reserved matter under Section H2 of Schedule 5 to the Scotland Act 1998. The term “process fire precautions” is not defined anywhere in statute but is widely used and understood as being distinct from general fire safety. Essentially, “process fire precautions”, which include risk assessment, are designed to prevent the outbreak or spread of fire from any work processes, taking into account process risk which can be perceived as the danger, due to the work process, that fire will break out. This is to be distinguished from “general fire precautions” which relate to the means of fire warning, fire fighting and escape, thereby dealing with the means to ensure people can escape safely once a fire has started.

78. Subsection (3) imposes a duty on the employer to review the risk assessment in accordance with regulations and to take the necessary fire safety measures to ensure compliance with the general duty under subsection (1).
Section 50 – Duties in relation to relevant premises

79. Section 50 provides that, in cases where a person has control of premises, they must carry out a risk assessment to identify fire safety risks to relevant persons in respect of harm caused by fire on the relevant premises. There is a definition of “relevant premises” in section 72. The person in control of the relevant premises would include the employer (where there is one), a person in control of the premises in connection with the carrying on of a trade, business or other undertaking, or the owner. For example, a shopkeeper who is a sole trader with no employees carrying out a business in leased premises would have duties under section 50 on the basis that they have control of the premises to an extent. In this example, the owner of the premises may also have section 50 duties. Other people, such as landlords or contractors who take responsibility for installation and maintenance of fire precautions or fire safety measures may be in a position to exercise varying degrees of control over premises and they may bear a relevant degree of responsibility under section 50.

80. The term “relevant person” is defined in section 73 and means persons who are or may be lawfully on the premises and persons in, or who may be in, the immediate vicinity of the premises whose safety would be at risk in respect of harm caused by fire in the premises. Employees of fire and rescue authorities and joint boards are excluded from the definition when they are carrying out specified operational tasks. Where the person subject to the duty in section 50 is an employer their employees are excluded because they are already protected by the section 49 employer/employee duty. Following the risk assessment the obligation is to take such fire safety measures as would be reasonable for a person in that position to take to ensure the safety of relevant persons, bearing in mind all the circumstances. Where the person in control of the premises is not the owner or a person carrying on an undertaking then the owner is also subject to the subsection (2) duties.

81. Subsection (4) imposes the subsection (2) duties on persons who have obligations under contracts or tenancies in relation to maintenance or repair or in relation to fire safety. The subsection (2) duty is imposed but only to the extent that those persons have such obligations. This would include e.g. contractors who take responsibility for installation and maintenance in relation to fire alarms.

82. Subsection (5) imposes an obligation on the persons subject to the subsection (2)(a) duty to review their risk assessment in line with the regulations made under section 53 and to take measures to ensure safety in line with their subsection (2)(b) duty.

Section 51 – Taking of measures under section 49 or 50: considerations

83. Section 51 details the considerations of which a person taking fire safety measures under section 49 or 50 should take account. These considerations include avoiding risks, adapting to technical progress and the development of a comprehensive policy on fire prevention. The measures set out in the Bill correspond with those set out in article 6(2) of the Framework Directive.

Section 52 – Duties of employees

84. This section places a duty on employees while at work to take, in respect of fire safety, reasonable care of themselves and others in or around the workplace who may be affected by their acts or omissions (namely, other relevant persons). Employees must also co-operate with
their employer so far as is necessary to enable the employer to meet their obligations and duties under the Bill.

Sections 53 and 54 – Risk assessments: power to make regulations and Scottish Ministers’ power to make regulations about fire safety

85. These sections provide the Scottish Ministers with the necessary powers to make regulations in connection with the carrying out of risk assessments, including their review, and to make regulations in connection with fire safety in premises to which Part 3 applies.

86. It is intended that regulations will cover – among other things - duties to record fire safety arrangements in particular circumstances, duties not to employ certain types of employee before assessments are made which take into account factors relevant to, for example, young employees the need to equip premises with fire-fighting equipment and fire detection equipment, requirements to provide safe routes to emergency exits, the standards required of such emergency exits, the need to establish appropriate safety procedures and the provision of information in connection with risks and fire safety measures in particular premises.

Section 54A – Power to make further provision for protection of fire-fighters

87. This provision enables Scottish Ministers to apply provisions in regulations concerning maintenance requirements in respect of measures provided for the protection of fire-fighters (e.g. rising mains), to the common areas of private dwellings.

Section 55 – Special case: temporary suspension of Chapter 1 duties

88. This section provides that in circumstances where the carrying out of the duties imposed by sections 49 to 52 and regulations under sections 53 and 54 (defined in section 73 as the “Chapter 1 duties”) would prevent a member of the armed forces of the Crown, a visiting force, a police constable or any other person of a description prescribed in regulations from carrying out their operational duties (as defined in subsection (4)), that there is a special case for temporarily suspending the Chapter 1 duties during that period. Subsection (3) provides that in these circumstances the person who has had their duties temporarily suspended must still ensure so far as is possible the safety of relevant persons in respect of harm caused by fire.

Chapter 2 – Enforcement

Section 56 – Enforcing authorities

89. This section imposes an obligation on enforcing authorities to enforce the Chapter 1 duties. In most cases the enforcing authorities will be the fire and rescue authority or joint board. However it is recognised that there are some special areas where it is more appropriate for another authority to enforce. The other enforcing authorities are: the local authority for major sports grounds, and the Chief Inspector of Fire and Rescue Authorities for Scotland – for Crown owned or occupied premises generally and for the United Kingdom Atomic Energy Authority premises.

90. Subsection (2) requires enforcing authorities to have regard to any guidance issued by the Scottish Ministers when carrying out their duties. Subsection (3) gives enforcing authorities the power to appoint “enforcement officers”. The Chief Inspector of Fire and Rescue Authorities
can appoint as an enforcement officer a person who has been appointed as an enforcement officer by a relevant authority, subject to the consent of that relevant authority and subject to the appointment being made in writing. Subsection (6) defines an “enforcing authority” for different types of premises, and subsection (7) enables the amendment of subsection (6) by regulations.

Section 57 – Powers of enforcement officers

91. Section 57 sets out the powers of enforcement officers in relation to the carrying out of the enforcing authorities’ duties. Subsection (3) provides that an enforcement officer must produce evidence of their authority to exercise these powers, if required to do so.

92. These powers include a power of entry and powers to take possession of, or samples of, articles found in the premises. Subsection (2)(c) requires persons on the premises to provide the enforcement officer with information, documents or other assistance etc. Subsection (6) requires the enforcement officer to undertake any activities mentioned in subsection (2)(d) or (e) in the presence of any person with Chapter 1 duties in relation to the relevant premises, if requested. Subsection (4) obliges an enforcement officer exercising the power under subsection (2)(f) to take samples to leave a notice at the premises. Similarly, subsection (6A) requires an enforcement officer exercising their power under subsection (2)(h) to leave a notice at the relevant premises indicating what has been removed and by whom.

93. Subsection (7) requires enforcement officers, in circumstances where they have exercised their powers of entry, to leave the premises as secure as found.

Section 58 – Prohibition notices

94. Where the use of relevant premises involves or will involve a risk to relevant persons so serious that their use ought to be prohibited or restricted, an enforcing authority may prohibit or restrict their use until such time as the matters giving rise to the risk have been remedied. This is done by the issuing of a prohibition notice. The process is similar to provisions that appeared in section 10 of the Fire Precautions Act 1971 (c.40). Under section 61 there is an appeal against the service of a prohibition notice to the Sheriff Court. The sheriff can make an order suspending the operation of the prohibition notice pending the determination of the appeal. Subsection (8) provides for the withdrawal in writing of a prohibition notice by the enforcing authority.

Section 59 – Enforcement notices

95. This section provides for the issue of an enforcement notice by the enforcing authority in cases where there is non-compliance with the Chapter 1 duties (except the employee’s duty of co-operation in section 52). The provisions are similar to equivalent provisions in section 20 of the Health and Safety at Work etc. Act 1974 (c.37) and provisions that appeared in the Fire Precautions (Workplace) Regulations 1997/1840. An enforcement notice sets out what duties have not been complied with, the reason why it is considered that the duty has not been complied with and what action should be taken to remedy the position.

96. Where an enforcement notice requires the making of alterations to premises, the enforcing authority must consult other bodies that have enforcement or approval responsibilities in respect of the premises prior to the issue of the notice, to ensure that measures required are appropriate in the light of other restrictions that may apply to the premises. Failure to comply
with the consultation requirement does not affect the validity of the notice. Subsection (7)
provides for the withdrawal in writing of an enforcement notice by the enforcing authority.
Under section 61 it is possible to appeal against the service of an enforcement notice in the
Sheriff Court. The bringing of the appeal has the effect of suspending the notice whilst the
appeal is ongoing.

Section 60 – Alterations notices

97. Where premises pose a serious risk to relevant persons, or could pose a serious risk to
relevant persons in respect of harm caused by fire if changes were made to the premises, the
enforcing authority can issue an alterations notice, the effect of which is to require the
“appropriate person” (that is, the person subject to requirements in respect of the premises in
terms of section 49 or 50) to notify the enforcing authority of their intentions prior to making any
specified changes. The alterations notice advises the recipient that where they intend to make
changes of a type falling within subsection (5), and where the change or changes would
constitute a serious risk to relevant persons in respect of harm caused by fire, they must notify
the enforcing authority of the changes they intend to make. This enables the enforcing authority
to be alerted to any potential problems and allows an intervention before changes are made
which significantly increase the risk.

98. The issue of an alterations notice does not preclude the appropriate person from
undertaking the changes proposed. However, it requires them to notify the enforcing authority in
advance of the change or changes being made. Subsection (6) provides for the withdrawal in
writing of an alterations notice by the enforcing authority.

Section 61 – Appeals

99. The rights of individuals are protected in relation to the service of prohibition notices,
enforcement notices and alterations notices by rights of appeal and this section provides for a
right of appeal to the Sheriff Court.

Section 62 – Determination of disputes

100. This section provides a right to seek a determination where the enforcing authority
considers that there has been a failure to comply with the Chapter 1 duties but there is a
difference of opinion on the action that requires to be taken to rectify this. The person alleged to
have failed to comply with the Chapter 1 duties and the enforcing authority must jointly agree to
seek such a determination. The matter will be referred either to Her Majesty’s Chief Inspector of
Fire and Rescue Authorities but, if the enforcing authority is the Chief Inspector, the matter will
be referred to Scottish Ministers. The determination might avoid the need to go before the courts
on appeal against an enforcement notice when the matter to be considered is purely technical–
for example where the disagreement concerns the standard of fire alarm which is appropriate in
the circumstances of the case.

101. Where a determination has been made, an enforcing authority may not issue an
enforcement notice which conflicts with the determination. However, this provision will not
apply in circumstances where a change has been made in relation to the premises or their use
which significantly increases the risk posed to relevant persons.
Chapter 3 – Miscellaneous

102. This chapter deals with a number of miscellaneous issues.

103. Section 63 imposes a prohibition on charging employees in respect of anything an employer may do in pursuance of their Chapter 1 duties. This reflects the requirements of article 6(5) of the Framework Directive.

104. Section 64 prevents civil proceedings being pursued in respect of failures to comply with the Chapter 1 duties. The exclusion does not, however, apply in relation to a breach of Chapter 1 duties by an employer that causes damage to an employee. This reflects Article 4 of the Framework Directive which requires that an effective legal remedy is available to employees for breach by their employer of the obligations imposed by the Directive and thereby ensures its effective implementation.

105. Section 65 ensures that Part I of the Health and Safety at Work etc. Act 1974 (c.37) (the “1974 Act”), and regulations made under that Part, do not apply in relation to devolved fire safety matters except where the enforcing authority is also an enforcing authority under Part I of the 1974 Act. At present, the 1974 Act and the regulations made under it are capable of making provision for certain matters of general fire safety that are to be dealt with in the Bill. It is therefore appropriate to disapply the 1974 Act in the context of creating a new devolved fire safety code.

Section 65A – Suspension of terms and conditions of licences dealing with the same matters as this Part

106. This section ensures that fire safety matters are dealt with under Part 3 (and related regulations) and not in licensing, certification or registration provisions in other enactments.

Chapter 4 – Offences

Sections 67 and 68 – Offences and offences by bodies corporate and partnerships

107. 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 either 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 49 to 52 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. 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 67(4)(e)(i)). In relation to the offence under subsection (1) in respect of a failure to comply with the duty in section 49 of the Bill (duty to ensure fire safety of employees so far as is reasonably practicable), subsection (10) provides that the onus of showing that it was not reasonably practicable to comply with the duty is on the accused. This is similar to the offence in section 40 of the Health and Safety at Work etc. Act 1974, 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 provided by section 40 of the 1974 Act was considered by the Court of Appeal in *R v Davies [2002] All ER (d) (Dec)* and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate.

108. The reverse burden of proof may also be applied in cases specified in regulations, concerning the breach of duties to fulfil requirements so far as is practicable, or so far as is reasonably practicable.

109. Subsection (9) provides for a defence of due diligence except in relation to the employer’s duties under section 49. Again, the exclusion of the employer from this defence reflects the high standards required of employers under the relevant European legislation. Subsection (9A) enables Scottish Ministers, by regulations, to specify further cases in which the due diligence defence would not apply.

*Section 68A – Offence due to fault of other person*

110. 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 appeared in section 24 of the Fire Precautions Act 1971.

*Section 69 – Employee’s act or omission not to afford employer defence*

111. 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.

**Chapter 5 – General**

*Section 70 – Service of documents*

112. This section sets out the methods by which documents issued under Part 3 may be served and subsection (6) further provides that the Scottish Ministers may make regulations as to the procedures to be followed in relation to the service of documents.

*Section 71 – Crown application*

113. This section provides that Part 3 of the Bill and any regulations made under it shall bind the Crown. Subsection (2) ensures that instead of making the Crown criminally liable for any contravention, the Court of Session may declare unlawful any act or omission of the Crown which constitutes a contravention. The powers of entry cannot be exercised in relation to Crown premises.

*Section 72 – Meaning of “relevant premises”*

114. This defines the meaning of relevant premises for the purposes of Part 3. The Bill applies to most non-domestic premises used or operated by employers, the self-employed and the voluntary sector. It also applies under subsection (3B) to houses licensed under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 S.S.I. 2000/177) (as amended), such as hostels. Other types of premises to which Part 3 applies
are listed in subsection (3B). These include premises used for the provision of a care home service, those used for the provision of a school care accommodation service, and those used for the provision of an independent health care service.

115. Types of premises which are not affected by Part 3 are offshore installations, certain means of transport, boreholes and fields, woods and agricultural land. There are special considerations associated with these areas and consequently separate safety regimes shall continue for the areas.

116. In addition, ships and hovercraft and mines are excluded from the definition. Fire safety on these premises is a reserved matter by virtue of Section H2 of Schedule 5 to the Scotland Act 1998 (as amended). Various defence premises are also excluded from the definition of “relevant premises” under subsections (2)(e) to (g) in consequence of the reservation of defence in Part I, paragraph 9 of Schedule 5 to the Scotland Act 1998, since fire safety on defence premises is regarded as being directly linked to the defence reservation and is regarded as having a direct impact on defence functions.

117. Under subsections (6) and (7), Scottish Ministers have power by regulations to modify the definition of “relevant premises” to which Part 3 applies, and to modify the application of Part 3 to relevant premises when the subsection (6) power is exercised.

PART 4 – MISCELLANEOUS

Sections 74 and 75 – Inquiries and inquiries: supplementary

118. These sections re-enact section 33 of the Fire Services Act 1947, in an amended form. The Scottish Ministers will be able to hold a public inquiry into the performance of a relevant authority or its handling of a particular incident. Section 75 provides that the Scottish Ministers may make regulations about inquiry procedure under the Bill.

Section 76 – Pre-commencement consultation

119. Section 76 sets out that where consultation is required under a provision in the Bill and before that provision comes into force consultation takes place, any such consultation will count as consultation required by and to the extent set out under that provision. In effect this will allow consultation prior to Royal Assent to be treated as consultation under the relevant provision. An example where this may be the case is preparation of the Framework Document.

Section 77 – Payments in respect of advisory bodies

120. Section 77 gives the Scottish Ministers powers to pay the expenses of any body established for the purpose of offering them advice on matters in relation to which provision is made under the Bill.

Section 78 – Abolition of Scottish Central Fire Brigades Advisory Council

121. Section 78 abolishes the Scottish Central Fire Brigades Advisory Council which was established for Scotland under section 36(18) of the Fire Services Act 1947 to provide general
advice to the Scottish Ministers on matters relating to the operation of that Act. The Council also served as statutory consultee prior to the exercise by the Scottish Ministers of certain of their regulation making powers under the 1947 Act. Where such regulation making powers are re-enacted elsewhere in the Bill the Scottish Ministers will consult any such persons as they consider appropriate.

Section 79 – False alarms

122. Section 79 supersedes section 31 of the Fire Services Act 1947. It provides that a person who knowingly gives or causes someone else to give a false alarm of fire to a person acting on behalf of a relevant authority is liable to a level 5 fine, prison sentence not exceeding 3 months or both.

Section 79A – Disposal of land

123. This section provides relevant authorities with powers to sell or dispose of land which it no longer requires. It re-enacts section 36(20) of the Fire Services Act 1947.
FIRE (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

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