INTRODUCTION

1. This document relates to the Fire (Scotland) Bill introduced in the Scottish Parliament on 28 June 2004. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 24–EN.

POLICY OBJECTIVES OF THE BILL

2. The main purpose of this Bill is to deliver a modernised Fire and Rescue Service that responds to the particular demands of the 21st Century and contributes to building a “Safer Scotland”.

3. The policy objectives of the Bill are:

   • to define the role of the modern Fire and Rescue Service;
   • to ensure that the fire and rescue authorities have clear national and local priorities and objectives;
   • to improve the protection offered to communities; and
   • to revise fire safety legislation.

4. The current legislation governing the Fire Service dates back to the Fire Services Act 1947 and many changes have taken place during the course of the last 50 years. The role of the Fire Service has evolved and developed and, while its primary purpose remains tackling fires, there are a range of other roles which it now carries out, particularly in respect of fire prevention, as well as attending road accidents and undertaking other rescue work.

5. In December 2002, the Report of the Independent Review of the Fire Service (the Bain Report) was critical of central Government for failing to provide sufficient strategic direction for the Fire and Rescue Service. The framework within which the Service currently operates, primarily the existing Standards of Fire Cover (which have been in place since World War II) is inappropriate and restrictive, determining how resources should be used and deployed locally.

6. Improving fire safety is essential. Of the UK countries, Scotland has the highest number of fatal and non-fatal casualties per million population. Stopping fires from starting in the first place will contribute to the reduction in casualties.
7. With regard to fire safety, there are currently 2 major pieces of legislation - the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997 - but each has a different approach to fire safety which can be confusing for those required to comply with the legislation. Consolidation of the legislation relating to devolved fire issues, should help clarify responsibilities in these areas.

8. Without a reform of the existing legislative framework, the Executive considers that:

- the developing role and responsibilities of firefighters would go unrecognised
- certain operational matters, including staff numbers and the location of resources, would continue to be referred to the Scottish Ministers rather than decisions being taken at local level with the benefit of local knowledge and expertise
- there would be differences between the priorities and objectives adopted by fire authorities which could create a barrier to progressing national priorities and objectives
- certain critical tasks, particularly relating to fire prevention and rescue work not involving fires, would continue to depend on the use of discretion rather than being backed by statute
- the Best Value potential of delegating functions to other individuals and organisations, would not be routinely explored
- the savings and benefits of a common approach to key areas of work such as procurement, would not be investigated
- the opportunity to make a greater impact on reducing injuries and deaths from fire, and the costs of damage caused by fire would be lost.

9. The Bill covers various aspects of the Fire and Rescue Service and is divided into 5 parts:

- Part 1 Fire and Rescue Authorities
- Part 2 Fire and Rescue Services
- Part 3 Fire Safety
- Part 4 Miscellaneous
- Part 5 General

**ALTERNATIVE APPROACHES**

10. The Fire Services Act 1947 has served the Fire Service and the population of the UK for the last 5 decades and in that time, it has not been a barrier to the evolution of the Service. An alternative to a new Bill would have been to continue to rely on the existing primary legislation and to use existing powers to bring forward revised secondary legislation in respect of a range of matters such as fire safety, appointments and promotions, establishment schemes and discipline. It was also recognised that the provision of strategic direction to fire and rescue authorities by the Scottish Ministers and the introduction of a risk management approach to providing fire cover could be achieved without the need for statutory powers provided fire
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authorities were prepared to adopt the guidance that would be required to promulgate these arrangements.

11. However, the Office of the Deputy Prime Minister (ODPM) has introduced its own primary legislation for England and Wales to repeal the Fire Services Act 1947 and to deliver a modernised Fire and Rescue Service. The Fire and Rescue Services Bill may receive Royal Assent within the next few months. A separate legislative route has been selected by ODPM for issues relating to fire safety: a Regulatory Reform Order which was laid in the UK Parliament on 10 May. The proposal is required to lie before the Parliament for a period of 60 days, excluding periods of recess, and once approved, the order becomes law.

12. The provisions of the 1947 Act relevant to Scotland, could be retained in respect of Scotland but it would be skeletal in comparison with the England and Wales legislation; would be difficult to read; and would do little to progress the modernisation agenda.

13. A combination of the retention of the 1947 Act, secondary legislation and change on the basis of consensual agreement by fire and rescue authorities, would go some way towards fulfilling the policy objectives listed at para 3. However, these measures would not, on the one hand, provide fire and rescue authorities with the backing and powers needed to enable them to carry out effectively the diverse range of functions which they are now relied on to provide, nor on the other hand, establish consistency of approach where this is desirable for national purposes.

14. While a number of issues relating to pensions and to health and safety are reserved, the majority of fire service issues are devolved to the Scottish Parliament. The first update of fire service legislation in over 50 years provides a unique opportunity to work with stakeholders to put in place a framework which will give fire and rescue authorities the scope to innovate and collaborate, to make best use of resources, and to provide a dynamic, reliable and efficient service.

CONSULTATION

15. Consultation on the modernisation of the Fire and Rescue Service commenced in April 2002 with the launch of the first comprehensive policy proposals for the Service in many years. *The Scottish Fire Service of the Future* document invited interested parties to contribute their views.

16. In general the responses received were very positive with a considerable amount of support for the Report’s many recommendations. However, further work in taking the proposals forward was postponed as a result of the fire dispute in 2002-03 and the UK Government’s initiative in setting up the Independent Review of the Fire Service chaired by Professor Sir George Bain.

17. The report of the Independent Review of the Fire Service - *The Future of the Fire Service: reducing risk, saving lives* which was published in December 2002, and the resolution of the fire dispute in June 2003 put the reform agenda back on track. In October 2003, the Scottish Ministers launched a consultation paper on their legislative proposals for the Scottish Fire and
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Rescue Service. The consultation paper built on the issues raised in, and the responses received to, the policy paper *The Scottish Fire Service of the Future*.

18. Following the launch of the consultation paper by Cathy Jamieson, Minister for Justice, on 1 October 2003, the proposals were debated in the Scottish Parliament on 8 October. In addition, a programme of visits to the 8 fire authorities was arranged during November and December 2003. A presentation on the background to the legislative proposals was provided by Justice Department Bill Team officials and was followed by a question and answer session. A similar presentation was given to stakeholders from the main trade unions, staff associations and professional bodies. Representatives from the Fire Brigades Union, Retained Firefighters Union, Fire Officers’ Association, Institution of Fire Engineers and UNISON attended. These presentations provided an early opportunity for stakeholders to clarify their understanding of the proposals, provide their initial views on the consultation paper and raise issues of particular concern. The comments made at these meetings, together with the written responses subsequently received, informed the Executive’s decisions with regard to the preparation of the draft Bill.

19. The number of written responses received was much greater than anticipated and by early February 2004 - at 62 - was more than double that received to the policy paper the previous year.

20. Generally the proposals were welcomed but some raised concerns among respondents. The outcome of the consultation is described below.

PART 1 FIRE AND RESCUE AUTHORITIES

21. Part 1 of the Bill determines the bodies which are fire and rescue authorities and makes provision for the constitution of joint fire and rescue boards to replicate the current position in which 6 joint boards operate on behalf of the majority of local authorities in respect of fire issues.

PART 2 FIRE AND RESCUE SERVICES

22. Part 2 sets out:

- the functions of fire and rescue authorities;
- provisions for the supply of water;
- sets out the powers of employees of fire and rescue authorities and police constables in relation to fires;
- provides provisions for assistance to authorities in the discharge of their functions;
- provides provisions for central supervision and support of authorities (including a National Framework, equipment and services); and
- provisions on employment issues.
Functions

23. Many of the provisions in this part are re-enactments of the provisions in the Fire Services Act 1947. However, the functions of fire and rescue authorities have been extended beyond firefighting to include fire safety, response to road traffic accidents and response to serious non-fire emergencies (as defined by the Scottish Ministers in subordinate legislation) following the widespread support given to these proposals by stakeholders.

24. The proposal to give authorities powers to enter into arrangements with any other relevant organisation or individual to assist with the discharge of their functions was warmly welcomed by respondents to the consultation paper. The provisions in the Bill therefore allow authorities to explore collaboration and delegation of their functions.

National Framework

25. There was no opposition in principle to the proposal for the introduction of a National Framework, with many respondents recognising the need for national priorities and urging the Scottish Ministers to establish these in consultation with stakeholders. However, there were some concerns expressed and these are described below, together with the Scottish Ministers’ response.

Concerns

- There was some concern expressed that the Framework would lead to the diminution of local control and decision-making. In addition, there was a mixed response to the proposal to abolish section 19 of the 1947 Act which requires the approval of the Scottish Ministers with regard to the deployment of resources at local level: some respondents valued the central approach to decisions about resources, while others considered it a local matter for local decision.

- Concerns were also raised about the power of direction which will allow Ministers to intervene if they considered that a fire and rescue authority was failing, or was likely to fail, to act in accordance with the Framework. The majority of respondents who expressed a view on the proposed reserve powers of direction queried the need for reserve powers in general and indicated that while there might be justification for a reserve power in relation to national resilience issues, it was not considered justifiable in relation to delivery on national fire priorities.

Response

- The Scottish Ministers are committed to local decision-making and accountability and the key aim of the National Framework and the abolition of section 19, will be to strengthen local service delivery. If authorities are clear about the national priorities and the standards expected of them by Ministers, they will be better equipped to make decisions on local service delivery. These Ministerial powers are very much powers of last resort and need to be considered in the wider context of the Bill, which will also provide fire and rescue authorities with a range of powers to enable them to meet the needs of their local communities.
National Resilience

26. Many of the responses to the proposals for Ministerial powers to procure equipment for the purpose of national and UK resilience and to require fire and rescue authorities to use and maintain specified equipment, focused on the Scottish Ministers’ funding to date and continuing commitment in this area. However, as with the National Framework, a number of respondents indicated their disagreement with the principle of the Scottish Ministers taking powers.

Structure of Service and Control Room Arrangements

27. A review of the structure of the Service was last undertaken in 1998 and it was concluded at that time that no changes were required. However, the Scottish Ministers decided to take the opportunity to revisit this issue and stakeholders were therefore invited to contribute their thoughts on the most effective structural arrangements for the Fire and Rescue Service in Scotland. However, none of the respondents took this opportunity to offer alternatives to the current structure.

28. In the consultation paper, the Scottish Ministers indicated the intention to consider the most efficient and effective arrangements for Fire and Rescue Service control rooms. Generally the response to this proposal was similar to that received in respect of the structure of the Service: cautious.

29. However, there were some concerns expressed and these are described below, together with the Scottish Ministers’ response.

Concerns

- While some respondents considered that the current structures worked well and did not require to be changed, others indicated that any proposals for change must be fully justified in terms of best value principles, must not result in any diminution of existing services and must be the subject of further consultation.

- With regard to the review of the structure, some challenged the need and timing of the review, suggesting that it had been prompted solely as a result of the review being undertaken in England and Wales.

Response

- Since the publication of the consultation paper, a review of control rooms has been commissioned and a report received. The report is currently being considered and there will be consultation with key stakeholders on its recommendations. In the event that consensual agreement is not reached on the best way forward, the Bill does provide for the Scottish Ministers to make directions for public safety purposes in respect of the use of property or facilities. However, this power would only be used as a last resort.

- The Scottish Ministers were disappointed that stakeholders did not take advantage of the opportunity presented to reconsider the structure of the Service. However, the Bill makes provision for the combination of authorities in amalgamation schemes.
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(the mechanism currently used and which will continue to be used to allow for joint fire boards operating on behalf of the majority of local authorities in respect of fire issues).

Common Fire and Rescue Services Agency

30. The proposal to set up a Common Fire and Rescue Services Agency as a means of improved service delivery for identified functions, received a mixed response and this is described below, together with the Scottish Ministers’ response.

Concerns

- Some respondents recognised the benefits of collaborative working but suggested that collaboration could be achieved through voluntary agreements or a statutory duty to collaborate, rather than the structural change of a proposed Common Fire and Rescue Services Agency. Others viewed it as a first step towards centralisation of the Service.

Response

- In light of the comments received, it has been decided to investigate this proposal further with stakeholders. Therefore the Bill makes provision for the first step in this process: powers for the Scottish Ministers to establish and maintain (or contribute to the establishment and maintenance of) a body to promote the economy, efficiency and effectiveness of fire and rescue authorities. This body could take responsibility for co-ordinating consideration of the establishment (whether by statute or otherwise) of a Common Fire and Rescue Services Agency at a later date.

Powers of investigation

31. The proposal to extend the powers for fire officers investigating the cause of fire was welcomed by all respondents who commented on this proposal. Therefore the Bill not only re-enacts the relevant section of the 1947 Act but extends the powers to recognise the wider range of duties of firefighters, including the work done in responding to road traffic accidents.

PART 3 FIRE SAFETY

32. The proposal to consolidate and rationalise much of the existing fire safety legislation was well received. The Bill makes provision in respect of general duties in relation to workplaces and other premises and it includes a power whereby the Scottish Ministers may make regulations in relation to fire safety duties (re-enacting a provision in the Fire Precautions Act 1971). The provisions will maintain and enhance the protection afforded both to users of premises and others who might be affected by a fire on the premises. The Bill also determines the enforcing authorities of the fire safety legislation and sets out their duty and powers.

33. It is recognised that a public awareness campaign will be required in due course to raise awareness of the new legislation and to increase compliance. Guidance will also be available to explain the responsibilities of owners, employers, occupiers and employees on premises.
PARTS 4 AND 5 MISCELLANEOUS AND GENERAL

34. The Bill makes provision for the abolition of the Scottish Central Fire Brigades Advisory Council and the determination of false alarms of fire as an offence.

35. There was a general consensus in the responses that the advisory structure for delivering advice to the Scottish Ministers and developing policy requires to be more dynamic. There was considerable interest expressed by respondents in the membership of the proposed new strategic advisory group. The Bill abolishes the Scottish Central Fire Brigades Advisory Council and the Scottish Ministers will consider replacement arrangements in consultation with stakeholders.

36. Finally, the Bill makes provision for commencement, orders and regulations, minor and consequential amendments, repeals and revocations.

SUMMARY

37. The views and comments received have helped shape the Bill introduced in Parliament; and will assist with the drafting of subsequent secondary legislation. The responses received will also help to progress those areas where legislation is not required in order to effect change e.g. Integrated Risk Management Plans (as a replacement for the existing Standards of Fire Cover).

38. The text of the non-confidential responses to the consultation document The Scottish Fire and Rescue service: Proposals for Legislation will be published on the Scottish Executive website in due course. In addition, a number of issues will be the subject of further consultation viz the detail of the National Framework and related Ministerial powers; the role, remit and structure of the Common Fire and Rescue Services Agency; and the future arrangements for fire control rooms (once the recommendations in the consultant’s report have been considered fully).

EFFECTS ON EQUAL OPPORTUNITIES AND DIVERSITY

39. Employment in the Service is open to all members of the community but is sometimes seen as male dominated and exclusive. In December 2000, the Fire and Rescue Service, represented by CACFOA, CoSLA and the FBU, in partnership with the Scottish Executive, confirmed its commitment to equality and social inclusion by signing an “Equity for All” agreement developed by the Service’s Fairness and Diversity Forum. While the commitment is clear, practical and tangible steps are now required to ensure that the principles of the agreement are upheld.

40. This Bill repeals the power to make appointment and promotion regulations, allowing the introduction of multi-tier entry and accelerated promotion and thereby benefiting equal opportunities. Multi-tier entry will allow people to enter the Service at a level appropriate to their qualifications and experience, making a career in the Fire and Rescue Service feasible for people of all ages, salary and qualifications. The replacement of the current rank system with a role-based structure may attract candidates previously put off by the militaristic undertones of the grading structure, while the expansion of statutory duties beyond firefighting may
encourage those with different skill sets to consider a career in the Fire and Rescue Service. Once appointed, those who have been identified as having the potential to progress to strategic management levels will be able to take advantage of the accelerated promotion system.

EFFECTS ON HUMAN RIGHTS

41. There are a number of areas where the Scottish Ministers consider that rights under the Convention are engaged:

- Article 2 (right to life). The power in section 15 in respect of charging may be argued as contrary to the positive obligation of the State to protect life. To the extent that this might be argued, the power is in any event subject to a number of safeguards in that section and any order will itself have to comply with the provisions of the Convention.

- Article 6 (right to a fair trial). Sections 19(3), 25, 45 and 57 could be said to raise issues in relation to this Article. The Executive considers that the right of access to a court which is partly restricted by section 19(3) and section 64 is not an absolute right, and that the limitation serves a legitimate interest and is proportionate to that interest. The restriction does not prevent a person from bringing a claim and a court finding that any loss suffered was not caused by action taken under that section. The power to obtain documents or records at section 25 and section 57 could be considered an infringement of the implied right against self incrimination. The Executive considers that there is a legitimate public interest in effective investigation under this provision. The reverse onus burden of proof in section 67(10) is considered to be justified necessary and proportionate. A similar burden of proof in the context of the Health and Safety at Work Act 1974 was considered by the Court of Appeal in R v Davies [2002] All ER (D) (Dec) and found to be ECHR compliant. Finally section 45 which gives the Scottish Ministers a power to establish negotiating bodies is subject to the restriction in section 45(7) which could be argued in certain circumstances to deny the right of an individual to have their civil obligations. The Executive considers that no such right arises and that in any event any order under this provision must be compatible with the Convention.

- Article 8 (right to respect for private life). The power of entry for investigating the cause of fire at section 27, the power of forcible entry by warrant to obtain information at section 25, and the associated powers of seizure within those sections could be said to engage article 8 as could similar powers in Part 3 for enforcement officers, but the Executive considers that these powers can be justified as being necessary in the interests of public safety and/or the prevention of crime and/or the protection of health. Section 23 which gives an authorised employee powers to enter premises by force etc and section 24 which allows constables to enter premises where they reasonably believe both that fire has broken out and it is necessary to do so to extinguish it or protect life or property could also be said to engage article 8. The Executive considers that these powers are justified under Article 8 on grounds of public safety and for the prevention of crime, and are proportionate to those ends. Other powers in Part 3 concerning enforcement notices, prohibition notices and alterations notices may infringe article 8 rights but are considered to be necessary in the interests of public safety and for the protection of the rights of others. The
safeguards associated with these powers including rights of appeal satisfy the requirements of proportionality.

- Article 11 (freedom of expression). As already stated, section 45 gives the Scottish Ministers power to set up negotiating bodies which must include persons who represent the interests of some or all employees. Those representatives may, but need not, be union representatives. The Executive considers that a union member’s interests under article 11 can be protected without the need for the union to be included in collective bargaining, and nothing in the section prevents a trade union submitting a collective plea to the negotiating body and is therefore of the view that this section does not contravene article 11.

- Article 1 of the First Protocol (protection of property). Section 25 gives power to authorised employees to require, for example, facilities and information that may reasonably be requested, and sections 23 and 24 set out powers to force open a vehicle, which could be said to engage this article. There are also powers in sections 27 to sample, dismantle and take possession of items in prescribed circumstances. The Executive considers that such powers are necessary to ensure the effective enforcement of this Part of the Bill and that they are proportionate to the gravity of the circumstances in which they would be used. The same arguments apply to provisions in Part 3 concerning the powers of enforcement inspectors (at section 57), to the use of prohibition notices, enforcement notices, alterations notices and to the power to include provision in Regulations that may impact on the use of property. Again, the Executive considers that these powers are proportionate because of the checks and balances weighed against the objective of protecting life and property. The various obligations imposed on water undertakers to provide an adequate supply of water, found at sections 16, 17, 18 and 19 could affect the rights of Scottish Water as regards the peaceful enjoyment of possessions under Article 1 of Protocol 1. Any controls must be proportionate to the interest pursued. The Executive considers that the obligations are proportionate as there is a general interest in ensuring that relevant authorities have access to water supplies for fire-fighting purposes. Furthermore, it is open to Scottish Water reasonably to refuse to enter into such an agreement in relation to water supply.

Section 45(7) may engage Article 1 Protocol 1 (as per Lord Nicholls in Wilson and others v Sec of State for Trade and Industry [2003] UKHL 40). Whilst there are arguments either way, if the Article is engaged the Executive considers that any deprivation of property can be justified on the basis that it is in the public interest and subject to conditions provided by law.

**EFFECTS ON ISLAND COMMUNITIES**

42. Island communities are at risk from fire and other emergencies just as mainland communities are and they must therefore be able to rely on an efficient and effective Fire and Rescue Service. It is the responsibility of the local authority to ensure adequate service provision. The provisions in the Bill clarify the duties and powers of fire and rescue authorities and will underpin the local planning and decision-making process. The Scottish Ministers are confident that the Bill will progress the modernisation of the Fire and Rescue Service and that communities (mainland and island) will benefit from strengthened local service delivery.
EFFECTS ON SUSTAINABLE DEVELOPMENT

43. The fundamental aim of sustainable development is to secure the future and this Bill recognises the important role that local authorities/fire and rescue authorities have to play in working towards a more sustainable Scotland. This Bill places local decision making at a local level to meet local needs in protecting the community, while making provision for a speedy, co-ordinated and effective response on a national basis in relation to serious non-fire emergencies.

OTHER MATTERS CONSIDERED RELEVANT

Effects on reserved/devolved issues

44. Although the majority of fire and rescue service issues are devolved to the Scottish Parliament, a number of issues were identified during the preparation of the Bill which are not within Parliament’s competence. These issues include process fire precautions (designed to prevent the outbreak or spread of fire from any work processes taking into account process risk which can be perceived as the danger, due to the work process, that fire will break out) and a number of other fire safety related issues (which are currently the responsibility of the Health & Safety Executive); firefighting at sea; and fire safety on Defence premises. Discussions are taking place with the UK Government about the best way of dealing with these issues.

Effects on EU obligations

45. This Bill and subsequent subordinate legislation will implement aspects of 6 EC Directives on health and safety at work:

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

in so far as

(a) the provisions in the Directives relate to general fire safety measures to be taken by employers;
(b) more specific legislation does not make appropriate provision;
(c) it is within devolved competence to make provision.
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FIRE (SCOTLAND) BILL

POLICY MEMORANDUM

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