

**2005 No. 2060 (S. 7)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**FIRE AND RESCUE SERVICES**

**The Fire (Scotland) Act 2005 (Consequential Provisions and  
Modifications) Order 2005**

*Made* - - - - - *21st July 2005*

*Coming into force in accordance with article 1(2)*

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998(a);

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 104, 112(1), 113 and 114 of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Fire (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005.

(2) This Order shall come into force as follows:—

- (a) article 1 shall come into force on the day after the day on which this Order is made;
- (b) article 2(1), in so far as it relates to the entries in article 2(2) and (3), shall come into force on the later of the day after the day on which this Order is made or the day on which Chapter 3 of Part 2 of the Fire (Scotland) Act 2005(b) comes into force;
- (c) article 2(2) and (3) shall come into force on the later of the day after the day on which this Order is made or the day on which Chapter 3 of Part 2 of the Fire (Scotland) Act 2005 comes into force;
- (d) article 2(1), in so far as it relates to the entries in article 2(4) to (9), shall come into force on the day after the day on which this Order is made;
- (e) article 2(4) to (9) shall come into force on the day after the day on which this Order is made; and

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(a) 1998 c.46.  
(b) 2005 asp 5.

(f) article 3 and the Schedule shall come into force on the later of the day after the day on which this Order is made or the day on which Part 1 of the Fire (Scotland) Act 2005 comes into force.

(3) Subject to paragraph (4), this Order extends to Scotland only.

(4) This article extends to England and Wales, Scotland and Northern Ireland, and paragraphs 1 and 14 of the Schedule, and article 3 in so far as it relates to those paragraphs, have the same extent as the provisions modified.

### **Amendment of the Fire (Scotland) Act 2005**

2.—(1) The Fire (Scotland) Act 2005 is amended as follows.

(2) In section 16 (power to make orders authorising relevant authorities to charge certain persons for certain actions taken by authorities), after subsection (6) insert—

“(7) The references in subsection (3) to “sea” include—

- (a) that part of the territorial sea of the United Kingdom which is not adjacent to Scotland; and
- (b) sea beyond the territorial sea of the United Kingdom.”.

(3) After section 16 insert—

#### **“16A Exercise of powers at sea: further provision**

(1) Subsection (2) applies where a relevant authority has power to act, or is required to act, at sea.

(2) The power may be exercised or the duty carried out—

- (a) at sea in that part of the territorial sea of the United Kingdom which is not adjacent to Scotland; and
- (b) at sea beyond the territorial sea of the United Kingdom.”.

(4) In section 61 (enforcing authorities), in subsection (9)—

(a) after “means—” insert—

“(za) in relation to relevant premises—

- (i) for which a licence is required by virtue of section 1 of the Nuclear Installations Act 1965 (c.57)(a) or for which a permit is required by virtue of section 2 of that Act;
- (ii) for which such a licence or permit would be required but for the fact that the premises are used by, or on behalf of, the Crown;
- (iii) which are a ship which is in the course of construction, reconstruction, conversion or repair by persons other than the ship’s master and crew (or by persons including the ship’s master and crew); or
- (iv) which are a workplace which is, or is on, a construction site (as defined in regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996(b)) and to which those Regulations apply (other than a construction site to which regulation 33(1) of those Regulations applies),

the Health and Safety Executive;

(zb) in relation to relevant premises which are—

- (i) occupied solely for the purposes of the armed forces of the Crown (other than premises such as are mentioned in paragraph (za)(iii));

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(a) Section 1 was amended by S.I. 1974/2056 and 1990/1918.

(b) S.I. 1996/1592, to which there are amendments not relevant to this Order.

- (ii) occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5); or
  - (iii) situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied (other than premises such as are mentioned in paragraph (za)(iii)),

the fire service maintained by the Secretary of State for Defence;”;
- (b) for paragraph (b) substitute–
  - “(b) in relation to relevant premises–
    - (i) in respect of which the Crown is subject to any of the Chapter 1 duties (other than premises such as are mentioned in paragraph (za)(ii), (iii) or (zb)); or
    - (ii) in respect of which the United Kingdom Atomic Energy Authority is subject to any of the Chapter 1 duties (other than premises such as are mentioned in paragraph (za)(ii)),

the person appointed under section 43(1)(a);”.
- (5) In section 72 (offences)–
  - (a) in subsection (5), at the beginning, insert “Subject to subsection (5A),”; and
  - (b) after subsection (5) insert–
    - “(5A) Where a person is guilty of an offence under subsection (1), (3) or (4)(e) or (f) in respect of relevant premises which are–
      - (a) a ship;
      - (b) premises occupied solely for the purposes of the armed forces of the Crown;
      - (c) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5); or
      - (d) premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied,

paragraph (a) of subsection (5) shall apply as if for “£20,000” there were substituted “level 5 on the standard scale”.”.
- (6) In section 77 (Crown application)–
  - (a) in subsection (1), at the beginning, insert “Subject to subsection (1A),”; and
  - (b) after subsection (1) insert–
    - “(1A) Where the enforcing authority in relation to relevant premises is the fire service maintained by the Secretary of State for Defence–
      - (a) sections 62 and 63 shall bind the Crown only in so far as they apply in relation to relevant premises owned by the Crown but not occupied by it; and
      - (b) sections 64 to 67 and 72 to 75 shall not bind the Crown; and
      - (c) subsection (2) shall not apply.”.
- (7) After section 77 insert–
 

**“77A Application to visiting forces etc.**

The provisions of this Part, and of regulations made under it, shall apply in relation to a visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5) to the same extent that they bind the Crown where the enforcing authority in relation to relevant premises is the fire service maintained by the Secretary of State for Defence.”.
- (8) In section 78 (meaning of “relevant premises”)–
  - (a) in subsection (2)–

- (i) in paragraph (b) omit “ships and hovercraft,”;
- (ii) after that paragraph insert–
  - “(ba) ships in respect of the normal ship-board activities of a ship’s crew which are carried out solely by the crew under the direction of the master;”;and
- (iii) omit paragraphs (e) to (g);
- (b) in subsection (3) after paragraph (b) insert–
  - “(ba) ships (other than as mentioned in subsection (2)(ba));
  - (bb) premises occupied solely for the purposes of the armed forces of the Crown;
  - (bc) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5);
  - (bd) premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;”;and
- (c) after subsection (5) insert–
  - “(5A) In subsection (2)(ba) “normal ship-board activities” includes the repair of a ship (other than repair carried out in dry dock).”.
- (9) In section 79(1) (interpretation), after the definition of “relevant person”, insert–
  - ““ship” includes every description of vessel used in navigation and hovercraft within the meaning of the Hovercraft Act 1968 (c.59) (and, in section 61(9)(za)(iii), includes a ship belonging to Her Majesty which forms part of Her Majesty’s Navy);”.

**Amendments**

- 3.** The modifications specified in Parts 1 and 2 of the Schedule to this Order shall have effect.

*DAVID CAIRNS*  
Parliamentary Under Secretary of State  
Scotland Office,  
Department for Constitutional Affairs,

Dover House,  
London  
21st July 2005

# SCHEDULE

Article 3

## PART 1

### MODIFICATIONS OF PUBLIC GENERAL ACTS

#### *The Pensions (Increase) Act 1971*

1. In paragraph 44 of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions)(a) for “Scottish fire authority” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))”.

#### *The Road Traffic Act 1988*

2. In section 85 of the Road Traffic Act 1988 (interpretation of Part 2), in the definition of “light passenger vehicle”(b) for the words from “a fire brigade” to “1947)” substitute “any matter in relation to which a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5)) has functions (whoever uses it for those purposes)”.

#### *The Vehicle Excise and Registration Act 1994*

3. In Schedule 2 to the Vehicle Excise and Registration Act 1994 (exempt vehicles) (c)–
- (a) in paragraph 4(2) (fire engines), for paragraph (b) substitute–
    - “(b) is used solely for purposes in relation to which a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5)) has functions (whoever uses it for those purposes).”; and
  - (b) in paragraph 5 (other vehicles kept by fire authorities)–
    - (i) for “fire authority” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))”; and
    - (ii) for “fire brigade service” substitute “functions”.

## PART 2

### MODIFICATIONS OF SUBORDINATE LEGISLATION

#### *The Social Security (Employed Earners’ Employments for Industrial Injuries Purposes) Regulations 1975*

4.—(1) The Social Security (Employed Earners’ Employments for Industrial Injuries Purposes) Regulations 1975(d) are amended as follows.

(2) In paragraph 2 of Part 1 of Schedule 1 (employments to be treated as employed earners’ employments for industrial injuries purposes)–

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(a) 1971 c.56; paragraph 44 was substituted by the Fire and Rescue Services Act 2004 (c.21), section 53 and Schedule 1, paragraph 35(3).  
(b) 1988 c.52; the definition of “light passenger vehicle” was inserted by S.I. 1992/3107; there is an amendment to that definition not relevant to this Order.  
(c) 1994 c.22; there are amendments to Schedule 2 not relevant to this Order.  
(d) S.I. 1975/467, to which there are amendments not relevant to this Order.

(a) after “as” where it first occurs insert “an employee of a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act for the purposes of that authority or board under that Act or”; and

(b) omit “fire brigade,”.

(3) In paragraph 4 of column (1) of Schedule 3 (employments in respect of which persons are treated as employees for industrial injuries purposes), for the words “fire brigade” substitute “fire and rescue authority or joint fire and rescue board”.

*The Income Support (General) Regulations 1987*

**5.** In paragraph 7(1) of Schedule 8 to the Income Support (General) Regulations 1987 (sums to be disregarded in the calculation of earnings)(a)–

(a) paragraph (a) is revoked; and

(b) after paragraph (aa) insert–

“(ab) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The Housing Benefit (General) Regulations 1987*

**6.—**(1) The Housing Benefit (General) Regulations 1987(b) are amended as follows.

(2) In paragraph 6(1) of Schedule 3 (sums to be disregarded in calculation of earnings)–

(a) paragraph (a) is revoked; and

(b) after paragraph (aa) insert–

“(ab) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

(3) In paragraph 3(2) of Schedule 3A (sums disregarded from claimant’s earnings)–

(a) paragraph (a) is revoked; and

(b) after paragraph (aa) insert–

“(ab) as a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The Council Tax Benefit (General) Regulations 1992*

**7.—**(1) The Council Tax Benefit (General) Regulations 1992(c) are amended as follows.

(2) In paragraph 6(1) of Schedule 3 (sums to be disregarded in the calculation of earnings)–

(a) paragraph (a) is revoked; and

(b) after paragraph (aa) insert–

“(ab) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

(3) In paragraph 3(2) of Schedule 3A (sums disregarded from claimant’s earnings)–

(a) paragraph (a) is revoked; and

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(a) S.I. 1987/1967, amended by S.I. 2000/2575; there are other amending instruments but none is relevant.

(b) S.I. 1987/1971; relevant amending instruments are S.I. 1993/317, 2000/2545 and 2003/325.

(c) S.I. 1992/1814; relevant amending instruments are S.I. 2000/2545, S.I. 2003/325.

(b) after paragraph (aa) insert–

“(ab) as a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The Child Support (Maintenance Assessments and Special Cases) Regulations 1992*

**8.** In paragraph 1(1)(i) of Part 1 of Schedule 1 to the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (earnings of an employed earner)(a)–

(a) head (ii) is revoked; and

(b) after head (ia) insert–

“(iib) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The Goods Vehicles (Licensing of Operators) Regulations 1995*

**9.** In paragraph 6 of Part 1 of Schedule 3 to the Goods Vehicles (Licensing of Operators) Regulations 1995 (exempt vehicles)(b), for “fire brigade” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))”.

*The Jobseeker’s Allowance Regulations 1996*

**10.**—(1) The Jobseeker’s Allowance Regulations 1996(c) are amended as follows.

(2) In regulation 4 (interpretation of Parts 2, 4 and 5), in the definition of “part-time member of a fire brigade” for “member of a fire brigade maintained in pursuance of the Fire Services Acts 1947 – 1959” substitute “fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act”.

(3) In regulation 53(d) (persons treated as not engaged in remunerative work)–

(a) sub-paragraph (i) is revoked; and

(b) after sub-paragraph (ia) insert–

“(ib) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

(4) In paragraph 9(1) of Schedule 6 (sums to be disregarded in the calculation of earnings)–

(a) paragraph (a) is revoked; and

(b) after paragraph (aa) insert–

“(ab) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The Social Security Benefit (Computation of Earnings) Regulations 1996*

**11.** In paragraph 9 of Schedule 1 to the Social Security Benefit (Computation of Earnings) Regulations 1996 (sums to be disregarded in the calculation of earnings)(d)–

(a) paragraph (a) is revoked; and

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(a) S.I. 1992/1815, revoked by S.I. 2001/155 with certain savings (see regulation 15(2) to (6) and S.I. 2000/3186); there are other amending instruments but none is relevant.

(b) S.I. 1995/2869, to which there is an amendment not relevant to this Order.

(c) S.I. 1996/207; amended by S.I. 2000/2545; there are other amending instruments but none is relevant.

(d) S.I. 1996/2745, to which there are amendments not relevant to this Order.

(b) after paragraph (aa) insert–

“(ab) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The Local Government Pension Scheme (Scotland) Regulations 1998*

**12.** In regulation 5(9) of the Local Government Pension Scheme (Scotland) Regulations 1998 (further restrictions on eligibility)(a) for “a member of a fire brigade” to “1947” substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))”.

*The Health and Safety (Enforcing Authority) Regulations 1998*

**13.** In regulation 4(3)(e) of the Health and Safety (Enforcing Authority) Regulations 1998 (exceptions)(b), for the words “fire authority within the meaning of section 43(1) of the Fire Precautions Act 1971” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))”.

*The Scotland Act 1998 (Concurrent Functions) Order 1999*

**14.—**(1) Schedule 2 to the Scotland Act 1998 (Concurrent Functions) Order 1999(c) is amended as follows.

(2) In paragraph 2(a)(ii) for “fire brigades” substitute “employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))”.

(3) In paragraph 2(b)(iii) for “members of fire brigades” substitute “employees of relevant authorities”.

(4) In paragraph 2(b)(iv) for “fire brigades” substitute “employees of relevant authorities”.

*The Child Support (Maintenance Calculations and Special Cases) Regulations 2000*

**15.** In paragraph 4(2)(g) of the Schedule to the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (calculation of earnings)(d)–

(a) head (ii) is revoked; and

(b) after head (ia) insert–

“(iib) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

*The State Pension Credit Regulations 2002*

**16.** In paragraph 2(2) of Schedule 6 to the State Pension Credit Regulations 2002 (sums disregarded from claimant’s earnings)(e)–

(a) paragraph (a) is revoked; and

(b) after paragraph (aa) insert–

“(ab) as a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;”.

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(a) S.I. 1998/366, to which there are amendments not relevant to this Order.

(b) S.I. 1998/494, to which there are amendments not relevant to this Order.

(c) S.I. 1999/1592.

(d) S.I. 2001/155, to which there are amendments not relevant to this Order.

(e) S.I. 2002/1792, to which there are amendments not relevant to this Order.



*The Regulation of Investigatory Powers (Communications Data) Order 2003*

**17.**—(1) The Regulation of Investigatory Powers (Communications Data) Order 2003(a) is amended as follows.

(2) In Part 1 of Schedule 2 (individuals in additional public authorities that may acquire all types of communications data), for the words “A joint Board constituted by an administration scheme under section 36 of the Fire Services Act 1947 or section 147 of the Local Government (Scotland) Act 1973” substitute “A joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 5) or a joint fire and rescue board within the meaning of section 5 of that Act”.

(3) In Part 2 of Schedule 2 (individuals in the public authorities specified in Part 1 that may only acquire certain types of communications data), for the words “A joint Board constituted by an administration scheme under section 36 of the Fire Services Act 1947 or section 147 of the Local Government (Scotland) Act 1973” substitute “A joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 5) or a joint fire and rescue board within the meaning of section 5 of that Act”.

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(a) S.I. 2003/3172, to which there are amendments not relevant to this Order.

## **EXPLANATORY NOTE**

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

This Order makes provision and modifications in consequence of the Fire (Scotland) Act 2005 (asp 5) (“the 2005 Act”).

Article 2 of the Order inserts provisions into and makes modifications of the 2005 Act that enable relevant authorities (as defined in section 6 of the 2005 Act) to exercise their powers at sea, in the territorial sea not adjacent to Scotland and beyond the territorial sea of the United Kingdom, and to charge for those activities.

Article 2 applies Part 3 of the 2005 Act (fire safety) to premises occupied by armed forces of the Crown, visiting forces or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5), and those which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied. In addition, article 2 applies Part 3 to ships and hovercraft except in respect of normal ship-board activities of a ship’s crew which are carried out solely by the crew under the direction of the master. It also provides that the definition of “relevant premises” in section 78 of the 2005 Act includes these premises.

Article 2 also confers the functions of an enforcing authority under the 2005 Act upon the Health and Safety Executive and the fire service maintained by the Secretary of State for Defence.

Article 3 provides for the modification of the enactments specified in the Schedule to the Order. Part 1 of the Schedule sets out modifications of public general Acts. Part 2 sets out modifications of subordinate legislation.



**2005 No. 2060 (S. 7)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**FIRE AND RESCUE SERVICES**

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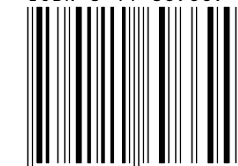
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