



**Isle of Man**  
**Government**

*Reiltys Ellan Vannin*



Department of Home Affairs

CONSULTATION

Fire and Rescue Service Bill

January 2014

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## FOREWORD BY THE MINISTER FOR HOME AFFAIRS

The Council of Ministers is committed to promoting the Island as a safe community in which to live and to do business. The Department has a role in protecting all in our society and in this context, this means ensuring our Fire and Rescue Service is equipped with appropriate legal powers to carry out the functions we expect them to perform in the 21<sup>st</sup> century. Furthermore, the Fire Precautions Act, which is key in terms of fire safety, dates back to 1975. Practice in relation to how fire safety is promoted and, where necessary, enforced, has developed since then and the Department considered it necessary to explore ways to develop legislation to enable new ways of dealing with fire safety that reflect better the needs of society now.

The purpose of the Bill is to repeal existing legislation and replace the current Acts with one that deals with the functions and appointment of the Isle of Man Fire and Rescue Service on the one hand, and the duties of various parties, including the Department, to promote and secure fire safety within premises on the other. Significant changes include moving away from the issue of fire certificates and regulations setting out prescribed safety measures, to a requirement on persons to be responsible for taking their own measures to ensure fire safety within their premises. In terms of the Fire and Rescue Service the proposed change in legislation reflects the fact that fire officers do not just deal with fires but also attend road traffic incidents, flooding and other environmental events. In these days of greater cross-Government working the legislation proposes that the Council of Ministers be given a role in determining any other kinds of emergency for which the Service may be required to perform duties.

In publishing this document I am seeking more than simply a response to the accompanying draft of a Bill. Questions have been posed within the consultation document, which reflects the Department's open mindedness on the way forward, but provides potential solutions for comment. In modernising this legislation we have attempted to reduce bureaucracy, whilst providing a modern legislative foundation for a fire service that has changed immeasurably since the current legislation was enacted in the 1970s and 1980s.

If you have any views on the proposals within the Bill, or the vision behind it, or can assist the Department by answering some of the questions posed within the document, I invite you to give me your response in writing (whether by letter or email), via the Department's Legislation Manager, at the Department of Home Affairs, 88 Woodbourne Road, Douglas, IM2 3AP by **Monday 10<sup>th</sup> March 2014**. I can assure you that any views you do express will be considered with the utmost care.

Hon. Juan Watterson, BA(Hons), ACA, MHK  
Minister for Home Affairs  
10 January 2014

## **INTRODUCTION**

It is normally the case that a Bill is consulted on once all preliminary policy and drafting issues have been resolved and the Bill is, in effect, ready to undergo scrutiny in the legislative Branches of Tynwald. The consultation process, in normal circumstances, is to elicit public comment and make any further changes in policy or to the draft that seem appropriate, before putting the finishing touches to a Bill and submitting it to the Council of Ministers for authority to print and introduce into the House of Keys.

In the case of this proposed legislation it was considered it would be useful to invite comment on the draft Bill at an earlier stage in its preparation. There are two reasons for this approach with Fire and Rescue Service legislation. Firstly, the Department feels that before more time is expended on the drafting, or redrafting, process it would be useful to invite comment on the Bill thus far so as to assist with its further development. Secondly, the Impact Assessment outlines some of the options considered thus far and the Department is aware there may be views on these, and other possible approaches, that could be adopted in relation to modernising Fire and Rescue Service legislation, and we would be interested in receiving, and considering, any of those views.

The Department believes it is of critical importance that, given the change to the basis of, in particular, fire certification, the views of both individuals and businesses are sought and considered before further progress is made on the Bill. This will ensure any concerns that either individuals or businesses have are taken into account and the legislation can then be adapted where considered necessary and appropriate.

The attached consultation draft of the Bill reflects the extent of its development as of December 2013 (hence the "Fire and Rescue Service Bill 2013"). Where a brief outline of each Part of, and certain key clauses within, the Bill is given, there will be some questions upon which your views are particularly invited. On page 11 of this document there are details of how and to whom your views may be made known.

## **KEY FEATURES OF THE PROPOSED LEGISLATION**

Key features of the legislation contained within the current consultation copy of the draft Bill include –

- establishing the Fire and Rescue Service (the Service) as an administrative arm or service of the Department (Part 2, Division 1);
- extending core functions so that, in addition to dealing with fires, the Service may promote community safety (particularly fire safety), attend road traffic incidents and deal with other emergencies as set out in an Order made by the Council of Ministers (Part 2, Division 2);
- empowering the Service to deal with incidents in internal waters and within Manx territorial waters and to cooperate with others (Part 2, Division 3);
- charging for the performance of functions by the Service (not for emergencies or where the Service was called in the genuine belief its presence was or may be required) (Part 2, Division 3);
- ensuring officers continue to have powers to enforce fire safety and enter premises for the purposes of dealing with emergencies or investigating the cause or other reason for a fire (Parts 3 and 4);
- imposing duties on persons responsible for premises, such as workplaces, to take measures to ensure safety of persons from the risk of fire (Part 4, Division 2, Subdivision 1);
- requiring the Department to make a document about the policies, objectives and priorities of the Service for each term of the House of Keys (Part 5);
- empowering the Department to make regulations setting out how risk assessments are to be made or undertaken (Part 4, Division 1, Subdivision 2 & Part 6);
- giving the Department powers to issue guidelines designed to help people to comply with the Act (Part 6);
- other provisions concerning enforcement, offences and appeals (Part 4);
- Part 5 of the Bill sets out the Department's functions such as equipping the Service, appointing the chief officer of the Service, ensuring other officers are appointed and giving policy direction to the Service; and
- repealing existing legislation and giving the Department primary responsibility for securing fire safety in the workplace as well as other non-domestic premises.

## OUTLINE OF THE MAIN PARTS OF THE LEGISLATION WITHIN THE BILL AS CURRENTLY DRAFTED

### PART 1

Part 1 is introductory and Clauses 1, 2 and 3 contain the title of the Bill, state that the Bill will be brought into operation by Appointed Day Order and provide interpretation.

### PART 2

Part 2 is titled "Fire and Rescue Services" and consists of clauses 4 to 24. For the purposes of dealing with specific aspects of the Service it is split into 5 Divisions.

**Division 1** is clause 4 and establishes the Isle of Man Fire and Rescue Service (the Service). Currently although the Service describes itself as the Isle of Man Fire and Rescue Service it is, in law, the fire brigade. The change in this provision is necessary because the Service has not, for a long time, just dealt with fires but has been called upon to assist in other emergencies such as incidents on the Island's roads and flooding events where it has performed rescue functions.

The Division makes it clear the Service is part of the Department (of Home Affairs) and performs fire and rescue functions for the Department. Equally, except in those cases set out in subsection (5), a reference to the Department is to the Service acting on the Department's behalf, and in its name.

Current legislation provides for the fire brigade to be headed by a chief fire officer. Proposed legislation reflects the fact that the person will head a fire and rescue service and shortens the person's title to "chief officer" (terms of appointment are specified in clause 71 of this draft of the Bill).

**Division 2** sets out the core functions of the Service. In a development from current legislation, this Division sets out the other functions such as promoting community safety through various methods.

Clause 8 is titled "Road traffic incidents" and refers to incidents for legal reasons. One view is that there is no such thing as a road traffic accident. Nevertheless it is not necessarily the case that all incidents to which Service personnel may be called are as a result of a strictly interpreted collision. The word "incident" empowers Service personnel to deal with call outs that occur on or near a road as a result of a road traffic incident.

NB. In relation to general fire-fighting duties and call outs to road traffic incidents the Service must not just take reasonable steps to limit damage to property but must now also take care to limit damage to the environment.

Clause 9 provides that the Council of Ministers may, by Order, give the Department (in effect the Service) certain functions. The purpose of this is to enable the Government to require the Service to assist in other kinds of emergency situations where, perhaps, there needs to be a co-ordinated cross-government approach which includes the Service.

**Division 3** is titled "Administration" and clause 11 provides that the Department (meaning the Minister) may direct, in writing, the chief officer (of the Fire and Rescue Service) to act in a certain way in relation to a particular emergency. Upon receipt of written directions, the chief officer is required to comply. It would be a very rare event, or set of circumstances, indeed that required the Department to issue specific directions to the chief officer in writing.

Clause 12 empowers the Department to charge for functions performed that are not specifically statutory functions under the Bill or where the Service was called out to an incident due to malice, negligence or recklessness. In other words it may not prescribe charges for attending a genuine emergency.

**Question 1:** *Do you agree that the Department should be able to charge for the performance of certain functions and if so, what kind or classes of function? Should they be based on full cost recovery?*

Clause 13 makes it clear the Service may perform its functions in or on internal waters and in the sea within the Island's 12 mile territorial limit.

**Division 4** concerns water supply, consists of clauses 14 to 20, and is about ensuring the Service has access to water at all times in order to perform its emergency functions. The Division outlines some offences in relation to this matter.

**Division 5** consists of clauses 21 to 24 and empowers the Department to offer mutual assistance and to co-operate with fire and rescue officers of other jurisdictions. This is mutually beneficial as there may be times when the Island requires outside assistance to deal with a particular emergency or needs to make arrangements for others to perform the functions of fire and rescue officers. Clause 24 would enable the Department to offer the service of fire and rescue officers for any purpose it thought appropriate.

### PART 3

Part 3 covers clauses 25 to 35, consists of 4 Divisions and gives the Service powers in emergencies (Division 1), powers of entry, and powers to obtain information about the cause of the incident, such as a fire or an environmental incident (Division 2). Division 3 empowers persons authorised by the Department (authorised officers) to enter premises to investigate or to enforce fire safety law. Division 5 details offences.

As with the current legislation under the Fire Services Act 1984 these powers are, and remain, necessary if fire safety is to be properly encouraged and lessons are to be learned from fires or other incidents to find out what caused them. Naturally, if there is any indication a fire or an incident may not have been entirely accidental, or where fire safety duties appear not to have been attended to as they should have been, there is the risk persons may not welcome investigation by persons authorised by the Department.

Although there are fortunately relatively few such incidents, the giving of a false alarm is a considerable drain on the resources of the Service and can place others, who may have a genuine emergency, at serious risk. Clause 34 sets out the offence of giving a false alarm, which is a very serious matter.

### PART 4

Part 4 consists of clauses 36 to 68 in 5 Divisions and effectively replaces the purpose of the Fire Precautions Act 1975 (which this Bill repeals) in that it is about fire safety in premises. The term used for premises is "relevant premises" and is interpreted, along with many other terms, in clause 36.

**Division 1** is clauses 36 and 37. Clause 36 provides the definitions for words used in this Part. The Department's Fire and Rescue Service considers it important that the Island's legislation is as near to the model found in Northern Ireland legislation<sup>1</sup> as is possible.

As with the Northern Irish legislation, clause 36 defines "employee" by reference to the Health and Safety at Work Act 1974 (of Parliament) and that Act does not go on to define "employer" (because it is clearly the person who gives the contract of employment to the employee).

**Division 2** deals with the duties of employers to employees in relation to fire safety and extends to those who have ultimate control over premises. It consists of clauses 38 to 43.

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<sup>1</sup>i.e. The Fire and Rescue Services (Northern Ireland) Order 2006. Ref 2006/1254 (N.I.9). Clause 36 is based on article 50.

Clause 38 sets out the duties of the employer to secure the safety from the risk of fire of his or her staff in the workplace and clause 39 sets out duties in relation to places other than a workplace. Depending on the final form of the legislation, this could include persons who own or manage or otherwise control a building containing a flat or flats and correspondingly in relation to houses in multiple occupation.

Clause 40 is important because it sets out the duty on the employer, or person who has control or ultimate responsibility for premises, to assess those premises in order to see what measures need to be taken to mitigate the risk of fire. Clauses 41 and 42 refer to the measures that may need to be taken to improve fire safety in the light of the risk assessment carried out in workplaces or other relevant premises. Clause 43 requires employees, in their place of work, to take responsibility for their own and other people's safety and to co-operate with employers in the exercise of their duties to promote fire safety.

Clauses 44 and 45 empower the Department to make regulations in connection with fire safety requirements.

**Division 3** comprises clauses 46 to 68 and is about enforcement, offences and appeals in relation to enforcement.

Clause 46 empowers an authorised officer of the Department to do anything necessary to enforce the fire safety duties in relation to workplaces and other relevant premises. An authorised officer may enter premises at any reasonable time or, in an emergency, at any time, to inspect any or all of the premises and anything in them. Essentially the authorised officer may do anything that is necessary, and bring any other person along to assist, in ensuring fire duties are complied with and, where a fire has occurred, establishing the circumstances surrounding the fire.

In modern language and drafting style (and following the Northern Ireland model) this provision is broadly similar to provision in Schedule 5 to the current Fire Precautions Act 1975.

Other clauses provide for the issue of prohibition notices (clause 48), enforcement notices (clause 49) and alteration notices (clause 50). Clause 51 provides a means by which disputes as to whether or not fire safety duties have been complied with may be determined other than by appeal to a court.

**Question 2:** *Clause 51 currently provides for a means of resolving disputes through the appointment of an arbitrator by agreement –*

- (a) do you think provision for dispute resolution outside of court is workable? If you do not think this provision is workable, it would be helpful to know why and receive your thoughts as to what alternatives the Department should consider.*
- (b) if you feel provision for dispute resolution outside of court is likely to be beneficial, do you think there should also be provision for mediation? or*
- (c) should the provision be redrafted so that the Department is responsible for dispute resolution, as is the case with the Northern Ireland legislation?*

Clauses 58, 59 and 60 provide for appeal rights to a Court of Summary Jurisdiction and, on a point of law, to the Staff of Government Division of the High Court. The appeals provisions have been adapted and updated broadly, and where appropriate, from current Schedule 6 to the Fire Precautions Act 1975.

**Division 4** consists of clauses 61 to 65, which set out further offences in relation to failing to comply with various fire safety obligations. Clause 66 makes an employer equally liable for an act or omission committed by his or her employee.

**Division 5** provides a due diligence defence for certain offences and provides for a temporary suspension of the requirement to comply with fire safety duties for certain categories of person in special cases.



## PART 5

Part 5 consists of clauses 69 to 79 and sets out the legal framework for the operation of the Isle of Man Fire and Rescue Service (the Service).

**Division 1** requires the Department efficiently and effectively to equip and maintain the Service. With drafting improvements and modernisation this is otherwise a restatement of current requirements in the Fire Services Act 1984. The Department is also empowered to give safety advice and information.

A new feature of the draft proposed legislation in subsection (2) of clause 69 is the requirement for the Department to make a (strategy) document setting out the policies, objectives and priorities of the Service at least once during any term of the House of Keys (i.e. the policy must be revisited at least once in every 5 year period). The chief officer must be consulted but equally, once the document is made, the chief officer is responsible for delivery.

Clause 70 empowers the Department to hold an inquiry into the performance of Service functions.

**Division 2** provides for the appointment and term of office of the chief officer of the Service. The appointment and dismissal provisions are similar to those relating to the chief constable. Clause 72 requires the chief officer to execute the strategy set out above. The chief officer is able to promote, discipline and determine the disposition of Service officers with the exception of the appointment of an officer, or officers, to the rank immediately below his or her position, which is subject to the Department's approval.

Clause 73 enables the appointment of Service officers and clause 74 enables the Department to require the chief officer to comply with written directions necessary to enable the Department to perform any of its functions and to make, or review, its strategy document.

Clauses 75 to 78 concern the appointment of officers authorised to enforce the Department's functions in relation to fire safety. Persons who may be authorised are Service officers, health and safety inspectors and environmental health officers. Provision is made for anyone else to be prescribed by regulations.

**Division 6** makes it an offence for officers, who obtain information as a result of the exercise of their functions, to reproduce or otherwise divulge the information for the benefit of any unauthorised person. This ensures that any information gained as a result of the exercise of Service functions is secure and only used for lawful purposes.

## PART 6

Part 6 consists of clauses 80 to 85 and contains miscellaneous provisions. A new feature is clause 83 which enables the Department to make guidelines designed to assist persons to comply with the Act. The guidelines may be entirely locally drafted or may apply, with or without modification, guidelines, codes, standards or any other document emanating from this or any other jurisdiction. Failing to apply or follow guidelines will not of itself render a person liable in civil or criminal law, but where the guidance is relevant to an alleged offence the question of whether or not guidance was followed may have a bearing on a case in Court.

Clause 84 provides a more comprehensive and general power to make regulations. This includes the power to modify the definition of "premises" in clause 3 and "relevant premises" in clause 36; to impose fees; to provide requirements in relation to the carrying out of risk assessments (in accordance with clause 40); and addressing fire safety in workplaces, relevant premises and the shared common areas for multiple or co-located private dwellings such as flats and houses in multiple occupation.

## PART 7

Part 7 will contain the closing provisions and be completed once the consultation process is over and the Bill is set in its final form. It will repeal the Fire Escapes Act 1950, the Fire Precautions Act 1975, the Fire Services Act 1984 and the Fire Precautions (Amendment) Act 1992 and make transitional provision to ensure that any action started under existing law will be able to be

completed. Existing fire safety rules and regulations, such as those regulating fire safety in flats, will be kept in operation until new legislation is made under the new Act. In the event amendments are required to any other legislation as a consequence of this Bill, the amendments will be included here.

The proposals in the Bill are based on the policy that the Service should be responsible for promoting and enforcing fire safety in all relevant premises including places of work. Currently fire safety in the workplace is undertaken by health and safety inspectors under health and safety at work legislation and so it may be necessary to revoke or amend regulation 17 of the Management of Health and Safety at Work Regulations 2003. Clearly it is envisaged that health and safety inspectors may be appointed as authorised officers and so would continue to monitor fire safety in the workplace but primary responsibility for fire safety would transfer to the Department.

**Question 3:** *Do you agree that it is appropriate for officers of the Isle of Man Fire and Rescue Service to be responsible for promoting and enforcing fire safety in all non-domestic premises including places of work?*

*If you do not agree with the proposal to give primary responsibility for fire safety in the workplace to fire and rescue officers it would be helpful to understand why and to receive your alternative proposals with an explanation of how they would be more effective and efficient.*

#### GENERAL

**Question 4:** *In line with broader Government policy, as an alternative to all offences being prosecuted through the Courts, would you support provision for fixed penalty notices to be imposed for certain (if so please specify which), or all, offences?*

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## FEEDBACK TO THE CONSULTATION

There are four appendices to this consultation document which may be downloaded from the Department's website at [www.gov.im/dha/consultations.gov](http://www.gov.im/dha/consultations.gov).

If you have any views or observations or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Tom Bateman, Legislation Manager  
Department of Home Affairs  
"Homefield", 88 Woodbourne Road  
Douglas, IM2 3AP

or by emailing [dhaconsultation@gov.im](mailto:dhaconsultation@gov.im)

The closing date for the receipt of comments is **Monday 10<sup>th</sup> March 2014**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

It may be useful when giving your feedback to make reference to the number and title of the specific provision(s)/Part set out in the Bill, or the number of the question, that you wish to discuss.

The draft of the Bill has been prepared for the purposes of consultation on the policy and principle of modernising the Isle of Man's fire and rescue legislation. The purpose of consultation is not to be a referendum, but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. The responses received do not necessarily guarantee changes will be made to what has been proposed. Nevertheless, the Department seeks your views on this consultation draft Bill, and is interested in any answers you may wish to give to the questions posed within this document.

Once the Department has considered responses to the consultation it will publish a summary of responses to the consultation and indicate how the Bill has, or is being, changed to reflect the outcome of the consultation exercise. Further drafts of the Bill will be prepared in the light of responses to the consultation. These subsequent drafts will involve refinement of the layout and content of the Bill.

**IMPACT ASSESSMENT**

**IMPACT ASSESSMENT OF:** Fire and Rescue Service Bill  
**DEPARTMENT:** Home Affairs  
**DATE:** 09/01/2014  
**VERSION NUMBER:** 2

Responsible Officer: Tom Bateman, Legislation Manager

E-mail Address: [dhaconsultation@gov.im](mailto:dhaconsultation@gov.im)

Telephone number: 694305

**SUMMARY: INTERVENTION AND OPTIONS**

**What is the Bill intended to do?:** The proposed Bill is intended to —

1. repeal and replace existing legislation with a single Act dealing both with fire safety and the establishment and administration of the Isle of Man Fire and Rescue Service (IOMFRS), and
2. to transfer primary responsibility for enforcing fire safety in the workplace from the Health and Safety Inspectorate to the Department.

**Nature of problem:** Currently there are two Acts which provide for a fire brigade to extinguish fires and for the issue of fire certificates and two other fire related Acts. Regulations may also be made dealing with fire safety, for example in flats. It is important to note that fire-fighters do not simply deal with fire related calls. The functions the community expects them to fulfil, and to which they respond, include fire safety advice, dealing with road traffic incidents<sup>2</sup>, and call outs relating to matters such as flooding.

The Island is internally autonomous and may, and does, order things domestically as it sees fit. Indeed this Bill is evidence of its competence to legislate for itself in an internal matter. Nevertheless, as a relatively small jurisdiction it has benefitted from being able to train its fire fighters by utilising the training offered by our neighbour, the United Kingdom. This has many advantages including economies of scale, experienced training officers, a wider variety of training scenarios than may be available on the Island and access to relevant guidance material in relation to fire safety.

The United Kingdom changed its fire legislation some years ago and now trains its officers to operate under, and enforce, an entirely different set of legislation to that obtaining in the Island. One effect of this is that where the Island previously utilised resources and guidance material available in neighbouring jurisdictions, that material has become out of date. It is in this context that it has been necessary to consider modernising the Island's legislation.

Currently fire officers provide advice and assistance to health and safety inspectors in respect of fire safety issues in the workplace. It is felt it would be sensible to make fire officers responsible for enforcing as well as advising on fire safety in the context of places of work.

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<sup>2</sup>In legal terms a collision may have a very much more restricted meaning than may generally be thought. The word "incident" would include rescuing a person, or persons, from a car that has spun off the road or has lost control and ended up on its roof but where no other vehicle was involved.

**Purpose of Proposal:** The Bill's primary purpose is to —

1. modernise fire safety legislation so it provides a (single) legal framework for current practice;
2. provide for risk based fire safety rather than safety based on prescriptive standards and in so doing minimise the burden of compliance on businesses of any description; and
3. impose an obligation on the Department to be responsible for the enforcement of fire safety in places where persons are employed.

**Means by which it is to be achieved**

**Option 1:** The draft Bill is not progressed.

The IOMFRS is increasingly carrying out a wide range of duties expected by the public but not currently underpinned or supported by a legal framework. The Island's fire safety legislation is out of step with other jurisdictions (not in itself necessarily a bad thing but it is nevertheless out of line with modern fire safety thinking) and this means any guidance material on fire safety relates to practices the Island does not have the legal power to apply.

The argument for the status quo is that legislative change should only be promoted if it is really necessary and is of benefit to the Island and it may be averred that the IOMFRS are performing their duties very well and without being subject to legal challenge. It could be argued that the Island should be able to prepare its own guidance material rather than being dependant on others.

However, the argument against retaining the status quo is that, whilst the IOMFRS is performing its functions very well, it is better to ensure the Service is empowered to perform the functions the community expects it to perform in the 21<sup>st</sup> century. The Department believes the legislation does need to be updated to properly underpin the full range of work the Service undertakes.

**Option 2:** A smaller Bill is promoted.

This could be achieved by only repealing and replacing either the Fire Precautions Act 1975 in relation to fire safety or the Fire Services Act 1984 in relation to the establishment and basic powers of the Isle of Man Fire and Rescue Service.

The problem with leaving the Fire Precautions Act 1975 in place relates to the fact that modern fire safety practice in neighbouring jurisdictions is about requiring persons to make their own assessment of fire risk and being held responsible for taking appropriate fire safety action.

Why do we need to change? In one sense the Island could retain the current legislation. However, the Department suggests it makes better sense to ensure the Island's legislation reflects and empowers best practice in relation to fire safety. In that respect things have moved on quite significantly. Fire safety is now about assessing risk and taking steps, in the light of that assessment, to address the risk of fire and to ensure the safety of persons in the event of fire. This is a different approach to issuing Fire Certificates and sets of regulations with standards "set in stone".

The problem with leaving the Fire Services Act 1984 in place is that it provides for a fire brigade to deal with fires and the Service now performs both fire and rescue functions. It is called upon to deal with road traffic related incidents, flooding and other emergencies or events which are not provided for in current legislation.

The Department could promote a smaller Bill, and is willing to receive submissions on this Option, but has set out a few examples by way of explanation as to why it has not adopted this Option as a way forward at this stage.

**Option 3: (preferred option):** Promote the Bill as drafted.

The preferred Option replaces the two Acts mentioned in Option 2 and any other fire related Acts with a single, modern Act. The Bill empowers the IOMFRS to continue to provide the service now offered, to promote current best fire safety practice, and provide a new risk based regulatory framework, which places the principal responsibility for fire safety where it should belong, namely with employers in the workplace and those responsible for other relevant premises.

This Option also enables the Department to make a document setting out the policies, objectives and priorities for the Service and Council of Ministers to require the Service to assist in other kinds of emergency situations.

This Option places the principal responsibility for promoting and enforcing fire safety in places of work on the IOMFRS.

The Department is aware there may be views or other approaches to modernising fire related legislation and would be open to considering such views once the consultation period has closed.

### **SUMMARY: ANALYSIS AND EVIDENCE**

#### **IMPACT OF PROPOSAL**

##### **Resource Issues - Financial (including manpower)**

**Statement:** Whilst the IOMFRS indicated a figure (see below) for implementing the new legislation the Department made it clear, when the Drafting Instructions for the Bill were approved in August 2011, that the costs must be met from within existing budgetary resources. The figure quoted below reflected the cost of conversion courses for officers in new fire safety procedures, raising awareness in the Island of the implications of the new legislation and producing new guidance material.

**Likely Financial Costs one off:** £28,342.

**Average Annual (excluding one off):** None.

**Likely Financial Benefits one off:** None.

**Average Annual (excluding one off):** None.

##### **If the proposal introduces provisions that will require enforcement or monitoring, who will undertake this and what is the likely annual cost?**

It is envisaged that existing officers will continue to enforce fire safety as authorised officers and therefore there should be no change that is likely to have a cost implication.

##### **Are there any costs or benefits that are not financial?**

The Bill may be said to form part of a wider picture in relation to the Government's strategy of growing the economy and, at the same time, protecting the vulnerable. This is because a safe environment is good for business and fire safety is an important element of community safety.

##### **Has Treasury concurrence been given for the preferred option?:**

Treasury concurrence has not been sought as the Department determined that if there are to be costs incurred when changing from the existing fire safety procedures to the proposed new risk assessed safety procedures, these must be met from within existing resources.

##### **Key Assumptions / Sensitivities / Risks:**

The key assumptions are that –

1. it is appropriate to review legislation from time to time to ensure it is either necessary or meets current operational and/or community requirements;
2. Government should seek, wherever possible, to consolidate and update legislation so it is in

one place rather than a number of Acts (as in this case);

3. aligning the Island's fire service and safety legislation as closely as possible with that in neighbouring jurisdictions<sup>3</sup> is both necessary (because it facilitates training and means fire safety material and procedures can be co-ordinated) and helpful to business (because any business that comes or relocates to the Island will be familiar with the fire safety requirements and so set up time and costs will be minimised). Furthermore, the removal of the "fire certificate" procedure may reduce bureaucracy and move the Island to a more modern, risk based, approach;
4. it will be considered appropriate that the Isle of Man Fire and Rescue Service should take full legal responsibility and accountability for promoting and enforcing fire safety within the workplace as well as in other relevant non-domestic premises; and
5. provision should be made to enable the Council of Ministers to require the Service, by Order, to assist in other kinds of emergencies in addition to dealing with fires or road traffic incidents.

**Approximate date for legislation to be implemented if known:**

The question of what date the legislation is to be implemented depends entirely on the outcome of the public consultation exercise. It may be that the Bill is developed and introduced into the House of Keys in broadly its current form or that the Bill is changed. In either event it is not possible to indicate a date at this stage in the process.

**Link to Agenda For Change:**

Good government; protect the vulnerable.

**Link to Department Aims and Objectives:**

Ensure the delivery of the Department of Home Affairs' Bills in accordance with the Legislative Programme.

**SUMMARY: CONSULTATION**

**Consultation in line with Government standard consultation process:** Yes.

**Date:** Between 10<sup>th</sup> January 2014 and 10<sup>th</sup> March 2014.

**Statement:** The purpose of this consultation is to invite public comment on the Bill as drafted to date. The consultation exercise will establish whether or not the public consider the Department has got the policy right in respect of provision for the Fire and Rescue Service and delivery of fire safety in future. The Department is interested in receiving all views or submissions including those that may suggest a different approach or that only part of the legislation outlined in the Bill is necessary.

**Ministerial signature**

I have read the Impact Assessment and I am satisfied that given the available information, it represents a reasonable view of the likely costs and impact of the preferred option.



*Hon Juan Watterson BA(Hons), ACA, MHK  
Minister for Home Affairs  
January 2014*

<sup>3</sup>The draft Bill contains many provisions that are based on the Fire and Rescue Services (Northern Ireland) Order 2006. Ref 2006/1254 (N.I.9).

Fire and Rescue Service Bill 2013  
Consultation Draft





## FIRE AND RESCUE SERVICE BILL 2013

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## FIRE AND RESCUE SERVICE BILL 2013

A **BILL** establishing the Isle of Man Fire and Rescue Service; to promote the safety of persons and property from fire and other emergencies; to repeal the Fire Escapes Act 1950, the Fire Precautions Act 1975 and the Fire Services Act 1984; to make minor and consequential amendments of other Acts and statutory documents; and for connected purposes.

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**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

### PART 1 — INTRODUCTORY

#### 1 Short title

The short title of this Act is the Fire and Rescue Service Act 2013.

#### 2 Commencement

This Act, other than section 1 and this section, comes into operation on the day or days appointed by order of the Department.

#### 3 Interpretation

In this Act —

“**authorised officer**” means an individual holding appointment under section 75(1) as an authorised officer;

“**chief officer**” means the person appointed as the Chief Fire and Rescue Officer under section 71;

“**common area**”, for private dwellings, means premises or a stair, passage, garden, yard, garage, outhouse or other appurtenance of or to the dwellings used in common by the occupants of more than one of the dwellings;

“**Department**” means the Department of Home Affairs;

“**emergency**” means an event or situation that causes or is likely to cause —

- (a) a person to die, be seriously injured or become seriously ill; or

- (b) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings);

**“environmental health officer”** means an environmental health officer of the Department of Environment, Food and Agriculture;

**“equipment”** includes a uniform or item of apparel properly used by a fire and rescue officer in performing the officer’s duty;

**“fire and rescue functions”** means —

- (a) functions conferred under this Act; and
- (b) functions conferred on the Department or the Isle of Man Fire and Rescue Service (however described) by an enactment;

**“fire investigation”** means an investigation into what caused a fire in premises or why a fire in premises progressed as it did;

**“fire and rescue officer”** means an individual appointed under section 73 as a fire and rescue officer, and includes the chief officer;

**“fire safety duty”** has the meaning given by section 36;

**“operational duties”**, for a fire and rescue officer or another office or position, means anything done —

- (a) while the person is performing functions in the capacity for which the person holds the office or position; and
- (b) that the person is required to do in that capacity;

**“owner”**, in relation to premises, means a person who (whether on his or her own account or as agent or trustee for another person) —

- (a) is for the time being receiving a rack rent of the premises, or
- (b) would receive a rack rent if the premises were let at rack rent;

**“premises”** means any place, including —

- (a) a workplace;
- (b) a place for accommodation;
- (c) a vehicle, ship or aircraft;
- (d) an onshore or offshore installation; and
- (e) a tent or other movable structure;

**“private dwelling”** means premises, or any part of premises (including, for example, a flat), used wholly or mainly usable as a place of residence; and

**“repealed Act”** has the meaning given by section 86.

## PART 2 – FIRE AND RESCUE SERVICES

### DIVISION 1 – ISLE OF MAN FIRE AND RESCUE SERVICE

#### 4 Establishment

- (1) The Isle of Man Fire and Rescue Service is established as an administrative part of the Department that performs the fire and rescue functions for the Department.
- (2) The Isle of Man Fire and Rescue Service is not a separate legal entity from the Department.
- (3) The Isle of Man Fire and Rescue Service is to be under the direction and control of a Chief Fire and Rescue Officer (the “**chief officer**”) appointed under section 71.
- (4) A reference in this Act to “the Department” is a reference to the Department acting through the Isle of Man Fire and Rescue Service.
- (5) Subsection (4) does not apply to the references to the “the Department” in the following provisions –
  - (a) section 11 (directions for certain emergencies);
  - (b) section 69 (Department’s main functions);
  - (c) section 70 (inquiries into the Isle of Man Fire and Rescue Service);
  - (d) section 71 (appointment and term of office); and
  - (e) section 74 (Departmental directions).

### DIVISION 2 – CORE FIRE AND RESCUE FUNCTIONS

#### 5 Fire safety

[SI 2006/1254/4]

- (1) The Department must promote fire safety.
- (2) In particular, the Department must, to the extent the chief officer considers it reasonable to do so, make arrangements to give –
  - (a) information, publicity and encouragement for the taking of steps to prevent fires and death or injury from fire; and
  - (b) advice, on request, about –
    - (i) how to prevent fires and restrict their spread in buildings and other property; and
    - (ii) how to escape from premises if there is a fire.

#### 6 Community safety

The Department may promote community safety, including, for example, by –

- (a) giving information, publicity and encouragement about, electrical appliance safety, road safety, building safety and flood prevention for homes and businesses;
- (b) giving, on request, safety advice; or
- (c) engaging in cooperative safety campaigns with others.

## 7 **Fire-fighting**

[SI 2006/1254/5]

- (1) The Department must make provision for the purpose of —
  - (a) extinguishing, containing or controlling fires; and
  - (b) protecting life and property in the event of fires.
- (2) In making provision under subsection (1) the Department must in particular —
  - (a) secure the provision of personnel, services and equipment;
  - (b) secure the provision of training for personnel;
  - (c) make arrangements for dealing with calls for help and for summoning personnel;
  - (d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in subsection (1); and
  - (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property or the environment resulting from action taken for the purpose mentioned in subsection (1).

## 8 **Road traffic incidents**

[SI 2006/1254/6]

- (1) The Department must make provision for the purpose of —
  - (a) rescuing persons in the event of road traffic incidents; and
  - (b) protecting persons from serious harm, to the extent that it considers it reasonable to do so, in the event of road traffic collisions.
- (2) In particular, the Department must —
  - (a) secure the provision of personnel, services and equipment;
  - (b) secure the provision of training for personnel;
  - (c) make arrangements for dealing with calls for help and for summoning personnel;
  - (d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in subsection (1); and
  - (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property or the environment



resulting from action taken for the purpose mentioned in subsection (1).

## **9 Emergencies**

[SI 2006/1254/7]

- (1) The Council of Ministers may by order confer on the Department functions relating to emergencies.
- (2) An order under this section may make provision as to what must or may be done for the purpose of performing a function conferred under this section, and may in particular require or authorise the Department –
  - (a) to secure the provision of personnel, services and equipment;
  - (b) to secure the provision of training for personnel;
  - (c) to make arrangements for dealing with calls for help and for summoning personnel;
  - (d) to make arrangements for obtaining information required or likely to be required for the purpose of performing the function; and
  - (e) to make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property or the environment resulting from performing the function.
- (3) Before making an order under this section the Council of Ministers must consult the Department, the chief officer and any other person it considers appropriate.

## **10 Functions in addition to those under other legislation**

The functions conferred on the Department by this Act are in addition to, and not in substitution for, functions conferred on the Department or the Isle of Man Fire and Rescue Service (however described) by an enactment.

### **DIVISION 3 – ADMINISTRATION**

## **11 Directions for certain emergencies**

[P2004/21/10]

- (1) The Department may, by written notice, direct the chief officer to take, or not to take, action stated in the notice for a stated emergency.
- (2) The chief officer must ensure the direction is complied with.

## **12 Charging**

[SI 2006/1254/14]

- (1) Regulations may prescribe charges for the performance of fire and rescue functions.

- (2) The charges may be imposed on, and recovered as a debt, from anyone –
- (a) who received the benefit of a function, other than someone for whom the function was required to be performed under this Act; or
  - (b) because of whose intentional or reckless behaviour a function was performed if, other than for the behaviour, the function would have been unnecessary.

### **13 Inland waters and territorial sea**

The Department may perform the fire and rescue functions in inland waters or coastal waters and waters within the seaward limits of the territorial sea adjacent to the Island.

#### **DIVISION 4 – WATER SUPPLY**

##### **SUBDIVISION 1 – WATER SUPPLY AND FIRE HYDRANTS**

### **14 Water authority's water supply obligation**

[SI 2006/1254/15]

The Isle of Man Water and Sewerage Authority must take all reasonable steps to ensure the Department has an adequate water supply to perform the fire and rescue functions.

### **15 Entitlement to use water supply**

[SI 2006/1254/16]

The Department may use any convenient or suitable supply of water to perform the fire and rescue functions.

### **16 Fire hydrants: identification**

[SI 2006/1254/17]

- (1) The Isle of Man Water and Sewerage Authority must show the location of each fire hydrant it provides by a written notice or distinguishing mark.
- (2) For subsection (1), the notice or mark may be placed on a wall or fence adjoining a road or public place.

### **17 Regulation-making power for fire hydrants**

[SI 2006/1254/17(4)]

The Department of Infrastructure may make regulations about –

- (a) fire hydrants, including, for example for their uniformity; or

- (b) requirements for notices or marks showing their location.

## SUBDIVISION 2 — OFFENCES ABOUT WATER SUPPLY AND FIRE HYDRANTS

### 18 Misuse of fire hydrant

- (1) A person commits an offence if the person uses a fire hydrant other than —
- (a) to extinguish, control or contain a fire;
  - (b) to perform fire and rescue functions, with the authority of a fire and rescue officer or an authorised officer; or
  - (c) for a purpose authorised by the Isle of Man Water and Sewerage Authority.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

### 19 Damaging or obstruction of fire hydrant

- (1) A person commits an offence if the person damages or obstructs a fire hydrant, otherwise than for a purpose mentioned in section 18.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

### 20 Offence for failing to give notice of certain works

[SI 2006/1254/17A]

- (1) A person commits an offence if —
- (a) the person carries out works for a supply of water to, or that affects, a fire hydrant;
  - (b) the person does not give the following period of notice to the Department of the person's intention to carry out the works —
    - (i) for works affecting a fire hydrant, 7 days;
    - (ii) for any other works, 6 weeks; or
    - (iii) if it is not practicable for a person to give notice, as soon as practicable; and
  - (c) the person does not have a reasonable excuse for failing to give notice within the period required.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

DIVISION 5 — COOPERATION AND MUTUAL ASSISTANCE

**21 External cooperation**

[SI 2006/1254/9]

The Department may liaise, co-operate and make arrangements with those performing functions outside the Island whose functions correspond, or substantially correspond, to the fire and rescue functions.

**22 Arrangements with others for assistance**

[SI 2006/1254/12]

- (1) Subject to subsection (2), the Department may enter into arrangements with a person for securing the provision by that person of assistance with the performance of a fire and rescue function.
- (2) The Department may only enter into arrangements with a person under paragraph (1) for the securing of assistance for the purpose of extinguishing, containing or controlling fires if the person employs fire-fighters.
- (3) Arrangements under this section may include provision as to the terms on which assistance is to be provided (including provision as to payment).

**23 Arrangements for performance of functions by others**

[SI 2006/1254/13]

- (1) Subject to paragraph (2), the Department may enter into arrangements with a person for the performance to any extent by that person of a fire and rescue function.
- (2) The Department may only enter into arrangements with a person under paragraph (1) in relation to its function of extinguishing, containing or controlling fires if the person employs fire-fighters.
- (3) Arrangements under this section may include provision as to the terms on which any function is to be carried out (including provision as to payment).

**24 Other services**

[P2004/21/12]

The Department may provide the services of fire and rescue officers or equipment, to anyone for any purpose that appears to be appropriate to the Department.

## **PART 3 – POWERS OF FIRE AND RESCUE OFFICERS**

### **DIVISION 1 – GENERAL POWERS OF FIRE AND RESCUE OFFICERS IN EMERGENCIES**

#### **25 Powers of fire and rescue officers in emergencies**

[SI 2006/1254/18 and 1984/19/5A]

- (1) A fire and rescue officer on duty may do any of the following that the officer reasonably believes is necessary –
  - (a) if the officer reasonably believes a fire to have broken out or to be about to break out, to extinguish, contain or control it, or prevent or protect life or property from it;
  - (b) if the officer reasonably believes a road traffic incident to have occurred, to rescue persons or protect them from harm;
  - (c) if the officer reasonably believes harm has occurred or is likely to occur to the environment (including the life and health of plants and animals and the fabric of buildings), to prevent or protect the environment from it;
  - (d) if the officer reasonably believes an emergency in relation to which functions are conferred under section 9 has occurred, to perform any of the functions of the Department for the emergency specified in the order under that section; or
  - (e) to prevent or limit property damage because of action taken under paragraph (a), (b), (c) or (d).
- (2) In particular, the officer may –
  - (a) enter premises, by force if necessary, without the consent of its owner or occupier;
  - (b) move or break into a vehicle without the consent of the owner;
  - (c) close a road;
  - (d) stop and regulate traffic;
  - (e) evacuate persons from premises; or
  - (f) restrict access to premises.

#### **26 Additional powers for certain events or situations**

- (1) This section applies if the fire and rescue officer reasonably believes there is an imminent danger of serious personal injury relating to premises from –
  - (a) a situation involving an explosion or the escape of any explosive, flammable or toxic substance;
  - (b) flooding; or

- (c) the collapse of a building or structure.
- (2) The fire and rescue officer may —
  - (a) remove persons from, and prevent persons entering, or returning to, the premises or place, until the danger is past; or
  - (b) for a situation mentioned in subsection (1)(a), do anything the officer reasonably believes is necessary to prevent, mitigate, control or reduce the situation or its effects.
- (3) In taking the action, the fire and rescue officer may —
  - (a) use reasonably necessary force; and
  - (b) enter premises, by force if necessary, without the consent of its owner or occupier.
- (4) In this section, “explosive, flammable or toxic substance” includes a substance that —
  - (a) is likely to react with another substance to produce a substance with that quality; or
  - (b) if otherwise combined with another substance, will have that quality.

#### DIVISION 2 — ENTRY POWERS OF AUTHORISED OFFICERS

### 27 **Entry without warrant to obtain information**

[SI 2006/1254/19]

- (1) An authorised officer may at any reasonable time enter premises for the purposes of obtaining information that the Department needs to perform the functions conferred under Division 2 of Part 2 (core functions).
- (2) However, the authorised officer may not under subsection (1) —
  - (a) enter premises by force; or
  - (b) enter premises occupied as a private dwelling without giving its occupier at least 24 hours’ written notice.

### 28 **Warrants**

- (1) An authorised officer may apply to a justice of the peace for a warrant to enter premises (by force if necessary) for the purpose mentioned in section 27(1).
- (2) The justice may issue the warrant only if satisfied —
  - (a) the entry is necessary for the purpose; and
  - (b) either —
    - (i) the officer is, or is likely to be, unable to enter the premises otherwise than by force; or

- (ii) entry without written notice is necessary for the purpose.
- (3) The warrant authorises any authorised officer to enter the premises —
  - (a) if the warrant was issued under subsection (2)(b)(i), at any reasonable time; or
  - (b) if the warrant was issued under subsection (2)(b)(ii), at any time.

## **29 Powers on entry to obtain information**

- (1) This section applies when an authorised officer enters premises under this Division or a warrant under section 28.
- (2) The authorised officer may do any or all of the following for the purposes of obtaining information that the Department needs to perform the functions conferred under Division 2 of Part 2 (core functions) —
  - (a) take to, into or onto the premises and use any person, equipment and materials the authorised officer reasonably requires;
  - (b) search any part of the premises;
  - (c) inspect, examine or film any part of the premises or anything at the premises;
  - (d) take an extract from, or copy, a document at the premises, or take the document to another premises to copy;
  - (e) produce an image or writing at the premises from an electronic document or, to the extent doing so is not practicable, take a thing containing an electronic document to another premises to produce an image or writing;
  - (f) remain at the premises for the time necessary to achieve the purpose; or
  - (g) a step necessary to exercise a power under paragraphs (a) to (f).
- (3) If the authorised officer takes a document from the premises to copy it, the officer must copy and return the document to the premises as soon as practicable.
- (4) If the authorised officer takes from the premises a thing reasonably capable of producing a document from an electronic document to produce the document, the officer must produce the document and return the thing to the premises as soon as practicable.
- (5) In this section —
  - “examine” includes analyse, test, account, measure, weigh, grade, gauge and identify.
  - “film” includes photograph, videotape or otherwise record an image; and
  - “inspect”, a thing, includes open the thing and examine its contents.

DIVISION 3 – ENTRY FOR FIRE INVESTIGATION OR ENFORCEMENT

**30 Powers of authorised officers in relation to investigating fires**

[SI 2006/1254/20]

- (1) An authorised officer may, at any reasonable time (by force if necessary), enter premises in which there has been a fire for the purpose of investigating —
  - (a) what caused the fire; or
  - (b) why it progressed as it did.
- (2) If an authorised officer exercises a power of entry under this section, the officer may —
  - (a) take onto the premises any other persons, and any equipment, that the officer considers necessary;
  - (b) inspect and copy any documents or records on the premises or remove them from the premises;
  - (c) carry out any inspections, measurements and tests in relation to the premises or an article or substance found on the premises, that the officer considers necessary;
  - (d) take samples of an article or substance found on the premises (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the investigation);
  - (e) dismantle an article found on the premises (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the investigation);
  - (f) take possession of an article or substance found on the premises and retain it for as long as is necessary for the purpose of —
    - (i) examining it and doing anything the officer has power to do under paragraph (c) or (e);
    - (ii) ensuring that it is not tampered with before the officer's examination of it is completed; or
    - (iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the investigation; and
  - (g) require a person present on the premises to provide the officer with any facilities, information, documents or records, or other assistance, that the officer may reasonably request.
- (3) The authorised officer must, if so required, produce evidence of the officer's authorisation under section 75 —
  - (a) before entering the premises; or
  - (b) at any time before leaving the premises.
- (4) If an authorised officer exercises the power in paragraph (2)(d), the officer must —



- (a) leave a written notice at the premises with a responsible person (or, if that is impracticable, fix the notice in a prominent position at the premises) giving particulars of the article or substance and stating that the officer has taken a sample of it; and
  - (b) if it is practicable to do so, give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
- (5) If an authorised officer exercises the power in paragraph (2)(f), the officer must leave a written notice at the premises with a responsible person (or, if that is impracticable, fix the notice in a prominent position at the premises) giving particulars of the article or substance and stating that the officer has taken possession of it.

### **31 Securing of premises following exercise of section 29 and 30 powers**

An authorised officer who, under section 29 or 30, enters premises –

- (a) that are unoccupied; or
- (b) from which the occupier is temporarily absent,

must on departure ensure that all reasonable measures have been taken to leave the premises effectively secured against unauthorised entry as the officer found them.

## **DIVISION 4 – OFFENCES**

### **32 Offence of failing to help when required**

- (1) A person commits an offence if –
  - (a) the person is required under section 30(2)(g) to do something; and
  - (b) the person, without reasonable excuse, contravenes the requirement.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

### **33 Offence of impersonating a fire and rescue officer or authorised officer**

- (1) A person commits an offence if the person impersonates a fire and rescue officer or an authorised officer.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £2,500.

### **34 Offence of giving false alarms**

[SI 2006/1254/23]

- (1) A person commits an offence if the person knowingly, recklessly or negligently gives, or causes to be given, a false alarm of an emergency to

a fire and rescue officer, an authorised officer or an officer of the Department.

- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both.
- (3) In this section, “emergency” includes any event or situation that could be the subject of an order under section 9.

### **35 Offence of obstructing official**

[SI 2006/1254/57]

- (1) A person commits an offence if the person, without reasonable excuse, obstructs an official.
- (2) A person guilty of an offence under subsection (1) is liable —
  - (a) on summary conviction to a fine not exceeding £5,000;
  - (b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.
- (3) If a person has obstructed an official and the official decides to proceed with their operational duties obstructed, the official must warn the person that —
  - (a) it is an offence to cause an obstruction, unless the person has a reasonable excuse; and
  - (b) the official considers the defendant’s conduct an obstruction.
- (4) In this section —

“obstruct” includes assault, impede, resist, and to obstruct and threaten to obstruct; and

“official” means —

  - (a) a person performing operational duties who is —
    - (i) a fire and rescue officer;
    - (ii) an authorised officer; or
    - (iii) a person helping the Department to perform its functions under an arrangement under section 21, 22 or 23; or
  - (b) someone helping a person mentioned in paragraph (a).

## **PART 4 — FIRE SAFETY DUTIES FOR RELEVANT PREMISES**

### **DIVISION 1 — INTERPRETATION**

#### **36 Definitions for this Part**

- (1) In this Part —

“**alteration notice**” means a notice given under section 50;

“**employee**” has the same meaning as in the Health and Safety at Work etc. Act 1974 (of Parliament) as applied to the Island by the Health and Safety at Work Order 1998<sup>4</sup>;

“**enforcement notice**” means a notice given under section 49;

“**fire safety duty**” is any –

- (a) duty imposed under Subdivision 1 of Division 2; or
- (b) a duty or requirement prescribed by regulations made under Subdivision 2 of Division 2 for fire safety in relevant premises;

“**prohibition notice**” means a notice given under section 48;

“**public road**” means a road repairable at the public expense;

“**relevant person**” for premises, means a person (other than a fire and rescue officer engaged in performing operational duties) who is, or may be –

- (a) lawfully in the premises; or
- (b) in its immediate vicinity if the person’s safety would be at risk if there were a fire or other emergency on the premises;

“**relevant premises**” means any premises other than –

- (a) premises occupied as a private dwelling (other than a house a house occupied by persons who do not form a single household);
- (b) shared common areas for multiple or collocated private dwellings;
- (c) a vehicle being used for exclusively private purposes;
- (d) premises occupied solely for the purposes of the armed forces of the Crown or by a visiting force (within the meaning of section 12(1) of the Visiting Forces Act 1952 (of Parliament) as applied in the Island);
- (e) premises situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;

“**work**” and “**at work**” have the same meaning as in the Health and Safety at Work etc. Act 1974 (of Parliament) as applied to the Island by the Health and Safety at Work Order 1998<sup>5</sup>; and

“**workplace**”, in relation to an employer and his or her employees, means relevant premises used for the purposes of an undertaking carried

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<sup>4</sup> SD 155/98

<sup>5</sup> SD 155/98

on by the employer and made available to an employee of the employer as a place of work, including other premises (other than a public road) —

- (a) used to get into or out of the relevant premises; or
- (b) other premises (other than a public road) at which facilities are provided to use in connection with the place of work.

### **37 Relationship with legislation for licensing relevant premises**

[SI 2006/1254/48]

- (1) This section applies if —
  - (a) an Act or statutory document provides for the licensing of premises or a person for premises;
  - (b) the authority responsible for dealing with licences under the provision is required or authorised to impose terms or conditions to the licences; and
  - (c) the licence is required for relevant premises.
- (2) A term, condition or restriction imposed for the licence is of no effect to the extent it is inconsistent with a matter for which requirements or prohibitions have been imposed under this Act.

## **DIVISION 2 — DUTIES OF EMPLOYERS EMPLOYEES AND PERSONS WHO CONTROL PREMISES**

### **SUBDIVISION 1 — FIRE SAFETY DUTIES**

### **38 Duties in relation to workplaces**

[SI 2006/1254/25]

- (1) An employer must ensure, so far as is reasonably practicable, the safety of his or her employees at the workplace in respect of harm caused, or that may be caused, by fire at the workplace.
- (2) The employer must —
  - (a) carry out an assessment in accordance with section 40 (risk assessments); and
  - (b) take in relation to the workplace such of the fire safety measures as are necessary to comply with his or her obligations under subsection (1).

### **39 Duties in relation to other relevant premises**

[SI 2006/1254/26]

- (1) A person who has control to any extent of relevant premises (other than a workplace) must —

- (a) carry out an assessment in accordance with section 40 (risk assessments); and
  - (b) take in relation to the premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his or her position to take to ensure the safety of relevant persons in respect of harm caused, or that may be caused, by fire in the premises.
- (2) If the person who has control of the premises is not —
- (a) the owner of the premises; or
  - (b) a person having control of the premises in connection with the carrying on by the person (whether for profit or not) of an undertaking,
- the owner of the premises must also comply with subsection (1).
- (3) However, if the person has control of premises only because the person has a contract or tenancy obligation, the general duty does not require the person to do anything more than the person must do to comply with the contract or tenancy.
- (4) In this section, “contract or tenancy obligation” means an obligation under a contract or tenancy —
- (a) that requires a person to maintain or repair premises, or anything in or on it; or
  - (b) about risks to the safety of persons from harm caused, or that may be caused, by fire in the premises.

#### **40 Duties to undertake risk assessments**

A person required under section 38 or 39 to undertake an assessment in accordance with this section must —

- (a) assess the premises in accordance with regulations under section 44 to identify risks to the safety of the following persons from harm caused, or that may be caused, by fire —
  - (i) for a workplace, employees at the premises; or
  - (ii) for another relevant premises, relevant persons for the premises;
- (b) if the assessment reveals one or more of the fire safety measures need to be taken to comply with the general duty, take the measures;
- (c) review the assessment in the way prescribed by the regulations and at the times or intervals prescribed by the regulations; and
- (d) if the review reveals additional fire safety measures need to be taken to comply with the person’s obligations under section 38 or 39, take the measures.

#### **41 Taking fire safety measures – considerations**

[SI 2006/1254/27]

- (1) This section applies if a person is required to take any fire safety measures.
- (2) The person must implement the fire safety measures on the basis of the following considerations –
  - (a) avoid risks;
  - (b) evaluate risks which cannot be avoided;
  - (c) combat risks at source;
  - (d) adapt to technical progress;
  - (e) replace the dangerous with the non-dangerous or the less dangerous;
  - (f) develop a coherent overall fire prevention policy covering technology, organisation of work and the influence of factors relating to the working environment;
  - (g) give collective fire safety measures priority over individual measures; and
  - (h) give appropriate instructions to relevant persons for the premises who are at the premises.

#### **42 Meaning of “fire safety measures”**

[SI 2006/1254/51]

- (1) Subject to subsection (2), the fire safety measures are –
  - (a) measures to reduce the risk of –
    - (i) fire in relevant premises; and
    - (ii) the risk of the spread of fire there;
  - (b) measures in relation to the means of escape from relevant premises;
  - (c) measures for securing that, at all material times, the means of escape from relevant premises can be safely and effectively used;
  - (d) measures in relation to the means of extinguishing, containing or controlling fires in relevant premises;
  - (e) measures in relation to the means of –
    - (i) detecting fires in relevant premises; and
    - (ii) giving warning in the event of fire, or suspected fire, in relevant premises;
  - (f) measures in relation to the arrangements for action to be taken in the event of fire in relevant premises (including, in particular, measures for the instruction and training of employees and for mitigation of the effects of fire); and

- (g) such other measures in relation to relevant premises as may be prescribed.
- (2) However, measures under subsection (1) do not include measures designed to prevent or reduce the likelihood of fire or to reduce its intensity that are required under health and safety legislation for work relating to —
  - (a) plant or machinery; or
  - (b) storing a dangerous substance.

#### **43 Duties of employees**

[SI 2006/1254/28]

Each employee carrying out work at a workplace must —

- (a) take reasonable care for the safety of —
  - (i) relevant persons for the workplace and who are at the workplace (including the employee) from harm caused, or that may be caused, by fire at the workplace; and
  - (ii) persons who may be affected by the employee's acts or omissions; and
- (b) co-operate with the employer to the extent the employer needs to comply with the employer's fire safety duties.

#### SUBDIVISION 2 — POWERS TO MAKE REGULATIONS ABOUT FIRE SAFETY

#### **44 Risk assessments – power to make regulations**

[SI2006/1254/29]

- (1) The Department may by regulations make provision about the carrying out of assessments and reviews under section 40.
- (2) Regulations under paragraph (1) may in particular make provision for or in connection with —
  - (a) specifying matters which persons shall take into account when carrying out assessments and reviews in relation to substances specified in the regulations;
  - (b) specifying other matters which persons must take into account when carrying out assessments and reviews;
  - (c) requiring persons to carry out assessments and reviews before employing persons of a description so specified;
  - (d) requiring persons in such circumstances as may be so specified to keep records of such information as may be so specified; and
  - (e) specifying circumstances in which reviews must be carried out.

**45 Fire safety – power to make regulations**

[SI2006/1254/30]

- (1) The Department may by regulations make provision about safety in relevant premises.
- (2) Regulations may in particular make provision for or in connection with –
  - (a) precautions that must be taken or observed;
  - (b) imposing requirements on persons (including requirements about the enforcement of any provision included in the regulations);
  - (c) the provision, maintenance and keeping free from obstruction of any means of escape in case of fire;
  - (d) the provision and maintenance of means for securing that any means of escape can be safely and effectively used at all material times;
  - (e) the provision and maintenance of means for extinguishing, containing or controlling fire and means for giving warning in the event of fire;
  - (f) the internal construction of premises and the materials used in that construction;
  - (g) prohibiting the presence or use in relevant premises of equipment of a description specified in the regulations, or prohibiting its presence or use unless standards, or conditions, so specified are complied with;
  - (h) where relevant premises form part of a building, enabling arrangements to be entered into with owners or occupiers of other parts of the building for the purpose of enabling persons who are subject to duties imposed by virtue of this Part to comply with them;
  - (i) securing that employees receive appropriate instruction or training in what to do in the event of fire;
  - (j) securing that, in circumstances so specified, numbers of attendants so specified are stationed in parts of the relevant premises so specified;
  - (k) the keeping of records of instruction or training given, or other things done, in pursuance of the regulations; and
  - (l) the giving of assistance or information by any person concerned in the enforcement of requirements imposed by virtue of this Part to any other person so concerned for the purposes of any such requirement.



DIVISION 3 — POWERS FOR RELEVANT PREMISES

SUBDIVISION 1 — ENFORCEMENT

**46 Enforcement**

[SI 2006/1254/33]

- (1) The Department must enforce the fire safety duties (within the meaning of section 36).
- (2) An authorised officer may do anything necessary to enforce the duties, and in particular may —
  - (a) at any reasonable time (or, in a situation which in the officer's opinion is or may be dangerous, at any time), enter relevant premises and inspect the whole or part of the premises and anything in them;
  - (b) take onto the relevant premises any other persons, and any equipment, that the officer considers necessary;
  - (c) require a person on the relevant premises who is subject to any of the fire safety duties to provide the officer with any —
    - (i) facilities, information, documents or records; or
    - (ii) other assistance,which relate to those duties and which the officer may reasonably request;
  - (d) inspect and copy any documents or records on the relevant premises or remove them from the premises;
  - (e) carry out any inspections, measurements and tests in relation to the premises or an article or substance found on the relevant premises, that the officer considers necessary;
  - (f) take samples of an article or substance found on the relevant premises for the purpose of ascertaining its fire resistance or flammability;
  - (g) if an article found on the relevant premises appears to the officer to have caused or to be likely to cause danger to the safety of a relevant person in the event of fire, dismantle the article (but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the inspection); and
  - (h) take possession of an article or substance found in the relevant premises and retain it for as long as is necessary for the purpose of —
    - (i) examining it and doing anything the officer has power to do under sub-paragraph (e) or (g);
    - (ii) ensuring that it is not tampered with before the officer's examination of it is completed; and

- (iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the inspection.
- (3) The authorised officer must, if so required, produce evidence of the officer's authorisation under section 75 —
  - (a) before entering the premises; or
  - (b) at any time before leaving the premises.
- (4) If an authorised officer exercises the power in paragraph (2)(f), the officer must —
  - (a) leave a written notice at the relevant premises with a person who is subject to a fire safety duty in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the premises) giving particulars of the article or substance and stating that the officer has taken a sample of it; and
  - (b) if it is practicable to do so, give such a person at the relevant premises a portion of the sample marked in a manner sufficient to identify it.
- (5) Before exercising the power in paragraph (2)(g), an authorised officer must consult such persons as appear to the officer to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the officer proposes to do under that power.
- (6) If requested to do so by a person present in the relevant premises who is subject to a fire safety duty in relation to the premises, an authorised officer must cause —
  - (a) anything that the officer proposes to do on the premises under the power in subsection (2)(d) or (e); or
  - (b) anything that the officer proposes to do under the power in subsection (2)(g);to be done in the presence of that person.
- (7) If an authorised officer exercises the power in paragraph (2)(h), the officer must leave a written notice at the relevant premises with a person who is subject to any of the fire safety duties in relation to the premises (or, if that is impracticable, fix the notice in a prominent position at the premises) giving particulars of the article or substance and stating that the authorised officer has taken possession of it.
- (8) The chief officer may make an arrangement (with or without payment) with another relevant body for persons mentioned in section 75(3)(b), (c) or (d) (authorised officers: appointment) to be appointed as authorised officers in accordance with section 73.

#### **47 Securing of premises following exercise of section 46 powers**

An authorised officer who, under section 46, enters premises —

- (a) that are unoccupied; or
- (b) from which the occupier is temporarily absent,

must on departure ensure that all reasonable measures have been taken to leave the premises effectively secured against unauthorised entry as the officer found them.

#### **48 Prohibition notices**

[SI 2006/1254/36]

- (1) If subsection (2) applies, an authorised officer may serve a prohibition notice on the occupier of relevant premises.
- (2) This subsection applies if, having regard to anything that may stop or impede the escape of relevant persons for the premises from the premises, the authorised officer considers that use of the premises involves, or will involve, a risk to relevant persons for the premises so serious that using them ought to be prohibited or restricted.
- (3) A prohibition notice must be in writing and must —
  - (a) state that the authorised officer considers that subsection (2) applies;
  - (b) specify the matters that the officer considers give rise or will give rise to the risk;
  - (c) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the matters specified under paragraph (b) have been remedied; and
  - (d) subject to subsection (4), specify when the notice takes effect.
- (4) The notice may specify that it takes effect on service of the notice only if the authorised officer considers that, in consequence of the matters specified under subsection (3)(b), there is or will be an imminent risk of serious personal injury to relevant persons for the premises.
- (5) A prohibition notice may include the steps that must be taken to remedy the matters specified in the notice.
- (6) Before serving a prohibition notice for a house on persons who do not form a single household, the authorised officer must, if practicable, give written or oral notice of intention to give the prohibition notice and the prohibition or restriction under it to —
  - (a) an environmental health officer; and
  - (b) the relevant local authority for the area in which the premises is situated.
- (7) However, a failure to give the notice of intention does not affect the validity of the prohibition notice.

- (8) The prohibition notice must be given to the owner of the premises and to anyone else who, to the authorised officer's knowledge, occupies the premises.

#### **49 Enforcement notices**

[SI 2006/1254/37]

- (1) If an authorised officer considers that a person (other than an employee) has failed to comply with a fire safety duty, the officer may serve an enforcement notice on that person.
- (2) An enforcement notice must be in writing and must —
- (a) state that the officer considers that the person on whom the notice is served has failed to comply with the fire safety duty specified in the notice;
  - (b) specify why the officer considers that the person has failed to comply with the duty in question; and
  - (c) require the person, before the expiry of the period specified in the notice (being a period of at least 28 days), to take the action so specified.
- (3) If the steps involve altering the premises, the authorised officer must, before giving the enforcement notice, consult with —
- (a) anyone whose consent to the alteration would be required under an Act or statutory document;
  - (b) the local authority for the area in which the premises are situated; and
  - (c) anyone else the authorised officer considers appropriate.
- (4) However, a failure to consult does not affect the validity of the enforcement notice.

#### **50 Alteration notices**

[SI 2006/1254/37 & 38]

- (1) If subsection (2) or (3) applies in relation to relevant premises, an authorised officer may serve an alterations notice on the appropriate person in relation to the premises.
- (2) This subsection applies if there would be a serious risk to relevant persons for relevant premises in respect of harm caused, or that may be caused, by fire in the premises.
- (3) This subsection applies if —
- (a) subsection (2) does not apply; but
  - (b) if any of the changes specified in subsection (6) were made, it is likely that subsection (2) would apply.

- (4) An alterations notice must be in writing and must require a person to notify an authorised officer if –
  - (a) it is proposed that a change specified in subsection (6) be made to the relevant premises; and
  - (b) if made, the change would constitute a serious risk to relevant persons for the premises in respect of harm caused, or that may be caused, by fire in the premises.
- (5) Notification under subsection (4) must be made at least 28 days before any change is commenced.
- (6) The changes referred to in subsections (3) and (4) are –
  - (a) a change to the relevant premises;
  - (b) a change to the services, fittings or equipment on the relevant premises;
  - (c) an increase in the quantities of dangerous substances which are present on the relevant premises; or
  - (d) a change in any use to which the relevant premises are put.
- (7) The authorised officer may include in an alterations notice provision requiring the person to do either or both of the following –
  - (a) include, or accompany with, the notice –
    - (i) an assessment carried out in accordance with section 40 (risk assessments) for the premises as it is proposed to be changed; and
    - (ii) a summary of the changes the appropriate person proposes to make to the fire safety measures for the premises because of the change; and
  - (b) keep the records prescribed by the regulations for the purposes of section 44(2)(d) for assessments or reviews carried out in accordance with section 40 or to plan, organise or monitor measures for the premises.
- (8) In this section, “appropriate person” in relation to relevant premises means a person subject to a requirement under section 38 or 39.

## **51 Determination of disputes**

[SI 2006/1254/39]

- (1) If –
  - (a) an authorised officer considers that a person has failed to comply with any of the fire safety duties; and
  - (b) the person and the authorised officer cannot agree on what (or whether any) action is required to be taken for the person to comply with the duty,

the person and the authorised officer may agree to refer the matter to an arbitrator (appointed by agreement between them) for determination.

- (2) The Department may, by regulation, make provision about references and determinations under this section.
- (3) Subject to subsection (4), if a determination is made under this section, an authorised officer may not —
  - (a) serve an enforcement notice; or
  - (b) include a direction in the notice,if the notice or the direction would conflict with the determination.
- (4) Subsection (4) does not apply if, after the date of the determination, the risk to relevant persons significantly increases because a change is made to —
  - (a) the relevant premises; or
  - (b) the use to which the relevant premises are put.

## **52 Effect on enforcement notice of subsequent acquittal in relevant proceeding**

If the person to whom the enforcement notice applies is acquitted of an offence for which the act or omission the subject of the notice is an element, the notice is taken never to have had any effect.

## **53 Declaratory provisions**

- (1) The powers under this Part to give a notice for a matter may be exercised —
  - (a) whether or not a proceeding for an offence has been started for the matter; and
  - (b) even if the person to whom the notice applies has been convicted of an offence for the matter.
- (2) An exercise of the powers does not affect any other action under this or another Act that may be taken for the matter.

## **54 Notice of appeal rights**

A notice under this Part must include, or be accompanied by, a written notice stating —

- (a) the decision to give the notice and the reasons for it;
- (b) for a prohibition notice, when it takes effect;
- (c) any period stated for compliance with the notice;
- (d) that, under section 58, the person to whom the notice applies may appeal against the decision; and

- (e) how to appeal.

## **55 Notices bind all owners and occupiers**

- (1) Unless it is withdrawn, a notice under this Part binds anyone who from time to time owns or occupies the relevant premises to which the notice applies.
- (2) A reference in this Act to the person to whom a notice applies is taken to include a reference to anyone bound by it under subsection (1), jointly and severally with the person stated in the notice.

## **56 Offence of failing to comply with notice**

- (1) A person commits an offence if —
  - (a) the person is bound by a prohibition notice, an enforcement notice or an alterations notice; and
  - (b) the person contravene the notice.
- (2) A person guilty of an offence under subsection (1) is liable —
  - (a) on summary conviction to a fine not exceeding £5,000;
  - (b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.

## **57 Injunctions**

- (1) The Department may apply to the High Court for an injunction to —
  - (a) enforce compliance with a notice given under this Part; or
  - (b) restrain a person from continuing to occupy relevant premises in contravention of a prohibition notice.
- (2) Subsection (1) does not relieve a person from criminal liability incurred because of any contravention of the notice.

### SUBDIVISION 2 — APPEALS

## **58 Appeal right**

- (1) A person to whom subsection (2) applies may appeal to a court of summary jurisdiction against a decision to give a prohibition notice, an enforcement notice or an alterations notice.
- (2) This subsection applies to —
  - (a) a person on whom the notice is served; and
  - (b) if the notice is a prohibition notice, a person who in relation to the premises to which the notice relates is subject to the obligations mentioned in sections 38, 39, 40 or 41.

- (3) An appeal may be started only —
  - (a) under the rules of court; and
  - (b) within 21 days after the appellant is given notice of the original decision.
- (4) An appeal is to be —
  - (a) by way of rehearing anew; and
  - (b) decided under the rules of court.
- (5) On hearing an appeal the court may —
  - (a) confirm, vary or reverse the original decision, and, for that purpose, has the same powers as the person who made the original decision; and
  - (b) make an order as to the costs of the appeal.
- (6) A variation or reversal of the original decision —
  - (a) is taken for this Act, other than this Division, to be the original decision; but
  - (b) does not affect its previous operation or anything done or suffered under it.

#### **59 Effect of appeal on original decision**

- (1) An appeal stays the original decision until the appeal or any appeal against it ends if the original decision was about an enforcement notice or alteration notice.
- (2) Appeals about other original decisions do not affect the operation of the decision or prevent it from being implemented unless the decision is stayed on the appellant's application by an order of the court.

#### **60 Further High Court appeal**

A further appeal from a decision of the court lies to the Staff of Government Division, under rules of court, on a question of law.

### **DIVISION 4 — OFFENCES**

#### **61 Offence of failing to comply with obligation in relation to relevant premises**

- (1) A person commits an offence if —
  - (a) the person fails to comply with a fire safety duty; and
  - (b) the failure causes a person of the following kind to be put at risk of death or injury from fire —
    - (i) for a workplace, employees at the premises; or



- (ii) for another relevant premises, a relevant person for the premises.
- (2) A person guilty of an offence under subsection (1) is liable —
  - (a) on summary conviction to a fine not exceeding £5,000;
  - (b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.
- (3) A defendant to a proceeding for an offence under subsection (1) in relation to a failure to comply with a duty under section 38 bears the onus of proving why it was not reasonably practicable to do more (or other) than what the defendant did.

## **62 Offence of failing to comply with obligation in relation to workplace**

- (1) An employee commits an offence if —
  - (a) the employee fails to comply with an obligation imposed on the employee under section 43; and
  - (b) the failure causes a relevant person for the workplace to be put at risk of death or injury from fire.
- (2) A person guilty of an offence under subsection (1) is liable —
  - (a) on summary conviction to a fine not exceeding £5,000;
  - (b) on conviction on information, to custody for a term not exceeding 2 years, or to a fine, or to both.

## **63 Offence of failing to help when required**

- (1) A person commits an offence if —
  - (a) the person is required under section 46(2)(c) to do something; and
  - (b) the person, without reasonable excuse, contravenes the requirement.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

## **64 Offence of giving false information**

- (1) A person commits an offence if —
  - (a) the person knowingly or recklessly gives a fire and rescue officer or an authorised officer a document or information for a purpose under this Act; and
  - (b) the document or information is false or misleading in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

**65 Offence of keeping false or misleading records**

- (1) A person commits an offence if —
  - (a) the person must keep a record of information for a purpose under this Act; and
  - (b) the record that the person keeps is false or misleading in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £5,000.

**66 Vicarious liability for employees and agents**

[SI 2006/1254/43]

- (1) This section applies in proceedings for an offence under this Part.
- (2) An act or omission by an employee at a workplace in the course of his or her employment or engagement is taken to have also been made by the employer.
- (3) An act or omission by an agent of a person (the “principal”) required to do something under section 39 or 40 within the scope of the agent’s authority is taken to have also been made by the principal.
- (4) Subsections (2) and (3) —
  - (a) do not stop a proceeding against the employee or agent for an offence against section 61 or another offence concerning the act or omission from being started; and
  - (b) apply whether or not —
    - (i) a proceeding has started;
    - (ii) if a proceeding has started, it has resulted in a conviction;
    - (iii) the act or omission took place with the employee’s or principal’s approval; and
    - (iv) the act or omission constituted an offence against section 61.
- (5) In this section, “authority” means any type of authority from the person, whether express or implied or actual or apparent, and whether precedent or subsequent to the act or omission.

DIVISION 5 — DEFENCE AND EXEMPTION

**67 Due diligence defence for certain offences**

- (1) This section applies in a proceeding for an offence under section 56, 61 (other than an offence for a failure to comply with a requirement under section 38), 62, 63, 64 and 65.

- (2) It is a defence for the defendant to prove that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence.
- (3) The defendant bears the onus of proving the matters mentioned in subsection (2).

## **68 Special case: temporary suspension of fire safety duties**

[SI 2006/1254/32]

- (1) This section applies to a person holding an office or position as follows —
  - (a) a member of the armed forces of the Crown or a visiting force (within the meaning of section 12(1) of the Visiting Forces Act 1952 (of Parliament));
  - (b) a constable;
  - (c) a member of an ambulance or paramedical service;
  - (d) a member of another service lawfully performing functions in relation to an emergency; or
  - (e) an office or position of another type prescribed by the regulations.
- (2) If complying with a fire safety duty would prevent the person from performing the person's operational duties for relevant premises, the fire safety duty does not apply while the person is performing the operational duties.
- (3) However, the person must, while performing the operational duties during the period, ensure so far as possible the safety of relevant persons for the premises from fire in the premises.
- (4) Regard may be had to a contravention of subsection (3) for any decision about disciplinary action against the person under this Act or any other relevant law.

## **PART 5 — OPERATION OF THE ISLE OF MAN FIRE AND RESCUE SERVICE**

### **DIVISION 1 — DEPARTMENT'S FUNCTIONS**

## **69 Department's main functions**

- (1) The Department must ensure the Isle of Man Fire and Rescue Service (the "service") is secured, maintained, administered and managed and that it is done so effectively and efficiently and, for that purpose, it may in particular —

- (a) provide, maintain, manage, furnish or equip premises it considers necessary;
  - (b) provide fire and rescue officers with uniforms and other personal equipment;
  - (c) provide and maintain vehicles and scientific, technical, training and other equipment needed by fire and rescue officers; and
  - (d) give safety advice and information.
- (2) The Department must, after consulting with the chief officer, make a document about the policies, objectives and priorities of the service for each term of the Keys.

## 70 **Inquiries into the Isle of Man Fire and Rescue Service**

The Department may hold an inquiry into –

- (a) how the fire and rescue functions have been performed, or are being, performed;
- (b) any aspect of that performance; or
- (c) the steps taken to deal with a particular emergency.

### DIVISION 2 – FIRE AND RESCUE OFFICERS

#### SUBDIVISION 1 – THE CHIEF OFFICER

## 71 **Appointment and term of office**

- (1) The Department must, by written notice, appoint a person as the Chief Fire and Rescue Officer (the “**chief officer**”).
- (2) The person must, in the opinion of the Department, have the appropriate qualifications, experience and competence.
- (3) The appointment may, but need not, be for a fixed term.
- (4) Subject to subsections (5) to (8), if it appears to the Department to be in the interests of the efficiency and effectiveness of the service, or otherwise in the public interest, to do so, the Department may –
  - (a) dismiss the chief officer;
  - (b) suspend the chief officer from duty, or
  - (c) require the chief officer to resign with effect from such date as the Department may specify.
- (5) Before exercising its powers under subsection (4) the Department must –
  - (a) give the chief officer an opportunity to make representations; and
  - (b) consider the representations; and

- (c) if the Department determines to dismiss the chief officer, or to require the chief officer to resign, give him or her not less than 28 days' notice in writing of its intention to do so.
- (6) Within 28 days of the giving of a notice under subsection (5)(c) the chief officer may, by notice in writing to the Chief Secretary, appeal to the Council of Ministers, and in that event the Department may not dismiss the chief officer, or require him or her to resign, without the consent of the Council of Ministers.
- (7) If the chief officer appeals under subsection (6), the Council of Ministers must appoint a person to hold an inquiry, and the appointed person must –
  - (a) invite the Department and the chief officer to make representations to the appointed person in writing with respect to the intended dismissal or requirement to resign;
  - (b) give the Department and the chief officer an opportunity to appear before the appointed person and to make oral representations to him or her; and
  - (c) report in writing to the Council of Ministers with respect to the intended dismissal or requirement to resign and the representations made.
- (8) The Council of Ministers must not give its consent under subsection (6) until it has considered the report mentioned in subsection (7)(c), and must cause a copy of the report to be laid before Tynwald.
- (9) In considering the interests of the efficiency and effectiveness of the service under subsections (4) to (8), the Department may have regard to any contravention of a direction or requirement from it to the chief officer under this Act.

## **72 Functions**

- (1) The chief officer must ensure the strategy made under section 69(2) is effectively and efficiently implemented.
- (2) The chief officer may promote fire and rescue officers, discipline them, or decide their disposition.
- (3) However, a person may be promoted to a position in the Department immediately below that of the chief officer only with the Department's approval.

## **73 Power to appoint fire and rescue service officers**

- (1) As well as the chief officer, the Department must, by written notice, appoint and retain enough individuals as fire and rescue service officers to allow the Department to perform the fire and rescue functions effectively and efficiently.

- (2) The individuals must, in the opinion of the Department, have the appropriate qualifications, experience and competence.

#### **74 Departmental directions**

[SI 2006/1254/56]

- (1) The Department may give the chief officer a written direction about the performance of the chief officer's functions, to allow it to —
  - (a) make or review the document made under section 69(2); or
  - (b) perform any of the fire and rescue functions.
- (2) The direction may be general or specific.
- (3) The chief officer must comply with the direction.

#### SUBDIVISION 2 – OTHER OFFICERS

#### **75 Authorised officers: appointment**

[P2004/21/28]

- (1) The Department may, by written notice, appoint persons as authorised officers.
- (2) An authorised officer's functions are to —
  - (a) do fire investigations; and
  - (b) enforce the fire safety duties.
- (3) A person may be appointed as an authorised officer only if the person is —
  - (a) a fire and rescue officer;
  - (b) a person holding office as an authorised officer or a similar office (however described) under the Health and Safety at Work Act 1974 (of Parliament) as applied to the Island by the Health and Safety at Work Order 1998<sup>6</sup>;
  - (c) an environmental health officer; or
  - (d) someone else of a class prescribed by the regulations.

#### **76 Appointment conditions and limit on powers**

- (1) An authorised officer holds that office subject to any conditions, conditions prescribed by the regulations stated in the person's notice of appointment or conditions in a written notice from the Department to the officer.

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<sup>6</sup> SD 155/98

- (2) The conditions may limit the powers under this Act that would otherwise apply for the holding of the office, including, for example, by limiting the functions to —
  - (a) obtaining information for an inquiry under section 70;
  - (b) a particular fire investigation or type of fire investigation;
  - (c) particular fire safety duties; or
  - (d) technical matters relating to those functions.

#### **77 Issue of identity card**

- (1) The Department must give an identity card to each authorised officer.
- (2) The identity card must —
  - (a) contain a recent photograph of the authorised officer;
  - (b) contain the signature of the individual who authorised the issue of the card;
  - (c) identify the person as an authorised officer for this Act; and
  - (d) state an expiry date for the card.

#### **78 Production or display of identity card**

In exercising a power in relation to another person in that person's presence, an authorised officer must —

- (a) produce the authorised officer's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person while exercising the power.

### **DIVISION 3 — PROTECTION OF INFORMATION BY FIRE AND RESCUE OFFICERS**

#### **79 Restriction on disclosure of confidential information**

[SI 2006/1254/58]

- (1) This section applies to a person who —
  - (a) is performing, or has performed, functions as a fire and rescue officer or as an authorised officer; and
  - (b) has, in that capacity, acquired information that is not publicly available or has or had access to, or custody of, a document containing information of that kind.
- (2) The person must not —
  - (a) make a record of the information;
  - (b) whether directly or indirectly, divulge or communicate the information; or

- (c) use the information to benefit any person.
- (3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding £2,500.
- (4) However, subsection (2) does not apply if the record is made, or the information is divulged, communicated or used —
  - (a) to the extent necessary to perform the person's functions as a fire and rescue officer or authorised officer;
  - (b) with the consent of the person to whom the protected information relates;
  - (c) as required or permitted by law; or
  - (d) for a proceeding (including arbitration).

## PART 6 — MISCELLANEOUS PROVISIONS

### 80 Evidentiary provisions

- (1) This section applies to a proceeding under or relating to this Act.
- (2) The following must be presumed, unless a party to the proceeding, by reasonable notice, requires proof of it —
  - (a) a person's appointment as —
    - (i) a fire and rescue officer;
    - (ii) an authorised officer; or
    - (iii) a person helping the Department to perform a fire and rescue function, under an arrangement under section 22; and
  - (b) the person's power to do anything under this Act.
- (3) A certificate signed, or purporting to be signed, by the chief officer stating any of the following matters is evidence of the matter —
  - (a) that a stated document of any of the following types is a document given, issued, kept or made under this Act —
    - (i) an appointment, approval or decision; or
    - (ii) a notice or other document; or
  - (b) that a stated document is a copy of, or an extract from or part of, a document mentioned in paragraph (a).

### 81 Time limit on proceedings for summary offences

- (1) A summary proceeding for an offence against this Act may be commenced only before the later of the following —
  - (a) 3 years after the offence was committed; or



- (b) 6 months after the prosecutor first had sufficient evidence of the offence.
- (2) For subsection (1)(b), a prosecutor's certificate stating when the prosecutor first had the sufficient evidence is evidence of that fact.
- (3) Subsection (1) is an express contrary provision for section 75(1) of the *Summary Jurisdiction Act 1989*.
- (4) In this section —  
“prosecutor's certificate” means a certificate signed, or purporting to be signed, by or for the prosecutor; and  
“sufficient evidence”, of the offence, means evidence that, in the prosecutor's opinion, was sufficient to justify the proceeding.

## 82 Liability of officers of bodies

- (1) This section applies if —
  - (a) an offence against this Act is committed by a body corporate, a partnership or an unincorporated body (the “body”); and
  - (b) it is proved an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent the commission of the offence (“in default”).
- (2) The officer, as well as the body, commits the offence.
- (3) A person guilty of an offence under this section is liable on summary conviction or on conviction on information to the maximum penalty for the offence by the body.
- (4) However, the following apply if a company is an officer of the body —
  - (a) if it is proved an officer of the company was in default, both the company and the officer of the company commit the offence; and
  - (b) if it is not proved an officer of the company was in default, the company does not commit the offence.
- (5) In this section —  
“officer” means —
  - (a) if the body is incorporated, any of the following of the body —
    - (i) a director, secretary or other similar officer;
    - (ii) a person purporting to act as a director, secretary or other similar officer;
    - (iii) if the affairs of the body are managed by its members, a member; and
    - (iv) if, under an Act about the incorporation of the body, the body has a registered agent, the registered agent.
  - (b) if the body is not incorporated —

- (i) if its affairs are being managed by its members, a member of the body;
  - (ii) if its affairs are not being managed by its members, a member of its governing body; and
  - (iii) a manager, secretary, registered agent or similar officer of the body; or
- (c) if the body is a partnership, a partner, manager, secretary, registered agent or similar officer of the partnership; and

“partner” includes a person holding himself or herself out to be a partner (within the meaning of section 16(1) of the Partnership Act 1909).

### 83 Guidelines

- (1) The Department may make guidelines about compliance with this Act.
- (2) The guidelines may be made by applying, adopting or incorporating, with or without modification, the provisions of any document (whether a law, code, standard or other document of the Island or another jurisdiction) as in operation at a particular time, or as in operation from time to time.
- (3) The Department must publish the guidelines in a way it considers will be likely to bring them to the attention of those likely to be affected by the guidelines.
- (4) A contravention of the guidelines does not of itself constitute an offence or civil wrong.
- (5) A provision of guidelines is admissible in evidence in a criminal or civil proceeding if —
  - (a) a person is alleged to have contravened this Act; and
  - (b) the provision appears to be relevant to the contravention.

### 84 General regulation-making power

- (1) The Department may make regulations for this Act’s purpose.
- (2) Regulations may do any or all of the following —
  - (a) contain incidental, supplementary, consequential, transitory, transitional and saving provisions the Department considers are necessary or convenient for the purpose;
  - (b) make provisions about fire safety in workplaces, relevant premises or for shared common areas for multiple or collocated private dwellings;
  - (c) impose requirements for carrying out assessments in accordance with section 40 (risk assessments) or reviews for fire safety duties, or for when they must be carried out;

- (d) make provisions about the safety of fire and rescue officers, authorised officers and firefighters;
  - (e) modify the definition of “premises” in section 3 and “relevant premises” in section 36;
  - (f) create offences for contraventions of the regulations and impose penalties of no more than £5,000 for the offences; or
  - (g) impose fees for this Act.
- (3) Subsection (2) and other specific regulation-making powers under this Act do not limit the regulation-making power under subsection (1).

## 85 Tynwald procedure for regulations

Regulations under this Act must not come into operation unless they are approved by Tynwald.

# PART 7 — CLOSING PROVISIONS

## DIVISION 1 — REPEAL OF ACTS

## 86 Repeals

The following (a “**repealed Act**”) are repealed —

- (a) the Fire Escapes Act 1950;
- (b) the Fire Precautions Act 1975;
- (c) the Fire Services Act 1984; and
- (d) the Fire Precautions Amendment) Act 1992.

## DIVISION 2 — SAVINGS AND TRANSITIONAL PROVISIONS

[To be inserted following consultation]

## DIVISION 3 — AMENDMENTS

[To be inserted following consultation]



**CONSULTATION CRITERIA**

**The Six Consultation Criteria**

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

## **APPENDIX D**

### **LIST OF PERSONS OR BODIES CONSULTED REGARDING THIS BILL**

- Tynwald Members
- Attorney General
- Local Authorities
- Chief Officers
- Isle of Man Chamber of Commerce
- Isle of Man Law Society
- Isle of Man Construction Forum
- Isle of Man Employers Federation
- TUC
- Estate agents
- Landlords Association
- Liberal Vannin
- Manx Labour Party
- Positive Action Group
- Third Sector Forum



**Isle of Man**  
Government

*Reiltys Ellan Vannin*



These documents can be provided in large print or on audio tape upon request

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