Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from Mark Laidlaw

Evidence pertaining to Non Amendment Section 51 of the Fire Scotland Act

1. My evidence has been generated from my personal investigatory activities through consultation with various Police and Fire and Rescue Services in England, Chief Fire Officers Association Scotland, Fire Officers Association, Communities and Local Government, the National Policing Improvement Agency and my involvement with a petition I had lodged with the Scottish Parliament Petitions Committee (Petition Ref No 1254), and also my own personal circumstances, where I served as a Special Constable with Lothian and Borders Police from April 2007 to November 2008, whilst also employed as a Full time Fire Officer with Lothian and Borders Fire and Rescue Service.

Section 51 of the Fire Scotland Act is a continuation from a Section of legislation which was contained within the Fire Services Act 1947. (Section 32)

Section 51 states “A relevant authority, may not employ a Constable for the purpose of carrying out any of the functions as conferred on the authority by virtue of this Act”

2. In 2004 when the Fire and Rescue Services Act (England & Wales) was enacted, Section 37 of this Act stated: “No member of a police force may be employed by a fire and rescue authority for the purpose of discharging any of the authority’s functions under this act.” Special Constables are not deemed to be members of the ‘Police Force’ and are not covered by the definition in Section 101 of the Police Act 1996. However Special Constables in England and Wales are deemed to be warranted and attested officers, as such they possess full policing powers, including the power of arrest, which can be exercised in any police force in England and Wales. Guidance provided in Fire and Rescue Service Circular 62/2009 ‘Employment of members of Police Forces by Fire and Rescue Authorities’, clearly defines the situation in England and Wales which is: “Provided there is local agreement between the Chief Fire Officer and the Chief Constable of the Police Force, a Special Constable can be permitted to serve as a Retained or Wholetime Duty System Firefighter.” This clearly defines the situation from the Fire Service Legislative perspective, the following defines the situation from the Police Legislation: Firefighters Employed as Special Constables, “There is no restriction in the Police Act 1996 which prohibits Firefighters from becoming Special Constables. Firefighters employed on either the Retained or Wholetime Duty Systems who seek to also work as Special Constables are eligible to do so, provided there is local agreement between the Chief Fire Officer and the Chief Constable.”

3. I made direct contact with the National Policing Improvement Agency and the department of Communities and Local Government, to ascertain if there had been any reported cases, of a “conflict of interest” existing between an individual who was either a Retained or Wholetime firefighter who was also a Special Constable, in the
seven years of this legislation’s existence, the response from both Westminster Government and the NPIA was: “There had been no reported cases of a conflict of interest existing between the two roles, of anyone who was a Firefighter and also a Special Constable”

So this is very strong evidence which states that the hypothetical reasoning behind the Scottish Government continuing to retain Section 51, being that of “A conflict of interest could exist between the role of Firefighter and Police Officer,” bears no relevance and accuracy, in modern times, as the existence of the Fire and Rescue Services Act 2004 proves this unequivocally.

4. During the Justice 2 Committee Official Report process, September 2004 – January 2005, (Fire Scotland Bill), there was much debate in relation to whether Section 47 of the Fire Scotland Bill “Prohibition on employment of Police”, should be retained, there was a large difference of opinions, the majority being in favour of the exclusion/amendment of this section, to allow Special Constables to be eligible to also serve as Firefighters particularly in remote rural areas, this was stated by CFOAS, as they wished that Special Constables were differentiated from full time Police Officers in the legislation. Those in favour of an amendment were: Lothian and Borders Fire Board, Highlands and Islands Fire Board, Fire Officers Association, Chief Fire Officers Association (Scotland), Retained Firefighters Union.

5. Throughout the period of my petition (Ref 1254), views were sought from the following organisational groups on the inclusion of Section 51 of the Fire Scotland Act, and whether they would wish it to be amended/removed, the following were in favour of an amendment:
Chief Fire Officers Association Scotland
Fire Officers Association
Association of Chief Police Officers in Scotland
Police Federation

Those wishing for Section 51 to be retained were:
Current Scottish Government
Fire Brigades Union (Scotland)

The reasons given by the Government and the FBU for the retention of Sect 51 were that a “Conflict of interest could exist between the roles of Constable and Firefighter. Fergus Ewing also stated that there are no differences between Special and Regular Constables in the context of Police powers, both take the same oath to the same office, and the powers and responsibilities associated with their roles are the same. I shall refer to previous evidence in relation to the situation in England and Wales, Special Constables in England and Wales hold exactly the same Police powers as Regular officers, Special Constables are fully warranted and attested and hold full Policing powers.

6. A point which was raised by myself during the process of my petition was:” Why does a similar restriction not exist, in the Fire Scotland Act, which prevents other members of the emergency services, being eligible to be appointed by a Fire Authority, as if a conflict of interest could apply between the Police and the Fire Service, then this could also be true for other services.”
This query was not answered directly by the Government.

7. So to clarify matters, in Scotland Special Constables hold the same Police powers as that of Regular Constables, as do their counterparts in England and Wales, but in Scotland Special Constables are not differentiated from Regular Constables under (Sect 51), in being prevented from also serving as a Firefighter, because according to the Government a conflict of interest could exist, as their Police powers are the same. But in England and Wales Special Constables are differentiated under the Fire and Rescue Services Act from Regular Constables, therefore they are eligible to be appointed as a Firefighter under agreement between the Chief Constable and the Chief Fire Officer. There have been no reported cases of a conflict of interest, even though Special Constables and Regular Constables in England and Wales hold the same Police powers, as do Special Constables and Regular Constables in Scotland.

8. During the 18 month period where I served as a Special Constable and also at the same time, as a Full time Firefighter, on not one occasion, did a conflict of interest situation occur, because I held Police powers, and also operated as a Firefighter. I must stress that during this 18 month period I attended incidents as a Firefighter, there were occasions where criminality was involved, but due to the fact that I was on duty as a Firefighter and not as a Special Constable, I acted in my Firefighter role only, and because I had a greater understanding and awareness of the manner in which the Justice system functions, I ensured the preservation of evidence, and acted as a more effective professional witness.

Serving as a Special Constable and also having the training of a Firefighter served as a huge advantage whilst attending incidents as a Special Constable, especially for example, at Road Traffic Collisions, where hazardous materials were involved and at incidents where casualties required treatment prior to the arrival of the Ambulance Service, as Firefighters are trained to a significantly higher level in casualty care, to that of the Police, and also attending incidents involving Water Rescue, as I could inform Police Officers of the systems of work/procedures/protocols which the Fire Service utilise, so that the inter-agency incident could operate more effectively.

The restriction of preventing Special Constables from being eligible to be appointed as a Firefighter exists solely from the Fire Scotland Act, as Chief Constables have complete discretion, in appointing individuals who have employment or business interests' outwith the Police Service. (Regulation 5 Police Special Constables Scotland Regulations 2008)

9. In relation to the responses from the online consultation on Police and Fire Reform, (Question 23) the following were in clear favour of an amendment to Section 51 of the Act, providing realistic and credible reasons:

Aberdeenshire Community Planning Partnership
Aberdeenshire Council
Association of Principal Fire Officers
Chief Fire Officers Association Scotland
Central Fire and Rescue Service and Highlands and Islands Fire Board commented that the existing arrangements were justified, however there may be occasions within remote rural areas that justify a Constable becoming a Firefighter.

East Ayrshire Council, East Renfrewshire Council and Falkirk Council commented that this was a matter for the Police and Fire Services to determine.

10. To summarise, concerns have been expressed by Organisations, who can clearly appreciate and fully understand, the advantages an amendment of Section 51 of the Fire Scotland Act 2005, would bring to the communities of Scotland, mainly communities who reside within the remote rural areas of our country, where suitable publically spirited individuals who could quite effectively serve their community as a Special Constable and a Firefighter either Wholetime or Retained, but currently are unscrupulously prevented from doing so, from a section of legislation which was created in 1947, but has been included in modern legislation for a hypothetical reason which, by the very nature of the evidence which I have collated, I have proven to be totally unethical and disproven.

To retain this section of legislation unamended which is 65 years old into our modern Scottish society for a reason, which refers to a hypothetical scenario, which has never occurred during seven years of the existence of the equivalent English and Welsh Legislation, will only result in communities of Scotland being deprived of an enhancement of the services which the Scottish Police and Fire Services, can provide to making Scotland’s Communities a Safer place to live and work.

11. Therefore I respectfully implore, the Scottish Parliament to take cognizance of the evidence which I have presented, and consider an amendment to Section 51 of the Fire Scotland Act 2005 (as amended) to differentiate between Special Police Constables and Regular Police Constables, to effectively bring Section 51 in line with Section 37 of the Fire and Rescue Services Act 2004 (England and Wales). This in effect would retain the prohibition of the Scottish Fire and Rescue Service from employing a Full time Police Constable, but would allow a Special Constable to be eligible to be appointed as a Firefighter either Wholetime or Retained, through agreement from the Chief Constable and Chief Fire Officer.

Mark Laidlaw
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