

Draft Order laid before the Scottish Parliament under section 88(4) of the Fire (Scotland) Act 2005, for approval by resolution of the Scottish Parliament. This draft Order supersedes the draft laid on 16th June 2006.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

FIRE SAFETY

The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006

Made - - - - - *2006*

Coming into force in accordance with article 1

The Scottish Ministers in exercise of the powers conferred by sections 87 and 88(2) of the Fire (Scotland) Act 2005 Act(a), and of all other powers enabling them in that behalf, hereby make the following Order a draft of which has, in accordance with section 88(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation and commencement

1. This Order may be cited as the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006 and shall come into force on 1st October 2006 or, if this Order has not been made by 30th September 2006, on the day after the day on which it is made.

Consequential amendments and repeals

2.—(1) The enactments referred to in Schedule 1 are amended in accordance with that Schedule.
(2) Subject to articles 3 and 4, the enactments specified in column 1 of the table in Schedule 2 are repealed to the extent specified in the corresponding entry in column 2 of that table.

Saving for prohibition notices under section 10 of the Fire Precautions Act 1971

3. Notwithstanding the repeal by this Order of section 10 of the Fire Precautions Act 1971(b), a prohibition notice served under subsection (2) of that section shall—
(a) remain in effect, and
(b) be deemed to be, and treated as if it were, a prohibition notice (as defined in subsection (4) of section 63 of the Fire (Scotland) Act 2005) served under that section.

(a) 2005 asp 5.
(b) 1971 c.40.

Saving for regulations under section 12 of the Fire Precautions Act 1971

4. Notwithstanding the repeal by this Order of section 12 of the Fire Precautions Act 1971, the Fire Precautions (Sub-surface Railway Stations) Regulations 1989^(a) shall remain in force and shall have effect as if made under section 58 of the Fire (Scotland) Act 2005.

St Andrew's House,
Edinburgh

2006

Authorised to sign by the Scottish Ministers

(a) S.I. 1989/1401 amended by S.I. 1991/259 and 1994/2184.

SCHEDULE 1

Article 2(1)

MODIFICATIONS OF PUBLIC GENERAL ACTS

The Celluloid and Cinematograph Film Act 1922 (c.35)

1. In section 2(a) of the Celluloid and Cinematograph Film Act 1922 (purposes to which the Act applies), in paragraph (iv) of the proviso, for the words “the Fire Precautions (Workplace) Regulations 1997” substitute “Part 3 of the Fire (Scotland) Act 2005 (asp 5)”.

The Pet Animals Act 1951 (c.35)

2. In section 1(b) of the Pet Animals Act 1951 (licensing of pet shops), after subsection (3) insert—

“(3A) No condition may be specified under subsection (3) of this section which relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005 (asp 5).”.

The Caravan Sites and Control of Development Act 1960 (c.62)

3.—(1) The Caravan Sites and Control of Development Act 1960 is amended as follows.

(2) In section 5 (power of local authority to attach conditions to site licences)—

(a) after subsection (2) insert—

“(2A) Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the land, no condition shall be attached to a site licence which relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of that Part.”; and

(b) after subsection (6) insert—

“(6A) No model standards may be specified under subsection (6) as respects land in relation to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies if the standards relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of that Part.”.

(3) In section 8 (power to alter conditions attached to site licences), after subsection (1) insert—

“(1A) Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the land to which a site licence relates, no alteration under subsection (1) may be made so as to add a new condition to, or vary an existing condition of, the site licence if the new condition or, as the case may be, existing condition as varied relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of that Part.”.

The Theatres Act 1968 (c.54)

4.—(1) The Theatres Act 1968 is amended as follows.

(2) In section 12 (licensing of premises for public performance of plays), after subsection (3) insert—

“(3A) Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to premises, no term which relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of that Part shall be included in a licence granted under this Act in respect of those premises.”.

(a) Section 2 was amended by the Factories Act 1961 (c.34), Schedule 6, by the Cinemas Act 1985 (c.13), section 24 and Schedule 2, by S.I. 1992/1811 and 2002/2776.

(b) Section 1 was amended by the Local Government (Scotland) Act 1973 (c.65), section 209(1) and Schedule 25, paragraph 26, and Schedule 29.

(3) In Schedule 1 (provisions with respect to licences), in paragraph 1(1), for “section 1(2)” substitute “sections 1(2) and 12(3A)”.

The Gaming Act 1968 (c.65)

5.—(1) The Gaming Act 1968 is amended as follows.

(2) In section 43 (rights of entry and related rights), in subsection (9)(a) for the words from “relevant authority” to “(asp 5)” substitute “appropriate fire and rescue authority”.

(3) In section 52, in subsection (1), after the definition of “the Act of 1963” insert—

“the appropriate fire and rescue authority”, in relation to premises, means—

- (a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the premises, the enforcing authority (as defined in section 61(9) of that Act of 2005);
- (b) in any other case, the relevant authority (as defined in section 6 of that Act of 2005) for the area where the premises are (or are to be) situated;”.

(4) In Schedule 2 (grant, renewal, cancellation and transfer of licences)—

(a) for the words “the appropriate authority” wherever they appear, substitute “the appropriate fire and rescue authority”;

(b) in paragraph 20—

(i) in sub-paragraph (1), after paragraph (a) insert—

“(aa) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the relevant premises, that any requirements or prohibitions imposed by virtue of that Part have not been complied with in respect of the relevant premises;”;

(ii) after sub-paragraph (2) insert—

“(2A) For the purposes of sub-paragraph (1), a person shall be taken not to be a fit and proper person to be the holder of a licence under this Act if he has been convicted of an offence by virtue of any provision of Part 3 of the Fire (Scotland) Act 2005 (asp 5) in respect of the relevant premises.”; and

(c) in paragraph 65(2)(d), for the words “appropriate fire authority” substitute “appropriate fire and rescue authority”.

The Health and Safety at Work etc. Act 1974 (c.37)

6. In section 23 of the Health and Safety at Work etc. Act 1974 (supplementary provisions about notices), in subsection (4)(b), for the words from “the authority” to the end of that subsection substitute the following—

“(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the premises, the enforcing authority (as defined in section 61(9) of that Act);

(b) in any other case, the relevant authority (as defined in section 6 of that Act) for the area where the premises are (or are to be) situated.”.

The Safety of Sports Grounds Act 1975 (c.52)

7.—(1) The Safety of Sports Grounds Act 1975 is amended as follows.

(2) In section 2 (contents of safety certificates), after subsection (2A)(c) insert—

(a) Subsection (9) was amended by the Gaming (Amendment) Act 1990 (c.26), section 1 and the Schedule by S.S.I. 2005/383.

(b) Subsection (4) was amended by S.S.I. 2005/383.

(c) Subsection (2A) was inserted by the Fire Safety and Safety of Places of Sport Act 1987 (c.27), section 21.

“(2B) No condition of a safety certificate shall require a person to contravene any provision of Part 3 of the Fire (Scotland) Act 2005 (asp 5) or regulations made by virtue of that Part.”.

(3) In section 4 (amendment etc. of certificates)–

(a) after subsection (1) insert–

“(1A) The local authority shall, if it appears to them that a safety certificate would require a person to contravene any provision of Part 3 of the Fire (Scotland) Act 2005 (asp 5) or regulations made by virtue of that Part, amend the safety certificate by notice in writing to its holder so as to remove the requirement.”; and

(b) in subsection (4) after “(1)(a)” insert “or (1A)”.

(4) After section 4 insert–

“4A Safety certificates: fire safety

A safety certificate has no effect to the extent that it would require a person to contravene any provision of Part 3 of the Fire (Scotland) Act 2005 (asp 5) or regulations made by virtue of that Part.”.

(5) In subsection (1) of section 9 (exclusion of other statutory requirements), in paragraph (e), for “those terms and conditions” substitute “the terms and conditions of the safety certificate”.

The Licensing (Scotland) Act 1976 (c.66)

8.—(1) The Licensing (Scotland) Act 1976 is amended as follows.

(2) In subsection (1) of section 16 (objections in relation to applications), in paragraph (e)(a) at the beginning insert “where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, the enforcing authority or, in any other case,”.

(3) In section 23 (special provisions relating to applications for a new licence)–

(a) in subsection (5)(b), for the words from “the”, where it third occurs, to the end of the subsection substitute–

“(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies (or, in the case of an application for the provisional grant of a licence in respect of premises whose construction is to be completed, would apply) to the premises to which the new licence relates, the enforcing authority;

(b) in any other case, the fire and rescue authority for the area in which the premises are, or (as the case may be) will be, situated.”; and

(b) in subsection (6)(c), after “with” insert “the enforcing authority or, as the case may be,”.

(4) In section 24 (special provisions relating to applications for renewal of a licence), in subsection (1)(d), for the words from “the”, where it third occurs, to the end of the subsection substitute–

“(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises to which the application for such renewal relates, the enforcing authority;

(b) in any other case, the fire and rescue authority for the area in which those premises are situated.”.

(5) In section 35 (consent of licensing board for reconstruction etc. of certain licensed premises), in subsection (3), for the words from “the”, where it second occurs, to the end of the subsection substitute–

(a) Paragraph (e) of section 16(1) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) Schedule 8, and amended by the Fire (Scotland) Act 2005 (asp 5) schedule 3.

(b) Subsection (5) of section 23 was amended by the Fire (Scotland) Act 2005 (asp 5) schedule 3.

(c) Subsection (6) of section 23 was amended by the Building (Scotland) Act 2003 (asp 8) schedule 6 and by the Fire (Scotland) Act 2005 (asp 5) schedule 3.

(d) Subsection (1) of section 24 was amended by the Fire (Scotland) Act 2005 (asp 5) schedule 3.

- “(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to premises in respect of which such consent is sought, the enforcing authority;
- (b) in any other case, the fire and rescue authority for the area in which those premises are situated.”.

(6) In section 105 (procedure on application for grant or renewal of certificate of registration), in subsection (3), for paragraph (c) substitute—

- “(c) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises to which the application relates, the enforcing authority or, in any other case, the fire and rescue authority for the area in which those premises are situated.”.

(7) In section 139(1), after the definition of “enactment” insert—

- “enforcing authority” has the meaning given by section 61(9) of the Fire (Scotland) Act 2005 (asp 5);”.

The Local Government, Planning and Land Act 1980 (c.65)

9. In subsection (1) of section 152 of the Local Government, Planning and Land Act 1980 (fire precautions and home insulation), for paragraph (a)(a) substitute—

- “(a) the functions under Part 3 of the Fire (Scotland) Act 2005 (asp 5) of an enforcing authority (as defined in section 61(9) of that Act);”.

The Zoo Licensing Act 1981 (c.37)

10.—(1) Section 3 of the Zoo Licensing Act 1981 (consideration of application for licence) is amended as follows.

(2) In subsection (2), for paragraph (c)(b) substitute—

- “(c) the appropriate authority”.

(3) After subsection (2), insert—

“(3) In subsection (2) “the appropriate authority” means—

- (a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the zoo—
 - (i) the enforcing authority within the meaning of section 61(9) of that Act, and
 - (ii) the relevant authority (as defined in section 6 of that Act) in whose area the zoo or any part of it is, or is to be, situated if that authority is not the enforcing authority mentioned in sub-paragraph (i);
- (b) in any other case, the relevant authority in whose area the zoo or any part of it is, or is to be, situated.”.

The Civic Government (Scotland) Act 1982 (c.45)

11.—(1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 89 (safety of platforms etc.), for subsection (4)(c) substitute—

“(4) Where—

- (a) Part 3 of the Fire (Scotland) Act 2005 (asp 5) (“the 2005 Act”) applies in relation to the premises where the raised structure is situated; and
- (b) the local authority are not the enforcing authority (as defined in section 61(9) of the 2005 Act),

the local authority shall consult the enforcing authority before making their decision under subsection (3)(b) above.

(a) Paragraph (a) of section 152(1) was amended by S.S.I. 2005/383.
 (b) Paragraph (c) of section 3(2) was amended by S.S.I. 2005/383.
 (c) Subsection (4) was amended by S.S.I. 2005/383.

- (4A) Where–
- (a) Part 3 of the 2005 Act does not apply in relation to the premises where the raised structure is situated; and
 - (b) the local authority are not the appropriate relevant authority,
- the local authority shall consult the appropriate relevant authority before reaching their decision under subsection (3)(b) above.
- (4B) In subsection (4A) “appropriate relevant authority” means a relevant authority (as defined in section 6 of the 2005 Act) discharging in the area of the local authority the functions of a relevant authority under that Act.”.
- (3) In section 93 (fire precautions in common stairs etc.)–
- (a) in subsection (3), at the beginning insert–

“Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the common property, an enforcement officer appointed under section 61(3) of that Act or, in any other case,”;
 - (b) in subsection (4), at the beginning insert–

“Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the common property, the enforcing authority or, in any other case,”;
 - (c) in subsection (6), after “by”, where it first occurs, insert “an enforcing authority or”; and
 - (d) in subsection (7)(a), at the beginning insert “The enforcing authority or, as the case may be,”.
- (4) In section 98(b) (luminous tube signs), after subsection (1) insert–
- “(1A) Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to premises where there is an electrical luminous tube sign, paragraphs (a), (b) and (c) of subsection (1) above apply as if references to the appropriate relevant authority were references to the enforcing authority.”.
- (5) In section 133, after “requires–” insert–
- ““enforcing authority” has the meaning given by section 61(9) of the Fire (Scotland) Act 2005 (asp 5)”.
- (6) In Schedule 1(c) (licensing – further provisions as to the general system)–
- (a) in sub-paragraph (1) of paragraph 2, for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) in any other premises”;
 - (b) in paragraph 5–
 - (i) in sub-paragraph (2), at the beginning insert “Subject to sub-paragraph (2A),”;
 - (ii) after that sub-paragraph insert–

“(2A) The conditions referred to in sub-paragraph (1)(b) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005 (asp 5).”;
 - (iii) in sub-paragraph (5)(d), for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) in any other premises”;
 - (c) in sub-paragraph (3) of paragraph 7–

(a) Subsection (7) was amended by S.S.I. 2005/383.
 (b) Section 98 was amended by S.S.I. 2005/383.
 (c) Schedule 1 was amended by S.S.I. 2005/383.

- (i) after “(2)” insert “, (2A)”;
- (ii) in paragraph (a), for “in premises” substitute–
 - “(i) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (ii) in any other premises”; and
- (iii) in paragraph (b), after “may” insert “, subject to sub-paragraph (3A) below,”;
- (d) after sub-paragraph (3) of paragraph 7 insert–
 - “(3A) The conditions referred to in paragraph (b) of sub-paragraph (3) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005 (asp 5).”;
- (e) in paragraph 9–
 - (i) in sub-paragraph (5) for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) any other premises”; and
 - (ii) in sub-paragraph (7) for “to premises” substitute–
 - “(a) to premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) to any other premises”;
- (f) in paragraph 10–
 - (i) in sub-paragraph (2)(b), for “mentioned in” substitute “required to be notified under”;
 - (ii) after sub-paragraph (2) insert–
 - “(2A) Where the premises mentioned in sub-paragraph (2)(a) above are premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, that sub-paragraph applies as if the reference to the appropriate relevant authority were a reference to the enforcing authority”; and
 - (iii) in sub-paragraph (4) for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) in any other premises”;
- (g) in sub-paragraph (7)(d) of paragraph 11, for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) in any other premises”;
- (h) in paragraph 12–
 - (i) in sub-paragraph (4) for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) in any other premises”; and
 - (ii) in sub-paragraph (7) for “in premises” substitute–
 - “(a) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (b) in any other premises”; and
- (i) in paragraph 17–
 - (i) in sub-paragraph (4)(c) for “in premises” substitute–

- “(i) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (ii) in any other premises”; and
 - (ii) in sub-paragraph (4)(d) for “in premises” substitute–
 - “(i) in premises to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, the enforcing authority;
 - (ii) in any other premises”.
- (7) In Schedule 2(a) (control of sex shops)–
 - (a) in sub-paragraph (1) of paragraph 8, after “and” insert–
 - “(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, vehicle vessel or stall to which the licence relates, to the enforcing authority;
 - (b) where Part 3 of that Act does not so apply,”;
 - (b) in paragraph 9–
 - (i) in sub-paragraph (2), at the beginning insert “Subject to sub-paragraph (2A)”;
 - (ii) after that sub-paragraph insert–
 - “(2A) The conditions referred to in sub-paragraph (1) above shall not relate to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of Part 3 of the Fire (Scotland) Act 2005 (asp 5).”;
 - (c) in sub-paragraph (1)(d) of paragraph 10, at the beginning insert “where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, vehicle, vessel or stall to which the licence relates, the enforcing authority or, where Part 3 of that Act does not so apply,”;
 - (d) in sub-paragraph (5)(d) of paragraph 13, at the beginning insert “where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, vehicle, vessel or stall to which the licence relates, the enforcing authority or, where Part 3 of that Act does not so apply,”;
 - (e) in paragraph 14–
 - (i) in sub-paragraph (5), for “with” substitute–
 - “(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, vehicle, vessel or stall, the enforcing authority;
 - (b) where Part 3 of that Act does not so apply,”; and
 - (ii) in sub-paragraph (7), after “and” insert “either the enforcing authority where Part 3 of that Act applies in relation to the premises, vehicle, vessel or stall or, where Part 3 of that Act does not so apply,”;
 - (f) in paragraph 15–
 - (i) after sub-paragraph (2) insert–
 - “(2A) Where the proposed variation is in respect of a licence which relates to any premises, vehicle, vessel or stall to which Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, sub-paragraph (2)(a) above applies as if the reference to the appropriate relevant authority were a reference to the enforcing authority.”; and
 - (ii) in sub-paragraph (5), after “and” insert “either the enforcing authority where Part 3 of that Act applies in relation to the premises, vehicle, vessel or stall or, where Part 3 of that Act does not so apply,”; and
 - (g) in sub-paragraph (4)(b) of paragraph 23, after “or” insert–
 - “(i) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, vehicle, vessel or stall to which the licence relates, the enforcing authority;
 - (ii) where Part 3 of that Act does not so apply,”.

(a) Schedule 2 was amended by the Local Government etc. (Scotland) Act 1994 c.39, schedule 1, paragraph 129(22) and by S.S.I. 2005/383.

The Cinemas Act 1985 (c.13)

- 12.—**(1) The Cinemas Act 1985 is amended as follows.
- (2) In section 1 (licence required for exhibitions)—
- (a) in subsection (2), after “to”, where it fourth occurs, insert “subsection (2A) and to”; and
 - (b) after subsection (2) insert—

“(2A) Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the premises, no term, condition or restriction may be imposed under subsection (2) which relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of that Part.”.
- (3) In section 2 (consent required for exhibitions for children)—
- (a) in subsection (2), after “to”, where it first occurs, insert “subsection (2A) and to”; and
 - (b) after subsection (2) insert—

“(2A) Where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies in relation to the premises, no condition or restriction may be imposed under subsection (2) which relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of that Part.”.
- (4) In the provisions mentioned in sub-paragraph (5), for “relevant” (in each place) substitute “fire”.
- (5) Those provisions are—
- (a) subsections (1)(b), (2) and (3)(a) of section 3 (grant, renewal and transfer of licence or consent);
 - (b) subsection (1)(a)(b) of section 7 (exhibitions in premises used occasionally);
 - (c) subsection (1)(b)(c) of section 8 (exhibitions in movable buildings, etc);
 - (d) subsection (3)(d) of section 16 (appeals against decisions of licensing authority).
- (6) In subsection (10)(e) of section 3, in the definition of “appropriate relevant authority”—
- (a) for “relevant”, where it first occurs, substitute “fire”; and
 - (b) after “means” insert—

“(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the premises, the enforcing authority as defined in section 61(9) of that Act;

(b) in any other case,”.
- (7) In subsection (2)(f) of section 8, in the definition of “appropriate relevant authority”—
- (a) for “relevant”, where it first occurs, substitute “fire”; and
 - (b) for “any premises, means” substitute “the building or structure, means—

“(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies to the building or structure, the enforcing authority as defined in section 61(9) of that Act,

(b) in any other case,”.
- (8) In subsection (1)(g) of section 21, in the definition of “appropriate relevant authority,” for “relevant” substitute “fire”.

The Fire Safety and Safety of Places of Sport Act 1987 (c.27)

- 13.—**(1) The Fire Safety and Safety of Places of Sport Act 1987 is amended as follows.

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- (a) Subsections (1)(b), (2) and (3) of section 3 were amended by S.S.I. 2005/383.
 - (b) Subsection (1)(a) of section 7 was amended by S.S.I. 2005/383.
 - (c) Subsection 1(b) of section 8 was amended by S.S.I. 2005/383.
 - (d) Subsection (3) of section 16 was amended by S.S.I. 2005/383.
 - (e) Subsection (10) of section 3 was amended by S.S.I. 2005/383.
 - (f) Subsection (2) of section 8 was amended by S.S.I. 2005/383.
 - (g) Subsection (1) of section 21 was amended by S.S.I. 2005/383.

- (2) In section 27 (contents of safety certificates), after subsection (3) insert—
- “(3A) No condition of a safety certificate shall require a person to contravene any provision of Part 3 of the Fire (Scotland) Act 2005 or of regulations made by virtue of that Part.”.
- (3) In section 29 (amendment, cancellation etc. of certificates)—
- (a) after subsection (1) insert—
- “(1A) The local authority shall, if it appears to them that a safety certificate would require a person to contravene any provision of Part 3 of the Fire (Scotland) Act 2005 (asp 5) or regulations made by virtue of that Part, amend the safety certificate by notice in writing to its holder so as to remove the requirement.”; and
- (b) in subsection (4) after “(1)(b)” insert “or (1A)”.
- (4) After section 29 insert—

“29A Safety certificates: fire safety

A safety certificate has no effect to the extent that it would require a person to contravene any provision of Part 3 of the Fire (Scotland) Act 2005 (asp 5) or regulations made by virtue of that Part.”

The Environment and Safety Information Act 1988 (c.30)

14. In the Schedule(a) to the Environment and Safety Information Act 1988 (authorities and statutory provisions), after the entry for the Food and Environment Protection Act 1985 insert the following entry—

2005 asp 5	Fire (Scotland) Act 2005.	The enforcing authority as defined in section 61(9).	Section 63.
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The Capital Allowances Act 2001 (c.2)

15. In section 29 of the Capital Allowances Act 2001 (allowances for fire safety), after subsection (4) insert—

- “(4A) A person takes required fire precautions in respect of premises if—
- (a) he has been served with a notice under section 63 of the Fire (Scotland) Act 2005 (asp 5) (prohibition notices) in respect of the premises specifying matters giving rise to a risk of a kind mentioned in subsection (2) of that section, and
- (b) he takes steps to remedy the matters specified in the prohibition notice.”.

The Gambling Act 2005 (c.19)

16.—(1) The Gambling Act 2005 is amended as follows.

- (2) In section 157 (responsible authorities) in paragraph (f), for the words from “council” to “(c.39)” substitute “relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5)”.
- (3) In section 304 (authorised persons), in subsection (4), for paragraph (a) substitute—
- “(a) where Part 3 of the Fire (Scotland) Act 2005 (asp 5) applies, an enforcement officer appointed under section 61(3) of that Act.”.
- (4) In section 354 (Crown application), for subsection (3) substitute—
- “(3) A reference to a responsible authority (being an authority mentioned in section 157(f) in a provision of this Act which, by virtue of subsection (1), applies to premises

(a) The schedule was amended by S.S.I. 2005/383.

owned or occupied by the Crown shall have effect as if the reference were a reference to the enforcing authority (as defined in section 61(9) of the Fire Scotland Act 2005 (asp 5)).”

The Housing (Scotland) Act 2006 (asp 1)

17.—(1) The Housing (Scotland) Act 2006 is amended as follows.

(2) In the provisions mentioned in sub-paragraph (3), for the words from “chief” to “rescue” (in each place) substitute “enforcing”.

(3) Those provisions are—

- (a) subsections (4)(b) and 8(b) of section 138 (variation of HMO licence);
- (b) subsection(2)(c) of section 139 (revocation of HMO licence),
- (c) subsections (2)(b) and (7)(c) of section 158 (notice of decisions);
- (d) subsection (3)(b)(iii) of section 164 (joint licence holders);
- (e) paragraph 2(9)(a) of schedule 4 (applications for HMO licences: procedure).

(4) In subsection (8)(c) of section 158, for the words from “chief” to “service” substitute “enforcing authority”.

(5) In section 166, after the definition of “chief constable” insert—

““enforcing authority” has the meaning given by section 61(9) of the Fire (Scotland) Act 2005 (asp 5).”.

SCHEDULE 2

Article 2(2)

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
The Theatres Act 1968 (c.54)	Section 15(4) and (7). In section 15(5), the words “or authorised employee of a relevant authority”.
The Gaming Act 1968 (c.65)	In Schedule 2, in paragraph 2(2), the definition of “the appropriate authority”, and paragraph 21(1)(f).
The Fire Precautions Act 1971 (c.40)	The whole Act subject to the savings made in articles 3 and 4.
The Housing (Financial Provisions) (Scotland) Act 1972 (c.46)	In Schedule 9, paragraph 31.
The Fire Precautions (Loans) Act 1973 (c.11)	The whole Act.
The Local Government (Scotland) Act 1973 (c.65)	In Schedule 15, paragraph 30. In Schedule 27, paragraph 200.
The Health and Safety at Work etc. Act 1974 (c.37)	Section 78. Schedule 8.
The Safety of Sports Grounds Act 1975 (c.52)	Section 9(1)(d).
The Local Government, Planning and Land Act 1980 (c.65)	Section 152(1)(b).
The Civic Government (Scotland) Act 1982 (c.45)	In section 5, in subsection (1) the words “or the appropriate relevant authority”, in subsection (3)(a), the words “or an employee of an appropriate relevant authority”, and in each of subsections (3)(b), (3)(c) and (6), the words “or an employee of the appropriate relevant authority”. In Schedule 2, in each of sub-paragraphs (1), (3), and (5) of paragraph 20, the words “or an employee of the appropriate relevant authority”.
The Cinemas Act 1985 (c.13)	In each of subsections (1) and (4) of section 13, the words “or an employee of the appropriate relevant authority”. Section 13(2). Section 22. Schedule 1. Paragraph 9 of Schedule 2.

<i>Enactment</i>	<i>Extent of repeal</i>
The Fire Safety and Safety of Places of Sport Act 1987 (c.27)	Part I. Section 33(1)(b). Schedule 1.
The Environment and Safety Information Act 1988 (c.30)	The entry in the Schedule relating to the Fire Precautions Act 1971.
The National Health Service and Community Care Act 1990 (c.19)	Schedule 8, paragraph 15.
The Capital Allowances Act 2001 (c.2)	Section 29(2) to (4).
The Building (Scotland) Act 2003 (asp 8)	In Schedule 6, paragraph 6.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order made under sections 87 and 88(2) of the Fire Scotland Act 2005 (asp 5), (“the 2005 Act”) makes modifications and repeals of primary legislation in consequence of Part 3 of the 2005 Act. The Order also includes savings relevant to the repeal of the Fire Precautions Act 1971.

Part 3 of the 2005 Act, once commenced, shall in its own terms and with attendant regulations alter the existing fire safety regime in respect of the premises to which the 2005 Act applies, placing fire safety duties to be followed in all such premises and replacing the existing fire safety regime that is set out in several different pieces of legislation.

The modifications to existing legislation replace references to existing fire safety legislation with references to the regime under Part 3 of the 2005 Act, prevent fire safety conditions from being included in licences under other legislation (fire safety requirements and prohibitions are to be imposed under Part 3 of the 2005 Act), prevent conditions in licences or certificates under existing legislation from requiring a person to contravene any requirement of Part 3 and provide for fire safety matters to be enforced by the enforcing authority under Part 3 of the 2005 Act where the 2005 Act applies to the premises in question.

Article 1 of the Order provides that the modifications and savings will have effect from the date mentioned therein.

Article 2(1) and Schedule 1 set out modifications to primary legislation.

Article 2(2) and Schedule 2 set out repeals of primary legislation.

Article 3 makes savings for Prohibition Notices issued under section 10 of the Fire Precautions Act 1971.

Article 4 saves the Fire Precautions (Sub-surface Railway Stations) Regulations 1989 which are made under section 12 of the Fire Precautions Act 1971.

Draft Order laid before the Scottish Parliament under section 88(4) of the Fire (Scotland) Act 2005, for approval by resolution of the Scottish Parliament. This draft Order supersedes the draft laid on 16th June 2006.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

FIRE SAFETY

The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006

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