

## Fire Safety – 2. Scotland

### Scope and context

As owners or occupiers of a hut, clubs have a legal duty of care to make their premises safe to use. Fire safety forms a major part of this duty.

### The Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006

Part 3 of the Fire (Scotland) Act 2005, and the Fire Safety (Scotland) Regulations came into force in late 2006. They consolidated and modernised fire safety legislation.

### Who is affected?

The legislation affects 'relevant premises' which more-or-less includes all non-domestic premises and therefore applies to mountaineering huts. Section 78 of the Act defines what premises are covered – [www.opsi.gov.uk/legislation/scotland/acts2005/20050005.htm](http://www.opsi.gov.uk/legislation/scotland/acts2005/20050005.htm)

Duties are placed on owners, employers and others in control of relevant premises. In addition, those with obligations of maintenance and/or repair of relevant premises, or obligations regarding fire safety in terms of a contract or a tenancy agreement, must also comply with the legislation.

### What are the requirements?

The legal duty which is imposed by the legislation seeks to achieve safety in the event of fire and can be considered in terms of seven general requirements:

- Carrying out a fire safety risk assessment of the premises;
- Identifying the fire safety measures necessary as a result of the fire safety risk assessment outcome;
- Implementing these fire safety measures using risk reduction principles;
- Putting in place fire safety arrangements for the ongoing control and review of the fire safety measures;
- Complying additionally with the specific requirements of the fire safety regulations;
- Keeping the fire safety risk assessment and outcome under review; and
- Record keeping.

### Risk assessment

The legislation introduced a new fire safety regime based on fire risk assessment. A risk assessment must be carried out to identify risks to the safety of persons in the event of a fire in the premises. In addition, all reasonable fire safety measures must be taken to ensure safety from harm caused by fire, including –

- reducing the risk and spread of fire;
- effective provision regarding escape routes from premises;

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- fire fighting and appropriate actions to be taken in the event of a fire;
- any other measures that may be prescribed by the Scottish Parliament.

### Notes:

1. It is essential that the risk assessment is specific to fire safety and to the premises concerned. An overall generic risk assessment will not be sufficient. It is also essential that the person who undertakes this fire safety risk assessment is proficient to do so.

2. Your risk assessment should include plans as to how to alert and evacuate any disabled persons. See guideline no. 4 Disability Discrimination for details of where you can seek specialist advice.

### Enforcement

Enforcement authorities have the power to enforce the legislation. Powers include the power to serve –

- a *prohibition notice* – where the use of the premises involves a risk so serious that it ought to be prohibited or restricted;
- an *enforcement notice* – where there has been a failure to comply with the duties. This will provide for at least 28 days to rectify the situation;
- an *alteration notice* – where there is a serious risk of harm from fire, or where proposed alteration of the premises would result in such a risk.

Those who fail to comply with the legislation may be found guilty of committing a criminal offence. Where the non-compliance could put people at risk of death or serious injury those responsible may be fined up to £20,000 and/or face imprisonment up to 2 years. Other failures that would not put persons at such serious risk could result in a fine not exceeding level five on the summary scale, currently £5,000.

It should be noted that if a successful prosecution was to be brought due to failure to comply with the relevant legislation then cover may not be provided by the present Mountaineering Scotland civil liability insurance (see guideline no. 6) since the specific exclusions include 'fines, penalties and punitive damages' and 'deliberate, dishonest or foreseeable acts' and it should be remembered that ignorance of the law is not a defence in law.

### The Fire Safety (Scotland) Regulations 2006

These Regulations came into force at the same time as Part 3 of the 2005 Act. They provide further guidance on compliance, such as the type of risk assessment that is required and what constitutes appropriate fire safety measures.

Comprehensive information and guidance notes are available from –

[www.scotland.gov.uk/Topics/Justice/public-safety/Fire-Rescue/FireLaw/FireLaw](http://www.scotland.gov.uk/Topics/Justice/public-safety/Fire-Rescue/FireLaw/FireLaw)

and these will provide you with all the information required to assist you to comply with the Act and current Regulations – click on the link 'General Guidance', which covers the following topics –

- Fire safety measures
- Fire safety risk assessment

and various guidance documents (.pdf) are provided –

- An overview of the fire safety legislation
- Evacuation of disabled persons from buildings

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There is also a link to sector specific guidance (available in .pdf).

Of particular relevance in the sector specific guidance is *Practical Fire Safety Guidance for Small Premises Providing Sleeping Accommodation*, which applies to premises of up to 2 storeys in height with a maximum single storey area of 200m<sup>2</sup>. A different set of guidelines *Practical Fire Safety Guidance for Medium and Large Premises* apply to any premises providing sleeping accommodation with any single storey area over 200 m<sup>2</sup>.

### Further guidance

The guidance referred to in the para. above states that in the event that the guidance is read by persons with duties under the *Fire (Scotland) Act 2005* (as amended) and those persons feel unable to apply the guidance, then they should seek assistance from someone with sufficient technical knowledge. **N.B.** In this respect the Fire & Rescue Authority, as principal enforcer of the legislation, cannot undertake the role. However, the authority does have a statutory requirement to provide general advice on request about issues relating to fire safety and should be able to provide information and advice that will assist duty holders to understand their obligations under the law. The contact details for the Scottish Fire & Rescue Service can be found on [www.firescotland.gov.uk](http://www.firescotland.gov.uk)

**Note:** Different legislation applies in England & Wales – see guideline no. 3.1 in this series.

**Note:** If viewing this .pdf while online then clicking on any **URL** will take you to that website.

### About Hut Guidelines

These guidelines have been produced by the Huts Advisory Group of Mountaineering Scotland and the Huts Group of the British Mountaineering Council to assist those operating mountain huts in Britain.

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**URLs:** If any of the URLs (web addresses) given on the preceding pages are found to be 'dead links' please notify [huts@mountaineering.scot](mailto:huts@mountaineering.scot)

**Disclaimer:** These guidelines were revised on the date shown below and the information herein is believed to be accurate at the time of writing. No responsibility can be accepted for any loss of benefit or entitlement arising through use of these guidelines – they are not intended to be definitive.

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These guidelines are updated periodically; to check on the currency of this version go to one of the websites above where the latest version will always be displayed.