Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Fire Brigades Union Scotland

Introduction

The Fire Brigades Union (FBU) welcomes the introduction of the Police and Fire Reform Bill as an opportunity to further define the establishment of the new single Scottish Fire & Rescue Service (SFRS), but also to improve on the provisions of the existing Fire (Scotland) Act 2005.

The fire service changed from being a UK wide National Fire Service during the years of World War II to a local authority service with the introduction of the Fire Services Act 1947. This legislation served well for almost 60 years. It was replaced, along with many of its supporting bodies and advisory structures with the Fire (Scotland) Act 2005. The latter legislation crucially changed fire brigades into fire and rescue services, which did recognise the role of firefighters in dealing with road traffic accidents (RTAs). What the Act did not anticipate was that the public understanding of the definition of “rescue” would mean a much wider and altogether more onerous role for the service.

FBU members the length and breadth of our country are now involved in a wide range of specialist rescue roles, with capabilities in a number of disciplines, from water rescue to mass decontamination. Our members have taken on this expanded role with professionalism and determination. We believe there are further opportunities for both the enhanced deployment of specialist rescue skills and the co-ordination of these capabilities, but this will rely on the legislative foundation being set in such a way as to allow for the service to adapt to meet public expectation. We do recognise that with a shrinking financial settlement this will prove to be a challenge but believe the structural changes to a single service will allow for development of Scotland wide strategic specialist skills, however our fear remains that a new Board may retreat back to providing just those functions that are statutory.

We are of the view that the fire and rescue service sits fully within and is integral to the community safety family. We believe that even in this time of financial constraint the role of the service in making our communities safer can be enhanced. The existing Fire and Rescue Services (FRS) have for many years led the way in developing fire prevention. There remains considerable work to be done in this area but by fully integrating prevention with the response capability the service can further reduce the cost, both social and economic of the impact of fire. By utilising such expertise we believe that the service has a role to play in the wider community safety environment and we call for a parallel approach that provides for a preventative aspect, complimentary to each intervention role the service develops. For example, as the ability to deliver water rescue increases so should the ability to provide water safety advice.
During the Independent Review of Open Water and Flood Rescue in Scotland\(^1\) ordered by the Minister for Community Safety and conducted by Mr Paddy Tomkins, a recommendation was made that the fire services should hold a register of water rescue assets. We view this as a model that can be developed for a wider range of rescue and community safety assets and that the new legislation should establish the new Scottish FRS (SFRS) as the Primary Rescue Service.

The fire service has a range of industrial relations practices that reflect the individual circumstances within the current 8 FRS. The FBU are keen to ensure that the development of the new single SFRS provides an opportunity for a more inclusive, collaborative approach to such matters. A great deal of effort has already taken place and the development of relationships between Scottish Government officials, current employers, senior managers and the FBU that has allowed progress on transitional arrangements. This also gives reason for optimism that such an approach might be carried forward into the new service.

The FBU are keen that the new SFRS is not blighted by poor industrial relations but does recognise that much of the current progress relies on relationships that are currently in place. We are of the view that these positive developments are vulnerable and should be protected wherever possible by the determination of Government attitude and policy. We therefore believe that the positive tone adopted by Scottish Government in the consultation document should form the basis of future procedures with the service and that this will be best secured by direct reference within the new Act.

Another major item in relation to the new service and the Bill is scrutiny and governance. We have long held the view that the current arrangements are sub-optimal and that a significant benefit of the new service will be an opportunity to improve the governance arrangements of the service. The foremost item will be the ability for the new SFRS board to access opinion other than that of the Chief Fire Officer (CFO). This does not mean that the CFO is wrong, but it does give an opportunity for other views and options to be considered.

It should also be recognised that the Board are governing the service on behalf of the people of Scotland and should therefore ultimately be answerable to the people of Scotland. We hold the opinion that the best way to do that is through the democratically elected representatives of the people, that being the members of the Scottish Parliament. We would welcome the robust scrutiny and oversight that parliamentarians would bring to the process and which brings together the national outcomes, established by Parliament, the SFRS Framework, approved by Parliament and the budget that is set by Parliament.

The FBU remains committed to the creation of a world-class fire and rescue service in Scotland and our officials are available should further information be required.

**Specific Areas of Consideration**

**Functions of the SFRS**

\(^1\) [http://www.floodrescueuk.com/0091079.pdf](http://www.floodrescueuk.com/0091079.pdf)
Chapter 2 currently details the Functions – Fire safety, fire fighting, road traffic accidents.

Whilst this seems clear it does not reflect the current range of services provided, nor does it indicate the public perception in relation to the capabilities of the service.

This should be broadened out reflect the wider role and range of operations?

There is currently an opportunity to merge the Additional Functions Order into the revised Fire (Scotland) Act

Should make reference to additional functions, wider scope being deliverable in terms of funding for equipment, personnel and training.

The service must publicly declare its capabilities and limitations based on Integrated Risk Management Planning (IRMP).

References to “other eventualities” should be removed and incorporated through IRMP

We have firefighting and safety but not RTA safety. The function should balance the need for prevention with the delivery of intervention.

The current legislation is a cluttered landscape with specific function, general or catch-all clauses and additional functions orders. These do not reflect the fact that the public in Scotland now have an expectation of the service, thanks to the renaming of the service in the 2005 Act to include “rescue”. This results in a belief that the service can actually provide a rescue service. Something it has not fully come to terms with, nor in fact does it have the legislative basis on which to carry out some of these functions.

We believe that the legislation should place the underpinning ethos of the service as the basis from which all else is derived. We suggest;

1. Save Life
2. Protect Property
3. Render Humanitarian Services

The revised Act should make clear direction that the activities of the service should be derived from the Framework document and based on the Integrated Risk Management Plan. This would allow for the service to develop a range of services that could provide local solutions to local needs, supported by a national capability to react across the country.

- There should be a wider community safety role.
- We should promote safety in relation to each other element of the services scope of operations. Water, Road Traffic Collisions for example?
- Powers to co-ordinate other agencies in emergency events should be added in line with Tomkins recommendations re water rescue.
- General powers as the primary rescue service.
- A direct reference to the services obligations under the Civil Contingencies Act 2004 and the Civil Contingencies (Scotland) Act 2005 should be included.
- The requirements under these Acts should be included in any IRMP.

Other considerations should include;

- Firefighting at sea. This has seen its funding recently withdrawn by the Maritime and Coastguard Agency\(^3\). The Scottish Government should consider the provision of a maritime safety provision within the Act.
- The relationship with Climate Change legislation and obligations under that legislation should be incorporated into the Act.
- Both in terms of the service corporate responsibilities and in terms of prevention and response including their obligations to minimise environmental damage etc.

Employment

- Establish the principle of a partnership approach

In the consultation on reform in February 2011 at paragraph 4.30 Organisational Structure, the Government described the following as one of the key principals and desired benefits: A new and active social partnership approach should sit at the heart of future industrial relations, based on shared recognition of common interests and common ownership of the resolution of problems.

Whilst the FBU applaud the efforts of the Government and its Civil Servants so far to promote this approach, as far as the FBU can determine there is nothing in the Bill to ensure such an approach to industrial relations shall prevail. In fact, with the deletion of Chapter 9, paragraph 49 of the Fire (Scotland) Act 2005, a safety net, as the FBU saw it, that indicated that Ministers could order the provision of a body ‘for the purposes of negotiation the conditions of service of employees . . . . ‘ will be lost.

By reinstating this provision the FBU believes a clear signal shall be sent to both the Board and the Chief of the new Service that they should be endeavouring to promote the industrial relations platform described in the consultation.

- There should be primary reference to employee representation through the partnership approach at all levels within the service.
- Agreed procedures for interaction – including the availability of recognised trade union officials with agreed facility time to undertake these duties.
- Negotiating arrangements – We strongly believe that any negotiating arrangements for the new board should be approved by Scottish Ministers.
- Negotiations to extend to pensions, replacing the current arrangements under the 1947 Act – section 26 (6) Any order under this section shall be made with the approval of the [Minister for the Civil Service], and after consultation with the Central Fire Brigades Advisory Council.
- Given the powers currently outlined in the Act empowering firefighters to enter premises etc, there is an enhanced level of public trust required
- The status of firefighters employment rights should reflect this.
- Improved discipline code, above current ACAS Code of Practise to take account of this employment status with similarities to the Police.
- Section 25 of the 2005 Act should be revised to;

\(^3\) http://maritimeaccident.org/2011/09/maritime-incident-response-group-to-end-december/
- take account of the wider role of the firefighter
- protect the status of the firefighter by issuing of a warrant
- Final appeal over discipline and grievance to the employer and not a delegated power to management.
- Improved, agreed grievance procedure

**Scrutiny**

The basis of scrutiny is the ability to bring both internal and external information to bear on a subject and to ensure through robust challenge that the best options are being selected. This is singularly the weakest point of the current FRS arrangements and the FBU welcomes proposals to strengthen the oversight of the service and its provisions. Over and above the selection of the new board of the SFRS we view it as crucial that they have access to external expert opinion, advice and resources and that they in turn are held to account on behalf of the people of Scotland.

- We believe there is a need for a high level of scrutiny in order to maintain public confidence in the service
- We believe the Scottish Parliament must take a role in this process
- We suggest the Justice Committee is best placed to act in this way.
- We suggest that on a regular basis the activities of the service are called before the Justice Committee for scrutiny, including oral evidence from;
  - The Chief Officer
  - The Chair of SFRS
  - The Chief Inspector of Fire & Rescue Service
  - Representatives of the workforce
  - Such other witnesses as determined by the Committee.

**Strategic Plan**

- We believe the strategic plan should indicate how the SFRS will contribute to the Scottish Government National Outcomes, by carrying out its functions.
- All SFRS activity should be developed in order to maximise the impact on the National Outcomes.
- We consider it essential that the strategic planning of the SFRS be scrutinised at the highest level.
- We suggest that the Justice Committee should scrutinise that plan and should report its findings to Scottish Ministers.
- We suggest an amendment to section 41, after (4) to read,
  o (a)“SFRS must submit the strategic plan prepared under subsection (1) to the Scottish Parliament Justice Committee for scrutiny.”
  o (b) The Justice Committee shall make a report on its findings and submit that report to the Scottish Minister for consideration.

The strategic plan is a vital element of the SFRS. It must be based on the principles of Integrated Risk Management Planning (IRMP) but must avoid the fundamental flaw in the way that IRMP is currently utilised. That is the ability for the process to run in reverse. By this we mean that IRMP should measure the risk and establish the FRS response that mitigates that risk. Clearly the overall budget will determine how
much of the risk can be mitigated but it does not in itself remove the underlying risk. It must also – as its founding principle – ensure firefighter safety by the provision of sufficient personnel, equipment, training and supervision, to ensure a successful outcome of SFRS activities. IRMP has been a much-misused tool and it is important therefore that strategic planning on the new SFRS uses a process that all parties believe to be fair, resilient and transparent.

It is our view that the Scotland wide IRMP should establish the deployment of resources across the country and that local plans should determine how best to utilise the allocated resources in order to have the maximum impact on community safety within each area. This process should be the subject of external scrutiny.

The strategic plan, through IRMP should establish how the FRS will deliver its service, in line with the Framework and our legislative function. It must do so in such a way as to meet the aspirations set in the National Outcomes. This should form the basis for the funding of the SFRS in order that the service, the SFRS Board, Parliament and the people of Scotland are content that the service is suitably resourced to deliver on its commitments.

General Points on the Fire Reform (Scotland) Bill

- Membership – section 2
  - We believe that at least one member of the board should be appointed with a particular portfolio including the representation of the employees of the service., as afforded to the workforce employed by Scottish Water and firefighters in Northern Ireland.
- The Chief Officer – section 8
  - This section could include reference to the Chief Officer holding the principles of partnership
- SFRS’s employees – section 9 (3)
  - The Bill states that SFRS “may pay or make arrangements for the payment of pensions, …” This should allow the SFRS to negotiate arrangements for pensions without the external interference of UK Govt.
- Procedure - section 11
  - We believe that this section should specify the minimum number of time the Board of the SFRS should meet in a year, and should ensure that these meetings are accessible by the public.
- SFRS’s general powers – section 12 (2) (e)
  - The FBU are concerned that this power could be utilised in the future to privatise all or part of the service.
- Delegation of functions – section 13 (3)
  - The Bill highlights the fact that whilst SFRS has the ability to delegate its functions it does maintain the responsibility for those delegated functions. Our concern stems from experience of similar powers within previous Fire Authorities. This situation can lead to a lack of scrutiny as the person reporting on the success of delegated powers is the person to whom they have been delegated. We suggest a specific report to Scottish Ministers and/or Justice Committee on the impact of this section.
• Grants – section 15
  o The basis for funding the service is not clearly defined. Historically this was based on the ability of services to comply with national standards of fire cover. More recently this link has been broken and the result has been cuts to frontline provision and an increase in support functions. The Bill should clarify the basis on which the level of funding for the service will be determined.

• Provision of centres for education and training
  o Amend from current “may” to “will”

• Charging – section 16 of 2005 Act
  o Allows for charging for incidents at sea – “only in respect of action taken by the authority at sea (or, if the authority's area extends to the low water mark, action taken at sea outwith its area.” There is a proposal to amend this in terms of SFRS. Consideration needs to be given to:
    ▪ The low water mark was relevant to the boundary of local authority responsibility. Is this the same for Scottish Government?
    ▪ This also related to the person injury insurance cover of employees. A major obstacle to FBU members support for these activities.
    ▪ The ability of the SFRS to deliver this service at all, if the firefighting at sea capability is lost due to MCA funding cuts.

• Assistance – section 35 of the 2005 Act
  o In line with the Tomkins recommendation relating to water rescue, a duty should be placed on the SFRS to maintain a register of all third party rescue assets.
  o The SFRS should be identifies at the primary rescue service and should co-ordinate the deployment of third party assets to an incident.
  o A duty should be placed on the SFRS to ensure interoperability between third party providers and other agencies.

• Delegation – section 36 of the 2005 Act
  o (2a) SFRS entering into arrangements to delegate firefighting. This should be clarified to ensure that specialist firefighters such as airport fire services are covered by assistance arrangements and this is not open to privatisation of the service.

• Assaulting or impeding – Section 38 and 39 of the 2005 Act
  o Relationship with Emergency Workers Act (EWA) requires clarification
    ▪ Currently penalties are different between the two Acts
    ▪ Should this be reduced to a reference to the EWA?

• Best Value – section 39B (3)(b)
  o Consultation. After “such other persons as they think appropriate”, add, including trade unions.

• Adherence – section 41(1) of the 2005 Act
  o Suggested amendment to read, “In carrying out their functions, relevant authorities will adhere to the document prepared under section 40(1).”

• Inspectors of the SFRS 43A (1) (b)
  o Consideration must be given to where inspectors are recruited from, and where they will go having completed their role.
Self-inspection by the service raises concerns over the veracity of reporting, when individuals who as part of the service and who must seek promotion from within that service, conduct this.

- Inquiries by inspectors 43B
  - (1) Suggest removal of “may inquire” and replace with “will inquire”
  - (3)(b) Whilst the requirement to undertake consideration of best value arrangements, it may be that inspectors recruited from the service may not have the required knowledge to undertake this aspect of an inquiry.

- Payments in respect of advisory bodies – section 83 of the 2005 Act
  - Should be removed.

Summary

1. The revised Act should clarify the statutory functions by reference to the overarching ethos of the service;
   - a. Save Life
   - b. Protect Property
   - c. Render Humanitarian Services

2. The Act should direct the Framework to be more detailed in defining the duties, responsibilities and how the above functions are conducted, by reference to IRMP.

3. Industrial relations should be based on a partnership approach.

4. Negotiating arrangements should be approved by the Scottish Ministers and should include all the pensions schemes of employees.

5. We believe the Scottish Parliament must take an active role in both the scrutiny and in setting the direction of the service. We suggest this is done principally on the basis of;
   - a. Scrutiny of SFRS strategic plans
   - b. Annual scrutiny of service by Justice Committee
   - c. Influence/direction on the Framework process

6. The basis, formula or other method, for determining the funding of the service should be established.

John Duffy
Scottish Secretary
2 March 2012