Passage of the

Fire (Scotland) Bill 2004

SPPB 78
Passage of the

Fire (Scotland) Bill 2004

SP Bill 24 (Session 2), subsequently 2005 asp 5

SPPB 78
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. Extracts from the Official Report are re-printed as corrected for the archive version of the Official Report.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
- Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.
After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Clerking and Reporting Directorate. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Justice 2 Committee originally listed several written submissions in the contents page of its Stage 1 report which were published on the Scottish Parliament website only. In addition, the Committee received several supplementary submissions that were not included in the Committee’s Stage 1 report. All of these submissions are included in this volume after the Stage 1 Report.

The Finance Committee reported to the Justice 2 Committee on the Bill at Stage 1. Its report is included in Annex A of the Stage 1 Report. However, the oral evidence taken by this committee was not included in that report and it is therefore included in this volume after the Stage 1 Report.

This volume also includes correspondence sent to the Justice 2 and Subordinate Legislation Committees regarding amendments at Stages 2 and 3.

Forthcoming titles

The next titles in this series will be:

- SPPB 79: Further and Higher Education (Scotland) Bill 2004
- SPPB 80: Gaelic Language (Scotland) Bill 2004
- SPPB 81: Prohibition of Female Genital Mutilation (Scotland) Bill 2004
- SPPB 82: Protection of Children and Prevention of Sexual Offences (Scotland) Bill 2004
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Schedule 1—Joint fire and rescue boards: supplementary provision
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Fire (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives 89/391/EEC, 89/654/EEC, 91/383/EEC, 94/33/EC, 98/24/EC and 99/92/EC; to make other provision in relation to fire safety in certain non-domestic premises; and for connected purposes.

PART 1

FIRE AND RESCUE AUTHORITIES

Fire and rescue authorities

The council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) for a local government area (within the meaning of that Act) shall be the fire and rescue authority for that area.

Joint fire and rescue boards

Schemes to constitute joint fire and rescue boards

(1) Where it appears to the Scottish Ministers that, for the purposes of this Act, it would be in the interests of greater economy, efficiency and effectiveness that the areas of two or more fire and rescue authorities be combined, they may by order make an amalgamation scheme for that combined area.

(2) An amalgamation scheme is a scheme constituting, for the combined area of the fire and rescue authorities specified in it (the “constituent authorities”), a joint fire and rescue board consisting of such number of members, being members of the constituent authorities, as are specified in the scheme.

(3) An amalgamation scheme may include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate.

(4) Provision that may be made under subsection (3) may include in particular provision with respect to—

ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 24-EN. A Policy Memorandum is printed separately as SP Bill 24-PM.
(a) the proceedings of the board;
(b) its funding and financial arrangements; including in particular—
   (i) provision for the payment of its expenses out of a combined fire and rescue service fund maintained by the constituent authorities;
   (ii) provision about the carrying-forward from one financial year to the next of any money received by the board in respect of the first year from the constituent authorities under provision made under paragraph (b)(i) and remaining unspent at the end of the first year;
(c) the transfer to the board of any property, rights and liabilities of the constituent authorities;
(d) the transfer to the board of any staff of the constituent authorities;
(e) officers of the board;
(f) the supply of services or facilities by the constituent authorities to the board;
(g) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the board.

(5) Before making an amalgamation scheme, the Scottish Ministers shall consult—
   (a) the fire and rescue authorities in respect of which the scheme is proposed;
   (b) such other fire and rescue authorities as appear to them likely to be affected; and
   (c) such other persons as they consider appropriate.

3 Schemes under section 2: amendment and revocation

(1) An order amending or revoking an amalgamation scheme made under section 2(1) may include provision for the transfer of staff, property, rights and liabilities from the joint fire and rescue board constituted by the scheme to—
   (a) any fire and rescue authority; or
   (b) any other such board.

(2) Before making an order such as is mentioned in subsection (1), the Scottish Ministers shall consult—
   (a) the joint board constituted by the scheme;
   (b) the fire and rescue authorities specified in the scheme; and
   (c) such other—
      (i) fire and rescue authorities; and
      (ii) joint fire and rescue boards,
   as appear to them likely to be affected.

4 Joint fire and rescue boards: supplementary provision

Schedule 1, which makes provision about joint fire and rescue boards constituted by schemes made under section 2(1), shall have effect.
5 Existing joint fire boards

(1) An administration scheme under section 36 of the Fire Services Act 1947 (c.41) or section 147 of the Local Government (Scotland) Act 1973 (c.65) which is in force immediately before the repeal of those sections by this Act shall continue to have effect notwithstanding that repeal.

(2) A scheme such as is mentioned in subsection (1) shall be taken to be a scheme made under section 2(1); and a joint fire board constituted by such a scheme in respect of an area shall be taken to be a joint fire and rescue board constituted by the scheme for that area.

6 Meaning of “relevant authority”

In this Act “relevant authority” means—

(a) a fire and rescue authority which is not specified in a scheme made under section 2(1); or

(b) a joint fire and rescue board constituted by such a scheme.

PART 2

FIRE AND RESCUE SERVICES

CHAPTER 1

PRINCIPAL FIRE AND RESCUE FUNCTIONS

7 Fire safety

(1) Each relevant authority shall make provision for the purpose of promoting fire safety in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular, to the extent that the authority considers it reasonable to do so, make arrangements for—

(a) the provision of information, publicity and encouragement in respect of the steps to be taken to prevent—

(i) fires; and

(ii) death or injury by fire;

(b) the giving of advice, on request, about—

(i) how to prevent fires and restrict their spread in buildings and other property; and

(ii) the means of escape from buildings and other property in the event of fire.

8 Fire-fighting

(1) Each relevant authority shall make provision for the purpose of—

(a) extinguishing fires in its area; and

(b) protecting life and property in the event of fires in its area.
Part 2—Fire and rescue services

Chapter 1—Principal fire and rescue functions

(2) In making provision under subsection (1) a relevant authority shall in particular—

(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;

(b) secure the provision of training for personnel;

(c) make arrangements for—

(i) dealing with calls for help; and

(ii) summoning personnel,

in the event of fire;

(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;

(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

Section 9

9 Road traffic accidents

(1) Each relevant authority shall make provision for the purpose of—

(a) rescuing persons in the event of road traffic accidents in its area; and

(b) to the extent that it considers it reasonable to do so, protecting persons from serious harm in the event of road traffic accidents in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular—

(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;

(b) secure the provision of training for personnel;

(c) make arrangements for—

(i) dealing with calls for help; and

(ii) summoning personnel,

in the event of road traffic accidents;

(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;

(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

Section 10

10 Conferral of functions in relation to other emergencies

(1) The Scottish Ministers may by order (an “additional function order”) confer on a relevant authority (the “specified authority”) a function relating to an emergency of a kind specified in the order (the “additional function”).

(2) An additional function order may not specify as a kind of emergency—

(a) a fire; or
(b) a road traffic accident,

in the area of the specified authority.

(3) An additional function order may make provision for or in connection with—

(a) requiring the additional function to be carried out by the specified authority

outwith its area;

(b) specifying what the specified authority shall or may do for the purpose of the

additional function;

(c) requiring or authorising the specified authority—

(i) to secure the provision of personnel, services and equipment;

(ii) to secure the provision of training for personnel;

(iii) to make arrangements for dealing with calls for help and summoning personnel;

(iv) to make arrangements for obtaining information required or likely to be

required for the purpose of carrying out the function;

(v) to make arrangements for ensuring that reasonable steps are taken to

prevent or limit damage to property resulting from carrying out the function.

CHAPTER 2

ANCILLARY FUNCTIONS

11 Emergency directions

(1) The Scottish Ministers may issue a direction (an “emergency direction”) requiring a

relevant authority to—

(a) take such action; or

(b) refrain from taking such action,

in relation to a fire, or emergency of another kind, specified in the direction.

(2) An emergency direction may require an authority to act outwith its area.

(3) An emergency direction may be varied or revoked by a further such direction.

12 Power to respond to other eventualities

(1) A relevant authority may take any action it considers appropriate—

(a) in response to an event or situation that causes or is likely to cause—

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

(ii) harm to the environment (including the life and health of plants and

animals and the fabric of buildings); or

(b) for the purpose of enabling it to take action in response to such an event or

situation.

(2) The power conferred by subsection (1)—
(a) includes power to secure the provision of equipment; and
(b) may be exercised by an authority within or outwith its area.

13 **Provision of other services**

(1) A relevant authority may provide—

(a) the services of any persons employed by it; or
(b) any equipment maintained by it,
to any person for any purpose that appears to the authority to be appropriate.

(2) An authority may provide services or equipment under this section within or outwith its area.

14 **Provision of centres for education and training**

A relevant authority may establish and maintain one or more centres for providing education and training in matters in relation to which relevant authorities have functions.

15 **Charging**

(1) The Scottish Ministers may by order (a “charging order”) authorise a relevant authority to charge a person of a description specified in the order for any action so specified taken by the authority.

(2) A charging order may authorise a charge to be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority.

(3) A charging order may not authorise charging for—

(a) extinguishing fires;
(b) protecting life; or
(c) protecting property in the event of fires.

(4) Where a relevant authority authorised by a charging order to charge for taking action of a particular description decides to do so—

(a) the amount of the charge shall be set by the authority;
(b) different amounts may be charged in different circumstances (and the authority may charge nothing).

(5) In setting the amount of a charge, a relevant authority shall secure that, taking one financial year with another, the authority’s income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed.

(6) In subsection (5) “financial year” means the period of 12 months ending on 31 March.
Duty to secure water supply

(1) A relevant authority shall take all reasonable measures for securing that an adequate supply of water will be available for the authority’s use for the purposes mentioned in subsection (2).

(2) Those purposes are—
   
   (a) extinguishing fires in the area of the authority;
   
   (b) protecting life and property in the event of fires in its area;
   
   (c) rescuing people in the event of road traffic accidents in its area;
   
   (d) protecting people from serious harm in the event of road traffic accidents in its area;
   
   (e) carrying out any function conferred on the authority by an order under section 10;

   and

   (f) fulfilling any requirement made of the authority by a direction given to it under section 11.

Use of water

(1) Subject to—
   
   (a) an agreement under section 18(1); and
   
   (b) section 9A of the Water (Scotland) Act 1980 (c.45) (charging for emergency use of water),

   a relevant authority may use any suitable supply of water for the purposes mentioned in section 16(2).

(2) A relevant authority shall pay reasonable compensation for water used by virtue of subsection (1).

Agreements in relation to water supply

(1) For the purposes of section 16, a relevant authority may—
   
   (a) enter into an agreement with Scottish Water; or
   
   (b) enter into an agreement to—

   (i) secure the use of water under the control of a person other than Scottish Water;

   (ii) improve access to any such water;

   (iii) lay and maintain pipes and carry out other works in connection with the use of such water.
(2) Subject to section 9A of the Water (Scotland) Act 1980 (c.45) (charging for emergency use of water), an agreement mentioned in subsection (1)(a) may include terms as to payment to be made to Scottish Water.

(3) Scottish Water shall not unreasonably refuse to enter an agreement mentioned in subsection (1)(a) which is proposed by a relevant authority.

(4) Any question whether Scottish Water has unreasonably refused to enter into an agreement mentioned in subsection (1)(a) shall be determined by the Scottish Ministers.

19 Emergency supply by Scottish Water

(1) If a relevant authority requests Scottish Water to provide a supply or pressure of water for a purpose mentioned in section 16(2) that is greater than it would otherwise provide, it shall take all necessary steps in order to do so.

(2) For the purposes of complying with its obligation under subsection (1) Scottish Water may shut off the water from the mains and pipes in any area.

(3) Scottish Water (and any other person) shall not be liable to any penalty or claim arising because of anything done by Scottish Water in complying with its obligation under subsection (1).

(4) If, without reasonable excuse, Scottish Water fails to take any step which it is obliged to take under subsection (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Fire hydrants

20 Fire hydrants: provision etc.

(1) Sections 19 to 22 of Schedule 4 to the Water (Scotland) Act 1980 (c.45) (requirement to provide fire hydrants etc.) shall apply to Scottish Water.

(2) Scottish Water shall cause the location of every fire hydrant provided by it to be clearly indicated by a—

   (a) notice; or
   (b) distinguishing mark.

(3) Scottish Water may place such a notice or mark on a wall or fence adjoining a road or public place.

(4) The expenses incurred by Scottish Water under subsection (2) in relation to a hydrant shall be borne by the relevant authority in whose area the hydrant is located.

(5) The Scottish Ministers may make regulations providing for uniformity in—

   (a) fire hydrants provided by Scottish Water; and
   (b) notices or marks indicating locations of such hydrants.

(6) Where a fire hydrant provided by Scottish Water is damaged as the result of any use made of it with the authority of Scottish Water (other than use for the purposes of firefighting or any other purposes of a relevant authority) the relevant authority in whose area the hydrant is located shall not be liable for the cost of repairing or replacing it.
Fire (Scotland) Bill
Part 2—Fire and rescue services
Chapter 4—Powers of employees and constables

21 Fire hydrants: offences

(1) A person who—
   (a) uses a fire hydrant provided by Scottish Water otherwise than for a purpose
       mentioned in subsection (2); or
   (b) damages or obstructs such a fire hydrant otherwise than in consequence of use for
       such a purpose,
   shall be guilty of an offence.

(2) Those purposes are—
   (a) fire-fighting;
   (b) any other purpose of a relevant authority;
   (c) any purpose authorised by Scottish Water.

(3) A person guilty of an offence under subsection (1) shall be liable on summary
    conviction to a fine not exceeding level 5 on the standard scale.

Works affecting supply and hydrants

22 Notice of works affecting water supply and fire hydrants

(1) A person who proposes to carry out works for the purpose of supplying water to any part
    of the area of a relevant authority shall give the relevant period’s notice in writing to the
    authority.

(2) In subsection (1) the “relevant period” is—
   (a) in the case where the works are proposed to be carried out to comply with a
       requirement imposed under any enactment other than the Water (Scotland) Act
       1980 (c.15), 14 days;
   (b) in any other case, 6 weeks.

(3) A person who proposes to carry out works affecting a fire hydrant shall give at least 7
    days’ notice in writing to the relevant authority in whose area the hydrant is situated.

(4) If it is not practicable for a person to give notice as required by subsection (1) or (3), the
    person shall be regarded as having given such notice if it is given as soon as practicable.

(5) A person who, without reasonable excuse, fails to give notice as required by subsection
    (1) or (3) shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) shall be liable on summary
    conviction to a fine not exceeding level 5 on the standard scale.

CHAPTER 4

POWERS OF EMPLOYEES AND CONSTABLES

Powers in emergencies

23 Powers of authorised employees in relation to emergencies

(1) An employee of a relevant authority who is authorised in writing by the authority for the
    purposes of this section (an “authorised employee”) and on duty may—
(a) if the employee reasonably believes that a fire has broken out, do anything the employee reasonably believes to be necessary for the purpose of—
   (i) extinguishing the fire; or
   (ii) protecting life or property;

(b) if the employee reasonably believes that a road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of—
   (i) rescuing people; or
   (ii) protecting them from serious harm;

(c) if the employee reasonably believes that an emergency other than a fire or road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of carrying out any function conferred on the authority in relation to the emergency; and

(d) do anything the employee reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from action taken as mentioned in paragraph (a), (b) or (c).

(2) An authorised employee may in particular under subsection (1)—

(a) enter premises or a place (by force if necessary) without the consent of the owner or occupier of the premises or place;

(b) move a vehicle without the consent of its owner;

(c) force open and enter a lockfast vehicle without the consent of its owner;

(d) close a road;

(e) stop and regulate traffic;

(f) restrict the access of persons to premises or a place.

(3) A person who—

(a) obstructs; or

(b) interferes with,

an authorised employee exercising a power under this section shall be guilty of an offence.

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Powers of constables in relation to fires

(1) A constable may—

(a) if the constable reasonably believes that a fire has broken out, do anything the constable reasonably believes to be necessary for the purpose of—
   (i) extinguishing the fire; or
   (ii) protecting life or property; and

(b) do anything the constable reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from anything done as mentioned in paragraph (a).
(2) A constable may in particular under subsection (1)—
(a) enter (by force if necessary) premises or a place;
(b) move a vehicle without the consent of its owner;
(c) force open and enter a lockfast vehicle without the consent of its owner;
(d) restrict the access of persons to premises or a place.

Obtaining information

25 Powers of authorised employees in relation to obtaining information

(1) Subject to subsection (2) an employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) may at any reasonable time enter premises for the purpose of obtaining information needed for the carrying out of the authority’s functions under section 8, 9 or 10.

(2) An authorised employee may not under subsection (1)—
(a) enter premises by force; or
(b) demand admission to premises occupied as a private dwelling unless 24 hours’ notice in writing has first been given to the occupier of the dwelling.

(3) If, on the application of an authorised employee, a sheriff or justice of the peace is satisfied—
(a) that—
(i) it is necessary for the employee to enter premises for the purposes of subsection (1); and
(ii) the employee is unable to do so, or is likely to be unable to do so, otherwise than by force,
the sheriff or justice may issue a warrant authorising the employee to enter the premises by force at any reasonable time; or
(b) that it is necessary for the employee to enter premises for the purposes of subsection (1) without giving notice as required by subsection (2)(b), the sheriff or justice may issue a warrant authorising the employee to enter the premises at any time (by force if necessary).

(4) If an authorised employee exercises a power of entry by virtue of this section, the employee may—
(a) take onto the premises—
(i) such other persons; and
(ii) such equipment,
as the employee considers necessary; and
(b) require any person present on the premises to provide the employee with any—
(i) facilities, information, documents or records; or
(ii) other assistance,
that the employee may reasonably request.
An authorised employee exercising a power of entry by virtue of this section shall, if so required, produce the items mentioned in subsection (6)—

(a) before entering the premises; or
(b) at any time before leaving the premises.

Those items are—

(a) evidence of the employee’s authorisation for the purpose of this section; and
(b) any warrant under subsection (3)(a) or (b).

Giving of notices required by section 25

The notice required by section 25(2)(b) may be given—

(a) by delivering it to the occupier of the dwelling;
(b) by leaving it for that person at the dwelling; or
(c) by sending it by post to that person at the dwelling.

If the name or address of the person to whom notice under section 25(2)(b) is required to be given cannot be ascertained after reasonable inquiry, the notice may be given—

(a) by leaving it in the hands of a person who is, or appears to be, resident in the dwelling; or
(b) by leaving it fixed to a conspicuous part of the dwelling.

Powers of authorised employees in relation to investigating fires

An employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) 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.

If an authorised employee exercises the power mentioned in subsection (1) the employee may—

(a) take onto the premises—
   (i) such other persons; and
   (ii) such equipment,
   as the employee 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—
   (i) the premises; or
   (ii) an article or substance found on the premises,
   that the employee 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 employee has power to do under
       paragraph (c) or (e);
   (ii) ensuring that it is not tampered with before the employee’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;

(g) require a person present on the premises to provide the employee with any—
   (i) facilities, information, documents or records; or
   (ii) other assistance,
    that the employee may reasonably request.

(3) An authorised employee exercising the power mentioned in subsection (1) shall, if so
required, produce evidence of the employee’s authorisation for the purpose of this
section—
   (a) before entering the premises; or
   (b) at any time before leaving the premises.

(4) If an authorised employee exercises the power in subsection (2)(d) the employee shall—
   (a) leave a notice at the premises with a responsible person (or, if that is
       impracticable, fixed in a prominent position) giving particulars of the article or
       substance and stating that the employee has taken a sample of it; and
   (b) if it is practicable to do so, give such a person at the premises a portion of the
       sample marked in a manner sufficient to identify it.

(5) If an authorised employee exercises the power in subsection (2)(f) the employee shall
leave a notice at the premises (either with a responsible person or if that is impracticable
fixed in a prominent position) giving particulars of the article or substance and stating
that the employee has taken possession of it.

Exercise of powers under sections 25 and 27: securing of premises

An employee of a relevant authority who, by virtue of section 25 or 27, enters
premises—
   (a) which are unoccupied; or
   (b) from which the occupier is temporarily absent,
shall on departure leave the premises as effectively secured against unauthorised entry
as the employee found them.
29 **Sections 25 and 27: offences**

(1) If, without reasonable excuse, a person—
   (a) obstructs the exercise of any power under section 25 or 27; or
   (b) fails to comply with any requirement under section 25(4)(b) or 27(2)(g),

the person shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Use of information**

30 **Use of commercially sensitive information**

(1) If, without reasonable excuse, a person—
   (a) makes use of; or
   (b) discloses,

any commercially sensitive information obtained by the person while on premises entered in exercise of a power conferred by virtue of section 23, 24, 25 or 27, the person shall be guilty of an offence.

(2) In subsection (1) “commercially sensitive information” means information with regard to any—
   (a) manufacturing process; or
   (b) trade secret.

(3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months.

**CHAPTER 5**

**MUTUAL ASSISTANCE ETC.**

31 **Reinforcement schemes**

(1) Each relevant authority shall, so far as practicable, enter into a reinforcement scheme with other relevant authorities.

(2) A reinforcement scheme is a scheme for securing mutual assistance as between the relevant authorities participating in it for the purpose of carrying out the functions conferred by virtue of sections 8 to 10 on any of them.

(3) A reinforcement scheme may make provision for apportioning between the participating authorities any expenses incurred in taking measures to secure the efficient operation of the scheme.

(4) The participating authorities shall notify the Scottish Ministers of—
   (a) the making of the scheme;
   (b) any variation of the scheme; and
(c) the revocation of the scheme.

(5) The participating authorities shall give effect to the scheme.

32 Directions about reinforcement schemes

(1) Where subsection (2) applies, the Scottish Ministers may direct two or more relevant authorities to make a reinforcement scheme in the terms specified in the direction.

(2) This subsection applies where—
   (a) one of the authorities has asked the other (or others) to agree to the making of the scheme;
   (b) the authorities are unable to agree as to—
      (i) that matter; or
      (ii) the terms proposed for the scheme; and
   (c) one of them asks the Scottish Ministers to make such a direction.

(3) Where subsection (4) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to vary the scheme in the terms specified in the direction.

(4) This subsection applies where—
   (a) one of the authorities has asked the other (or others) to agree to the variation of the scheme;
   (b) the authorities are unable to agree as to that matter; and
   (c) one of them asks the Scottish Ministers to make such a direction.

(5) Where subsection (6) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to revoke the scheme.

(6) This subsection applies where—
   (a) one of the authorities has asked the other (or others) to agree to the revocation of the scheme;
   (b) the authorities are unable to agree as to that matter; and
   (c) one of them asks the Scottish Ministers to make such a direction.

(7) Before giving a direction under this section, the Scottish Ministers—
   (a) shall give the authorities concerned an opportunity to make representations; and
   (b) may cause an inquiry to be held.

(8) A direction given under this section may be varied or revoked by a further such direction.

(9) In this section “reinforcement scheme” has the meaning given by section 31(2).

33 Assistance other than from relevant authorities

(1) A relevant authority may enter into arrangements with a relevant person for securing the provision by that person of assistance for the purpose of the carrying out by the authority of a function conferred on it by virtue of any of sections 8 to 10.
(2) In subsection (1) “relevant person” means a person who—
   (a) is not a relevant authority; and
   (b) in the case of arrangements for the securing of assistance for the purpose of extinguishing fires, employs fire-fighters.

(3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which assistance is to be provided.

Performance of functions by others

34 Arrangements for carrying out of functions by others

(1) A relevant authority may enter into arrangements with a relevant person for the carrying out by that person of a function conferred on the authority by virtue of any of sections 7 to 10, 12 and 56.

(2) In subsection (1) “relevant person” means—
   (a) in the case of arrangements in relation to the authority’s function of extinguishing fires—
      (i) another relevant authority; or
      (ii) any other person who employs fire-fighters;
   (b) in any other case—
      (i) another relevant authority; or
      (ii) any other person.

(3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which any function is to be carried out.

35 Section 34: directions

(1) The Scottish Ministers may—
   (a) direct two relevant authorities to enter into arrangements under section 34; or
   (b) direct two relevant authorities who have entered into such arrangements—
      (i) to vary the arrangements in the terms specified in the direction; or
      (ii) to terminate the arrangements.

(2) Before giving a direction under this section, the Scottish Ministers—
   (a) shall give the authorities concerned an opportunity to make representations; and
   (b) may cause an inquiry to be held.

(3) The Scottish Ministers may give a direction under this section only where, after considering—
   (a) any representations made under subsection (2)(a); and
   (b) the report of any person by whom any inquiry under subsection (2)(b) is held,
they consider it expedient to do so with a view to securing greater economy, efficiency and effectiveness.
(4) A direction given under this section may be varied or revoked by a further such direction.

CHAPTER 6
CENTRAL SUPERVISION AND SUPPORT

Fire and Rescue Framework for Scotland

36 Framework document

(1) The Scottish Ministers shall prepare a document—
(a) setting out priorities and objectives for relevant authorities in connection with the carrying out of their functions; and
(b) containing—
(i) such guidance in connection with the carrying out of any of those functions; and
(ii) such other matters relating to those authorities or those functions, as the Scottish Ministers consider appropriate.

(2) The Scottish Ministers—
(a) shall keep the document prepared under subsection (1) under review; and
(b) may from time to time revise it.

(3) The Scottish Ministers shall carry out the functions conferred on them by subsection (1) and (2) in the manner and to the extent that appears to them to be best calculated to promote—
(a) public safety;
(b) the efficiency and effectiveness of fire and rescue authorities; and
(c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

(4) The document prepared under subsection (1), and any revision of it which appears to the Scottish Ministers to be significant, shall have effect only when brought into effect by the Scottish Ministers by order.

(5) In preparing—
(a) the document mentioned in subsection (1); and
(b) any revision of it which appears to them to be significant,
the Scottish Ministers shall consult the persons mentioned in subsection (6).

(6) Those persons are—
(a) each relevant authority or such persons as the Scottish Ministers consider represent those authorities; and
(b) such persons as the Scottish Ministers consider represent employees of those authorities.
37 Adherence

(1) In carrying out their functions, relevant authorities shall have regard to the document prepared under section 36(1).

(2) Subsections (3) and (4) apply where the Scottish Ministers consider that a relevant authority is failing, or is likely to fail, to act in accordance with the document prepared under section 36(1).

(3) The Scottish Ministers may cause an inquiry to be held into the matter.

(4) Subject to subsection (5), the Scottish Ministers may, for the purpose of securing that the authority acts in accordance with the document, by order require the authority—

(a) to take; or

(b) to refrain from taking,

such action as is specified in the order.

(5) The Scottish Ministers may make an order under subsection (4) only where they consider that it would promote—

(a) public safety;

(b) the efficiency and effectiveness of the authority; or

(c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

(6) Before making an order under subsection (4), the Scottish Ministers shall consult the authority in respect of which it is proposed to be made.

(7) Where the document prepared under subsection (1) of section 36 has been revised under subsection (2)(b) of that section, the references in this section and section 38 to that document shall be taken to refer to that document as revised.

38 Reporting

(1) The Scottish Ministers shall report to the Scottish Parliament on—

(a) the extent to which relevant authorities are acting in accordance with the document prepared under section 36(1); and

(b) any steps taken by them for the purpose of securing that relevant authorities so act.

(2) The first report under subsection (1) shall be made before the expiry of the period of two years starting on the date when the document prepared under section 36(1) is brought into effect.

(3) Every subsequent such report shall be made before the expiry of the period of two years starting on the date on which the last such report was made.

39 Inspectors of Fire and Rescue Authorities

(1) Her Majesty may by Order in Council appoint—

(a) a Chief Inspector of Fire and Rescue Authorities; and

Inspection
(b) such number of Inspectors of Fire and Rescue Authorities as the Scottish Ministers may determine.

(2) The Scottish Ministers may appoint Assistant Inspectors of Fire and Rescue Authorities.

(3) The Scottish Ministers shall pay to the persons appointed under this section such remuneration as the Scottish Ministers may determine.

(4) A person who, immediately before the coming into force of this section, is by virtue of appointment under section 24 of the Fire Services Act 1947 (c.41)—

(a) the Chief Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(a);

(b) an Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(b);

(c) an Assistant Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (2).

40 Functions of Inspectors of Fire and Rescue Authorities

(1) The Scottish Ministers may direct a person appointed under section 39 to—

(a) inquire into a matter mentioned in subsection (2); and

(b) to submit to them a written report on that matter by a date specified by them.

(2) Those matters are—

(a) the state and efficiency of relevant authorities generally;

(b) the manner in which—

(i) a relevant authority is carrying out any of its functions under this Act; or

(ii) relevant authorities are carrying out such functions generally;

(c) technical matters relating to a function of a relevant authority under this Act.

(3) The Scottish Ministers shall lay a copy of each report submitted to them under subsection (1)(b) on the matter mentioned in subsection (2)(a) before the Scottish Parliament.

41 Directions for public safety purposes

(1) Where the Scottish Ministers consider it necessary to do so for public safety purposes, they may make an order (a “property and facilities order”) giving general or specific directions to a relevant authority (or two or more such authorities) about the use or disposal of property or facilities.

(2) A direction under subsection (1) given to an authority may in particular include provision—

(a) about the use or disposal by the authority of property or facilities belonging to it or under its control;

(b) about the use by the authority of property or facilities belonging to or under the control of—
(i) another relevant authority; or
(ii) a person who has made, or is willing to make, the property or facilities available;
(c) requiring payments to be made by the authority to—
(i) another relevant authority; or
(ii) any other person,
in respect of the use of property or facilities.

(3) In subsection (2)(b) a reference to property or facilities belonging to a person includes a reference to land occupied by the person.

**42 Requirements concerning equipment and services**

The Scottish Ministers may make an order requiring a relevant authority (or two or more such authorities)—
(a) to use and maintain equipment—
(i) specified in the order; or
(ii) of a description so specified; or
(b) to use services—
(i) so specified; or
(ii) of a description so specified.

**43 Provision of equipment etc.**

(1) The Scottish Ministers may—
(a) provide and maintain any equipment, facilities and services;
(b) contribute to the provision and maintenance of any equipment, facilities and services;
(c) establish and maintain any organisations; or
(d) contribute to the establishment and maintenance of any organisations,
they consider appropriate for promoting the economy, efficiency and effectiveness of relevant authorities.

(2) Subject to subsection (3), charges may be imposed for the use of equipment, facilities and services—
(a) provided by the Scottish Ministers under subsection (1)(a); or
(b) provided by an organisation established or maintained by the Scottish Ministers under subsection (1)(c).

(3) Any such charge shall not exceed the costs reasonably incurred in providing the equipment, facility or service to which it relates.
**Training**

### Central institution and other centres for education and training

1. The Scottish Ministers may establish and maintain—
   
   (a) a central training institution; and
   
   (b) local training centres,

for one or more of the purposes mentioned in subsection (2).

2. Those purposes are—
   
   (a) the provision of education and training to employees of relevant authorities;
   
   (b) the provision of advice and assistance to relevant authorities in connection with the provision of such education and training;
   
   (c) the supervision and regulation of the provision of such education and training;
   
   (d) the provision of education and training to persons who provide (or are to provide) such education and training;
   
   (e) the provision of education or training to persons who are not employees of relevant authorities in matters in relation to which relevant authorities have functions;
   
   (f) the provision of advice and assistance in connection with the provision of such education and training.

### CHAPTER 7

**EMPLOYMENT**

**Negotiation of conditions of service**

### Statutory negotiation arrangements

1. The Scottish Ministers may by order make provision for the establishment of a body of persons (a “statutory negotiation body”), or two or more such bodies, for the purpose of negotiating the conditions of service of employees of relevant authorities.

2. An order under subsection (1) shall provide for the statutory negotiation body established by it to be composed of—
   
   (a) persons representing the interests of some or all relevant authorities;
   
   (b) persons representing the interests of some or all employees of relevant authorities; and
   
   (c) a person who does not fall within subsection (3), who shall chair the body.

3. A person falls within this subsection if the person is—
   
   (a) a member or employee of a relevant authority;
   
   (b) a member or employee of a body representing the interests of some or all employees of relevant authorities; or
   
   (c) an office-holder in, or a member of the staff of, the Scottish Administration.
(4) A statutory negotiation body may make arrangements for the purpose of enabling conditions of service of employees of relevant authorities to be negotiated at local level (“local negotiation arrangements”).

(5) Local negotiation arrangements may in particular include provision as to—

(a) the—

(i) persons; or

(ii) descriptions of person,

by whom, or by means of whom, negotiations are authorised to be carried out at local level;

(b) the conditions of service and descriptions of conditions of service authorised to be negotiated at local level.

(6) Local negotiation arrangements may be made by a statutory negotiation body in respect of employees of a particular description only if the statutory negotiation body includes persons representing the interests of employees of that description.

(7) Where there is a statutory negotiation body which includes persons representing the interests of employees of a particular description, an agreement as to the conditions of service of employees of that description which is made by or on behalf of a relevant authority and by or on behalf of employees of the description concerned is a legally enforceable contract only where the terms of the agreement were negotiated—

(a) by means of the statutory negotiation body; or

(b) in accordance with local negotiation arrangements made by the statutory negotiation body in respect of employees of that description.

46 Guidance

(1) A relevant negotiation body shall, in negotiating the conditions of service of employees of relevant authorities, have regard to any guidance given by the Scottish Ministers in connection with that matter.

(2) In subsection (1) “relevant negotiation body” means—

(a) a body established by virtue of section 45(1); or

(b) any other body of persons which—

(i) includes both persons representing the interests of some or all relevant authorities and persons representing the interests of some or all employees of relevant authorities; and

(ii) is constituted in accordance with what appear to the Scottish Ministers to be appropriate arrangements for the negotiation of the conditions of service of employees of relevant authorities.
Supplementary

47 Prohibition on employment of police

No member of a police force may be employed by a relevant authority for the purpose of carrying out any of the functions conferred on the authority by virtue of this Act.

CHAPTER 8

INTERPRETATION

48 Interpretation of Part 2

In this Part, unless the context otherwise requires—

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

(a) a person to die;
(b) a person to suffer serious—
   (i) injury; or
   (ii) illness; or
(c) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings);

“road” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (c.22).

PART 3

FIRE SAFETY

CHAPTER 1

FIRE SAFETY DUTIES

Duties

49 Duties of employers to employees

(1) Each employer shall ensure, so far as is reasonably practicable, the safety of the employer’s employees in the event of fire in the workplace.

(2) Each employer shall—
   (a) carry out an assessment of the workplace for the purpose of identifying any risks to the safety of the employer’s employees in the event of fire in the workplace;
   (b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).

(3) Where under subsection (2)(a) an employer carries out an assessment, the employer shall—
   (a) in accordance with regulations under section 53, review the assessment; and
   (b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).
(4) Schedule 2 makes provision as to the fire safety measures.

50 Duties in relation to relevant premises

(1) Where a person has control to any extent of relevant premises the person shall, to that extent, comply with subsection (2).

(2) The person shall—

(a) carry out an assessment of the relevant premises for the purpose of identifying any risks to the safety of relevant persons in the event of fire in the relevant premises; and

(b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in the event of fire in the relevant premises.

(3) If a person falls within subsection (1) other than by virtue of—

(a) having control to any extent of relevant premises in connection with the carrying on by the person (whether for profit or not) of an undertaking; or

(b) owning relevant premises,

the person who owns the relevant premises shall also comply with subsection (2).

(4) A person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of—

(i) relevant premises; or

(ii) anything in or on relevant premises; or

(b) safety in the event of fire in relevant premises,

shall also comply, to the extent of the obligation, with subsection (2).

(5) Where under subsection (2)(a) a person carries out an assessment, the person shall—

(a) in accordance with regulations under section 53, review the assessment; and

(b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in the event of fire in the relevant premises.

51 Taking of measures under section 49 or 50: considerations

(1) Subsection (2) applies where under section 49(2)(b) or (3)(b) or 50(2)(b) or (5)(b) a person is required to take any fire safety measures.

(2) The person shall implement the fire safety measures on the basis of the considerations mentioned in subsection (3).

(3) Those considerations are—

(a) avoiding risks;

(b) evaluating risks which cannot be avoided;

(c) combating risks at source;
(d) adapting to technical progress;
(e) replacing the dangerous with the non-dangerous or the less dangerous;
(f) developing a coherent overall fire prevention policy which covers technology, organisation of work and the influence of factors relating to the working environment;
(g) giving collective fire safety protective measures priority over individual measures; and
(h) giving appropriate instructions to employees.

52 **Duties of employees**

Each employee shall—

(a) take reasonable care for the safety in the event of fire in the workplace of—
   (i) the employee; and
   (ii) any other relevant person who may be affected by acts or omissions of the employee; and

(b) in relation to any requirement imposed by virtue of this Part on the employee’s employer, co-operate with the employer in so far as is necessary for the purpose of enabling the employer to comply with the requirement.

53 **Risk assessments: power to make regulations**

(1) The Scottish Ministers may make regulations about the carrying out of assessments and reviews under sections 49 and 50.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

   (a) specifying matters which persons must 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;
   (e) specifying circumstances in which reviews must be carried out; and
   (f) specifying intervals at which reviews must be carried out.

54 **Scottish Ministers’ power to make regulations about fire safety**

(1) The Scottish Ministers may by regulations make provision about fire safety in relevant premises.
Regulations under subsection (1) 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 fighting 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) securing that employees receive appropriate instruction or training in what to do in the event of fire;
(i) securing that, in circumstances so specified, numbers of attendants so specified are stationed in parts of the relevant premises so specified;
(j) the keeping of records of instruction or training given, or other things done, in pursuance of the regulations;
(k) 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; and
(l) creating criminal offences and specifying rules as to the burden of proof in relation to such offences.

Special case

Special case: temporary suspension of Chapter 1 duties

(1) If in relation to any relevant premises the application of any of the Chapter 1 duties would prevent a person who falls within subsection (2) from carrying out the person’s duties, the Chapter 1 duty (or, as the case may be duties) in question shall be deemed not to apply in relation to those relevant premises during the period when the person is carrying out those duties.

(2) A person falls within this subsection if the person is—

(a) a member of—
   (i) the armed forces of the Crown; or
   (ii) a visiting force; or
(b) a constable or any other member of a police force.
A person subject to the Chapter 1 duty (or duties) which, by virtue of subsection (1) is (or are) deemed not to apply in relation to relevant premises shall, during the period mentioned in that subsection, ensure so far as is possible the safety of relevant persons in the event of fire in those premises.

CHAPTER 2
ENFORCEMENT

56 Enforcing authorities

(1) Each enforcing authority shall enforce the Chapter 1 duties.

(2) In carrying out the duty imposed by subsection (1), an enforcing authority shall have regard to any guidance given by the Scottish Ministers.

(3) For the purpose of carrying out the duty imposed by subsection (1), an enforcing authority may appoint enforcement officers.

(4) Subsection (1) does not authorise an enforcing authority to institute proceedings for an offence.

(5) A relevant authority may make arrangements with the Health and Safety Commission for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the Health and Safety Executive in relation to a workplace so specified.

(6) In this section, “enforcing authority” means—

(a) in relation to relevant premises which are—

(i) a sports ground designated in an order under section 1 of the Safety of Sports Grounds Act 1975 (c.52) (safety certificates for large sports stadia);

(ii) a sports ground to which Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27) applies; or

(iii) a regulated stand within the meaning of section 26(5) of that Act of 1987 (safety certificates for stands at certain sports grounds),

the local authority in whose area the relevant premises are situated;

(b) in relation to relevant premises in respect of which—

(i) the Crown; or

(ii) the United Kingdom Atomic Energy Authority,

is subject to any of the Chapter 1 duties, the person appointed under section 39(1)(a);

(c) in relation to any other relevant premises, the relevant authority in whose area the relevant premises are, or are to be, situated.

57 Powers of enforcement officers

(1) An enforcement officer may do anything necessary for the purpose mentioned in section 56(3).

(2) An enforcement officer may in particular under subsection (1)—
(a) at any reasonable time (or, in a situation which in the opinion of the officer is or may be dangerous, at any time), enter relevant premises and inspect the whole or part of the relevant premises and anything in them;

(b) take onto the relevant premises—

(i) such other persons; and

(ii) such equipment,
as the officer considers necessary;

(c) require a person on the relevant premises who is subject to any of the Chapter 1 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 relevant premises;

(e) carry out any inspections, measurements and tests in relation to—

(i) the relevant premises; or

(ii) an article or substance found on the relevant premises;

(f) take samples of an article or substance found on the relevant premises for the purpose of ascertaining their 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 paragraph (e) or (g);

(ii) ensuring that it is not tampered with before the officer’s examination of it is completed;

(iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the inspection.

(3) An enforcement officer exercising the power mentioned in subsection (2)(a) shall, if so required, produce evidence of the officer’s authority to do so—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(4) If an enforcement officer exercises the power in subsection (2)(f), the officer shall—

(a) leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant 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 mentioned in subsection (2)(g), an enforcement officer shall 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 any of the Chapter 1 duties in relation to the relevant premises, an enforcement officer shall cause anything which the officer proposes to do under the power mentioned in subsection (2)(g) to be done in the presence of that person.

(7) An enforcement officer who, by virtue of this section, enters relevant premises—

(a) which are unoccupied; or

(b) from which the occupier is temporarily absent,

shall on departure leave the relevant premises as effectively secured against unauthorised entry as the officer found them.

58 Prohibition notices

(1) Where subsection (2) applies in relation to relevant premises, an enforcing authority may serve a prohibition notice on the occupier of the relevant premises.

(2) This subsection applies where—

(a) having regard in particular to the matter mentioned in subsection (3), the enforcing authority considers that there is, or will be, a serious risk to relevant persons in the event of fire in the relevant premises; and

(b) the authority considers that in consequence of that risk it is necessary to—

(i) prohibit; or

(ii) restrict,

use of the relevant premises.

(3) The matter is anything affecting relevant persons’ escape from the relevant premises in the event of fire.

(4) A prohibition notice is a notice—

(a) stating that the enforcing authority considers that subsection (2) applies;

(b) specifying the matters which the enforcing authority considers give rise or, as the case may be, will give rise to the risk;

(c) directing that until those matters have been remedied the use to which the prohibition notice relates is—

(i) prohibited; or

(ii) restricted to such extent as may be specified in the notice; and

(d) subject to subsection (5), specifying when the notice shall take effect.
(5) An enforcing authority may specify that a notice shall take effect on service of the notice only if the authority considers that, in consequence of the matters specified under subsection (4)(b), there is or, as the case may be, will be an imminent risk of serious personal injury to relevant persons.

(6) A prohibition notice may specify steps which may be taken to remedy the matters specified in the notice.

(7) If by virtue of an order under section 44(1)(b) of the Civic Government (Scotland) Act 1982 (c.45) a licence is required in relation to the relevant premises, the enforcing authority shall, before serving the prohibition notice and if it is practicable to do so, notify the local authority in whose area the relevant premises are situated of—

(a) the enforcing authority’s intention to serve a prohibition notice; and

(b) the use which it is intended to prohibit or, as the case may be, restrict.

(8) A prohibition notice served by an enforcing authority under subsection (1) may be withdrawn by that authority.

Enforcement notices

(1) Where an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, the authority may serve an enforcement notice on the person.

(2) An enforcement notice is a notice—

(a) stating that the enforcing authority considers that the person on whom the notice is served has failed to comply with the Chapter 1 duty specified in the notice;

(b) specifying the reason the authority considers that the person has failed to comply with the duty in question; and

(c) requiring 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) Where—

(a) an enforcing authority (the “first enforcing authority”) proposes to serve an enforcement notice on a person; and

(b) the first enforcing authority considers that the person has failed to comply with any of the Chapter 1 duties in relation to—

(i) a workplace in relation to which some other authority is the enforcing authority; or

(ii) employees who work in such a workplace,

any enforcement notice served by the first enforcing authority may include requirements relating to that workplace or those employees.

(4) Before serving an enforcement notice including a requirement such as is mentioned in subsection (3) the first enforcing authority shall consult the other enforcing authority.

(5) Before serving an enforcement notice including a requirement to make an alteration to relevant premises, the enforcing authority shall consult—

(a) if the local authority in whose area the relevant premises are situated is not the enforcing authority, that local authority;
(b) if the notice relates to a workplace in relation to which the authority responsible to any extent for enforcing Part I of the Health and Safety at Work etc. Act 1974 (c.37) and the existing statutory provisions is—

(i) the Health and Safety Executive; or

(ii) by virtue of Part I of that Act or the existing statutory provisions, any other authority,

the Executive or, as the case may be, that other authority; and

(c) any other person whose consent to the alteration would be required by virtue of any enactment.

(6) Failure to comply with subsection (4) or (5) shall not affect the validity of an enforcement notice.

(7) Where an enforcing authority serves an enforcement notice, the authority may—

(a) before the expiry of the period specified in the notice, withdraw the notice;

(b) except where an application under section 61 has been made and not determined, extend, or further extend, the period specified in the notice.

(8) In subsection (5)(b), “existing statutory provisions” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37).

(9) For the purposes of this section, “Chapter 1 duties” does not include the duty imposed by section 52.

60 Alterations notices

(1) Where subsection (2) or (3) applies in relation to relevant premises, the enforcing authority may serve an alterations notice on the appropriate person.

(2) This subsection applies where there would be a serious risk to relevant persons in the event of fire in the relevant premises.

(3) This subsection applies where—

(a) subsection (2) does not apply; but

(b) if any of the changes mentioned in subsection (5) were made, it is likely that subsection (2) would apply.

(4) An alterations notice is a notice requiring the appropriate person—

(a) where a change mentioned in subsection (5) is made to the relevant premises; and

(b) the change could significantly increase the risk to relevant persons in the event of fire in the relevant premises,

to notify the enforcing authority of the change.

(5) Those changes 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; and
(d) a change in the use to which the relevant premises are put (or, where they are put to more than one use, a use to which they are put).

(6) An alterations notice served by an enforcing authority under subsection (1) may be withdrawn by that authority.

(7) In this section, “appropriate person”, in relation to relevant premises, means a person subject to a requirement under section 49 or 50 in relation to the relevant premises.

61 Appeals

(1) On the application of the person on whom a relevant notice is served, the sheriff may make an order—

(a) revoking the notice;
(b) varying it in such manner as may be specified in the order; or
(c) confirming the notice.

(2) Any application under this section shall be made before the expiry of the period of 21 days beginning with the service of the relevant notice to which the application relates.

(3) If the application relates to—

(a) an enforcement notice; or
(b) an alterations notice,

the notice shall be suspended during the relevant period.

(4) If, pending the making of an order under subsection (1), the sheriff makes an order suspending a prohibition notice (a “suspension order”) the suspension order shall be effective only from its making.

(5) An application under this section shall be made by summary application.

(6) In this section—

“relevant notice” means—

(a) a prohibition notice;
(b) an enforcement notice; or
(c) an alterations notice; and

“relevant period” means the period beginning with the making of an application under this section and ending with—

(a) the making of an order under subsection (1); or
(b) the abandonment of the application.

62 Determination of disputes

(1) Where—

(a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties; but

(b) in relation to the duty in question the person and the enforcing authority cannot agree on the action that requires to be taken to comply with the duty,
the person and the authority may, subject to subsection (2), refer the matter to the person appointed under section 39(1)(a) for determination.

(2) If the enforcing authority is the person appointed under section 39(1)(a), the matter may be referred to the Scottish Ministers for determination.

(3) The Scottish Ministers may by regulations make provision about references under this section.

CHAPTER 3
MISCELLANEOUS

63 Prohibition on charging employees
No employer shall charge, or permit the charging of, any employee of the employer in respect of anything done or provided in pursuance of any of the Chapter 1 duties.

64 Civil liability for breach of statutory duty
(1) Subject to subsection (2), nothing in this Part shall be construed as conferring a right of action in any civil proceedings (other than proceedings for recovery of a fine).

(2) Breach of a duty imposed on an employer by virtue of this Part shall, in so far as it causes damage to an employee, confer a right of action on that employee in civil proceedings.

65 Consequential restriction of application of Part I of Health and Safety at Work etc. Act 1974
Part I of the Health and Safety at Work etc. Act 1974 (c.37) shall have effect in relation to fire safety only in so far as it applies in relation to reserved matters.

66 Consequential restriction of application of certain other enactments
(1) The enactments mentioned in subsection (2) shall have effect only in so far as they apply in relation to reserved matters.

(2) Those enactments are—
(a) the Fire Precautions Act 1971 (c.40); and
(b) the Fire Precautions (Workplace) Regulations 1997 (S.I. 1997/1840).

CHAPTER 4
OFFENCES

67 Offences
(1) If—
(a) a person fails to carry out a duty to which the person is subject by virtue of—
(i) section 49;
(ii) section 50; or
(iii) section 51; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(2) If—

(a) an employee fails to carry out a duty to which the employee is subject by virtue of section 52; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the employee shall be guilty of an offence.

(3) If—

(a) a person fails to comply with a requirement or prohibition to which the person is subject by virtue of regulations made under section 53 or 54; and

(b) the failure to comply with the requirement or prohibition in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(4) It shall be an offence for a person—

(a) to fail, without reasonable excuse, to comply with a requirement imposed by an enforcement officer under section 57(2)(c); 

(b) falsely to pretend to be an enforcement officer;

(c) intentionally to obstruct an enforcement officer in the carrying out of the officer’s functions under this Part;

(d) to fail to comply with a requirement or prohibition imposed by a prohibition notice;

(e) to fail to comply with a requirement imposed by—

(i) an enforcement notice; or

(ii) an alterations notice;

(f) to contravene section 63;

(g) to make in any register, book, notice or other document required by virtue of this Part to be kept, served or given an entry which the person knows to be false in a material particular;

(h) to give any information which the person knows to be false in a material particular, or recklessly to give any information which is false in a material particular, where the information is given in purported compliance with a requirement to give information imposed by virtue of this Part.

(5) A person guilty of an offence under subsection (1), (3) or (4)(d) or (e) shall be liable—

(a) on summary conviction, to a fine not exceeding £20,000;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(6) A person guilty of an offence under subsection (2) shall be liable—
(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
(b) on conviction on indictment, to a fine.

(7) A person guilty of an offence under subsection (4)(a), (c), (f), (g) or (h) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) A person guilty of an offence under subsection (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) It shall be a defence for a person charged with an offence under this section (other than an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(10) In any proceedings for an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.

68 Offences by bodies corporate and partnerships

(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a relevant person, the relevant person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a relevant person.

(3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In this section, “relevant person”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

69 Employee’s act or omission not to afford employer defence

Nothing in this Part shall be construed as affording an employer a defence in any proceedings in pursuance of section 67 or 68 by reason only of any act or omission of an employee of the employer.

CHAPTER 5

GENERAL

70 Service of documents

(1) Any document required or authorised by virtue of this Part to be served on any person may be served—
(a) by delivering it to the person or by leaving it at the person’s proper address or by sending it by post to the person at that address;
(b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary or clerk of the body;

(c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or

(d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.

(2) For the purposes of this section and paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) (service of documents by post) ("the Order") in its application to this section, the proper address of any person on whom a document is to be served shall be the person’s last known address, except that—

(a) in the case of service on a body corporate (other than a limited liability partnership), its secretary or clerk, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;

(c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outwith the United Kingdom or of a partnership carrying on business outwith the United Kingdom is its principal office within the United Kingdom.

(4) Subsection (5) applies if a person who is to be served by virtue of this Part with any document by another has specified to that other an address within the United Kingdom other than the person’s proper address (as determined under subsection (2)) as the one at which the person or someone on the person’s behalf will accept documents of the same description as that document.

(5) In relation to that document, that address shall be treated as the person’s proper address for the purposes of this section and paragraph 4 of Schedule 1 to the Order in its application to this section, instead of that determined under subsection (2).

(6) The Scottish Ministers may by regulations make provision for or in connection with specifying procedures which must, or may, be followed when serving documents required or authorised by virtue of this Part to be served on any person.

71 Crown application

(1) The provisions of this Part, and of regulations made under it, shall bind the Crown.

(2) No contravention by the Crown of any provision of this Act or of any regulations made under it shall make the Crown criminally liable; but the Court of Session may, on the application of an enforcing authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (2), the provisions of this Part and of regulations made under it shall apply to persons in the public service of the Crown as they apply to other persons.
(4) Nothing in this Part authorises the entry of any relevant premises occupied by the Crown.

(5) Nothing in this section affects Her Majesty in Her private capacity.

(6) This Part shall apply in relation to relevant premises owned or occupied by the Parliamentary corporation as it applies in relation to relevant premises owned or occupied by the Crown.

72 Meaning of “relevant premises”

(1) In this Part, “relevant premises” means any premises other than those mentioned in subsection (2).

(2) Those premises are—

(a) domestic premises (as defined in section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37));

(b) construction sites, ships and hovercraft, mines and offshore installations;

(c) premises which, on 1 July 1999, were of a description specified in Part I of Schedule I to the Fire Certificates (Special Premises) Regulations 1976 (S.I. 1976/2003);

(d) borehole sites to which the Borehole Sites and Operations Regulations 1995 (S.I. 1995/2038) apply;

(e) premises occupied solely for the purposes of the armed forces of the Crown;

(f) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5);

(g) premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;

(h) if the undertaking carried on in premises is agriculture or forestry, any land other than buildings.

(3) For the purposes of subsection (1), “premises” includes in particular—

(a) any place;

(b) any installation on land;

(c) any tent or movable structure; and

(d) vehicles other than those mentioned in subsection (4).

(4) The vehicles referred to in subsection (3)(d) are—

(a) any aircraft, locomotive, rolling stock, trailer or semi-trailer used as a means of transport;

(b) any vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 (c.22);

(c) any vehicle which is exempt from duty under that Act.

(5) References in this Part to relevant premises include references to a part of relevant premises.
(6) The Scottish Ministers may by regulations modify subsections (1) to (4).

73 Interpretation of Part 3

(1) In this Part, unless the context otherwise requires—

“Chapter 1 duties” means—

(a) the duties imposed by sections 49, 50, 51 and 52; and
(b) any duties imposed by regulations made under section 53 or 54;

“employee” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37); and related expressions shall be construed accordingly;

“enforcement officer” means an enforcement officer appointed under section 56(3);

“enforcing authority” has the meaning given by section 56(6);

“fire safety measures” shall be construed in accordance with schedule 2;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“public road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c.54);

“relevant person”, in relation to premises, means—

(a) any person who is, or may be, lawfully in the premises; or
(b) any person—

(i) who is, or may be, in the immediate vicinity of the premises; and
(ii) whose safety would be at risk in the event of fire in the premises;

but does not include an employee of a relevant authority carrying out functions of the authority and, in its application to section 50, a person such as is mentioned in subsection (2);

“workplace”, in relation to an employer, means any relevant premises which are used for the purposes of an undertaking carried on by the employer and made available to an employee of the employer as a place of work; and includes—

(a) any part of those premises to which an employee of the employer has access while at work;
(b) any relevant premises (other than a public road)—

(i) which are a means of access to or egress from the place of work; or
(ii) where facilities are provided for use in connection with the place of work.

(2) The person is, where the person (“the employer”) subject to the requirement to carry out an assessment (or a review) under section 50 is also subject to the requirement to carry out an assessment (or a review) under section 49, any employee of the employer.

(3) For the purposes of section 52 references in the definition of “relevant person” in subsection (1) to premises shall be construed as references to the workplace.
PART 4

MISCELLANEOUS

74 Inquiries

The Scottish Ministers may cause an inquiry to be held into—

(a) the manner in which a relevant authority is carrying out any of its functions under this Act;

(b) the circumstances of, or the steps taken to deal with—

(i) a fire;

(ii) a road traffic accident; or

(iii) an emergency of another kind in relation to which a relevant authority has functions under this Act.

75 Inquiries: supplementary

(1) The Scottish Ministers may by regulations make provision in connection with inquiries under this Act.

(2) The reference in subsection (1) to inquiries does not include inquiries mentioned in section 40.

(3) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) the persons who may conduct an inquiry and their appointment to do so;

(b) the giving of notice of an inquiry;

(c) requiring persons to attend an inquiry—

(i) to give evidence; or

(ii) produce documents;

(d) the taking of evidence on oath;

(e) the payment of expenses—

(i) of witnesses; and

(ii) of or concerning the production of documents;

(f) the making of awards of expenses in respect of—

(i) an inquiry; or

(ii) arrangements made for an inquiry which does not take place;

(g) what expenses may be included in such awards;

(h) how expenses are to be calculated; and

(i) recovery of expenses.

Consultation requirements

76 Pre-commencement consultation

Where—
(a) consultation is required to take place under a provision of this Act; and
(b) before the provision comes into force, consultation takes place which would have satisfied the requirements of the provision to any extent if it had been in force, those requirements shall be taken to have been satisfied to that extent.

Advisory bodies

Payments in respect of advisory bodies

(1) The Scottish Ministers may make any payments they consider appropriate in respect of the expenses of a body established for the purpose of advising them on any matter in relation to which provision is made by this Act.

(2) The Scottish Ministers may make a payment under this section—
(a) to any person; and
(b) subject to any conditions,
they consider appropriate.

Abolition of Scottish Central Fire Brigades Advisory Council

The Scottish Central Fire Brigades Advisory Council is hereby abolished.

False alarms

(1) A person who knowingly gives or causes to be given to a person acting on behalf of a relevant authority a false alarm of—
(a) fire;
(b) a road traffic accident; or
(c) an emergency of another kind,
shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction—
(a) to a fine not exceeding level 5 on the standard scale;
(b) to imprisonment for a term not exceeding 3 months; or
(c) to both.

PART 5

Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.
(2) An order under subsection (1) may modify any enactment, instrument or document.

81 Orders and regulations

(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations shall be exercisable by statutory instrument.

(2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—

   (a) may be exercised so as to make different provision for different purposes; and

   (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(3) A statutory instrument containing an order or regulations made under this Act (other than an order under section 83) shall, subject to subsection (4), be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—

   (a) an order under section 80(1) modifying an enactment; or

   (b) regulations under section 75,

shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

82 Minor and consequential amendments and repeals

(1) Schedule 3, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.

(2) The enactments mentioned in the first column of schedule 4 (which include enactments that are spent) are repealed to the extent set out in the second column.

83 Commencement

This Act, other than this section and section 81, shall come into force on such day as the Scottish Ministers may by order appoint.

84 Short title

This Act may be cited as the Fire (Scotland) Act 2004.
SCHEDULE 1
(introduced by section 4)

JOINT FIRE AND RESCUE BOARDS: SUPPLEMENTARY PROVISION

Status

1 A joint fire and rescue board constituted by a scheme made under section 2(1) shall be a body corporate and shall have a common seal.

General powers

2 Subject to this Act and the scheme made under section 2(1) by which it is constituted, a joint fire and rescue board may do anything which appears to it to be appropriate for the purposes of, or in connection with, the carrying out of its functions; and it may in particular—

(a) acquire and dispose of land and other property; and

(b) borrow money.

SCHEDULE 2
(introduced by section 49(4))

FIRE SAFETY MEASURES

1 Subject to paragraph 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 fighting 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 by the Scottish Ministers by regulations.

2 Nothing in paragraph 1 shall be construed as including process fire precautions.
SCHEDULE 3
(introduced by section 82(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

The Local Government (Scotland) Act 1973 (c.65)

1 In section 63A of the Local Government (Scotland) Act 1973 (disapplication of sections 62A to 62C in relation to fire authorities), after “fire” insert “and rescue”.

The Water (Scotland) Act 1980 (c.45)

2 (1) The Water (Scotland) Act 1980 shall be amended as follows.

(2) In section 109(1) (interpretation), in the definition of “fire authority” for the words from “has” to the end substitute “means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2004 (asp 00)”.

(3) In section 1(1) of Schedule 4 (provisions incorporated in orders relating to water undertakings), in the definition of “fire authority” for the words from “has” to the end substitute “means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2004 (asp 00)”.

The Scottish Public Services Ombudsman Act 2002 (asp 11)

3 For paragraph 13 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities) substitute—

“13 A joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2004 (asp 00).”.

The Local Government in Scotland Act 2003 (asp 1)

4 In section 61 of the Local Government in Scotland Act 2003 (asp 1) (definitions), in the definition of “joint fire board” for the words from “board”, where it secondly occurs, to the end substitute “and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2004 (asp 00)”.
### SCHEDULE 4
*(introduced by section 82(2))*

#### REPEALS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
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<tr>
<td>The Fire Services Act 1947 (c.41)</td>
<td>The whole Act except sections 26 to 27A.</td>
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<tr>
<td>The Local Government (Scotland) Act 1973 (c. 65)</td>
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<td>The Local Government etc. (Scotland) Act 1994 (c. 39)</td>
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Fire (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives 89/391/EEC, 89/654/EEC, 91/383/EEC, 94/33/EC, 98/24/EC and 99/92/EC; to make other provision in relation to fire safety in certain non-domestic premises; and for connected purposes.

Introduced by: Cathy Jamieson
On: 28 June 2004
Supported by: Hugh Henry
Bill type: Executive Bill
These documents relate to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

FIRE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Fire (Scotland) Bill introduced in the Scottish Parliament on 28 June 2004:
   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 24–PM.
INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The main purpose of this Bill is to deliver modernised fire and rescue services that respond to the particular demands of the 21st Century and contributes to building a safer Scotland.

5. The Bill repeals and re-enacts many of the provisions of the Fire Services Act 1947 (c.41) (“the 1947 Act”) as they currently apply in Scotland.


7. These proposals included the reform of fire safety legislation in Scotland, which is also addressed in the Bill.

8. The consultation paper mentioned above built on the issues raised in, and the responses received to, the policy paper The Scottish Fire Service of the Future which was published in April 2002. The paper also took account of 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.

THE BILL – AN OVERVIEW

9. The Bill covers various aspects of the fire and rescue services and is in 5 Parts:
   (a) Part 1 – Fire and Rescue Authorities: determines the bodies which are the fire and rescue authorities (section 1); provides schemes for the creation, variation and revocation of joint fire and rescue boards and supplementary provision (sections 2, 3, 4 and 5) and provides a meaning of ‘relevant authority’ (section 6).
   (b) Part 2 – Fire and Rescue Services (8 Chapters): sets out the principal functions of relevant authorities (sections 7 to 10); sets out ancillary functions (sections 11 to 15); determines responsibilities for the supply of water for use by relevant authorities (sections 16 to 22); sets out the powers of employees of relevant authorities (sections 23
These documents relate to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

to 30); provides for reinforcement schemes (sections 31 and 32); provides for assistance other than from relevant authorities (section 33); enables arrangements to be made for the carrying out of functions by others (sections 34 and 35); provides for the preparation of a fire and rescue framework for Scotland (sections 36 to 38); provides for Inspectors of relevant authorities (sections 39 and 40); provides for the supervision and support of fire and rescue authorities (sections 41 to 44); deals with employment by relevant authorities (sections 45 and 46); prohibits the employment of the police (section 47) and provides an interpretation of Part 2 (section 48).

c) Part 3 – Fire Safety (5 Chapters): consolidates and rationalises much of the existing fire safety legislation in respect of the duties of employers to their employees and in relation to premises (sections 49 and 50); sets out considerations about the taking of fire safety measures (section 51); the general duties of employees (section 52); sets out a power for the Scottish Ministers to make regulations in relation to risk assessments and fire safety (sections 53 and 54); suspends the duties in certain limited circumstances (section 55); determines the enforcing authorities and sets out the duties of the enforcing authorities (section 56); sets out the powers of enforcement officers (section 57); details the notice and appeals procedures (sections 58 to 62); establishes a duty not to charge employees for things done or provided (section 63) and sets out miscellaneous provisions in relation to civil liability for breach of statutory duty (section 64); disapplies the Health and Safety at Work etc. Act 1974 in respect of fire safety matters (section 65); restricts the application of enactments covering devolved matters (section 66); creates offences related to Part 3 (sections 67 and 68); makes provision on defences available to an employer (section 69); provides for service of documents (section 70); sets out Crown application (section 71); and addresses the interpretation of terms used in Part 3 (sections 72 and 73).

Part 3 is intended to continue the implementation of, and provide for implementation by subordinate legislation of, the provisions of 6 EU 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,
These documents relate to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

in so far as these provisions relate to matters within devolved competence, general fire safety measures to be taken by employers and in so far as more specific legislation does not make appropriate provision.

(d) Part 4 – Miscellaneous: details the provisions in relation to inquiries (sections 74 and 75); addresses the issue of pre-commencement consultation (section 76); enables payments in respect of advisory bodies (section 77); provides for the abolition of the Scottish Central Fire Brigades Advisory Council (section 78) and sets out the offence that may be committed in relation to false alarms of fire (section 79).

(e) Part 5 – General: this part covers general provisions such as the making of orders and regulations and minor and consequential amendments and repeals. In particular it provides powers for the Scottish Ministers to make ancillary provision (section 80); makes provision for orders and regulations (section 81); addresses minor and consequential amendments and repeals (section 82); covers commencement for the Act (section 83); and the short title of the Act (section 84).

THE BILL – SECTION BY SECTION

PART 1 – FIRE AND RESCUE AUTHORITIES

Section 1 – Fire and rescue authorities

10. This section defines what is meant in the Bill by “fire and rescue authority”: the council for the local government area as constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

Sections 2, 3, 4 and 5 – Joint fire and rescue boards

11. These provisions allow for the combining of fire and rescue authorities in an amalgamation scheme by the Scottish Ministers on the grounds of improving efficiency, effectiveness and economy. Schemes will be subject to a power to vary or revoke them by order. Any such scheme will constitute a joint board to carry out the functions of each authority for the combined area. Schedule 1 also relates to the powers of joint boards.

12. In all cases, the Scottish Ministers will be required to consult the existing fire authorities which will, or may be, affected and such other persons as Ministers consider appropriate. Similar schemes already exist under section 147 of the Local Government (Scotland) Act 1973. Section 5 provides that these schemes will continue to have effect despite the repeal of the Fire Services Act 1947 and section 147 of the Local Government (Scotland) Act 1973 and that they will be deemed to be section 2(1) schemes under this Bill.

Section 6 – Meaning of “relevant authority”

13. The term “relevant authority” is used throughout the Bill and is defined at section 6 as a fire and rescue authority as constituted under section 1 or a joint board constituted under an amalgamation scheme under section 2(1). “Relevant authority” is used throughout these Notes in the same way.
PART 2 – FIRE AND RESCUE SERVICES

Chapter 1 – Principal fire and rescue functions

Section 7 – Fire safety

14. This provision places a statutory duty on relevant authorities to make provision for the purpose of promoting fire safety. At present, fire authorities undertake community fire safety initiatives. These take various forms, for example, schools education programmes, safety information advisory sessions for community groups and attendance at public events, fetes, etc. In some cases individual home fire safety advisory visits are undertaken and advice is given to homeowners on fire prevention issues. This work is currently carried out on a discretionary basis and the effect of section 7 is to make it a statutory duty.

Sections 8 and 9 – Fire-fighting and road traffic accidents

15. Section 8 re-enacts the existing statutory duty for a relevant authority to plan and provide arrangements for fighting fires and protecting life and property from fires within its area. A relevant authority is required to secure sufficient equipment etc. and training to discharge its duty in normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions; the latter might include, for example, information about the nature and characteristics of buildings within the authority’s area or availability of, and access to, water supplies.

16. Section 9 places a duty on a relevant authority to make provision for rescuing persons from road traffic accidents and for dealing with the aftermath of such accidents. Historically, the risk of fire was the trigger for attendance at such an incident. Whilst advances in vehicle design have seen the incidence of fire following an accident decrease, calls to assist with the rescue of people from wreckage and protect them from harm from spillage of hazardous substances have increased dramatically. A relevant authority is required therefore to secure sufficient resources and training to discharge its duties in all normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions (for example, knowledge of local road and trunk road networks).

17. Under both sections 8 and 9 relevant authorities must seek to prevent or limit damage to property in exercising these statutory functions.

Section 10 – Conferral of functions in relation to other emergencies

18. This section allows the Scottish Ministers to confer on a relevant authority specified functions by order (an “additional function order”). This would relate to such matters as flooding, chemical spills and terrorist incidents.

19. The Scottish Ministers will also have the power, by additional function order, to direct relevant authorities as to how they should plan, equip for, and respond to such emergencies. This may include, for example, directions as to the deployments of mass decontamination equipment for civil resilience purposes. The intention is to ensure consistency of approach towards emergencies, particularly in response to terrorist incidents.
20. This section also allows the order to require an authority to respond to an emergency that has arisen outside its own area if, for example, it has more appropriate equipment and training than the authority in whose area the emergency has occurred.

21. The term “emergency” is defined for the purposes of this Bill, at section 48.

Chapter 2 – Ancillary functions

Section 11 – Emergency directions

22. Section 11 gives the Scottish Ministers power to direct relevant authorities to respond to a particular fire or emergency incident, either in its own area or in that of another authority. The Scottish Ministers will also be able to direct an authority not to take any action in the event of such an emergency if, for example, another authority is better equipped to do so.

Section 12 – Power to respond to other eventualities

23. This section provides relevant authorities with discretion to equip, and respond to, events beyond its core functions provided for at sections 7 to 10 and 56. Such an authority will be free to act where it believes there is a risk to life or the environment. This would allow, for example, specialist activities such as rope rescue.

Section 13 – Provision of other services

24. Section 13 provides a relevant authority with the power to agree to the use of its equipment or personnel for any purpose it believes appropriate and wherever it so chooses. For example, an authority may agree to help pump a local pond as a service to its community.

Section 14 – Provision of centres for education and training

25. This section re-enacts provisions in the Fire Services Act 1947 that allow a relevant authority to establish training centres in respect of any function conferred under these provisions.

Section 15 – Charging

26. Section 15 allows the Scottish Ministers to set out by order, following consultation, the services for which a relevant authority may charge and the persons who may be subject to the charge. At present fire authorities have discretionary powers to charge for exercising certain functions. As with the existing legislation, relevant authorities will not be able to charge for activity in extinguishing fires, protecting property in the event of fires or protecting life.

27. Subsection (4) maintains the existing arrangement that allows fire authorities to set their own level of charge, and to vary the charge depending on the type of service provided and the circumstances of a particular incident, or to choose not to charge at all.

28. Subsection (5) sets out that in setting the amount of any charge a relevant authority shall secure that the income from charging does not exceed the cost to the relevant authority for providing the service for which charges are levied when looked at over any particular financial year.
Chapter 3 – Water supply

Section 16 – Duty to secure water supply
29. This section re-enacts section 13 of the Fire Services Act 1947, requiring relevant authorities to take all reasonable measures to ensure an adequate supply of water and the purposes for which they should secure that supply.

Section 17 – Use of water
30. This section allows a relevant authority to use any suitable supply of water. Whilst it provides for payment of reasonable compensation for water this is limited by reference to section 9A of the Water (Scotland) Act 1980, which expressly forbids charging by a water undertaker in respect of: water taken for the purpose of extinguishing fires or for any other emergency purposes; water taken for testing apparatus used for extinguishing fires; or for fire fighting training. This section re-enacts section 15(2) of the Fire Services Act 1947.

Section 18 – Agreements in relation to water supply
31. This section re-enacts subsections 14(1) and (4) of the Fire Services Act 1947 and allows a relevant authority to enter into agreements with Scottish Water and persons other than Scottish Water in order to secure the use of water; to improve access to water; or to lay and maintain pipes and to carry out other works in connection with the use of water. Subsection (2) allows for any agreement to include terms for payment, other than for the purposes covered by section 9A of the Water (Scotland) Act 1980.

32. Subsection (3) places a requirement on Scottish Water to not unreasonably refuse to enter into an agreement in relation to water supply and subsection (4) provides that Scottish Ministers may determine whether any refusal by Scottish Water to enter into an agreement under this section is unreasonable.

Section 19 – Emergency supply by Scottish Water
33. This section re-enacts sections 30(4) and (4A) of the Fire Services Act 1947. Subsection (1) places an obligation on Scottish Water to take all necessary steps to increase supply and pressure of water if requested to do so by a relevant authority for the purposes in section 16(2). Subsection (2) allows Scottish Water to shut off water from the mains and pipes in any area to enable it to comply with a request to increase supply and water pressure. Subsection (3) safeguards the authority, Scottish Water or any person from any liability for anything done by Scottish Water in complying with is obligations. Subsection (4) make it an offence for Scottish Water, without reasonable excuse, to fail to take any steps which it is obliged to take and provides for a level 5 fine (currently £5,000) on summary conviction.

Section 20 – Fire hydrants: provision etc.
34. Subsection (1) re-enacts the first part of section 14(3)(a) of the Fire Services Act 1947 in respect of the requirement to provide fire hydrants. Access to the water supply is by connection to a fire hydrant. Hydrants may be fitted by Scottish Water at the request of a relevant authority. Subsection (2) requires Scottish Water to mark the location of every fire hydrant with a notice or
These documents relate to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

distinguishing mark and under subsection (4) the costs of doing this can be charged to the relevant authority in whose area the hydrant is situated.

35. Subsection (5) enables the Scottish Ministers to make regulations providing for uniformity in fire hydrants and the distinguishing marks and notices indicating their location. This re-enacts section 14(6) of the 1947 Act.

36. Subsection (6) provides that in circumstances where a hydrant is damaged as a result of authorised use which was not for the purposes of fire fighting or other relevant authority purposes that the liability for the cost of repair or replacement will not fall to the relevant authority. This re-enacts section 14(3)(b) of the 1947 Act.

Section 21 – Fire hydrants: offences

37. This section makes it an offence for any person to use a fire hydrant provided by Scottish Water other than for fire fighting or any other purpose of a relevant authority, or other than for any purpose authorised by Scottish Water. It also makes it an offence to damage or obstruct a fire hydrant provided by Scottish Water other than as a consequence of its use for fire fighting, for any other authority function or any purpose other than one authorised by Scottish Water.

38. Under subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a level 5 fine. This re-enacts section 14(5) of the Fire Services Act 1947.

Section 22 – Notice of works affecting water supply and fire hydrants

39. This section re-enacts section 16(1) to (3) of the Fire Services Act 1947 and requires any person who proposes to carry out any works for the purpose of supplying water to any part of the area of a relevant authority to give written notice to the authority under subsection (1). The period for doing so must be either 14 days in a case where proposed works are to be carried out under a requirement under any Act other than the Water (Scotland) Act 1980, or 6 weeks in any other case. A person proposing to carry out any works affecting a fire hydrant is required to give at least seven days notice in writing.

40. Under subsection (4), if it is not practicable for written notice to be given, the person is regarded as having given such notice if he gives it as soon as practicable. It is an offence under subsection (5), if, without reasonable excuse, a person fails to give notice as required. Under subsection (6) a person is liable on summary conviction to a level 5 fine.

Chapter 4 – Powers of employees and constables

Section 23 – Powers of authorised employees in relation to emergencies

41. This section provides an authorised employee of a relevant authority with the powers to deal with fires, road traffic accidents and other emergencies. It replaces section 30(1) of the Fire Services Act 1947 which was limited to dealing with extinguishing or preventing the spread of fires and recognises the wider range of duties of fire fighters, including the work which fire authorities do in responding to road traffic accidents.
Section 24 – Powers of constables in relation to fires

42. This section sets out the powers of constables in the event of fire breaking out and replicates powers that currently exist under the 1947 Act.

Section 25 – Powers of authorised employees in relation to obtaining information

43. This section allows an authorised officer of a relevant authority to enter premises to obtain information that is needed for the discharge of the core functions of fire fighting (section 8), dealing with road traffic accidents (section 9) and specified emergencies (section 10). Such entry cannot be forcible and 24 hours notice must be given to the occupier of a private dwelling, unless authorised by a Sheriff or Justice of the Peace.

Section 26 – Giving of notices required by section 25

44. Section 25 provides for the means by which a notice under section 24 may be served.

Section 27 – Powers of authorised employees in relation to investigating fires

45. This section allows an authorised officer of a relevant authority to enter premises where a fire has occurred in order to investigate the cause and progression of the fire that has occurred there including the taking of samples.

Section 28 – Exercise of powers under sections 25 and 27: securing of premises

46. Section 28 obliges an authorised employee of a relevant authority who has entered a place under section 25 or 27 to leave the premises as secure against unauthorised entry as the employee found them.

Section 29 – Sections 25 and 27: offences

47. Section 29 makes it an offence for any person to obstruct the exercise of any powers set out in sections 25 and 27 and a person is liable on summary conviction to a level 4 fine (currently £2500).

Section 30 – Use of commercially sensitive information

48. Section 30 replicates the 1947 Act provisions making it an offence for any person to make use or disclose any commercially sensitive information which they obtain in the course of exercising their powers under sections 23, 24, 25 or 27. A person is liable on summary conviction to a fine not exceeding level 4 or to 3 months’ imprisonment.

Chapter 5 – Mutual assistance etc.

Sections 31 and 32 – Reinforcement schemes and directions about reinforcement schemes

49. These sections re-enact the existing provisions of the Fire Services Act 1947 on reinforcement schemes and extend them to apply to road traffic accidents and other serious emergencies (as set out by additional function order under section 10). Section 31 obliges relevant authorities to group together (so far as practicable) to provide mutual assistance. If there are cases where such authorities are unable to come to an agreement about forming such a
group then, at the request of one of the authorities concerned, section 32 gives the Scottish Ministers the power to direct authorities involved to make, vary or revoke such a scheme.

50. Before giving a direction, the Scottish Ministers will give all authorities concerned the opportunity to make representations to them and may also instruct an inquiry.

Section 33 – Assistance other than from relevant authorities

51. This section will extend existing powers in the Fire Services Act 1947 which allow fire authorities to enter into agreements with organisations that employ their own fire-fighters. For example, a relevant authority could arrange with an industrial company for their in-house fire-fighters to provide assistance to the authority out with the company premises if requested and required. The cost of this assistance could be reimbursed. These arrangements can also apply to the non-fire emergencies covered by sections 9 and 10.

52. The arrangements under this section cannot be between two relevant authorities as this type of relationship would be covered under sections 31 and 32.

Sections 34 and 35 – Arrangements for carrying out of functions by others

53. Section 34 extends existing powers in the Fire Services Act 1947 to provide relevant authorities with the ability to enter into contractual arrangements with others (including other authorities) to provide services in the execution of their functions (covered by sections 7 to 10, 12 and 56). An example would be an agreement where a relevant authority contracts with a local authority to promote fire safety within its schools. Another example would be where a relevant authority specialises in rope rescue and a neighbouring relevant authority contracts with it to provide some, or all, of its response to incidents requiring rope rescue.

54. However, a relevant authority can only delegate its fire-fighting functions to another authority or others that employ fire-fighters.

55. Section 35 re-enacts provisions in the Fire Services Act 1947 that provide the Scottish Ministers with the ability to require relevant authorities to enter into contractual arrangements under section 34 (or to vary or cancel any such arrangements). The Scottish Ministers can exercise the power on their own initiative, but the power must be exercised in the interests of economy, efficiency and effectiveness.

56. Before issuing a direction, the Scottish Ministers must give the relevant authorities concerned the opportunity to make representations to them and they may hold an inquiry.

Chapter 6 – Central supervision and support

Section 36 – Framework document

57. This section requires the Scottish Ministers to consult on, and prepare, a Fire and Rescue Service National Framework (“the Framework”), keep the Framework under review and consult on any significant revisions made to it. The Framework (and any significant revision) will come into effect by order.
These documents relate to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

Section 37 – Adherence
58. This section requires relevant authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if authorities fail to act in accordance with the Framework by setting out, by order, an obligation for an authority to act in accordance with the Framework where they consider that the authority is failing to do so. Before making such an order, the Scottish Ministers must consult the authority.

Section 38 – Reporting
59. This section requires the Scottish Ministers to report to the Parliament on the extent to which relevant authorities are acting in accordance with the Framework and any action they have taken to ensure the authorities do so.

Sections 39 and 40 – Inspectors of Fire and Rescue Authorities and functions of Inspectors of Fire and Rescue Authorities
60. Section 39 sets out the arrangements for appointing inspectors of relevant authorities.

61. Section 40 sets out the functions of the inspectors, including the submission of reports to the Scottish Ministers on matters arising under the Bill and on the general performance of relevant authorities. The Scottish Ministers are required to lay any report submitted on the state and efficiency of relevant authorities generally before Parliament.

Section 41 – Directions for public safety purposes
62. This section provides the Scottish Ministers with the power to give general directions (“a property and facilities” order), to relevant authorities as to the use and disposal of their property or facilities for the purposes of public safety. Such a direction may cover all kinds of property and facilities. An example of when this power might be used is during a period of industrial action when official relevant authority cover to deal with emergencies is insufficient to deal with local risks and in order to ensure public safety, their equipment needs to be used by others providing emergency fire cover.

Section 42 – Requirements concerning equipment and services
63. This section confers on the Scottish Ministers the power (by order) to oblige relevant authorities to use and maintain equipment and services as specified. An example would be the new Firelink radio system where in order to ensure inter-operability between the emergency services, and to enable relevant authorities to work across their own boundaries in the event of an emergency, it is essential that all authorities use the same radio system.

Section 43 – Provision of equipment etc.
64. This section allows the Scottish Ministers to provide and maintain equipment, facilities, organisations and services which may be used by relevant authorities. This power must be exercised in the interests of economy, efficiency and effectiveness. For example, this clause will give the Scottish Ministers the specific authority to provide equipment to deal with civil resilience incidents and standardised systems for radio communications. This will help to ensure consistency of approach in the case of major emergencies such as a terrorist incident.
Section 44 – Central institution and other centres for education and training

65. This section allows the Scottish Ministers to set up central or local training centres for the purposes set out in subsection (2). Some training which is best suited to local delivery may be undertaken by relevant authorities under powers in section 14.

Chapter 7 – Employment

Section 45 – Statutory negotiation arrangements

66. This section provides the Scottish Ministers with power to establish negotiating machinery for the fire and rescue services. The power allows the Scottish Ministers to determine the number, composition and chair of such a negotiating body or bodies.

67. Subsection (2) requires that any such body include representatives of employers and employees, (which may include a trade union) and an independent chair.

68. Should any negotiating body be set up under these powers, subsection (7) would prevent the body being undermined by negotiations being held in another forum. Subsections (4), (5) and (6), however, would allow the statutory body to make arrangements for some conditions of service to be negotiated locally either in their entirety or within nationally agreed parameters.

Section 46 – Guidance

69. Any negotiating body, whether established voluntarily or under section 45, is required by this section to have regard to any guidance given by the Scottish Ministers in connection with the negotiation of conditions of service.

Section 47 – Prohibition on employment of police

70. This section re-enacts section 32 of the Fire Services Act 1947 and provides that no member of a police force may be employed as a firefighter. If an off-duty police officer were employed by a relevant authority, for example as a firefighter on the retained duty system and available for response by pager call, difficulties may arise at the scene of a fire or other emergency due to confusion over which employer has the primary claim on the officer’s services.

Chapter 8 – Interpretation

Section 48 – Interpretation of Part 2

71. This section gives meanings to two terms used in Part 2 of the Bill – in particular it provides a definition of ‘emergency’, for the purposes of this Part.
PART 3 – FIRE SAFETY

Chapter 1 – Fire safety duties

Section 49 – Duties of employers to employees

72. Section 49 provides that employers have a general duty to ensure so far as is reasonably practicable the safety of their employees from fire in the workplace. The formulation of this duty is very similar to section 2 of the Health and Safety at Work Act etc. 1974 (c.37) (“the 1974 Act”). In that context the words have been considered by the Court of Appeal in Edwards v NCB [1949] 1 All ER 743, where they held that it is a narrower term than “physically possible” and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk is placed in the other. If it can be shown that there is a gross disproportion between them, the risk being insufficient in relation to the sacrifice, the person on whom the burden is placed discharges the burden of providing that compliance was not reasonably practicable. This interpretation has been consistently applied by the courts in subsequent decisions.

73. Subsection (2) sets out specific employer duties in relation to carrying out a risk assessment to identify fire safety risks, and taking the necessary fire safety measures to ensure that they comply with their general duty under subsection (1). The obligations apply whether or not the requirements relate to matters within their control. There is therefore a difference between this duty and that found in section 50, where persons who have control of premises to a certain extent, have a duty to the same extent. This reflects the high standard which is expected of employers in domestic and European legislation.

74. Fire safety measures are defined in schedule 2. Paragraph 2 of schedule 2 makes it clear that these measures do not include process fire precautions which are a reserved matter under Section H2 of Schedule 5 to the Scotland Act 1998. The term “process fire precautions” is not defined anywhere in statute but is widely used and understood as being distinct from general fire safety. Essentially, “process fire precautions”, which include risk assessment, are 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. This is to be distinguished from “general fire precautions” which relate to the means of fire warning, fire fighting and escape, thereby dealing with the means to ensure people can escape safely once a fire has started.

75. Subsection (3) imposes a duty on the employer to review the risk assessment in accordance with regulations and to take the necessary fire safety measures to ensure compliance with the general duty under subsection (1).

Section 50 – Duties in relation to relevant premises

76. Section 50 provides that, in cases where a person has control of premises, they must carry out a risk assessment to identify fire safety risks to relevant persons in the event of fire on the premises. There is a definition of “premises” in section 72. The person in control of the premises would include the employer (where there is one), a person in control of the premises in connection with the carrying on of a trade, business or other undertaking, or the owner. The term “relevant person” is defined in section 73 and means persons who are lawfully on the
These documents relate to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

premises and persons in the immediate vicinity of the premises whose safety would be at risk in the event of fire in the premises. Employees of fire and rescue authorities and joint boards are excluded from the definition when they are carrying out their functions. Where the person subject to the duty in section 50 is an employer their employees are excluded because they are already protected by the section 49 employer/employee duty. Following the risk assessment the obligation is to take such fire safety measures as would be reasonable for a person in that position to take to ensure the safety of relevant persons, bearing in mind the circumstances. Where the person in control of the premises is not the owner or a person carrying on an undertaking then the owner is subject to the subsection (2) duties.

77. Subsection (4) imposes the subsection (2) duties on persons who have obligations under contracts or tenancies in relation to maintenance or repair or in relation to fire safety. The subsection (2) duty is imposed but only to the extent that those persons have such obligations. This would include e.g. contractors who take responsibility for installation and maintenance in relation to fire alarms.

78. Subsection (5) imposes an obligation on the persons subject to the subsection (2) duty to review their risk assessment in line with the regulations made under section 53 and to take measures to ensure safety in line with their subsection (2)(b) duty.

Section 51 – Taking of measures under section 49 or 50: considerations

79. Section 51 details the considerations, which a person taking fire safety measures under section 49 or 50 should take account of. These considerations include avoiding risks, adapting to technical progress and the development of a comprehensive policy on fire prevention. The measures set out in the Bill correspond with those set out in article 6(2) of the Framework Directive.

Section 52 – Duties of employees

80. This section places a duty on employees to take, in respect of fire safety, reasonable care of themselves and others in or around the workplace who may be affected by their actions (namely other relevant persons). Employees must also co-operate with their employer to enable the employer to meet their obligations and duties under the Bill.

Sections 53 and 54 – Risk assessments: power to make regulations and Scottish Ministers’ power to make regulations about fire safety

81. These sections provide the Scottish Ministers with the necessary powers to make regulations in connection with the carrying out of risk assessments, including their review, and to make regulations in connection with fire safety in premises to which the Bill applies.

82. It is intended that regulations will cover – among other things - duties to record fire safety arrangements in particular circumstances, duties not to employ certain types of employee before assessments are made which take into account factors relevant to, for example, young employees the need to equip premises with fire-fighting equipment and fire detection equipment, requirements to provide safe routes to emergency exits, the standards required of such emergency exits, the need to establish appropriate safety procedures and the provision of information in connection with risks and fire safety measures in particular premises.
Section 55 – Special case: temporary suspension of Chapter 1 duties

83. This section provides that in circumstances where the carrying out of the duties imposed by sections 49 to 52 and regulations under sections 53 and 54 (defined in section 73 as the “Chapter 1 duties”) would prevent a member of the armed forces of the Crown, a visiting force, a constable or any other member of a police force from carrying out their duties, that there is a special case for temporarily suspending the Chapter 1 duties during that period. Subsection (3) provides that in these circumstances the person who has had their duties temporarily suspended must still ensure so far as is possible the safety of relevant persons in the event of fire.

Chapter 2 – Enforcement

Section 56 – Enforcing authorities

84. This section imposes an obligation on enforcing authorities to enforce the Chapter 1 duties. In most cases the enforcing authorities will be the fire and rescue authority or joint board. However it is recognised that there are some special areas where it is more appropriate for another authority to enforce. The other enforcing authorities are: the local authority for major sports grounds; and the Chief Inspector of Fire and Rescue Authorities for Scotland – for Crown owned or occupied premises generally or the United Kingdom Atomic Energy Authority premises.

85. Subsection (2) requires enforcing authorities to have regard to any guidance issued by the Scottish Ministers when carrying out their duties. Subsection (3) gives enforcing authorities the power to appoint ‘enforcement officers’.

Section 57 – Powers of enforcement officers

86. Section 57 sets out the powers of enforcement officers in relation to carrying out the enforcing authorities’ duties. Subsection (3) requires that an enforcement officer must produce evidence of their authority to exercise these powers if required to do so.

87. These powers include a power of entry and powers to take possession of or samples of articles found in the premises. Subsection (2)(c) requires persons on the premises to provide the enforcement officer with information, documents or other assistance etc.

88. Subsection (7) requires enforcement officers, in circumstances where they have exercised their powers to leave the premises as found.

Section 58 – Prohibition notices

89. Where there is serious risk to relevant persons in the event of fire, an enforcing authority may prohibit or restrict the use of premises until such time as the serious level of risk has been removed. This section provides for the issue of a prohibition notice to achieve this process and is similar to existing provisions in section 10 of the Fire Precautions Act 1971 (c.40). Under section 61 there is an appeal against the service of a prohibitions notice to the sheriff court. The sheriff can make an order suspending the operation of the prohibition notice pending the determination of the appeal.
Section 59 – Enforcement notices

90. This section provides for the issue of an enforcement notice by the enforcing authority in cases where there is non-compliance with the Chapter 1 duties (except the employee’s duty of cooperation in section 52). The provisions are similar to equivalent provisions in section 20 of the Health and Safety at Work etc. Act 1974 (c.37) and the Fire Precautions (Workplace) Regulations 1997/1840. An enforcement notice will set out what duties have not been complied with, the reason why it is considered that the duty has not been complied with and what action should be taken to remedy the position.

91. Where an enforcement notice will require the making of an alteration to premises, the enforcing authority must consult other bodies that have enforcement or approval responsibilities in respect of the premises prior to the issue of the notice, to ensure that measures required are appropriate in the light of other restrictions that may apply to the premises (for example, contractual obligations not to alter the premises without the consent of the landlord). Failure to comply with the consultation requirement does not affect the validity of the notice. Under section 61 it is possible to appeal against the service of an enforcement notice in the sheriff court. The bringing of the appeal has the effect of suspending the notice whilst the appeal is ongoing.

Section 60 – Alterations notices

92. Where premises pose a serious risk to relevant persons, or could pose a serious risk to relevant persons in the event of fire if changes were made to the premises, the enforcing authority can issue an alterations notice, the effect of which is to require the appropriate person responsible for the premises in terms of section 49 or 50 to notify the enforcing authority of their intentions prior to making any specified changes. The alterations notice advises the recipient that where they intend to make changes of a type falling within subsection (5), and where the change or changes could significantly increase the risk to relevant persons in the event of fire, they must notify the enforcing authority of the changes they intend to make. This enables the enforcing authority to be alerted to any potential problems and allows an intervention before changes are made which significantly increase the risk.

93. The issue of an alterations notice does not preclude the responsible person from undertaking the changes proposed in advance of obtaining the agreement of the enforcing authority.

Section 61 – Appeals

94. The rights of individuals are protected in relation to the service of prohibition notices, enforcement notices and alterations notices by rights of appeal and this section provides for a right of appeal to the Sheriff Court.

Section 62 – Determination of disputes

95. This section provides a right to seek a determination where the enforcing authority considers that there has been a failure to comply with the Chapter 1 duties but there is a difference of opinion on the action that requires to be taken to rectify this. The person alleged to have failed to comply with the Chapter 1 duties and the enforcing authority must jointly agree to seek such a determination. The matter will be referred either to Her Majesty’s Chief Inspector of
Fire and Rescue Authorities but, if the enforcing authority is the Chief Inspector, the matter will be referred to Scottish Ministers. The determination might avoid the need to go before the courts on appeal against an enforcement notice when the matter to be considered is purely technical—for example, the standard of fire alarm which is appropriate in the circumstances of the case. Subsection (3) confers powers on Scottish Ministers to make provision about the reference. This might include, for example, provision for the parties to provide further information and provision preventing the taking of any enforcement action in conflict with the determination.

**Chapter 3 – Miscellaneous**

96. This chapter deals with a number of miscellaneous issues.

97. Section 63 imposes a prohibition on charging employees in respect of anything an employer may do in pursuance of their Chapter 1 duties. This reflects the requirements of article 6(5) of the Framework Directive.

98. Section 64 prevents civil proceedings being pursued in respect of failures to comply with the Chapter 1 duties. The exclusion does not, however, apply in relation to a breach of Chapter 1 duties by an employer that causes damage to an employee. This reflects Article 4 of the Framework Directive which requires that an effective legal remedy is available to employees for breach by their employer of the obligations imposed by the Directive and thereby ensures its effective implementation.

99. Section 65 ensures that Part 1 of the Health and Safety at Work etc. Act 1974 (c.37) (the “1974 Act”) does not apply in relation to devolved fire safety matters. At present, the 1974 Act and the regulations made under it are capable of making provision for certain matters of general fire safety that are to be dealt with in the Bill. It is therefore appropriate to disapply the 1974 Act in the context of creating a new devolved fire safety code.

100. Section 66 disapplies the two main pieces of fire safety legislation, the Fire Precautions Act 1971 (c.40) and the Fire Precautions (Workplace) Regulations 1997/1840 in their application to devolved matters in consequence of the provision that is made in the Bill.

**Chapter 4 – Offences**

*Sections 67 and 68 – Offences and offences by bodies corporate and partnerships*

101. These sections set out the offences and associated penalties in respect of the provisions contained in Part 3 of the Bill. The most serious offences under the Bill are subject to a maximum penalty on summary conviction of either a fine not exceeding £20,000 or on conviction on indictment to imprisonment not exceeding 2 years or to a fine, or to both. In other cases on summary conviction the statutory maximum applies (currently £5,000) and on conviction on indictment the penalty is a fine. Other less serious offences are subject to lesser maximum penalties. The offences of failing to comply with the duties under sections 49 to 52 and any requirements or prohibition under regulations apply only where the failure puts a relevant person at risk of death, or serious injury, in the event of fire. The limitation means that a prosecution could only be brought in the most serious cases, although even seemingly minor breaches might of course put a person at risk of death or serious injury in the event of fire. More
minor contraventions might be dealt with either through informal advice or through the service of an enforcement notice (failure to comply with such a notice being an offence under section 67(4)(e)(i)). In relation to the offence under subsection (1) in respect of a failure to comply with the duty in section 49 of the Bill (duty to ensure fire safety of employees so far as is reasonably practicable), subsection (10) provides that the onus of showing that it was not reasonably practicable to comply with the duty is on the accused. This is similar to the offence in section 40 of the Health and Safety at Work etc. Act 1974, relating to the duty in section 2 of the 1974 Act to ensure the safety of employees at work, so far as is reasonably practicable. The reverse legal burden of proof provided by section 40 of the 1974 Act was considered by the Court of Appeal in *R v Davies [2002] All ER (d) (Dec)* and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate.

102. Subsection (9) provides for a defence of due diligence except in relation to the employer’s duties under section 49. Again, the exclusion of the employer from this defence reflects the high standards required of employers under the relevant European legislation.

*Section 69 – Employee’s act or omission not to afford employer defence*

103. This section ensures that the acts or omissions of employees will not afford the employer a defence in relation to proceedings for any offence.

*Chapter 5 – General*

*Section 70 – Service of documents*

104. This section sets out the methods by which documents issued under Part 3 may be served and subsection (6) further provides that the Scottish Ministers may make regulations as to the procedures to be followed in relation to the service of documents.

*Section 71 – Crown application*

105. This section provides that Part 3 of the Bill and any regulations made under it shall bind the Crown. Subsection (2) ensures that instead of making the Crown criminally liable for any contravention, the Court of Session may declare unlawful any act or omission of the Crown which constitutes a contravention. The powers of entry cannot be exercised in relation to Crown premises.

*Section 72 – Meaning of “relevant premises”*

106. This defines the meaning of relevant premises for the purposes of Part 3. The Bill applies to most non-domestic premises used or operated by employers, the self-employed and the voluntary sector.

107. Exceptions are offshore installations, means of transport, boreholes and fields, woods and agricultural land. There are special considerations associated with these areas and consequently separate safety regimes shall continue for the areas.
108. In addition, construction sites, ships and hovercraft, mines, premises of a description specified Part 1 of Schedule I to the Fire Certificates (Special Premises) regulations 1976 are excluded from the definition Fire safety on these premises is a reserved matter by virtue of Section H2 of Schedule 5 to the Scotland Act 1998. Various defence premises are also excluded from the definition under subsection (2)(e) to (g) in consequence of the reservation of defence in Part I, paragraph 9 of Schedule 5 to the Scotland Act 1998 since fire safety on defence premises is regarded as directly linked to the defence reservation and as having a direct impact on defence functions.

109. Under subsection (6), Scottish Ministers have power by regulations to modify the definition of premises.

PART 4 – MISCELLANEOUS

Sections 74 and 75 – Inquiries and inquiries: supplementary

110. These sections re-enact section 33 of the Fire Services Act 1947, in an amended form. The Scottish Ministers will be able to hold a public inquiry into the performance of a relevant authority or its handling of a particular incident. Section 75 provides that the Scottish Ministers may make regulations about inquiry procedure under the Bill.

Section 76 – Pre-commencement consultation

111. Section 76 sets out that where consultation is required under a provision in the Bill and before that provision comes into force consultation takes place, any such consultation will count as consultation required by and to the extent set out under that provision. In effect this will allow consultation prior to Royal Assent to be treated as consultation under the relevant provision. An example where this may be the case is preparation of the Framework Document.

Section 77 – Payments in respect of advisory bodies

112. Section 77 gives the Scottish Ministers powers to pay the expenses of any body established for the purpose of offering them advice on matters in relation to which provision is made under the Bill.

Section 78 – Abolition of Scottish Central Fire Brigades Advisory Council

113. Section 78 abolishes the Scottish Central Fire Brigades Advisory Council which was established for Scotland under section 36(18) of the Fire Services Act 1947 to provide general advice to the Scottish Ministers on matter relating to the operation of that Act. The Council also served as statutory consultee prior to the exercise by the Scottish Ministers of certain of their regulation making powers under the 1947 Act. Where such regulation making powers are re-enacted elsewhere in the Bill the Scottish Ministers will consult any such persons as they consider appropriate.
Section 79 – False alarms

114. Section 79 supersedes section 31 of the Fire Services Act 1947. It provides that a person who knowingly gives or causes someone else to give a false alarm of fire to a person acting on behalf of a relevant authority is liable to a level 5 fine, prison sentence not exceeding 3 months or both.

FINANCIAL MEMORANDUM

INTRODUCTION

115. The Bill largely builds on the existing arrangements under which the fire service is structured. The financial provision from the Scottish Executive and the arrangements under which the funding is provided will essentially remain unchanged. This reflects that most of the costs associated with the fire service will not change as a result of the Bill. However there are some new powers for Ministers which, if exercised in particular ways, may give rise to additional costs. While equally the overall policy thrust in seeking to maximise efficiencies and developing collaboration may also have financial implications. Similarly changes in the fire safety regime will have financial implications.

116. The Bill makes provisions for a number of orders/regulations, which will be the subject of extensive consideration and consultation, including Regulatory Impact Assessments where necessary, before the introduction of draft secondary legislation.

COSTS ON THE SCOTTISH ADMINISTRATION

Control room arrangements

117. In the consultation paper issued last year, the Scottish Ministers signalled their intention to consider the most efficient and effective arrangements for fire service control rooms. Generally the concern amongst respondents was that the case for changing the current structure should be evidence based.

118. Since the publication of the legislative proposals, a review of control rooms has been commissioned and a report received. The report is currently being considered. The Bill makes provision for powers of direction for Scottish Ministers in certain circumstances. These circumstances relate to public safety and the economy, efficiency and effectiveness of the fire and rescue services in performing their duties, including the handling of calls received in respect of incidents.

119. The report outlines a range of costs and benefits, quantifiable and non-quantifiable, based on either maintaining the existing number of control rooms or a move to fewer control rooms. Costs range from £5.8m at one end of the spectrum to maintain the existing 8 control rooms to around £2.5m at the other end of the spectrum, if only one control room was used. Consequently
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savings could range from nil for no change to £3.3m, for a single control room. (These figures reflect the report’s estimates of training and staff re-deployment costs.)

120. However, decisions on the report’s recommendations about the future arrangements for control rooms and the timing of any changes will be made after discussion with stakeholders.

National resilience

121. The Bill makes provision for the purchase of equipment, facilities and services by the Scottish Ministers for use by relevant authorities. Ministers have already provided £5m (under the New Dimension programme) for the purchase of a range of equipment to enhance relevant authorities’ capability to respond to emergencies as a result of terrorist activities and other serious non-fire emergencies. A further £3m will be provided under this programme over the course of the next 3 years and the Bill makes provision for the Scottish Ministers to require relevant authorities to use and maintain specified equipment, such as New Dimension equipment.

Fire safety

122. To the extent that the provisions in the Bill provide for a reform of fire safety legislation, a publicity campaign will be required to improve awareness and to increase compliance with the new legislation. It is estimated that £100,000 to £150,000 will be required to cover the costs of advertising, production, publication and distribution of leaflets and guidance documents promoting the new legislation.

123. In addition, Ministers have made a commitment to fund the Firelink project to provide a new radio communications systems for the fire and rescue services. This project is being pursued on a UK basis because of the need for interoperability and secure communications with the other emergency services. The project has not yet reached the stage where contracts have been signed but there are 2 funding options: capital purchase which would require a Scottish contribution of around £26m; or a managed service provided by a contractor which would cost from £5m to £10m p.a. in respect of Scotland.

COSTS ON LOCAL AUTHORITIES

124. The provision of fire services is a local authority responsibility which is administered by 6 joint fire boards (on behalf of 30 of the 32 local authorities) and 2 unitary fire authorities.

Core duties

125. Where the provisions in the Bill impose obligations on relevant authorities in respect of the provision of services, these provisions, by and large, give statutory expression to existing services provided by relevant authorities. A common theme in the responses received to the legislative proposals from key stakeholders, such as local authorities, was a request for additional funding to cover the costs of the “new” core duties. However, the duties are not new burdens on relevant authorities but a formalisation of the role which the Service currently undertakes within the existing financial provision.
126. The introduction of integrated risk management plans (replacing the existing prescriptive standards of fire cover which determines the current level of fire service response to emergencies) is the new method by which relevant authorities will have greater flexibility to use local knowledge and experience to better target resources, transferring the emphasis from resource-intensive intervention to more of a balance between intervention and prevention. While it is anticipated that this change – to be implemented from 1 April 2005 – will provide relevant authorities with greater flexibility in the use of their resources and should lead to greater efficiencies, the level of these efficiencies or any increased costs will not emerge until such time as the Plans are available.

127. The provisions in the Bill remove the obligation for the certification of premises in respect of fire safety. As at 31 March 2003, almost 27,000 premises required a fire certificate, with an average of 600 certificates being issued each year. Fire authorities currently recover some of the costs associated with certification from the owner or occupier of the premises. The scale of charges varies from authority to authority based on the size, complexity and occupancy of the premises (in 2002-03 the charge for an initial fire certificate in respect of a single occupancy building ranged from £102 to £253). As a result of the provisions in the Bill, the staffing resources which would have been required for fire certification would be available for deployment elsewhere.

**Efficiency and economy**

128. Many of the provisions in the Bill are aimed at maximising efficiency and promoting collaborative working. Where the provisions in the Bill allow the Scottish Ministers to direct relevant authorities to participate in new arrangements in the interest of efficiency and economy, with regard to functions which are currently operated at local level, there may be implications for the establishment levels of individual authorities. At present, the distribution formula used in the funding calculations for the provision of a fire service by local authorities is based primarily on establishment levels. However, a working group has been set up representing key stakeholders to review the current formula and consider whether it needs to be changed to reflect the integrated risk management approach to fire cover. The working group will report to the Scottish Ministers in due course.

**COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

129. Where the provisions in the Bill reform fire safety legislation, these may have implications for some bodies, individuals and businesses. However, these should be limited to one-off costs associated with the new arrangements: £12 for copies of the guidance (or free if downloaded from the Internet).

130. In general, existing fire safety legislation applies to every workplace with one or more employees, therefore premises operated by businesses, voluntary organisations or charities, and having at least one employee are currently required to comply with legislation. In addition, even in premises where people are not employed to work, under existing health and safety legislation there are duties of care which require safety risks to be assessed which should include the assessment of risk from fire.
131. As a result of the removal of fire certification, organisations will save the charges which are currently paid in respect of initial certificates, amendments or replacements. The scale of charges varies from authority to authority and is based on recovering some of the administrative costs of the certification process, and reflects the size, complexity and occupancy of the premises certified. For example, in 2002-03 the charge for an initial fire certificate in respect of a single occupancy building, ranged from £102 to £253. The new fire safety regime will be based on risk assessment, which is currently the basis of health and safety legislation.

132. Data is not currently available on the number of businesses, voluntary organisations and charities which are not required to comply with either fire safety or health and safety legislation at present, but would be required to comply with the new fire safety legislation. It is anticipated that the number will be insignificant but a full and comprehensive consultation will be undertaken during the summer and details of compliance costs, where applicable, will be included in a Regulatory Impact Assessment in due course.

133. Where the provisions of the Bill refer to the introduction of legislation allowing relevant authorities to charge when the service has been misused or used for commerce, this will potentially have implications for all recipients of the service. At present, authorities have powers to charge for ‘special’ services on a cost recovery basis but this is not fully utilised. The basis of charges and the services/incidents, to which these charges could be applied, will be the subject of consultation during the summer.
**SUMMARY TABLE OF COSTS**

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<th>Costs on local authorities</th>
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<tr>
<td>Building and Systems Costs</td>
<td>£5.8m p.a. to maintain the existing 8 control rooms and around £2.5m for a single facility</td>
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<td>Unquantifiable at this stage</td>
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EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

134. On 28 June 2004, the Minister for Justice (Cathy Jamieson) made the following statement:

“In my view, the provisions of the Fire (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

135. On 24 June 2004, the Presiding Officer (George Reid) made the following statement:

“In my view, the provisions of the Fire (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
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;
- 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, focussed 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
This document relates to the Fire (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 28 June 2004

(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
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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 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.
Justice 2 Committee

8th Report 2004 (Session 2)

Stage 1 Report on the Fire (Scotland) Bill
Justice 2 Committee

8th Report, 2004 (Session 2)

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- Lothian & Borders Fire Bridage
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- UNISON
Justice 2 Committee

Remit and membership

Remit:

To consider and report on matters relating to the administration of civil and criminal justice, the reform of the civil and criminal law and such other matters as fall within the responsibility of the Minister for Justice, and the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigations of deaths in Scotland.

Membership:

Miss Annabel Goldie (Convener)
Jackie Baillie
Bill Butler (Deputy Convener)
Colin Fox
Maureen Macmillan
Mr Stewart Maxwell
Mike Pringle

Committee Clerking Team:

Clerk to the Committee
Tracey Hawe
Gillian Baxendine

Senior Assistant Clerk
Anne Peat

Assistant Clerk
Richard Hough
INTRODUCTION

1. The Fire (Scotland) Bill was introduced on 28 June 2004 by the Minister for Justice, Cathy Jamieson. On 30 June, the Parliament designated the Justice 2 Committee as lead committee on the Bill. Under Rule 9.6 of the Parliament’s standing orders, it is for the lead committee to report to the Parliament on the general principles of the Bill.

2. The Justice 2 Committee received reports from the Finance Committee and the Subordinate Legislation Committee. These are attached as Annexes A and B.

3. All evidence provided to the Justice 2 Committee is included at Annexe D to this report.

BACKGROUND AND CONSULTATION

4. The existing legislation governing the fire service is the Fire Services Act 1947. The Scottish Executive suggests in the Policy Memorandum that, although parts of the 1947 legislation are still perfectly adequate, to rely on existing legislation would mean that the Scottish framework “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.”

5. This Bill follows a two-year period of consultation which started with the publication in April 2002 of a wide-ranging Executive consultation, “The Scottish Fire Service of the Future”. This was followed in December 2002 by the report of the UK Government’s Independent Review of the Fire Service (the Bain review); and in June 2003 the Office of the Deputy Prime Minister published a white paper on the fire service in England and Wales. In October

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1 Policy Memorandum paragraph 12
2 The Future of the Fire Service: reducing risk, saving lives
2003 the Scottish Executive published its consultation paper on proposed legislative changes,\(^3\) which formed the basis for this Bill.

6. The principal purposes of the Bill are the delivery of a modernised fire and rescue service responsive to the demands of the 21st Century;\(^4\) providing a mechanism for a National Framework to set out central Government strategic direction by way of national and local priorities and objectives; and revision of fire safety legislation.

7. Much of the detail of the new framework will be set out in secondary legislation and in the National Framework. The Executive has indicated that there will be a range of further consultations, a number of which will be taking place during the passage of the Bill.

8. It is difficult to reach a conclusion on parts of the Bill without more detail about what is intended. We also note the concerns of the Finance Committee, in its report to the Justice 2 Committee, that it is being asked to scrutinise the financial implications of this Bill while there are a number of key policy decisions, which may well have substantial costs implications, still to be taken (in relation to control room arrangements, the Firelink project and integrated risk management plans (IRMPs)).

9. The Committee therefore welcomes the Executive’s intention to consult during the Bill’s passage on a range of areas including the National Framework, fire safety regulations, charging and functions orders and the new advisory structure.

EVIDENCE TAKEN BY COMMITTEE

10. The Committee issued its call for evidence in July 2004 and received 24 written responses. On 9 September we took oral evidence from the Executive Bill team. On 14 September we took evidence from the Chief Fire Officers Association Scotland (CFOA), the Fire Brigades Union (FBU) and the Retained Firefighters Union (RFU). On 21 September we took evidence from Her Majesty’s Chief Inspector of Fire Services for Scotland (Jeff Ord), the Scottish Fire Services College and COSLA. Finally on 28 September we took evidence from the Fire Officers Association (FOA) and the Deputy Minister for Justice, Hugh Henry.

ISSUES CONSIDERED BY THE COMMITTEE

General

11. The evidence we received indicated that the Bill and its policy intentions were generally welcomed. All of our witnesses agreed that the existing legislation should be brought up-to-date, to reflect the breadth of the role and functions

\(^3\) The Scottish Fire and Rescue Service: Proposals for Legislation
\(^4\) Policy Memorandum
carried out by the fire service and to deliver a clear framework of responsibilities for fire safety.

12. A range of specific issues was raised and these are discussed in the following sections. Some witnesses also had broad concerns about the overall approach taken by the Bill including the balance between central strategic direction and local accountability; the extent of Ministerial powers; and the need for clarity about governance of the fire service.

13. CFOA pointed out that the Bill has some 27 areas where Scottish Ministers take powers to direct the way in which fire services will be managed. They felt that there should be a clear division between the three different levels of responsibility, with strategic direction from Ministers, governance with fire authorities and management from the firemaster. CFOA suggested that the bill does not make “those lines of responsibility clear enough to enable us to ensure things do not get clouded”. Among other things, they wanted to see a direct statutory line of reporting responsibility from the firemaster to the fire authority, as exists in the 1947 Act.

14. The FBU shared some of these concerns, wanting clarity in the legislation about the responsibilities of chief officers and about the local democratic control to be exercised by fire authorities. COSLA also expressed concern that the legislation did not clearly enough set out the local democratic and operational control which they saw as essential for an effective fire service.

15. The Chief Inspector, Jeff Ord, was less concerned about the extent of Ministerial powers, which he perceived as “no greater than what many ministers already have in relation to other essential public services”. His perception was that the concerns being expressed could be resolved through detailed drafting changes but that the overall form was broadly right, and necessary to achieve further modernisation.

16. The Minister also sought to reassure the Committee about the powers conferred on Ministers by the Bill. He emphasised that “the fire and rescue service will remain a local government service and that its day-to-day operation and management will take place at local level.” On the specific issue of the firemaster’s role, he was confident that this could be made clear through contractual arrangements or the fire board’s standing orders, given that the board is the accountable body for the fire service.

5 Official Report, 14 September 2004, Col. 942
6 ibid, Col. 944
7 ibid, Col. 945
8 ibid, Col. 942
9 ibid, Col. 964
10 Official Report, 21 September 2004, Col. 1025-6
11 Official Report, 14 September 2004, Col. 999
12 Official Report, 21 September 2004, Col. 1000
13 Official Report, 28 September 2004, Col1057
14 ibid, Col. 1065
17. The Committee is content with the overall approach to the Bill but, in the light of the concerns expressed, asks the Minister to give comfort to the Committee and the Parliament at Stage 1 by clarifying who would be in overall command and control in a major fire situation.

Part 1: Fire and Rescue Authorities

Structure of Fire Service

18. The Bill does not in itself make any changes to the present structure of the fire service. Part 1 of the Bill establishes each local government authority as the fire and rescue authority for its area and provides for joint fire and rescue boards which can cover more than one local authority where this is the most efficient approach. Section 4 provides for the continuation of the existing eight joint fire boards; the other powers in Part 1 would enable changes to be made to this structure in the future.

19. A number of the responses from fire authorities, and the oral evidence from CFOA\(^{15}\) expressed concern that Part 1 of the Bill puts the power to amalgamate fire boards firmly in Ministers’ hands with no scope for authorities to bring forward their own voluntary proposals for amalgamation schemes. Executive officials advised that, even where fire authorities initiated proposals for amalgamation, these had always had to be approved by Ministers.\(^{16}\) The net effect of the new sections was therefore no different from the current legislation, since it does not prevent authorities from putting forward proposals to Ministers.

20. Some of our witnesses expressed concern about possible future reductions in the number of fire authorities. The question of the number of authorities arose particularly in the context of the number of fire control rooms (discussed below). Both FBU and CFOA expressed concern that the number of control rooms might end up determining the number of brigades, rather than the question of the number of brigades being determined on its own merits. On the other hand, the Chief Inspector seemed to suggest that the drive for modernisation would almost inevitably lead to more amalgamations, because of the greater budget flexibility in larger authorities and also because of the increasing strain on management teams in smaller authorities.\(^{17}\)

21. The Committee considers that these powers are appropriate but seeks assurances that the consultation required under section 2 will be comprehensive and transparent and will include all interested parties.\(^{18}\)

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\(^{15}\) Official Report, 14 September 2004, Col. 945
\(^{16}\) Official Report, 9 September 2004, Col. 917-918
\(^{17}\) Official Report, 21 September 2004, Col. 1001-1002
\(^{18}\) Annabel Goldie dissented on the basis that, if exercise of the power were to result in a reduction from the current number of brigades, she would want that aspect dealt with by primary legislation. Stewart Maxwell dissented on the basis that he believes these powers would be used to reduce the number of brigades in Scotland.
Fire Control Rooms

22. The proposal to reduce the number of control rooms from the present eight emerged from a review undertaken by Mott McDonald consultants at the request of HM Fire Service Inspectorate for Scotland. Although the proposal does not require legislation, it appears that it is seen as an integral part of the modernisation programme in terms of efficiency and the Financial Memorandum includes it as a potential cost saving.

23. In evidence to us, the Minister advised that the immediate driver behind the proposal to reduce the number of control rooms was the necessity to fund the Firelink project (discussed in para 32 below) and that “it would be inappropriate to invest in and upgrade eight control rooms…but then to feel in the near future that experience and investment decisions were pushing us towards having fewer control rooms.”

24. The consultants’ report concluded that a reduction to one control room would be the most cost effective option but could only be implemented on a UK-wide basis, which might pose technical and resourcing difficulties. The review concluded that both two and three control rooms were viable options with little to choose between them on cost effectiveness grounds and with each having different advantages in terms of ease of implementation.

25. Some witnesses did not think that a case for any change had been made. COSLA’s view was that the case for fewer command and control rooms was unproven; the status quo was their preferred option. The FBU said that a reduction in the number of control rooms would reduce effectiveness as there would be fewer people dealing with the same number of calls. CFOA stated that it would prefer each brigade to retain its own control room.

26. A few of our witnesses felt that there would be merit in looking at these proposals. The FOA said that it would not rule out change if it was based on a sound business case. The Chief Inspector pointed to the success of the Strathclyde control room which takes almost half the calls in Scotland and arose from a merger of five control rooms. However, the committee also heard major concerns about the proposal.

27. One concern was that the report overstates the scope for savings. For example, CFOA suggested that the report was flawed because it was based on the number of incidents not the number of calls (one incident can generate many calls). They also pointed out that staff did more than answer calls and that their other functions would have to continue for each brigade if control rooms were merged.

28. The Finance Committee drew attention to the evidence it had received: for example, that no account had been taken of associated redundancy payments, training and recruitment issues, the cost of redeployment to other areas and the redistribution of certain functions not transferred to any new configuration of
control rooms. The Finance Committee sought clarification from Scottish Executive officials on how the creation of a single control room would generate a saving of £3.3m. The response it received (published in Annexe B of its report) assumes a reduction from 211 to 91 FTE staff if a single control room was implemented. However the Finance Committee did not appear to be satisfied with the robustness of the savings estimate in advance of a firm decision about which policy option is to be pursued.

29. A second concern centred on resilience (i.e. arrangements to deal with large-scale incidents beyond the capacity of a single control room or single emergency service). CFOA was concerned that a reduction in the number of control rooms would end the present co-terminosity with police control rooms, making emergency management arrangements more difficult.\(^{21}\) FOA also emphasised that resilience was key to developing the new arrangements. However, the Chief Inspector felt that two or three control rooms would have resilience built in and indeed might be more effective than present arrangements because the control rooms would be of comparable size and so more able to offer equivalent back up. With a single control room, resilience would have to be built in on a UK basis, which he considered desirable in any case.\(^{22}\)

30. The third concern was about loss of local knowledge if control rooms became very large. CFOA expressed concern about large control rooms being able to deal as effectively with local dialects or Gaelic place names.\(^{23}\) FOA were less concerned about this point, suggesting that proper resourcing and information systems could address this.\(^{24}\) Similarly, the Chief Inspector felt that the Strathclyde merger had demonstrated that this was not a significant problem.\(^{25}\)

31. The Executive has consulted on the Mott McDonald report but not yet reached a conclusion on it. The Minister indicated that there would be further consultation with stakeholders before a final decision, although he was not persuaded that the status quo was the right answer, particularly given the huge variation between authorities at present in the cost per incident.\(^{26}\) The Minister’s view was that the report “demonstrates clearly that in a country the size of Scotland we could operate with one fire control room and that resilience and back up could be provided by other parts of the United Kingdom.”\(^{27}\) He also noted that “fire boards representing 23 of the 32 local authorities in Scotland have suggested that we should consider having three control rooms. A minority have said that the status quo should remain.”\(^{28}\)

32. **While the Committee is not in a position to take a definitive view on the number of control rooms, we note the evidence that a single control room**

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\(^{21}\) ibid, Col. 950
\(^{22}\) Official Report, 21 September 2004, Col. 1009-1010
\(^{23}\) Official Report, 14 September 2004, Col. 950
\(^{24}\) Official Report, 28 September 2004, Col. 1047
\(^{25}\) Official Report, 21 September 2004, Col. 1007
\(^{26}\) Official Report, 28 September 2004, Col. 1069
\(^{27}\) Official Report, 28 September 2004, Col.1068
\(^{28}\) Official Report, 28 September 2004, Col.1069
might be technically feasible but we consider it undesirable on other grounds. We invite the Minister to consider carefully the concerns raised and to address them specifically in the further round of consultation.

33. In relation to the Firelink project (a new radio communication system for the fire service), the Finance Committee observed that the contracts for this system will either be awarded on the basis of a one-off purchase of £26m or a managed contractor service for between £5m and £10m per annum. Assuming such a contract runs for between 10 and 15 years, the Finance Committee is concerned that this could lead to the second option costing between £50m and £150m overall. The Finance Committee therefore invited the Justice 2 Committee to further explore this issue with the Minister.

34. The Committee, in the light of these concerns, requests that the Minister provides further details of the issues under consideration.

Part 2 – Fire and Rescue Services

Principal Fire and Rescue Functions

35. Sections 7 to 10 set out the principal functions of the fire and rescue service. Of these, only fire-fighting previously had statutory underpinning, although promoting fire safety and attending road traffic accidents are already core fire service activities. The service also attends a range of other emergencies - section 10 allows these to be conferred as additional functions in secondary legislation.

36. There was general acceptance that it was valuable for the fire service's functions to be set out in statute and that the approach in section 10 was necessary to give flexibility, as functions might change or develop over time. Both COSLA and the FBU emphasised the importance of identifying clearly fire service functions so that appropriate funding and training follows. There were also a number of suggestions for additional functions which are sufficiently core to justify their being mentioned on the face of the Bill.

37. A number of witnesses wanted to see urban search and rescue specifically mentioned, with CFOA emphasising the significance of this role in relation to "new dimensions" incidents such as terrorist attacks. The Fire Officers Association also emphasised this function.

38. A number of witnesses²⁹ raised the issue of offshore firefighting where it appears that the extent of fire authority responsibilities is not well defined. Subject to resolution of the complexities (which include the borderline between reserved and devolved matters)³⁰ we understand that the Executive hopes to bring forward amendments at Stage 2.³¹

39. The Executive did not feel that it was appropriate to specify any further functions on the face of the Bill since this could be adequately covered in a

²⁹ FOA, CFOA, Highland and Islands, Lothian and Borders
³⁰ Policy Memorandum, Para 44
³¹ Official Report, 9 September 2004, Col. 938
section 10 order. Executive officials emphasised that there would be full consultation on any such order.\(^\text{32}\)

40. **The Committee is content with the Executive approach to section 10 and welcomes the Executive’s intention to bring forward amendments at Stage 2 to include the issue of offshore firefighting.**

**Ancillary Functions – Emergency directions**

41. Section 11 of the Bill gives Scottish Ministers the power to give authorities emergency directions to act in relation to a particular emergency, whether in the authority’s area or not. It is the only new power in the bill which, because of its emergency nature, would potentially not be subject to parliamentary process.

42. CFOA wished to see the section redrafted to put beyond doubt the command and control responsibilities of firemasters. They were concerned at the uncertainty which could be created by giving Ministers powers over specific incidents.\(^\text{33}\) However, the Chief Inspector suggested that the powers were necessary for reasons of national resilience, would only be used rarely and would not involve Ministers cutting across the operational management of an incident.\(^\text{34}\)

43. The Minister also emphasised that section 11 orders would rarely if ever be made but were a necessary response to the threat of major incidents beyond the capacity of local services to handle.\(^\text{35}\) In a further letter\(^\text{36}\) the Executive, at the Committee’s request, expanded on why it thought these powers were necessary. For example, as well as instructing authorities to act, the powers could be used to instruct an authority not to respond to an incident because another authority was better equipped. The Executive also pointed out that these powers could be used quickly in response to a large scale emergency when there might not be time to make regulations under section 10 to give an authority statutory authority to act.

44. **The Committee is content with the powers in section 11 but seeks clarification, as in paragraph 17, about who would be in overall command and control in a major fire situation.**

**Ancillary Functions – Charging**

45. Section 15 of the Bill maintains the existing ability for fire and rescue authorities to charge for particular services.\(^\text{37}\) It allows the Ministers to set out, by order, the services for which an authority may charge and to specify who may be subject to charges. Subsection 3 also specifies the services for which charges may not be authorised (extinguishing fires, protecting life or protecting property in the event of a fire). Each fire authority may set its own level of charge

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\(^{32}\) Official Report, 9 September 2004, Col. 938  
\(^{33}\) Official Report, 14 September 2004, Col. 944  
\(^{34}\) Official Report, 21 September 2004, Col. 1000  
\(^{35}\) Official Report, 28 September 2004, Col. 1057  
\(^{36}\) Ian Snedden, 3 November 2004  
\(^{37}\) Official Report, 9 September 2004, Col. 916
except that any income derived from charging should not exceed the costs of providing the service.

46. Assuming appropriate guidance is in place, both CFOA\(^{38}\) and FOA\(^{39}\) were broadly supportive of the charging provisions. The Fire Brigades Union, although not necessarily against the principle of charging, raised a number of objections to the Bill’s “vagueness and lack of clarity” in this respect.\(^{40}\)

47. It is the Executive’s intention, through subsection 5, to ensure that the charging provisions should be used only to recover costs. COSLA expressed concern that this would “restrict the authorities’ ability to charge at market rate”.\(^{41}\) CFOA indicated that, while currently “brigades have fairly well-developed arrangements for income generation through charging mechanisms”, the Bill appears to prevent income generation of this type.\(^{42}\) The Fire Officers Association indicated that charging was likely to be of particular importance since it anticipated a loss of income from fire certification and the amendment of fire certificates as a result of Part 3 of the Bill.\(^{43}\)

48. The Finance Committee agreed, noting that the Bill removes the obligation for the certification of premises in respect of fire safety. The Finance Committee heard evidence that this would result in a significant loss of income and that the proposed alternative of self-certification on advice would have financial implications for the fire service. The Finance Committee recommends that the Justice 2 Committee further explores this issue with the Minister.

49. CFOA was also concerned that the implementation of the Freedom of Information (Scotland) Act 2002 is having a negative impact on brigades’ ability to generate income and this, in addition to the provisions of section 15, would have “significant implications for brigades’ revenue budgets.”\(^{44}\)

50. **We recognise and welcome the fact that there is to be consultation shortly on the detail of charging orders. We seek assurances that fire authorities’ budgets will not be compromised by any changes resulting from this Bill and that any loss of ability to generate income will be compensated for.**

51. Opposing views were expressed as to whether fire authorities should be able to charge for the inappropriate activation of fire alarms. CFOA “would like to extend the charging provisions to include charging for attendance at calls that transpire to be false alarms”\(^{45}\) and the Fire Officers Association expressed a “desire to have the power to impose a penalty on people who deliberately refuse to maintain alarm systems.”\(^{46}\) The FBU, on the other hand, expressed

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\(^{38}\) Official Report, 14 September 2004, Col. 952  
\(^{39}\) Official Report, 28 September 2004, Col. 1048  
\(^{40}\) Official Report, 14 September 2004, Col. 970  
\(^{41}\) Official Report, 21 September 2004, Col. 1030  
\(^{42}\) Official Report, 14 September 2004, Col. 952  
\(^{43}\) Official Report, 28 September 2003, Col. 1048  
\(^{44}\) Official Report, 14 September 2004, Col. 952  
\(^{45}\) Official Report, 14 September 2004, Col. 952  
\(^{46}\) Official Report, 28 September 2004, Col. 1049
concern that individuals or organisations may choose to deactivate alarm systems rather than risk being charged.\textsuperscript{47} The Executive acknowledges that this is a controversial area and has indicated that further consultation on this issue will take place.\textsuperscript{48}

52. The FBU raised a concern that subsection 2 of this section may have ECHR implications as it is not formulated with sufficient clarity “to enable a person who might be affected to understand and so to regulate their conduct accordingly.” In response to this, the Executive advised that the situations in which third parties may be charged and the identities of such third parties will be laid down by order which will contain greater detail.\textsuperscript{49}

53. \textbf{The Committee is content with the extent of detail in these provisions.}

\textbf{Water Supply}

54. Chapter 3 of Part 2 is concerned with the use and supply of water. The only issue of contention which arose was in relation to the cost, use, installation and maintenance of water hydrants. The Executive view is that, as hydrants are provided for firefighting purposes, fire authorities should continue to be responsible for their maintenance.\textsuperscript{50}

55. The FOA\textsuperscript{51} suggested that this section required a substantial re-think and proposed that the responsibility for the provision of suitable and sufficient water supply infrastructure, including adequate arrangements for water for firefighting, should rest with Scottish Water. Their view was that fire authorities should not be responsible for maintaining suitable and sufficient supplies of water for use in the event of fire. The FOA was also concerned that water authorities should be responsible for ensuring that there is adequate mains and pressure flow to ensure effective and sustained firefighting.

56. FOA also suggested that it is inappropriate for fire authorities to be required to pay for damage and defect to hydrants when their usage is not under fire authority control. CFOA agreed that there are “few occasions” on which the fire service actually uses water hydrants and that responsibility for their maintenance should therefore lie with the water undertaker.\textsuperscript{52} In written evidence to the Committee, Fife Council, Highland and Islands Fire Board and Strathclyde Fire Board all supported the view that responsibility for funding should be transferred to the water undertaker.

57. \textbf{The Committee agrees that there is merit in the water supplier having the responsibility for maintaining water hydrants but wishes clarification of the financial implications for the fire service were this transfer of responsibility to be recommended.} The Committee draws the Minister's

\textsuperscript{47} Official Report, 14 September 2004, Col. 970
\textsuperscript{48} Official Report, 9 September 2004, Col. 920
\textsuperscript{49} Ian Snedden, letter of 24 September
\textsuperscript{50} Official Report, 9 September 2004, Col. 924
\textsuperscript{51} Letter of 1 October 2004, supplementary comments from FOA
\textsuperscript{52} Official Report, 14 September 2004, Col. 954
attention to the evidence taken and invites him to consider the issue further.

Common Fire and Rescue Services Agency
58. At section 43, although not particularly clearly signalled, the Bill makes provision for Ministers to take the first steps towards setting up a body to promote the economy, efficiency and effectiveness of the fire and rescue authorities. Although the powers are not intended to allow for the establishment of a common services agency they would, for example, allow the establishment of a body to consider and develop this proposal for future implementation.

59. It was accepted by witnesses that there was scope for more collaborative working in order to secure efficiencies and avoid the unnecessary duplication of work across fire authorities. However the proposal for a common agency did not appear to be generally favoured. CFOA described it as “an overly bureaucratic forum that will add very little benefit to the service”. They preferred a model of joint project boards which they suggested would minimise additional bureaucracy. COSLA would like to see the option of a common agency ruled out now rather than prolonged by further consultation. FOA were content for there to be further consultation although they recognised that alternatives such as appointing lead authorities might work better. FOA did suggest that “brigades are not going far enough and …it might be necessary to enforce collaboration”.

60. The Minister appeared to accept the concerns about additional bureaucracy and was content at this point to encourage co-operation through informal arrangements if these could be shown to be effective. We welcome this approach.

Powers of Employees and Constables
61. Section 24 sets out the powers of constables in relation to fires. Section 47 prohibits fire authorities from employing a member of a police force. We heard two concerns about these sections. First, section 24 (which continues existing powers) might be seen to encourage police officers to tackle situations for which they are inadequately trained: FOA commented that “police constables who have entered premises have sometimes ended up being rescued themselves”. Second, section 47 was seen as unnecessarily restrictive in some rural areas where it is difficult to recruit retained or volunteer firefighters and where it is common for one individual to carry out a number of roles. CFOA, FOA, COSLA and RFU all wanted to see the restriction on employing police officers lifted. RFU pointed out that rural police officers often take on

53 Official Report, 14 September 2004, Col. 942
54 ibid, Col. 948
55 Official Report, 21 September 2004, Col. 1031
56 Official Report, 28 September 2004, Col. 1048
57 ibid, Col. 1041
58 ibid, Col. 1061
59 ibid, Col. 1052
other emergency service roles such as mountain rescue and lifeboat work.\textsuperscript{60} FOA also pointed out that a police officer who was a trained fire officer would not have the same difficulty in using their powers under section 24.

62. However, the FBU – with support from ACPOS - felt that if serving police constables were carrying out emergency fire service duties, there could be confusion about which role to adopt in an emergency situation. They also felt that the impact on rural recruitment would be negligible.

63. The Minister recognised the concerns expressed on both sides and indicated willingness to explore possible solutions with stakeholders and bring forward an amendment at Stage 2 if a resolution is found.\textsuperscript{61}

64. \textbf{The Committee also recognises that there are valid arguments on both sides and we are content at this stage to await the results of the Minister’s further discussions.}

\textit{Central Supervision and Support – Framework Document}

65. Section 36 requires Scottish Ministers to consult on and prepare a document that sets out the priorities and objectives for authorities in carrying out their functions. This framework document (the Framework) will provide guidance and strategic direction and authorities will be required to have regard to the Framework when carrying out functions.

66. The principle of such a framework attracted general support. Some witnesses, including the FBU and the Chief Inspector, suggested that it would have been more helpful to have had sight of the Framework, perhaps in a draft form, along with the Bill.

67. In relation to consultation, CFOA wanted to see wider consultation than stipulated in section 36(6) which only covers the relevant employees and representatives of employees.\textsuperscript{52} COSLA also felt that full consultation was essential and that otherwise, there was the risk of elements of the framework being imposed by Ministers.\textsuperscript{63} The Minister emphasised that the framework would be “the basis of the future partnership between the Executive and the fire and rescue authorities” and would therefore be prepared in full consultation with key stakeholders.\textsuperscript{64}

68. \textbf{The Committee welcomes the fact that the Executive is now consulting on the National Framework, a copy of which was sent to the Committee as it was completing this report.}

\begin{itemize}
\item \textsuperscript{60} Official Report, 14 September 2004, Col. 990
\item \textsuperscript{61} Letter from the Deputy Minister for Justice, October 2004
\item \textsuperscript{62} Official Report, 14 September 2004, Col. 956
\item \textsuperscript{63} Official Report, 21 September 2004, Col 1026
\item \textsuperscript{64} Official Report, 28 September 2004, Col. 1057
\end{itemize}
Part 3 – Fire Safety Duties

69. Part 3 of the Bill consolidates and streamlines existing fire safety legislation in order to provide a new fire safety regime which is consistent throughout the UK. It sets out both the duties of employers and landlords, and the enforcement role of fire authorities. Commencement of this part will be supported by a publicity campaign to raise awareness of the new duties and responsibilities. Guidance will also be distributed setting out the responsibilities of owners, occupiers, employers and employees. In its report to the Justice 2 Committee, the Finance Committee expressed concern that the Financial Memorandum contains no estimated costs for the planned publicity campaign relating to the new fire regime and recommends that the Justice 2 Committee seeks a firm estimate from the Scottish Executive.

70. The Committee agrees with the Finance Committee and requests an estimate of costs for the campaign in advance of Stage 2 consideration.

71. This Part of the bill was widely supported. The main concerns were expressed by the FBU. First, they felt that some of the definitions were insufficiently flexible. For example they suggested that section 49 (duties of employers to employees) and section 52 (duties of employees) were based on traditional employee/employer relationships but did not take account of the modern working environment, which can be characterised by franchisees, licensees, the self-employed, temporary contracts and agencies. They raised similar concerns in relation to section 50 (duties in relation to premises). Their view was that it could be difficult to find the relevant person for enforcement purposes. FOA agreed that there would be benefit in wider powers for enforcement officers to identify the proper person to take enforcement action against where fire safety duties have been breached. The Executive indicated that they were satisfied with the definitions and that the power in section 50 to take action against the person in control of the premises should give sufficient flexibility.

72. The FBU also referred to the general complexity of the legislation given that some parts of fire safety are reserved. They were not convinced that the challenge of creating a workable UK wide framework had been achieved. They were particularly concerned about section 65 of the Bill which states that Part 1 of the Health and Safety at Work etc. Act 1974 (the 1974 Act) shall have effect in relation to fire safety only in relation to reserved matters, which in the view of the FBU would result in taking the Scottish Fire Services out of cover of the 1974 Act, also in contravention of Community law (as many European directives have been implemented via this Act).

73. In written evidence to us, Executive officials advised that there was no intention to disapply any fire safety directives but that one consequence of the Bill is that it is necessary to implement some directives again for Scotland. The Minister

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65 Official Report, 28 September 2004, Col. 1053
66 Letter from Ian Sneddon, Scottish Executive Justice Department, Fire Services Division, 24 September 2004
67 Official Report, 14 September 2004, Col. 978
advised “we do not want, either intentionally or unintentionally, to disapply health and safety legislation”.\textsuperscript{68} This had also been explained by Executive officials who had written to the Committee stating that the part of the 1974 Act that is being disapplied relates to fire safety. Fire safety is an issue which is generally devolved, with only certain aspects being reserved. Section 65 of the Bill is intended to make clear that devolved fire safety issues will be dealt with under this Bill (and supporting Regulations), as opposed to being covered by the 1974 Act.

74. The FBU also expressed two further concerns, both about section 67 which sets out the offences and associated penalties in respect of Part 3 of the Bill. The FBU observed that in their view, section 240 of the Trades Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act) would be sufficient to cover the situation envisaged in section 67 of the Bill. Further, the provisions in the 1992 Act contain two important qualifications beyond what is proposed in this Bill, namely that a person must break the contract wilfully and maliciously and know that the probable consequences of those actions will be to endanger life or cause serious injury. The FBU felt that “section 67(2) of the Bill could be interpreted as being very strict and could act as a disincentive to any employee who was considering taking on fire safety.”

75. Their second concern – supported by the STUC - was that section 67 could mean that a firefighter taking industrial action could be prosecuted under this section for taking such action and that accordingly this section of the Bill contravenes trade union rights and the right to withdraw labour. The FBU suggested that one way of addressing their concerns would be to include the qualifications in the 1992 Act in section 67 of this Bill.

76. In a written response\textsuperscript{69}, Executive officials disagreed with the FBU’s interpretation of this section, stating that an employee’s responsibility is limited to co-operating as far as possible to enable an employer to meet its obligations and that an offence would only be committed where the consequences of an employee failing to co-operate with their (limited) duty are particularly serious. Criminal sanctions would only be imposed on an employee where that employee’s dereliction of duty in his/her own workplace led to risk of death or serious injury in the event of fire. It would not be the case that an offence would automatically be committed by those taking industrial action.

77. The Committee also questioned witnesses about how the fire safety regime would sit with other regulatory regimes, in particular in relation to houses in multiple occupation (HMOs) and care homes. The FOA were confident that enforcement would be far easier because responsibility for fire safety would be clearly brought together in one place, the fire authority.\textsuperscript{70} CFOA took a similar view. The Chief Inspector also pointed out that making the fire authority the single enforcing authority did not preclude working in multi-agency teams where this would be effective.\textsuperscript{71}

\textsuperscript{68} Official Report, 28 September 2004, Col. 1067
\textsuperscript{69} Letter from Ian Snedden, 24 September 2004
\textsuperscript{70} Official Report, 28 September 2004, Col. 1054
\textsuperscript{71} Official Report, 21 September 2004, Col. 1014
78. The Committee is satisfied with the Minister’s detailed assurances on these technical legal issues but invites the Minister to continue discussions with the FBU and others to try and allay these concerns. In relation to the evidence on HMOs and care homes, the Committee invites the Executive to reflect further on whether the single enforcing authority approach is the most effective. The Committee welcomes the intention to consult in the near future on the fire safety regulations and looks forward to being updated on discussions during Stage 2.

Issues on Part 3 Raised by Subordinate Legislation Committee

79. In its report to this Committee the Subordinate Legislation Committee brought two particular provisions in Part 3 to our attention.

80. The first of these relates to section 54(2)(l) (creating criminal offences and specifying rules as to the burden of proof in relation to such offences). The Executive explained that this power ensures that fire safety requirements contained in regulations will be backed up with an offence provision. The Subordinate Legislation Committee points out that, as a consequence of provisions at section 67 to 69, failure to comply with section 54 regulations is already a criminal offence in certain circumstances. This subsection could be used to extend the possible range of offences beyond circumstances which put someone at risk of death or serious injury (section 67).

81. The Subordinate Legislation Committee is concerned that the Bill is silent as to what the penalties, in particular the maximum penalties, will be for offences created by such regulations. The Subordinate Legislation Committee considers it inappropriate for the Executive to have a wide power to create offences without any limitation on the face of the Bill as to what the penalties for committing such offences will be. This Committee notes that, for offences under section 67, a maximum penalty is specified (section 67(5)).

82. The Committee is of the view that it is appropriate for this power to be delegated but that a maximum penalty should be stipulated.

83. The second point to which the Subordinate Legislation wished to draw our attention was in relation to the definition of “relevant premises” (section 72). The Executive’s memorandum advises that the power to modify the meaning of “relevant premises” is necessary as Scottish Ministers may wish to bring new types of premises into the fire safety regime or exclude other premises. The view of the Subordinate Legislation Committee is that powers which modify or amend primary legislation should normally be subject to affirmative resolution procedure. In light of the Subordinate Legislation Committee’s concern, the Executive has agreed that this provision should be subject to the affirmative rather than negative procedure and has indicated its intention to bring forward an amendment at Stage 2 to this effect.

84. The Committee welcomes this proposed Stage 2 amendment.

Part 4 – Miscellaneous
Advisory Bodies

85. Section 78 of the Bill abolishes the Scottish Central Fire Brigades Advisory Council (SCFBAC). The Policy Memorandum states that “there was general consensus...that the advisory structure for delivering advice to Scottish Ministers and developing policy requires to be more dynamic.” Any replacement would not be statutory.

86. CFOA welcomed the replacement of the Council and proposed a three tier replacement with a practitioner, employer and ministerial level. COSLA felt that it should have been possible to fine tune the existing structure rather than abolish it completely. The FBU did not consider criticism of the council justified but accepted that it was going to be replaced. They were concerned that any new structure should include them at all levels and not just the lowest level; and wanted new arrangements to be statutory.

87. The Chief Inspector was concerned that there were insufficient people to support a wide range of groups and forums and wanted to see a very streamlined structure. He indicated that he was “struggling to find an example of good practice or dynamic change that the advisory council has been able to implement”. The FOA suggested that this difficulty might be addressed by a UK wide approach.

88. We questioned witnesses as to whether the consultation provisions should require consultation with recognised trade unions. The Minister indicated that this was a complex issue given that different bodies were recognised for different purposes and so he preferred to take a more generic approach.

89. On the general question of replacement structures, the Minister said that there would be further consultation. The aim would be that the process “is not cumbersome or bureaucratic, that it is well focussed and that it encourages the discussion of relevant issues” among all those with a legitimate interest. He did not envisage a statutory model and recognised the Chief Inspector’s concerns about not putting too much of a burden of meetings on the same small group.

90. The Committee supports the abolition of the Council but expresses concern that no replacement has yet been proposed by the Minister. The Committee welcomes the Executive’s intention to consult shortly on the replacement structure and encourages the Executive to ensure that the results of this consultation are known before the Bill’s passage is complete.

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72 Policy Memorandum, Para. 35
73 Official Report, 14 September 2004, Col. 955
74 Official Report, 21 September 2004, Col. 1027
75 Official Report, 14 September 2004, Col. 972
76 Official Report, 21 September 2004, Col 1005-1006
77 Official Report, 28 September 2004, Col. 1051
78 Ibid, Col. 1066
79 Ibid, Col. 1074
Issues not included in the Bill

91. Strathclyde Fire Board brought the Committee’s attention to there being no reference in the Bill of it being an offence to pass oneself off as a firefighter. The Board points out that while under section 43 of the Police (Scotland) Act 1967 it is an offence to pass yourself off as a Police Officer, there is no such offence in the Fire Services Act 1947.\(^{80}\) Although, in oral evidence to the Committee, Scottish Executive officials indicated that this issue had not been previously brought to their attention, they did agree to consider the matter further.\(^{81}\)

92. Strathclyde Fire Board in further written evidence\(^{82}\) advised that they had become aware of an organisation which gives the impression that it carries out fire investigation work. It uses a vehicle with additional lights and a logo similar to Strathclyde Fire Board, all with the potential for misinterpretation.

93. In subsequent correspondence with the Committee the Executive stated that it would be concerned “where pretending to be a firefighter brought about a practical gain - for example a bogus caller attempts to gain money from an elderly person, dressed as a firefighter and purporting to check the smoke alarm”. However, the Executive position is that the common law offence of fraud would be sufficient to cover these and similar circumstances.\(^{83}\)

94. In addition, Strathclyde Fire Board pointed out that there was nothing in the Bill on assisting overseas fire and rescue authorities seeking second-hand rescue equipment. Whilst it acknowledges that the Local Government (Overseas Assistance) Act 1993 provides general powers which permit such disposal of equipment, the Board feels that a “more specific power for Fire Authorities would be preferable”.\(^{84}\) Executive officials indicated that it had received no specific representations from brigades that this was a problem and therefore took the view that the current arrangements “were operating quite successfully”.\(^{85}\)

95. In evidence to the Committee, the Minister indicated that there would be further discussions on both the issue of masquerading as a firefighter and on the disposal of firefighting equipment. The Committee is interested in the outcome of these discussions, particularly in why the Executive feels there is a distinction to be drawn between impersonating a police officer, a specific statutory offence and impersonation of a firefighter, where no specific statutory offence exists or is proposed.

Conclusion

\(^{80}\) Letter from Alan Cuthbertson, Clerk, Strathclyde Fire Board, 7 October 2004
\(^{81}\) Official Report, 9 September 2004, Col. 937
\(^{82}\) Letter of 7 October 2004 from Alan Cuthbertson, Strathclyde Fire Board
\(^{83}\) Letter from Ian Snedden, Scottish Executive Justice Department, Fire Services Division, 24 September 2004
\(^{84}\) Letter from Alan Cuthbertson, Clerk, Strathclyde Fire Board, 7 October 2004
\(^{85}\) ibid, Col. 937
96. The Committee recommends that the Parliament agrees to the general principles of the Fire (Scotland) Bill.
ANNE A – REPORT FROM FINANCE COMMITTEE

Finance Committee

Report on the Financial Memorandum of the Fire (Scotland) Bill

The Committee reports to the Justice 2 Committee as follows—

Background

1. Under Standing Orders, Rule 9.6, the lead committee in relation to a Bill must consider and report on the Bill’s Financial Memorandum at Stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee in relation to the Financial Memorandum on the Fire (Scotland) Bill, for which the Justice 2 Committee has been designated the lead committee at stage 1 by the Parliamentary Bureau.

Financial Memorandum

3. The Bill seeks to deliver a modernised Fire and Rescue Service, mainly through re-defining the role of the fire services to take account of its additional responsibilities relating to fire prevention and rescue work which is not covered in the existing fire legislation which dates from 1947; providing a framework for strategic direction by the Scottish Executive; and revising existing fire safety legislation.

4. The Financial Memorandum published to accompany the Bill states that the financial provision from the Scottish Executive, and the arrangements under which the funding is provided, will essentially remain unchanged.

5. The Financial Memorandum does, however, give rise to some additional costs and a table setting out the expected costs and savings associated with the Bill is set out at page 24 of the Financial Memorandum. In summary, these include savings of up to £3.3m per annum in relation to control room arrangements; £3m over the next three years for the New Dimension programme; £26m one-off cost or £5m to £10m for the Firelink project; and £100,000 to £150,000 for the publicity campaign for the new fire safety regime.

Consideration by the Committee

6. At its meeting on 9 September 2004, the Finance Committee took oral evidence on the Financial Memorandum from the following:

   Councillor Pat Watters, President of COSLA; Councillor Julie Sturrock, Dundee Council; Stephen Hunter, Firemaster, Tayside Fire Brigade; Eileen Baird, Strathclyde Fire Brigade; and Barbara Lindsay, Corporate Manager, COSLA.

   The Official Report for this meeting can be viewed by clicking here.

7. The Committee also took evidence at its meeting on 14 September 2004 from:

   Ian Snedden, Head of Fire services Division; Jill Clark, Fire Bill Team Leader; and John Nicholls, Fire services Division, Scottish Executive Justice Department.

   The Official Report for this meeting can be viewed by clicking here.

8. In addition, the Committee considered written evidence from the Association of Chief Police Officers in Scotland (ACPOS), Central Scotland Fire Brigade, Convention of Scottish Local

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86 Financial Memorandum, paragraph 115
Authorities (COSLA), Dumfries and Galloway Fire Brigade, Grampian Fire Brigade, Lothian and Borders Fire Brigade, Scottish Ambulance Service, Strathclyde Fire Brigade and Tayside Fire Brigade. All the written evidence considered by the Committee is attached at Appendix A.

9. The Committee would like to express its gratitude to all those who took the time to provide evidence in relation to this Financial Memorandum.

Summary of Evidence

Control Room Arrangements

10. During the consultation period on the Bill, the Scottish Executive stated that it was seeking to improve the efficiency of the fire service control room arrangements. The Scottish Executive commissioned a report from Mott MacDonald, 'The Future of the Fire Service Control Rooms in Scotland', and it is currently considering the report’s recommendations. The report offers a range of options, from maintaining the status quo arrangement of eight control rooms, costing £5.8m per annum, to consolidating services into one control room, costing £2.5m per annum, thereby creating a saving of £3.3m per annum. The Financial Memorandum does not say when the Scottish Executive will be in a position to make a decision on the control room arrangements.

11. In written evidence, many fire brigades suggested that the highest estimated saving of £3.3m could not be realised by the merger of control rooms and that this estimate did not cover costs associated with redundancy payments, training/recruitment issues or redeployment to other areas. In addition, Dumfries and Galloway Fire Brigade stated that:

"From a Brigade perspective, a large number of functions carried out by our Fire Control staff will not be transferred to any of the proposed recommendations if they are implemented. This will, therefore, require alternative arrangements to be made for the carrying out of such functions and the resultant requirement in maintaining staff costs for this to be carried out."

12. In oral evidence, COSLA and fire service representatives elaborated on the concerns set out in their written evidence. The President of COSLA suggested that a single control room would not be a safe way of operating and that, at the very least, a back up system in case of emergencies would be required. Stephen Hunter, Firemaster for Tayside Fire Brigade, added that the current control room arrangement does not include the capacity to be merged into a single room and that capital investment would be required to make this possible. The witnesses were unable, however, to put a figure on these possible additional costs.

13. The Committee explored with Scottish Executive officials the consultant’s calculations for the £3.3m savings and asked for further information on how the consultants reached this figure. This information is reproduced at Appendix B.

14. Officials confirmed that 20% of fire brigade control room staff will be required to remain within the eight fire board areas in order to carry out tasks such as data collection, performance management, statistical analysis as well as crewing activities, regardless of which decision is made over the merger of control rooms. Officials argued, however, that this issue has been included in the consultant’s report, and that costs would not increase as these tasks are already being carried out.

15. The Committee also questioned whether the consultant’s report covered the possible difficulties in retaining and recruiting staff for one central control room, rather than eight regional centres, and whether this could increase costs. Scottish Executive officials noted this point, but did not offer any indication of the likely costs which may be involved.

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87 Mott MacDonald 'The Future of Fire Service Control Rooms in Scotland'
88 Official Report, 9 September 2004, col. ref. 1602-03
89 Official Report, 14 September 2004, col. ref. 1644
90 Official Report, 14 September 2004, col. ref. 1651
16. In considering the control room arrangements, Members expressed their concern that this section of the Financial Memorandum lacked detail because the policy decision which would impact on the final level of costs has yet to be made. As Dr Elaine Murray commented:

“Because we do not know the shape and structure of what is being proposed, we do not know whether the savings that it is claimed could be made will in fact be made, or whether there will be additional costs on brigades that have not yet been quantified.”91

Fire Safety

17. The Financial Memorandum states that the Bill provides for reform of fire safety legislation and that a publicity campaign will be required to promote awareness and compliance with the new legislation. It is estimated that costs of between £100,000 and £150,000 will cover this.92

18. When questioned on the adequacy of the figure for the publicity campaign, Scottish Executive officials said that this was intended to cover costs to be incurred whilst preparing the guidance documents for the new fire safety regime only, and that costs have not yet been calculated for the publicity campaign. Officials were unable to provide the Committee with a figure of how much the campaign may cost, but did provide an informal estimate of it being in excess of £200,000. By way of comparison, officials also referred to the current ‘Don’t Give Fire A Home’ fire safety campaign in Scotland which has cost between £400,000 and £500,000.93

19. The Financial Memorandum also refers to the commitment from the Scottish Executive to fund the ‘Firelink project’ which is a new radio communication system for the Fire services. The Financial Memorandum acknowledges that the contracts for this system have not been awarded yet, but anticipates that it will give rise to either a capital, one-off purchase of £26m or a managed contractor service for between £5m and £10m per annum.94

20. The Committee questioned the funding and duration of the Firelink project contract. Several fire boards requested in their written evidence that the Committee consider whether the costs attributed to the Firelink project include on-going revenue and maintenance costs. Scottish Executive officials confirmed that the contract will cover these costs.

21. The Committee discussed the comparability of the two funding options with Scottish Executive officials. Members heard that the one-off purchase option of £26m was compared with a second option of between £5m and £10m per annum on a contract which is expected to run for between 10 and 15 years. Members were concerned that this could lead to the second option costing between £50m and £150m overall.

22. Scottish Executive officials accepted this concern and stated that:

“At the moment, we do not know what costs the bidders will come up with; we will clearly need to have discussions with them once we see their best and final offer. There is obviously an affordability issue…”95

23. As with the projected costs for the control room arrangements, the Committee was told that a decision on the Firelink project is not expected to be made until the new year and the Committee is again concerned that it is not being given complete information with which to consider the financial implications of this part of the Bill.96

Core Duties

24. The Financial Memorandum states that where the Bill places obligations on fire services, these provisions mainly give statutory expression to existing services provided by relevant

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91 Official Report, 9 September 2004, col. ref. 1603
92 Financial Memorandum, paragraph 122
93 Official Report, 14 September 2004, col. ref. 1652-53
94 Financial Memorandum, paragraph 123
95 Official Report, 14 September 2004, col. ref. 1647-48
authorities and formalise the role which the service currently undertakes within the existing financial provision.\textsuperscript{96}

25. In written evidence, COSLA argued that the Bill does introduce new duties for the fire service and expressed its concern that its comments regarding the financing of new duties made during the consultation on the Bill have been disregarded. COSLA stated that “it is completely unacceptable that new burdens are not funded, we do not accept that they [are] simply a ‘formalisation of the role which the Service currently undertakes within the existing financial provision’.\textsuperscript{97}

26. When questioned by the Committee, however, COSLA clarified its concerns. COSLA representatives stated that the Bill formalises many duties that fire services currently carry out, for example around community fire safety, and that they are concerned that:

“… the statutory duty will mean that community fire safety will have to be delivered in a far more structured and auditable manner in order to measure the benefits that are accruing to the community as a result of the work that is taking place.”\textsuperscript{97}

27. The Committee was satisfied, however, with the Scottish Executive officials’ affirmation that the Bill does not place new duties on the fire service and that:

“… a lot of the Bill is about saying to the fire service that we recognise that it is carrying out such activities and that we think that it needs to have the statutory powers to underpin what it does”.\textsuperscript{98}

Integrated Risk Management Plans
28. The Financial Memorandum highlights the introduction of integrated risk management plans (IRMPs) as a method which will enable relevant authorities to have greater flexibility to use local knowledge and experience so that resources can be targeted more effectively. It states that these IRMPs will not be implemented until 1 April 2005.\textsuperscript{99}

29. The Committee was concerned that the Financial Memorandum lacked information on the financial implications of IRMPs. When questioned on this, COSLA representatives responded that the costs and savings involved with IRMPs can only be gauged after the plan has been in operation for a period of time.\textsuperscript{100}

30. The Committee also had concerns over the suggestion in the Financial Memorandum that IRMPs may impact on the current formula used in the funding calculations for the fire services. In evidence, Scottish Executive officials did not directly respond to this question, but clarified that it is intended that IRMPs will improve the flexibility of the mechanism to calculate funding. Officials also confirmed that efficiency savings were not linked to the introduction of IRMPs.\textsuperscript{101}

Fire certificates
31. The Bill removes the obligation for the certification of premises in respect of fire safety and the Financial Memorandum states that, on average, 600 certificates are issued each year at a cost of between £102 and £253 each.\textsuperscript{102}

32. In their written evidence, many fire boards expressed concern that this would result in a significant loss of income, with Lothian and Borders Fire Board estimating a loss of £80,000 a year.

33. During oral evidence, COSLA representatives estimated that this would cost £200,000 across the eight fire boards. In addition, COSLA argued that the proposed replacement to the existing system, self certification on advice, would have financial implications for the fire service.

\textsuperscript{96} Financial Memorandum, paragraph 125
\textsuperscript{97} Official Report, 9 September 2004, col. ref. 1607
\textsuperscript{98} Official Report, 14 September 2004, col. ref. 1649
\textsuperscript{99} Financial Memorandum, paragraph 126
\textsuperscript{100} Official Report, 9 September 2004, col. ref. 1610
\textsuperscript{101} Official Report, 14 September 2004, col. ref. 1645-46
\textsuperscript{102} Financial Memorandum, paragraph 127
with regards to the provision of advice, which is currently provided free of charge. Firemaster Stephen Hunter commented:

“We cannot predict the activity levels for the provision of advice; however, it is likely that after an advertising campaign occupiers and owners of commercial and industrial properties will want to take the fire service’s advice which, up to now, has always been given free of charge.”

34. When asked to comment on this, Scottish Executive officials argued that they calculated that the fire services would experience a loss of income in the region of £165,000, and that this figure is minor in relation to the total expenditure on the fire service. Officials argued that the income covers the administrative work associated with the fire certificates so that the removal of that income and associated work will balance each other out. Officials did not comment on the possible costs in relation to the provision of advice by the fire service.

Conclusions and Recommendations

35. The Finance Committee is content that the Fire (Scotland) Bill does not place significant additional duties on the fire service and, therefore, that significant increased costs will not fall to the fire service. The Committee does, however, have concerns with regard to several aspects of the Financial Memorandum.

36. As a general comment, the Committee is concerned that policy decisions that are yet to be made (for example, regarding the control room arrangements, Firelink project and IRMPs) may have substantial costs associated with their implementation and that these costs cannot be adequately scrutinised by the Committee. This builds on the Committee’s concerns in relation to earlier Financial Memoranda, since communicated to the Scottish Executive by correspondence from the Convener, that it has been asked to consider several Financial Memoranda where significant cost bearing elements have been introduced via subordinate legislation or guidance after the Bill has been passed and parliamentary scrutiny has been concluded.

37. The Committee recognises that the Financial Memorandum contains no estimated costs for the planned publicity campaign relating to the new fire regime and recommends that the Justice 2 Committee seeks a firm estimate from the Scottish Executive. The Committee also recommends that in similar cases such information be included in future Financial Memoranda in order to provide the Parliament with a more accurate picture of the anticipated costs under the Bill.

38. The Committee highlights the possible wide gap between the two funding options for the Firelink project and requests that the Justice 2 Committee further explores this issue with the Minister.

39. With regards to the provision of advice by the fire service for self-certification, the Committee recommends that the Justice 2 Committee seeks assurances from the Minister that these will not create undue financial pressures on the fire service.

103 Official Report, 9 September 2004, col. ref. 1609
104 Official Report, 14 September 2004, col. ref. 1653
APPENDIX 1 – WRITTEN EVIDENCE TO THE FINANCE COMMITTEE

SUBMISSION FROM ASSOCIATION OF CHIEF POLICE OFFICERS SCOTLAND (ACPOS)

With regard to point 115 on page 20 and point 128 on page 22 of the document, members are happy to be consulted on and explore joint opportunities for forces and brigades to maximise efficiency and promote collaborative working. Members consider the consultation should be extended to include other stakeholders who have an interest in fire safety and community planning.

With regard to point 121 on page 21, members recognise that whilst any financial saving may not be significant, the possibility of joint procurement of certain items of equipment and personal protective clothing could be considered.

With regard to point 123 on page 21, members acknowledge the commitment of Ministers to invest in Firelink, the new radio communications system for fire and rescue services. Members would welcome the prospect of all emergency services sharing a common communications system when responding to and dealing with emergency situations. Members have been successful in negotiating substantial discounts in the purchase of Airwave equipment and there may be an opportunity for the Fire Service to benefit from these arrangements.

Members recognise that opportunities may exist, through collaboration, to make savings in the cost of maintaining equipment associated with Firelink. Members are aware that work has been progressed jointly between Strathclyde Police and Strathclyde Fire Brigade, which examines operational aspects of work undertaken both separately and jointly.

SUBMISSION FROM CENTRAL SCOTLAND FIRE BRIGADE

Introduction

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004.

The stated 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 of our communities.
- To revise fire safety legislation.

The purpose of this paper is to present the views on costs of Central Scotland Fire Brigade to the Finance Committee.

The Brigade welcomes the publication of the Fire (Scotland) Bill. The provisions of the Fire (Scotland) Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future). The Brigade had in general expressed its support for the proposals for legislation and consequently the provisions of the Bill are broadly welcomed.

There are, however, clearly financial implications and concerns for Brigades. This submission seeks to identify these.

The financial memorandum indicates that, “The financial proposals from the Scottish Executive and the arrangements under which the funding is provided will essentially remain unchanged”.

Control Room Arrangement

The costs identified as those being met by the Scottish Administration are based on a report commissioned by the Executive. Staff cost savings, which would accrue to Fire Authorities, are estimated at £3.3M in Scotland. These costs are very much estimates and the Mott MacDonald report recommends a more detailed analysis in the areas of redundancy payment and training/recruitment issues before proceeding.
We have difficulty reconciling the costs given in table 6-5 with the numbers of FTE staff. Taking the current position as a starting point, the average cost per FTE member of staff is approximately £27,500. The cost for 91 staff is shown as £2,540,000, which is approximately correct for that number of staff, but does not include the costs of alternatively employing the 20% of Control staff not required. If these costs are added, staff costs rise to £3,200,000. The assumption that 20% of the redundant staff would be redeployed within existing budgets is considered to be unrealistic.

We experience similar difficulties with table 6-7, which shows the ongoing savings expected to be achieved by the different scenarios. In the case of the one Control option, annual savings of £3.6M are predicted. We cannot see how this figure is arrived at, and assume that other factors, not clearly stated in the report, have been included. We note that one of the sensitivities examined refers to projected savings in maintenance costs and, therefore, assume that this has been factored in. We would strongly urge that this sensitivity case be used as the base figure, as we believe that current maintenance costs experienced in Scotland are very competitive, largely due to the ability of Brigades to reduce costs by carrying out maintenance in-house.

We also refer to our comments above and recommend that projected savings should not include assumptions of redeployment, which are currently unfunded. It is our view that a more conservative estimate of the annual savings achievable is approximately £1M less than the figure shown in table 6-7 in each case.

It is, therefore, unclear if these projected staff cost savings will be achieved.

**National Resilience – New Dimension**

The funding provision of £3M for equipment is welcomed. This is a new burden and funding should not be at the detriment of existing funding levels. If existing levels of capital grant are used to fund this additional and new expenditure area, then essential investment issues will be affected in Brigades. Ongoing revenue costs will have to be addressed.

**Firelink**

Firelink is a significant National Communication project. The Executives commitment to fund this is welcomed. However, with the New Dimensions commitment, this should not be to the detriment of existing investment requirements of Brigades. Ongoing revenue costs will have to be addressed.

**Fire Safety**

It is anticipated that we will be required to provide funding for local advertising campaigns and PR activities. The Bill proposes the removal of the need for fire certification. In consequence, we anticipate a reduction in income. Given the additional statutory responsibilities there may be additional staffing requirements.

**Charging**

At 15(1), the Bill provides that “Ministers may by order authorise a relevant authority to charge a person ….” Further, at 15(5) “the authority’s income from charges does not exceed the cost to the authority ….” These provisions inhibit the ability of authorities to promote income generation initiatives and prevent ‘trading’ at a profit – for example, in commercial training activities. The promotion of efficient and effective arrangements would be better determined at local level. The restriction at 15(5) should be removed.

**Common Fire Services Agency**

The Bill makes reference to a Common Fire Services Agency. No costs are identified for this although, if implemented, this may represent an additional layer of management for the service.

**Central Institution and Other Centres for Education and Training**
Section 44(1)(b) provides that Scottish Ministers may establish and maintain local training centres. No costs are identified for this. However, Brigades already operate local training centres. Should this provision be enacted, then there will be financial implications for Brigades. This provision, however, duplicates that within S.14 of the Bill.

**Livery, Stationery Etc**

There will be costs associated with the change in corporate identity resultant from the Bill. Costs will be dependent on the approach and speed of change.

**Appliance Fuel**

The Service currently pays fuel tax at standard rate. The opportunity should be taken to exempt the Fire Service from this in respect of special appliances. This concession is already given in respect of Hydraulic Platforms.

**Long Term Implications - Integrated Risk Management Planning**

This is a new way of assessing how the Fire Service should be delivered. Its focus is on life risk and seeks to move service emphasis from intervention to prevention. It is unclear what the financial consequences of this will be at this time. The Justice Department has acknowledged that changes to Fire GAE arrangements will not be made until 2008/9, when the outcome of the IRMP process should be known.

**Control Rooms**

Until a clear announcement is made by the Executive, it is not possible to give an indication of long term financial implications. However, as mentioned earlier, there are concerns about the financial estimates contained within the Executives report.

**SUBMISSION FROM COSLA**

**Introduction**

COSLA is pleased to offer comment on the potential financial implications contained within the Fire (Scotland) Bill. However, we note that within the financial memorandum it is indicated, “the financial provision from the Scottish Executive and the arrangements under which the funding is provided will essentially remain unchanged. This reflects that most of the costs associated with the future service will not change as a result of the Bill”. It concerns us that this premise is given without robust and comprehensive research to ensure this. If we are to introduce new legislation, it is vital that the finance is adequate to effectively implement the proposal. Initiatives fail or succeed according to the financial provisions made to support them. Within our Spending Review submission, we strongly emphasised that any core funding would not be utilised to fund new legislation, and based on this we will assume that any new legislation or policies will be fully funded from the Scottish Executive. We therefore welcome this opportunity to give evidence to reinforce our position.

**Detail**

**Control Rooms**

This is being undertaken within a separate consultation, which we will as an organisation, be responding to further. However in the interim we would wish to draw the committees attention to the fact that the financial estimates associated with control rooms have raised concerns. Indeed, it is noted within the consultants report that the financial estimates contained within in this would need further investigation. Areas that, we would contend, need further clarification are areas such as, the number of dispatching positions, redundancy payments, training/recruitment issues, and opportunities for redeployment within the Brigades. Additionally, governance arrangements would need to be clarified and any associated financial implications assessed.
Ultimately this cannot be fully assessed until we are clear on the appropriate national solution for Scotland.

**National Resilience**

While the funding provision of £3m for equipment is welcomed. This is a new burden and funding should not be at the determinant of existing funding levels. If existing levels of capital grant are used to fund this additional and new expenditure area, then essential investment issues will be affected in Brigades. Ongoing revenue costs will have to be addressed, as it is stated within the financial memorandum that Bill makes provision for the Scottish Ministers to require relevant authorities to use and maintains specified equipment.

**Fire Safety**

We are pleased that there is recognition that a reform of fire safety legislation will require advertising and PR campaigns and provision is made for such activities.

**Core Duties**

We have concerns that the comments we and other member authorities made regarding the financing of new duties which will come into effect upon the enactment of the bill, have been disregarded. We would wish to explore this issue further both with the Scottish Executive and relevant authorities. It is completely unacceptable that new burdens were not funded, we do not accept that they simply a ‘formalisation of the role which the Service currently undertakes within the existing financial provision’, and would wish clarification on this from the Executive.

**Certification of premises**

We note that provisions within the Bill remove the obligation for the certification of premises in respect of fire safety. However, we dispute the conclusions that the financial memorandum derives from that. The memorandum feels that due to the abolition of this responsibility, staffing resources could be deployed elsewhere, however, Brigades estimate that this will reduce income to the authority by approximately £80,000. There is no reference to how this can be recouped.

**Charging**

We have concerns that clause 15(5) of the Bill, will limit the income generating capacity of authorities and we have concerns regarding the intervention powers provided for within this.

**Conclusion**

We share with the Scottish Executive, the desire to ensure that Scotland has a fire service fit for the twenty first century. We support their aim to make the most effective and efficient use of fire authority resources. However, we have serious concerns that if the proposals are not adequately resourced or further implications are not considered this may negatively influence the enactment of the Bill. Therefore, we hope to work with the Executive over the coming months to consider the detail of proposals as it embarks on the legislative process.

**SUBMISSION FROM THE DUMFRIES AND GALLOWAY FIRE BRIGADE**

**Introduction**

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004.

The stated 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 of our communities.
To revise fire safety legislation.

The purpose of this paper is to present the views on costs of Dumfries & Galloway Fire Brigade to the Finance Committee.

The Brigade welcomes the publication of the Fire (Scotland) Bill. The provisions of the Fire (Scotland) Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future). The Brigade had in general expressed its support for the proposals for legislation and consequently the provisions of the Bill are broadly welcomed.

There are, however, clearly financial implications and concerns for our Brigade. This submission seeks to identify these.

The financial memorandum indicates that, “The financial proposals from the Scottish Executive and the arrangements under which the funding is provided will essentially remain unchanged”.

**Control Room Arrangement**

The costs identified as those being met by the Scottish Administration are based on a report commissioned by the Executive. Staff cost savings, which would accrue to Fire Authorities, are estimated at £3.3M in Scotland. These costs are very much estimates and the Mott MacDonald report recommends a more detailed analysis in the areas of redundancy payment and training/recruitment issues before proceeding.

Publication of the consultants report on the future of control rooms in Scotland indicate a number of options for consideration by Ministers. The report outlines a range of costs and benefits with projected savings which can be made depending on the option to be considered.

Whilst the report gives suggestions as to the costs that can be saved we have difficulty in reconciling that the projected savings are a true reflection of all requirements. From a Brigade perspective a large number of functions carried out by our Fire Control staff will not be transferred to any of the proposed recommendations if they are implemented. This will therefore require alternative arrangements to be made for the carrying out of such functions and the resultant requirement in maintaining staff costs for this to be carried out.

The projected staff savings indicated in the report do not in our opinion truly reflect the needs of maintaining staff to deliver services required of a Fire Brigade as currently carried out by our Fire Control staff.

Until a decision is taken as to the future direction for Fire Controls in Scotland it is not possible to detail what the long term financial implication will be for Dumfries & Galloway Fire Brigade.

**National Resilience – New Dimension**

The funding provision of £3M for equipment is welcomed. This is a new burden and funding should not be at the detriment of existing funding levels. If existing levels of capital grant are used to fund this additional and new expenditure area, then essential investment issues will be affected in Brigades. Ongoing revenue costs with regard to maintenance and replacement programmes requires to be considered.

**Firelink**

Firelink is a significant National Communication project. The Executives commitment to fund this is welcomed. However, with the New Dimensions commitment, this should not be to the detriment of existing investment requirements of Brigades. Ongoing revenue costs will have to be addressed.
Fire Safety

It is anticipated that we will be required to provide funding for local advertising campaigns and PR activities. The Bill proposes the removal of the need for fire certification. In consequence, we anticipate a reduction in income as a result of this. Given the additional statutory responsibilities there also may be additional staffing requirements which have not been clarified as yet.

Charging

At 15(1), the Bill provides that “Ministers may by order authorise a relevant authority to charge a person…..”. Further, at 15(5) “the authority's income from charges does not exceed the cost to the authority ….”. These provisions inhibit the ability of authorities to promote income generation initiatives and prevent ‘trading’ at a profit – for example, in commercial training activities. The promotion of efficient and effective arrangements would be better determined at local level. The restriction at 15(5) should be removed.

Common Fire Services Agency

The Bill makes reference to a Common Fire Services Agency. No costs are identified for this although, if implemented, this may represent an additional layer of management for the service.

Central Institution and Other Centres for Education and Training

Section 44(1)(b) provides that Scottish Ministers may establish and maintain local training centres. No costs are identified for this. However, Brigades already operate local training centres. Should this provision be enacted, then there will be financial implications for Brigades. This provision, however, duplicates that within S.14 of the Bill.

Livery, Stationery Etc

There will be costs associated with the change in corporate identity resultant from the Bill. Costs will be dependent on the approach and speed of change.

Appliance Fuel

The Service currently pays fuel tax at a standard rate. The opportunity should be taken to exempt the Fire Service from this in respect of special appliances.

Long Term Implications – Integrated Risk Management Planning

This is a new way of assessing how the Fire Service should be delivered. Its focus is on life risk and seeks to move service emphasis from intervention to prevention. It is unclear what the financial consequences of this will be at this time. The Justice Department has acknowledged that changes to Fire GAE arrangements will not be made until 2008/9, when the outcome of the IRMP process should be known.

This submission is made on behalf of Dumfries & Galloway Fire Brigade for consideration by the Finance Committee in connection with the Fire (Scotland) Bill. If required I will be pleased to clarify any of the matters outlined above.
SUBMISSION FROM GRAMPIAN FIRE BOARD

I enclose for your attention the comments of Grampian Fire Board on the Fire (Scotland) Bill. Please note that the Board did not consider financial implications separately. I would therefore direct your attention to paragraphs 3, 6, 7 and 8 of this letter.

In respect of amalgamation schemes the Board does not support the proposal that Ministers lead on the setting up, amendment or revocation of amalgamation schemes. The Board would prefer to maintain the current arrangements of fire authorities being able to develop amalgamation schemes as is currently the position under the Fire Services Act 1947.

The Board supports the inclusion in the Bill's provisions of clauses which provide fire authorities with the appropriate powers related to borrowing. Such powers are provided in the 1947 Act under section 36 sub sections (10) (11) and (13) and the Board supports the inclusion of similar powers in the Bill. It is considered that without these powers being provided that authorities would not be able to borrow.

With regard to Additional Function Orders the Board considers there should be:

- provisions for consultation with the Authority concerned, and,
- provisions on the time the Order should remain in force and,
- provisions for financial assistance for authorities who are required to carry out any additional functions.

In respect of the proposed powers being taken by Ministers in Section 11 of the Bill the Board seeks clarification of whether the emergency direction being taken by the Ministers would take precedence over the statutory duty of an authority.

In respect of the Charging Order provisions, the Board supports the proposal for powers to be taken by Ministers to enable fire authorities to make charges (other than for extinguishing fire, protecting life or property in the event of fire). The Board supports the development of these powers to charge for:

- attending incidents which are found to be caused by inappropriate activation of fire alarm systems,
- charging for services connected to property protection and preventing the spread of fire, provided to individuals or agencies who are themselves professional advisers or where it is considered they should engage professional advice. An appropriate exclusion to this being advice to private homeowners.

In developing a Charging Order, the Board considers it appropriate that a requirement for consultation takes place with fire authorities as to what can be charged for in an Order should be included in the Bill.

In respect of water supplies provision the Board considers it appropriate that there should be included in the Bill provisions that define reasonable minimum standards of water supply in order for a brigade to fight fires. Costs associated with the development of water supply infrastructures should be defrayed to the water undertaking or developer through planning gain initiatives and not charged to the fire authority.

With regard to the Minister's involvement in the development of mutual aid schemes the Board wishes to comment on:

- the possible conflict might arise from the powers available to a Minister to develop an Additional Function Order and its relationship to a mutual aid scheme, and
- whether an Authority (which has statutory authority) can itself delegate the carrying out of functions to another body when it is responsible for ensuring the function is carried out.
With regard to a National Framework document, the Board rejects proposals that provide for a Minister to take powers to make an Order requiring an Authority to take or refrain from taking action in a certain manner when it is considered that an Authority is failing or likely to fail to act in accordance with the Framework Documents.

The Board also rejects proposals that provide for Ministers to have a greater say in the way a fire authority runs its day-to-day affairs through the utilisation of a combination of powers being considered under Section 2, Section 34 and Section 36 of the Bill. The utilisation of such powers are seen to be contrary to local accountability and to date as far as this Board is aware there has been no precedent which gives rise for such powers to be used. The Board reinforces its commitment to a decentralised, locally accountable, locally representative Fire Board and rejects the Scottish Executive’s premise that centralisation and direction from Edinburgh is best for Grampian Fire and Rescue Service. The Grampian Joint Board is a well defined, extended community and the existing boundaries are best for the people of Aberdeen, Aberdeenshire and Moray.

The Board expresses its concern and reservations on the development of Property and Facility Orders, as it may leave Grampian Fire and Rescue Service exposed with a shortage of resources in the event of such an Order being raised. The Board would wish to see incorporated in the Bill provision for consultation with fire authorities as a matter of course.

The Board supports the Bill’s proposal to abolish the Scottish Central Fire Brigades Advisory Council and to develop a replacement forum that advises Ministers on the development of fire service policy.

The Bill omits completely the provisions contained in Section 18 of the 1947 Act. This section related to the appointment and promotion of fire service personnel. There requires to be incorporated in the Bill’s provisions a clause which facilitates a Minister to draw up an appointment and promotion regulations.

The provisions for an Authority to develop an establishment scheme for its area are not incorporated in the Bill’s arrangements. These are included in Section 19 of the 1947 Act. The Board supports the inclusion of a clause in the new Bill that facilitates an Authority to develop and establishment scheme for its area.

The absence of an establishment scheme raises dubiety over the position of a Firemaster and that post holders responsibility to the fire authority. The Board supports the current statutory arrangement incorporated in s(19)(2) of the 1947 Act “the chief officer of the fire brigade to which a scheme relates shall be directly responsible to the fire authority maintaining the Brigade or to a committee thereof”.

SUBMISSION FROM THE LOTHIAN AND BORDERS FIRE BOARD

Introduction

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004.

The stated 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 of our communities.
- To revise fire safety legislation.

The Brigade welcomes the publication of the Fire (Scotland) Bill. The provisions of the Fire (Scotland) Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future). The Brigade had in general expressed its support for the proposals for legislation and consequently the provisions of the Bill are broadly welcomed.
The financial memorandum indicates that, “The financial proposals from the Scottish Executive and the arrangements under which the funding is provided will essentially remain unchanged”.

There are, however, clearly financial implications and concerns for Brigades. This submission seeks to identify these.

**Short-Term Financial Implications**

**Control Room Arrangement**

The costs identified as those being met by the Scottish Administration are based on a report commissioned by the Executive. Staff cost savings, which would accrue to Fire Authorities, are estimated at £3.3M in Scotland. These costs are very much estimates and the Mott MacDonald report recommends a more detailed analysis in the areas of redundancy payment and training/recruitment issues before proceeding.

We recommend that projected savings should not include assumptions of redeployment, which are currently unfunded. It is our view that a more conservative estimate of the annual savings achievable is approximately £1M less than the figure shown.

It is unclear if the projected staff cost savings will be achieved.

**National Resilience – New Dimension**

The funding provision of £3M for equipment is welcomed. This is a new burden and funding should not be at the detriment of existing funding levels. If existing levels of capital grant are used to fund this additional and new expenditure area, then essential investment issues will be affected in Brigades. Ongoing revenue costs will be addressed.

**Firelink**

Firelink is a significant National Communication project. The Executive’s commitment to fund this is welcomed. However, as with the New Dimensions commitment, this should not be to the detriment of existing investment requirements of Brigades. Ongoing revenue costs will have to be addressed.

**Fire Safety**

It is anticipated that we will be required to provide funding for local advertising campaigns and PR activities. The Bill proposes the removal of the need for fire certification. In consequence, we anticipate a reduction in income of £80,000.

**Charging**

At 15(1), the Bill provides that “Ministers may by order authorise a relevant authority to charge a person …..”. Further, at 15(5) “the authority’s income from the charges does not exceed the cost to the authority…..”. These provisions inhibit the ability of authorities to promote income generation initiatives and prevent ‘trading’ at a profit - for example, in commercial training activities. The promotion of efficient and effective arrangements would be better determined at local level. The restriction at 15(5) should be removed.

**Common Fire Services Agency**

The Bill makes reference to a Common Fire Services Agency. No costs are identified for this although, if implemented, this may represent an additional layer of management for the service.
Central Institution and Other Centres for Education and Training

Section 44(1)(b) provides that Scottish Ministers may establish and maintain local training centres. Should this provision be enacted, then there will be financial implications for Brigades. This provision, however, duplicates that within S.14 of the Bill.

Livery, Stationary etc.

There will be costs associated with the change in corporate identity resultant from the Bill. Costs will be dependent on the approach and speed of change.

Effects on Equal opportunities Diversity

The Policy memorandum recognises Brigades commitment to Equal opportunities and diversity but also recognises that “clear and tangible steps are now required”.

Part of the barrier to a more diverse workforce is the property and facilities which was put in place to meet the needs of a “male dominated” organisation.

In order to attract a more diverse workforce, the working environment must be improved and adapted to meet their needs.

This will require additional ring fenced funding if we wish to address these issues in the short term.

Brigades are committed to increasing the diversity of the workforce but advertising campaigns training and policy changes can only achieve limited success if the basic infrastructure including access, toilet and shower facilities are not in place to attract a modern and diverse workforce.

Long-Term Financial Implications

Integrated Risk Management Planning

This is a new way of assessing how the Fire Service should be delivered. Its focus is on life risk and seeks to move service emphasis from intervention to prevention. It is unclear what the financial consequences of this will be at this time. The Justice Department has acknowledged that changes to Fire GAE arrangements will not be made until 2008/9, when the outcome of the IRMP process should be known.

Control Rooms

Until a clear announcement is made by the Executive, it is not possible to give an indication of long term financial implications. However, as mentioned earlier, there are concerns about the financial estimates associated with this area.

SUBMISSION FROM THE SCOTTISH AMBULANCE SERVICE

I refer to your correspondence of 13 August 2004. I have reviewed the above Bill and the Financial Memorandum within the explanatory notes and can see no major financial implications for the Scottish Ambulance Service. The funding mechanism, it would appear, will essentially remain unchanged. The Financial Memorandum breaks the costs into three main categories: Costs on the Scottish Administration; Costs on Local Authorities; and Costs on Bodies, Individuals and Organisations. The summary table also breaks down the nature of the costs. In respect of the control rooms, there is expected to be no impact on costs for the Scottish Ambulance Service. For National resilience, the Scottish Ambulance Service is participating in the UK wide ambulance service re-procurement for a digital mobile voice and data system. Depending on the options chosen by the Ambulance Services and the Fire Service, there may be software required to be developed to support interoperability and secure communications. For fire safety, there may be a slight saving from the need to certify Scottish Ambulance Service premises.
SUBMISSION FROM THE STRATHCLYDE FIRE BOARD

Introduction

Strathclyde Fire Board is pleased to offer comment on the potential financial implications contained within the “Fire (Scotland) Bill”. With a Brigade covering twelve of Scotland’s local authority areas, i.e. one of the largest Brigades in Europe, the Board are broadly supportive of the provisions within the Bill and see it as an excellent opportunity to ensure the sustainable development of a uniquely Scottish Fire Service, set within and supported by an overall UK framework, delivering a high quality service at a local level.

There are, however, financial implications for Brigades and this submission seeks to identify these.

These implications are set against the introduction to the financial memorandum, which states “the financial provision from the Scottish Executive and the arrangements under which the funding is provided will essentially remain unchanged. This reflects that most of the costs associated with the fire service will not change as a result of the Bill”.

Control Room Arrangements

The costs identified as those being met by the Scottish Administration are based on a report commissioned by the Executive, which has in itself been the subject of consultation with Fire Boards. In our response to that consultation, whilst acknowledging the report as clear, concise and well balanced, we recognised that a number of statements need clarified in order to best determine the savings achieved by amalgamating the controls.

In particular, the number of dispatching positions identified in the report needs to be further explained, as do the areas of redundancy payments, training/recruitment issues and opportunities for redeployment within Brigades. Finally, governance arrangements need to be clarified and any associated financial implications assessed.

National Resilience

The funding provision of £5m with a further £3m for equipment is welcomed. However, as this is a new burden, funding should not be at the detriment of existing funding levels such that essential investment issues within Brigades are affected.

In addition, equipment provided must be serviced, operated and maintained by Brigades and these additional revenue costs should be taken into account.

Firelink Project

Firelink is a significant National Communication project. The Executive’s commitment to fund this is welcomed. However, as with National Resilience, investment in this should not be to the detriment of existing investment requirements of Brigades. Again, the issue of ongoing revenue costs should be taken into account.

Fire Safety

Although Brigades are currently involved in this activity, the Bill imposes a duty on Fire Authorities which may require, over time, additional monies to be spent on local advertising campaigns and PR activities. Consideration should be given to adequately funding Fire Service Community Safety Schemes that meet the aims and objectives of wider social reform. In particular, consideration should be given to enable the fire service more direct access to existing funding streams.

The Bill also proposes the removal of the need to issue Fire Certificates. This Brigade will lose £50,000 as a consequence of this loss of income. New enforcement responsibilities may require Brigades to employ additional enforcement officers.
Charging

At 15(1), the Bill provides that “Ministers may, by order, authorise a relevant authority to charge a person….”. Further, at 15 (5) “the authority’s income from charges does not exceed the cost to the authority….”. These provisions inhibit the ability of authorities to promote income generation initiatives and prevent ‘trading’ at a profit – for example, in commercial training activities. The promotion of effective and efficient arrangements would be better determined at a local level and therefore the restrictions 15 (5) should be removed.

In addition to the above, there may be instances where charging could be used as a deterrent for repeated attendance to automatic alarm calls which are made as a consequence of mechanical failure, poor maintenance etc.

It is recognised that the whole issue of charging will be subject to a subsequent consultation exercise and Strathclyde Fire Board looks forward to participating fully in that process.

Common Fire Services Agency

The Bill makes reference to the potential for Ministers to create such an agency in the future. This Board would welcome the opportunity to participate in any consultation process which should include the benefits that may accrue over and above those capable of being generated by collaborative working on a voluntary basis, in addition to the costs that would arise from an additional layer of management for the service.

Livery, Stationery etc.

There will be costs associated with the change in corporate identity resultant from the Bill. However, these will be dependent on the approach and speed of change.

Appliance Fuel

Given the nature of this Emergency Service, changes should be considered to legislation that enables diesel fuel to be purchased free from duty.

Longer Term Implications – Integrated Risk Management Planning

Within Brigades Integrated Risk Management Plans (IRMP) focus is on life risks in addition to property risks. The service emphasis moves from intervention to prevention. At this stage in the IRMP process it is not yet known what the full financial implications of this change will be.

This has been recognised by the Justice Department and the Working Group on Fire GAE arrangements where it has been acknowledged that any changes in the GAE distribution methodology cannot take place until 2008/09 at the earliest when the outcome of IRMP should be known.

Conclusion

Notwithstanding the above comments in relation to specific aspects contained within the Bill, Strathclyde Fire Board fully supports the aim within the Bill, ensuring that the most effective and efficient use is made of fire authority resources.

We remain ready to work with the Scottish Executive in developing the concepts contained within the Bill to the level of detail necessary for the successful implementation of new legislation and guidance.

SUBMISSION FROM THE TAYSIDE FIRE BRIGADE

Introduction

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004.
The stated 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 of our communities.
- To revise fire safety legislation.

The purpose of this paper is to present the views of Tayside Fire Brigade on the financial implications of the Bill to the Finance Committee.

The Brigade welcomes the publication of the Fire (Scotland) Bill. The provisions of the Fire (Scotland) Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future).

There are, however, clearly financial implications and concerns for Brigades. This submission seeks to identify these.

**Control Room Arrangements**

The costs identified as those being met by the Scottish Administration are based on a report commissioned by the Executive which all Boards have had the opportunity to comment on. All costs are very much estimates and the report recommends a more detailed analysis in the areas of redundancy payment and training/recruitment issues before proceeding. In addition to these we feel that possible costs should be considered which may arise due to relocation, property adjustments, communication issues, and, the publicity/advertising campaign which will inform the public of the changes to the emergency service being provided.

In the case of the one Control option, annual savings of £3.6M are predicted. We feel that the basis on which this figure was arrived at would require further clarification in order to establish the actual savings which will accrue from such a measure.

**National Resilience – New Dimension**

The funding provision of £3M for equipment is welcomed. This is a new burden on Brigades and it is hoped that this funding will not affect the existing levels of capital grant afforded to Brigades. If existing levels of capital grant are used to fund this additional and new expenditure area, then the capital planning undertaken by Brigades would be compromised. Ongoing revenue costs such as training of personnel in new equipment, the maintenance of the equipment, and the property issues surrounding the housing of such equipment should also be considered.

**Firelink**

Firelink is a significant National Communication project. The Executive’s commitment to fund this is welcomed. However, as with the New Dimensions commitment, this should not be to the detriment of existing investment requirements of Brigades. Again, ongoing revenue costs will require to be addressed.

**Fire Safety**

It is felt that consideration should be given to the funding for both local advertising campaigns, PR activities and the implementation of any new initiatives arising as a result of the duties imposed by the Bill, including possible additional staff. The Bill proposes the removal of the need for fire certification. This will result in a reduction in income within Tayside.

**Charging**

At 15(1), the Bill provides that “Ministers may by order authorise a relevant authority to charge a person ……”. Further, at 15(5) “the authority’s income from charges does not exceed the cost to the authority ……”. These provisions inhibit the ability of authorities to generate income and prevent
‘trading’ at a profit – for example, in commercial training activities. The promotion of efficient and effective arrangements would be better determined at local level. The restriction at 15(5) should be removed.

**Common Fire Services Agency**

The Bill makes reference to a Common Fire Services Agency. No costs are identified for this although, if implemented, this may represent an additional layer of management for the service and it is questionable whether this would indeed reduce costs. Tayside Fire Brigade would welcome the opportunity to participate in any further consultation processes on this matter.

**Central Institution and Other Centres for Education and Training**

Section 44(1)(b) provides that Scottish Ministers may establish and maintain local training centres. No costs are identified for this. However, Brigades including Tayside already operate local training centres. Should this provision be enacted, then there will be financial implications for Brigades.

**Livery, Stationery Etc**

There will be costs associated with the change in corporate identity resultant from the Bill.

**Appliance Fuel**

The Service currently pays fuel tax at standard rate. The opportunity should be taken to exempt the Fire Service from this in respect of special appliances.

**Long Term Implications - Integrated Risk Management Planning**

All Brigades are currently preparing their own Integrated Risk Management Plans. Their focus is on life risk and seeks to move service emphasis from intervention to prevention. It is unclear what the financial consequences of this will be at this time. It has been acknowledged that changes to Fire GAE arrangements will not be made until 2008/9, at which time the outcome of the IRMP process should be known. It is hoped however that any change to the distribution formula will not penalise Brigades for making efficiency and economy savings through a reduction in establishment numbers as is currently the case.
SUPPLEMENTARY SUBMISSION FROM SCOTTISH EXECUTIVE JUSTICE DEPARTMENT, FIRE SERVICES DIVISION

I am writing to follow up an issue which was raised with me when I gave evidence to the Finance Committee last week and on which I promised to get back to you. Dr Elaine Murray questioned me on the savings of £3.3m identified in the Consultant’s Report on Fire Control Rooms and you indicated that it would be helpful to the Committee if some indication could be given of how the figure was arrived at.

The Consultants – Mott MacDonald – used the approach of cost per incident as the basis for predicting staffing levels at given levels of activity. Using the cost per incident approach, a formula is derived from a variety of cost data which predicts staffing costs from numbers of incidents. This was the approach used in the Mott MacDonald report on England and Wales Control Rooms. The Consultants took into account the different size, population and geography of Scotland in drawing comparisons with the data for England and Wales and tested it against their model. Their studies of control rooms throughout the UK and their visits to control rooms in Scotland confirmed that irrespective of size, control rooms performed the same key functions of call-taking and dispatch. (The similarities also extending to other functions of administration, statistical returns, database management and crewing work.)

The Consultant’s model of costs enabled them to calculate cost per incident for control rooms handling different levels of incidents. According to the Consultant’s report, the cost per incident followed a very similar pattern in Scotland as in England and Wales. For example, the cost per incident in the Isle of Wight (1,969 incidents) compared with Dumfries & Galloway (2,081 incidents) was very similar at around £200 per incident. At the other end of the scale the cost in Strathclyde (61,716 incidents) was very similar to the West Midlands (62,785 incidents) at approximately £30 per incident.

Consequently by using the cost model the Consultants are able to calculate the Full Time Equivalent (FTE) numbers of staff required to handle a given number of incidents and compare it with current staffing levels. Continuing with the existing 8 control rooms across Scotland handling 122,000 incidents with 211 FTE staff costs £5.8m per annum while one control room could handle the same number of incidents with 91 FTE at a total annual cost of £2.5m per annum. This is where the figure of £3.3m saving derives.
ANNEX B – REPORT FROM SUBORDINATE LEGISLATION COMMITTEE

Subordinate Legislation Committee

Fire (Scotland) Bill

Delegated Powers Scrutiny

Stage 1 Report

The Committee reports to the Justice 1 Committee as follows—

1. At its meetings on 21st and 28th September and 5th October 2004 the Subordinate Legislation Committee considered the delegated powers provision in the Fire (Scotland) Bill. The Committee submits this report to the Justice 1 Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.
Committee remit
1. Under the terms of its remit, the Committee considers and reports on proposed powers to make subordinate legislation in particular Bills or other proposed legislation and on whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

2. The term "subordinate legislation" carries the same definition in the Standing Orders as in the Interpretation Act 1978. Section 21(1) of that Act defines subordinate legislation as meaning "Orders in Council, orders, rules, regulations, schemes, warrants, bye-laws and other instruments made or to be made under any Act". "Act" for this purpose includes an Act of the Scottish Parliament. The Committee therefore considers not only powers to make statutory instruments as such contained in a Bill but also all other proposed provisions conferring delegated powers of a legislative nature.

Report

Introduction
3. The Fire (Scotland) Bill amends and updates the law in respect of fire services for Scotland which is presently contained in the Fire Services Act 1947 (Parts 1, 2 and 4 of the Bill) and reforms and updates fire safety legislation (Part 3).

4. Part 1 of the Bill provides that the council for each local government area shall be the fire and rescue authority for that area and makes provision for the constitution and operation of joint fire and rescue boards.

5. Part 2 of the Bill sets out the functions of fire and rescue authorities; provides for the supply of water; sets out the powers of employees of fire and rescue authorities and police constables in relation to fires; provides for assistance to authorities in the discharge of their functions; provides for the central supervision and support of authorities; and makes provision for negotiation of conditions of service of employees.

6. Part 3 consolidates existing fire safety legislation. It provides for general duties in relation to workplaces and other premises and gives the Scottish Ministers power to make regulations in relation to fire safety duties. This Part also makes provision for enforcement authorities, powers of enforcement officers, various notices related to fire safety and criminal offences.

7. Part 4 deals with, amongst other things, the scope and conduct of inquiries by the Scottish Ministers into the exercise of functions by fire and rescue authorities, and the abolition of the Scottish Central Fire Brigades Advisory Council.

8. The Bill contains powers to make delegated legislation and, as is customary, the Executive has supplied a detailed Memorandum for the assistance of the Committee in carrying out its scrutiny function in respect of those powers. The memorandum is reproduced at Appendix 1 to this report.

9. Having considered the following delegated powers with the assistance of the Executive’s memorandum, the Committee approves them without further comment: Sections 2, 3, 11, 15, 20, 32, 35, 37, 39, 45, 53, 62, 70(6) and Schedule 2, paragraph 1(g).

Individual delegated powers

Section 10 Conferral of functions in relation to other emergencies
Section 42 Requirements concerning equipment and services

10. Section 10(1) gives the Scottish Ministers a power, exercisable by order subject to negative procedure, to confer functions relating to emergencies on relevant authorities (defined at section 6 as meaning fire and rescue authorities and joint fire boards). The type of emergency in relation to which functions may be conferred are to be specified by order, and will not include fire and road traffic accidents, which are dealt with separately at sections 8 and 9 of the Bill. The scope of the power is limited by the definition of “emergency” at section 48.

11. Subsection (3) provides that such an order may provide for the additional function to be carried out by a specified authority outwith its area and may specify what the authority shall or may do for the purpose of the additional function. Subsection (3)(c) lists specific functions which an order may require or authorise an authority to discharge.

12. The Executive’s memorandum advises that the power at section 10 is intended to allow a flexible response to the changing environment in which fire authorities operate, where they are increasingly relied upon to respond to non-fire emergencies. It notes that the changing nature of such emergencies (and in particular the risks posed by terrorism) require a degree of flexibility best provided by subordinate legislation. The Committee is content that an order-making power subject to negative procedure is appropriate.

13. The Committee noted that section 10(3)(a) would allow an order to provide that an additional function is to be carried out by an authority outwith its own area. In that case the function would, by definition, be discharged in the area of another authority. The Committee asked the Executive whether it might be appropriate in those circumstances for the Scottish Ministers to consult the fire and rescue authority in whose area the function is to be discharged and asked the same question regarding section 42.

14. Section 42 gives the Scottish Ministers the power, by order subject to negative resolution, to require a relevant authority to use and maintain specified equipment and services.

15. The Executive’s memorandum explains that this power might be used to ensure that different authorities are using compatible equipment, or to ensure that they procure equipment or services from particular sources.

16. Section 42 partially re-enacts section 21 of the Fire Safety Act. That section required consultation with the Scottish Central Fire Brigades Advisory Council (abolished by section 78 of the Bill). The order-making power at section 42 does not contain a consultation requirement, and the Committee may wish to consider whether any relevant authority affected should be consulted before an order is made.

Report

17. In its reply, reproduced at Appendix 2, the Executive assures the Committee that both an additional function order under section 10 and an order relating to equipment and services under section 42 will be subject to full consultation and that the Scottish Ministers would, as a matter of course, consult the relevant authorities on whom such orders may impact.

18. The Committee noted the Executive’s response and considered that, given the Executive’s assurances and the particular circumstances in which these powers will be exercised, there does not appear to be a need for an express consultation requirement on the face of the Bill. The Committee therefore approves the delegations of power and the procedure chosen as drafted.

Section 36 Framework document

19. Section 36(1) requires the Scottish Ministers to prepare a document (“the framework document”) setting our priorities and objectives for relevant authorities and containing guidance as to the carrying out of their functions and such other matters as they consider appropriate. Subsection (2) provides that the Scottish Ministers shall keep the document under review, and may revise it from time to time.
20. Subsection (3) provides that the Scottish Ministers shall carry out their functions in relation to the framework document in a way that appears to them to be best calculated to promote public safety, the efficiency and effectiveness of fire and rescue authorities and efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

21. Subsection (4) provides that the framework document, and any revision of it which appears to the Scottish Ministers to be significant, shall have effect only when brought into effect by the Scottish Ministers by order subject to negative resolution procedure.

22. Subsections (5) and (6) require the Scottish Ministers, when preparing the framework document or any significant revision to it, to consult each relevant authority, or such persons as the Scottish Ministers consider represent those authorities, and such persons as the Scottish Ministers consider represent employees of those authorities.

Report
23. The Executive’s memorandum notes that section 36 requires the Scottish Ministers to “prepare and publish” a Fire and Rescue National Framework for Scotland. Section 36 does not appear to contain any requirement to publish the framework document. If the Executive’s intention is that the framework document will form part of the order which will bring it into effect then it will be published by HMSO. If an order under subsection (4) will not contain the framework document, and there is no requirement in the Bill that it should, then it was not clear to the Committee from the face of the Bill that publication is required.

24. Further, subsection (4) only requires the Scottish Ministers to bring into effect by order revisions which appear to them to be significant. It was unclear to the Committee how the Scottish Ministers will decide whether a particular revision is significant, and how attention will be drawn to revisions which do not appear to them to be significant, in the absence of any requirement to publish.

25. The Committee referred these questions to the Executive. The Executive’s response, set out in Appendix 2, describes the publication arrangements for the framework document and explains that the Scottish Ministers would class a revision as significant (thus requiring to be brought into effect by order) if it changed in a material way the strategic aims and objectives set out in the National Framework. It further describes the means by which revisions (whether considered significant or not) will be publicised and drawn to the attention of chief officers of fire and rescue authorities.

26. The Committee considered the Executive’s response and concluded that there appeared to be adequate administrative measures in place to ensure publication of the National Framework Document, and revisions to it. The Committee therefore approves the delegation of power as drafted.

Section 41 Directions for public safety purposes

27. Section 41(1) gives the Scottish Ministers the power to make an order (“a property and facilities order”), when they consider it necessary to do so for public safety purposes, giving directions to a relevant authority about the use or disposal of property and facilities.

28. Subsection (2) provides that such a direction may include provision as to the use or disposal by the authority of property belonging to it or under its control, or as to the use by an authority of property and facilities belonging to or under the control of either another authority or a person who has made, or is willing to make, the property or facilities (including land) available.

29. A direction under subsection (1) may also require an authority to make payments to another relevant authority or any other person in respect of the use of property or facilities.

Report
30. This appeared to the Committee to be a potentially far-reaching power, limited by the requirement that Scottish Ministers must consider an order to be necessary for public safety
purposes. The Executive’s memorandum states, by way of example, that the power could allow the Scottish Ministers to require an authority to make available property and facilities (such as fire appliances and, presumably, fire stations) to persons providing emergency cover in the event of a strike by the authority’s employees.

31. Given the possible use to which orders under this section may be put, and the potential political sensitivity of such orders, the Committee asked the Executive for further justification of the proposed negative resolution procedure for exercise of the power.

32. In reply, the Executive reiterated its view that negative procedure affords an adequate level of parliamentary scrutiny notwithstanding the potential political sensitivity of such orders. It explains that, in the circumstances in which the power is likely to be exercised, the ability to react quickly and flexibly will be crucial and negative procedure is therefore appropriate.

33. The Committee was not entirely clear why the Executive should regard negative procedure as providing the ability to move more quickly and flexibly than affirmative procedure. It seemed possible to the Committee that the Executive might have in mind breaching the 21-day rule when exercising this power although that does not appear the best reason for advocating its use. In any event, it was by no means clear that negative procedure is any quicker than affirmative procedure. When the need arises, affirmative instruments can be debated at very short notice and the formal 21-day rule does not apply to them. The Committee also considered that the nature of the subject matter seemed sufficient to justify the greater parliamentary scrutiny afforded by affirmative procedure. The Committee therefore asked the Executive for further justification of the procedure.

34. The Executive reiterated its view that the use of negative resolution procedure is appropriate. Using the example of a period of industrial action, it considers that affirmative procedure would inhibit the Executive from reacting within the required timescale - four weeks in the example given - to take measures to protect the public as that procedure would require a 40-day period before the order could come into force. The Executive’s further response is reproduced at Appendix 3.

35. The Committee observed that the Executive’s response does not acknowledge that affirmative instruments can be steered through the committee process in far less than 40 days if circumstances require. The Committee nevertheless noted that if industrial action were to take place over the summer recess, for example, it would not be possible for an affirmative instrument to be made immediately without parliamentary approval while, on the other hand, a negative instrument could breach the 21-day rule. The Committee considered that, on balance, there is merit in the Executive’s argument that affirmative resolution procedure does not offer the same flexibility as negative resolution procedure in this case. The Committee therefore approves the power and negative procedure chosen as appropriate in the circumstances.

Part 3

36. Part 3 of the Bill makes provision in relation to fire safety. It is intended to consolidate existing legislation on devolved fire issues, including health and safety, and implement provisions on fire safety contained in several European Community Directives on worker health and safety. Scottish fire safety policy also mirrors the policy in England and Wales, which is being implemented in the Regulatory Reform (Fire Safety) Order 2004 (laid in draft before the Westminster Parliament on 12 May 2004 under section 6 of the Regulatory Reform Act 2001).

37. The Executive’s memorandum (paragraphs 34 to 41) contains a detailed explanation of the background to the enabling powers in Part 3. In general, the Committee endorses the Executive’s comments on the appropriateness of using delegated powers to achieve the policy in this area and the suitability of negative resolution procedure.

Section 54

Scottish Ministers’ power to make regulations about fire safety
38. Section 54(1) gives the Scottish Ministers the power, by regulations subject to negative resolution procedure, to make provision about fire safety in relevant premises (“relevant premises” is defined in section 72).

39. Subsection (2) provides a list of examples of provisions that may be made under the power at section 54(1). A detailed explanation of each of these provisions, with examples of how each may be exercised in practice is given in the Executive’s memorandum (paragraphs 54 to 67). Subsection (2)(l), which provides that regulations may make provision for or in connection with creating criminal offences and specifying rules as to the burden of proof in relation to such offences, is discussed further below.

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40. The power at section 54(1) is a very general one, limited only by the requirement that regulations make provision about fire safety in relevant premises. While the paragraphs of subsection (2) give a clear idea of the intended uses of the subsection (1) power, that list is non-exhaustive so the power appears capable of being exercised to make orders which are very wide in scope.

41. The Executive explains that much of the material to be covered by regulations made under section 54 is currently contained in subordinate legislation. It considers that the detailed and prescriptive nature of the provision intended to be made and the need to have flexibility to take account of developments in fire safety and changing EU obligations makes a subordinate legislation power appropriate.

42. The Committee recognises that provision in relation to fire safety can only be effective if it is sufficiently detailed and capable of being amended quickly to adapt to changing circumstances. It has nothing to add to the Executive’s comments on subsection (2)(a) to (k), and considers that it is appropriate for such provision to be contained in subordinate legislation subject to negative resolution procedure.

43. Nevertheless, it seemed to the Committee likely that fire safety regulations dealing with the matters listed at subsection (2)(a) to (k) will cause owners of premises to incur compliance costs. There could, therefore, be a case that the Executive should be required to inform persons affected by the intended provisions and explain the likely impact of the regulations. The Committee noted, in that connection, that section 2(4) of the Fireworks Act 2003 requires the Secretary of State to “issue a full regulatory impact assessment setting out details of the costs and benefits and the wider economic, social and environmental impact” of regulations made under that section.

44. The Committee asked the Executive whether it would consider it appropriate to include a consultation requirement on the face of the Bill and whether the Bill should require the Executive to issue a Regulatory Impact Assessment (RIA).

45. The Executive explains that persons affected by regulations dealing with fire safety will be consulted in due course and a RIA will form part of the consultation material. In addition, the Executive will also be undertaking a publicity and awareness campaign to ensure that all persons affected by the revised legislation are made aware of their responsibilities. The Executive does not anticipate that the regulations will create a new burden in most cases.

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46. The Committee was satisfied by the Executive’s response on that point.

47. The Committee also had some concern over subsection (2)(l) (creating criminal offences and specifying rules as to the burden of proof in relation to such offences). The Executive explains that this power is included so that fire safety requirements contained in regulations will be backed up with an offence provision. Section 67(3) already provides that if a person fails to comply with a requirement or prohibition to which the person is subject by virtue of regulations made under section 53 or 54 and that failure puts a relevant person (defined in section 73) at risk of death or serious injury in the event of fire, that person shall be guilty of an offence. Thus, failure to comply with section 54 regulations is already a criminal offence in certain circumstances.
48. The power at subsection (2)(l) seemed to the Committee intended to target situations where non-compliance with regulations does not put a person at risk of death or serious injury in the event of fire. It was not clear to the Committee from the drafting of that subsection, however, how the offence provisions at section 67 to 69 of the Bill would interact with offence provisions contained in regulations made under section 54(2)(l). The Committee therefore sought an explanation from the Executive as to the drafting of section 54(2)(l) and, in particular, how offence provisions contained in regulations made under section 54 will work alongside the offence provisions contained in sections 67 to 69, especially section 67(3).

49. The Executive explained that it requires the power in regulations to make breach of certain requirements or prohibitions contained therein an offence, even where the breach does not put a relevant person at risk of death, or serious injury, in the event of fire. The Executive’s reply is set out in Appendix 2.

Report

50. It seemed to the Committee that the issues around this enabling power are not wholly addressed by the Executive’s response. In particular, the Committee was concerned that the Bill is silent as to what the penalties will be for new offences created by regulations. In the Committee’s view, this power raises important points of principle as well as technical drafting points that the Executive’s reply did not fully address.

51. It seems arguable to the Committee that in the absence of an express enabling power, under the provisions as currently drafted, the Scottish Ministers would not have vires to make provision for penalties in the regulations. If the Ministers do not have powers to make provision for penalties in the regulations then, in the absence of any limitation in the Bill and in accordance with the rules of statutory interpretation which apply where no penalty is specified in the legislation, the maximum penalty in Scots law would apply to any breach of the regulations namely life imprisonment.

52. Even if the Executive considers that under the provisions as drafted it does have the vires to make provision for penalties in the regulations, again the likely result is that the Executive will have complete freedom to set the penalties in the regulations up to a maximum of life imprisonment however minor the offence.

53. The Committee noted that the normal practice is to provide in the primary legislation itself for breaches of the regulations to be an offence and for primary legislation to set the penalties for such offences. It seemed to the Committee that, whilst it is not unknown for an Act to confer powers to create offences, such powers are rare and invariably subject to restrictions.

54. The Committee therefore asked for explanation from the Executive as to why the Bill does not set out the maximum penalties which will apply to offences created by regulations.

55. The Executive replied that, in its view, there is no doubt that the power to create an offence includes power to specify penalties. It disagrees with the Committee’s assertion that provisions which allow for the creation of criminal offences are rare and invariably subject to restrictions, and cites several examples from the Statute Book of powers which allow for the creation of offences without making specific provision for penalties.

56. Although the Executive has provided examples of powers which create offences without any apparent limitation on the penalty for those offences, the Committee is not persuaded that it is appropriate for such wide powers to be delegated. The Committee can make no comment as to the level of scrutiny that the cited provisions received from the Delegated Powers Committee of the House of Lords but notes, however, that the only provision in an Act of the Scottish Parliament referred to in the Executive’s response (section 44(8)(a) of the Transport (Scotland) Act 2001) is a power which provides that regulations may create criminal offences, but also expressly states the maximum penalty for such offences. Taking a similar approach in the present Bill would, in the Committee’s view, go a long way to addressing its concerns.

57. The Committee is aware of several examples where powers to create criminal offences are accompanied by specific provision in relation to penalties (see for example the European
Communities Act 1972, Schedule 2, paragraph 1(1)(d) (which sets a maximum penalty for an offence created by an instrument made under section 2(2) of that Act) and section 26(3)(b) of the Food Safety Act 1990, which provides that a person guilty of an offence created in regulations shall be liable to such penalties, not exceeding the penalties which may be imposed by that Act, as may be specified in the regulations).

58. The Committee therefore remains concerned, notwithstanding the examples cited by the Executive, that the power at section 54 to create offences by regulations is not accompanied by a provision limiting the penalties which may be imposed for such offences.

59. The Committee therefore draws its concern with this provision to the attention of the lead committee for its own consideration at Stage 1 of the Bill as, in the Committee’s view, it is inappropriate for the Executive to have a wide power to create offences without any limitation whatever on the face of the Bill as to the penalties for those offences.

Section 72  Meaning of “relevant premises”

60. Section 72 defines “relevant premises”, being the premises which are subject to the fire safety regime in Part 3 of the Bill. The premises excluded by subsection (2), and the vehicles excluded by subsection (4), are excluded as fire safety on those premises, or in those vehicles, is a reserved matter.

61. Subsection (6) gives the Scottish Ministers the power to modify, by regulations subject to negative resolution procedure, subsections (1) to (4). This is effectively a power to modify the premises to which Part 3 applies.

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62. The Executive’s memorandum advises that the power to modify the meaning of “relevant premises” is necessary as the Scottish ministers may wish to bring new types of premises into the fire safety regime, or exclude other premises, and a delegated power subject to negative procedure would provide the flexibility to achieve this. The Committee, however, has long taken the view that it is normally appropriate for powers which modify or amend primary legislation to be subject to affirmative resolution procedure and noted that, for example, the power to modify at section 80(2) of the Bill is subject to affirmative resolution procedure).

63. Whilst it seemed reasonable to the Committee that the Scottish Ministers should have this power, as regulations made under subsection (6) would modify primary legislation the Committee asked the Executive to consider whether the power might more appropriately be subject to affirmative resolution procedure.

64. The Executive advises that, in light of the Committee’s point, it now intends to bring forward an amendment at Stage 2 so that this power is subject to affirmative rather than negative procedure.

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65. The Committee welcomed this constructive response from the Executive which it draws to the attention of the lead committee. The adjustment of a definition may clearly have a considerable effect on the operation of a piece of legislation and the Committee’s view remains that affirmative procedure should always be considered as the default procedure for the exercise of any power to make such an adjustment by subordinate legislation.

Section 75  Inquiries

66. Section 75(1) gives the Scottish Ministers the power to make regulations, subject to affirmative resolution procedure, in connection with inquiries which will be held under the Act. Subsection (2) excludes inquiries under section 40 (inquiries by inspectors of fire and rescue authorities) from the scope of the regulations which may be made under subsection (1).

67. Subsection (3) gives a non-exhaustive list of the types of provisions which may be made by regulations under subsection (1). By virtue of that subsection, regulations may provide for the
appointment of the persons who may conduct an inquiry; the giving of notice of an inquiry; requiring persons to attend and give evidence at an inquiry; taking of evidence on oath; payment of witness expenses and expenses concerning the production of documents and payment and recovery of awards of expenses.

Report
68. The Executive’s memorandum advises that this enabling power re-enacts section 36(19) of the Fire Services Act 1947 (which in turn refers to section 210 of the Local Government (Scotland) Act 1973). The Executive considers it appropriate to delegate the power to prescribe the technical detail of the operation of inquiries rather than have such provision on the face of the Bill. The Committee agreed that the detailed provision relating to the conduct of inquiries held under the provisions of the Bill should properly be included in regulations.

69. The Committee asked the Executive whether it intends that inquiries under the Bill will come within the scope of the Tribunals and Inquiries Act 1992 (c.53). If so, the Scottish Ministers may be required to consult with the Council on Tribunals before making regulations under section 75.

70. The Executive replied that it considers that inquiries held under section 74 of the Bill only fall within the scope of section 9 of the Tribunals and Inquiries Act 1992 (“the 1992 Act”) which allows the Lord Advocate, after consultation with the Council on Tribunals, to make rules regulating the procedure to be followed in connection with any statutory inquiry. Any rules made under section 9(1) of the 1992 Act are subject to the provisions of the enactment under which the inquiry is to be held and of any regulations made under that enactment (section 9(2)).

71. The Executive considers that the procedure under which an inquiry under section 74 of the Bill will be regulated will be by section 75 regulations and will not require rules to be made under the 1992 Act. Thus, the Scottish Ministers will not be required to consult the Council on Tribunals, although in theory if the Lord Advocate wished to make rules under the 1992 Act he would require to consult with the Council. The Executive’s reply is reproduced at Appendix 2.

72. The Committee accepts this full and helpful explanation and approves the power and affirmative procedure selected as appropriate.

Section 80 Ancillary provision

73. Section 80(1) of the Bill gives the Scottish Ministers the power, by order, to make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to the Act or any provision of it. Subsection (2) provides that an order under subsection (1) may modify any enactment, instrument or document.

74. An order under subsection (1) is subject to negative resolution procedure unless it modifies an enactment, in which case it is subject to draft affirmative resolution procedure (section 81(4)).

Report
75. The Executive’s memorandum advises that this power will enable the Scottish Ministers to give full and proper effect to the Parliament’s intention in enacting the Bill. It advises that the power will enable any necessary consequential and minor amendments which have been missed to be made by order.

76. The section 80(1) power is a Henry VIII power as it is capable of modifying primary legislation by subordinate legislation. The power to modify an enactment is limited to circumstances where Scottish Ministers consider that this is appropriate for the purposes of, in consequence of or for giving full effect to, the Act.

77. In this case, the Committee agrees but not without a degree of reluctance that the scope of the Henry VIII power is justified for the reasons given by the Executive and the choice of affirmative procedure is appropriate.
Section 83

Commencement

78. Section 83 gives the Scottish Ministers the power, by order, to appoint a day for the coming into force of the Act. Commencement orders made under section 83 are not subject to any parliamentary procedure.

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79. The Committee noted that, unusually, the power to commence by order does not include a provision to the effect that different days may be appointed for different purposes. It is not considered that the wording of section 83 would prevent the Scottish ministers from commencing different provisions on different days, as section 81(2) provides that an order-making power may be exercised so as to make different provision for different purposes. Further, as the Interpretation Order provides that the singular includes the plural unless the contrary intention appears, it is considered that “day” in section 83 could be read as “days”.

80. Given the wording of section 83, the Committee asked the Executive to clarify whether it intends to commence the Act on a single day or to commence different provisions on different days.

81. The Executive replied that, on the issue of when the sections of the Bill will be commenced, it is likely that the sections relating to new fire safety duties and to the repeal of the Discipline Regulations will be commenced at a later date to allow those affected to become familiar with the new regimes and associated guidance. With regard to fire safety, the Executive is also keen to ensure that there is some co-ordination on a UK basis of the introduction of the provisions in Part 3 of the Bill and the related subordinate legislation (the new fire safety regime is being provided for in England and Wales via a Regulatory Reform (Fire Safety) Order).

82. The Executive agrees with the Committee’s view that section 81(2)(a) of the Bill provides the necessary authority for commencing different provisions on different days. Consequently, anything further is unnecessary. The Committee notes that this also reflects the approach taken in the Anti-Social Behaviour etc. (Scotland) Act 2004.

83. Again, the Committee accepts this full and helpful reply. The Committee approves the power as drafted.

84. The Committee has no further comment to make on the Bill at Stage 1.
APPENDIX 1 – WRITTEN EVIDENCE TO THE SUBORDINATE LEGISLATION COMMITTEE

SCOTTISH EXECUTIVE MEMORANDUM
TO THE SUBORDINATE LEGISLATION COMMITTEE
ON
SUBORDINATE LEGISLATION PROVISIONS

FIRE (SCOTLAND) BILL
At Stage 1

Purpose

This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of provisions of the Fire (Scotland) Bill conferring power to make subordinate legislation. It describes the purpose of each such provision and explains why the matter is to be left to subordinate legislation. The memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill (documents SP Bill 24–EN and SP Bill 24–PM).

Policy Context

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004. It fulfils a commitment in the Partnership Agreement Building a Better Scotland of May 2003 to ‘make communities safer, and people feel safer’.

The Bill will deliver modern legislation for a modern fire and rescue service and replaces the current Fire Services Act 1947 as amended. It will place a greater emphasis on community fire safety and prevention measures to provide greater impetus in our efforts to protect the public from fire and to reduce Scotland’s poor record of fire fatalities. In addition, it consolidates the legislation relating to devolved fire issues, which should help clarify responsibilities in these areas.

Outline and Scope of the Bill

The Bill covers various aspects of the fire and rescue service and is in 5 Parts. Part 1 sets out what bodies are fire and rescue authorities and how they may combine administratively. In effect they are either unitary authorities under section 1 (that is, a council under section 2 of the Local Government etc. (Scotland) Act 1994), or two or more authorities combined in an amalgamation scheme (as a joint board as per section 2(1)). Throughout the Bill and this memorandum, the term “relevant authority” is used to refer to both (section 6).

Part 2 sets out their principal and ancillary functions. It provides for the preparation of a fire and rescue framework for Scotland and details the supervision and support which is available to fire and rescue authorities. This Part also deals with employment by relevant authorities, determines responsibilities for the supply of water for use by relevant authorities and the powers of employees of such authorities.

Part 3 of the Bill consolidates and rationalises much of the existing fire safety legislation in relation to general duties of employers in relation to the workplace and general duties in relation to other premises. It provides a power for the Scottish Ministers to make regulations in relation to fire safety duties and determines the enforcing authorities and their duties.

Part 4 makes miscellaneous provision including provision in relation to false alarms of fire and the abolition of the Scottish Central Fire Brigades Advisory Council.

Part 5 provides powers for Scottish Ministers to make ancillary provision and orders and regulations. It deals with minor and consequential amendments and repeals, the commencement date and the short title for the Act.
Delegated Powers

Order making power under section 2: Power to combine fire and rescue authorities

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 2 of the Bill allows Scottish Ministers by order to combine fire and rescue authorities (2(1)) for the purposes of carrying out the functions of a fire and rescue authority. An order made under 2(1) by Scottish Ministers shall provide for the incorporation of a joint board with a common seal (Schedule 1).

The Scottish Ministers may only exercise the power where it appears to be in the interests of greater economy, efficiency and effectiveness that two or more areas be combined. Amongst other things, provision may be made in respect of the proceedings of the joint board, its funding and financial arrangements, the transfer to it of any property rights and liabilities, the transfer of staff and the supply of services of facilities by the constituent authorities to the board (section 2(4)(a) to (g)). Section 2(5) requires Scottish Ministers to consult the relevant fire and rescue authorities and any other appropriate person before making an amalgamation order.

Section 3 gives Scottish Ministers the power to vary or revoke a scheme established under 2. Section 3(2) details the consultation requirements placed on Scottish Ministers and subsection (1) sets out that any such order may provide for the transfer of staff, property and rights and liabilities.

The power exists at present (at section 147 of the Local Government (Scotland) Act 1973) and is re-enacted here a modified form.

It is appropriate to have these powers as the circumstances which necessitate the creation/modification of amalgamation schemes will change over time. The power provides the necessary flexibility to deal with these changing circumstances. It is not thought appropriate that the Bill should specify the detail of the amalgamation scheme provisions.

Order making power under section 10: Conferral of functions in relation to other emergencies

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 10 gives Scottish Ministers a power, by order (an additional function order) to confer functions relating to emergencies on relevant authorities other than functions relating to fires and road traffic accidents which are dealt with at sections 8 and 9 of the Bill.

The order can specify the types of emergency to which relevant authorities must or may respond, and the nature of the provisions which they should make to respond to such incidents. Different functions can be conferred on different authorities and can be exercised outside their own area. “Emergency” is defined in section 48 as an event or situation that causes or is likely to cause –

(a) a person to die:

(b) a person to suffer serious –
   (i) injury; or
   (ii) illness; or

(c) serious harm to the environment (including the life and health of plants and animals and the fabric of buildings).

The purpose of the power is to allow a flexible response to the changing environment in which relevant authorities operate where they are increasingly relied upon to respond to non-fire emergencies. As the type of incident which relevant authorities will be required to make provisions for may well change over time and as the level and type of provision will depend on the type of
incident, we think that it is appropriate that Scottish Ministers are empowered to impose these
duties by order. The matter is best suited to subordinate legislation on the basis that this will allow
an appropriate degree of flexibility to respond to changed circumstances and to deal with types of
emergency not foreseeable at the present. The role of the fire and rescue service has changed
considerably over the years and will continue to develop as the risk we face from the new
dimension of terrorism becomes clearer. The power will enable the statutory core functions of
relevant authorities to keep pace with the work that authorities actually undertake. This was not
possible under the 1947 Act, which had a primary focus on firefighting only. The power is
constrained by the definition of ‘emergency’ in section 48.

The power is subject to negative resolution procedure which we think will provide an appropriate
level of scrutiny for the details of these new functions.
Order making power under section 15: Charging
Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 15 gives the Scottish Ministers a power by order, to authorise a relevant authority to charge a specified category of person in respect of a specified type of action taken by the authority. Subsection (3) expressly excludes the extinguishing of fires, protecting life, or protecting property in the event of fire from such authorisation.

Subsections (4) to (6) provide that the level of charge is a matter for the authority but that any income from charging cannot exceed the cost of taking the action for which charges are made.

Fire authorities have limited powers to charge under the 1947 Act. Although there may be scope to extend the powers, any such extension would need to be carefully thought through and subject to wide consultation before implementation. It will obviously be vital to ensure that charging does not diminish public safety. For example – imposing a charge for providing fire safety advice might discourage persons from seeking necessary advice. We think it is appropriate therefore to deal with charging through a delegated power so that the Scottish Ministers have the necessary flexibility to authorise charging to the extent which is appropriate. A power to charge on the face of the Bill would be too rigid and would have to rule out options which might in fact be found to be appropriate. The power would initially be exercised to maintain the status quo – i.e. to give relevant authorities the same powers to charge as fire authorities currently have under the 1947 Act.

We consider that this power being subject to the negative resolution procedure as at present under the 1947 provision is appropriate.

Regulation making power under section 20: Fire hydrants - marking of location
Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 20(5) gives the Scottish Ministers a power to make regulations which will provide for uniformity in fire hydrants provided by Scottish Water and also in the notices or marks which indicate the locations of fire hydrants. The power is necessary to ensure uniformity in hydrants etc. Any regulations are likely to be technical and detailed and as such, we think that it is appropriate to re-enact this delegated power rather than provide for it in the Bill. Given the technical nature of provision we think that the negative resolution procedure provides an appropriate level of scrutiny.

Order making power under section 36: Framework document
Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 36 requires the Scottish Ministers to prepare and publish a Fire and Rescue National Framework for Scotland (“the Framework”) and provides a mechanism for ensuring that the Scottish Minister’s priorities, objectives and guidance for fire and rescue services is followed by relevant authorities in carrying out their functions. The Framework must set out priorities and objectives for relevant authorities in connection with the discharge of their functions as well as other guidance to authorities. In preparing the Framework (and any revisions to it) the Scottish Ministers must act in a manner calculated to promote public safety and the economy, efficiency and effectiveness of authorities and is required to consult on contents. The Framework document (and any significant revision) only has effect when brought into effect by order. The power is subject to a negative resolution procedure which we consider appropriate in the circumstances.

Order making power under section 37: Adherence to Framework
Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament
Section 37(1) provides that relevant authorities must have regard to the Framework in the exercise of their functions. Section 37(4) gives the Scottish Ministers power to intervene to require an authority to take or refrain from taking specified action where they consider that the authority is failing, or is likely to fail, to act in accordance with the Framework. The power can only be exercised where the Scottish Ministers consider that an order would promote public safety, the economy, efficiency and effectiveness of the relevant authority or the economy, efficiency and effectiveness in connection with the matters in relation to which such authorities have functions. Scottish Ministers must consult any such relevant authority before such an order is made.

The powers to intervene are necessary to ensure that the priorities and objectives for the fire and rescue service as a whole, which are set out in the Framework cannot be thwarted by the actions of individual authorities. The power needs to be flexible so that the Scottish Ministers can ensure that the action an individual authority needs to take is appropriate in every circumstance.

If the Scottish Ministers propose to enforce a measure in the Framework by exercising the intervention powers in section 37(4) the exercise of that power is subject to Parliamentary scrutiny by negative resolution procedure. It should also be noted that section 38 requires the Scottish Ministers to report to the Scottish Parliament from time to time on the extent to which authorities are acting in accordance with the Framework and any steps taken to secure this.

Order in Council making power under section 39: Inspectors of Fire and Rescue Authorities

- Power conferred on: Her Majesty the Queen
- Power exercisable by: order in Council
- Parliamentary procedure: none

This section provides for Her Majesty by Order in Council to appoint a chief inspector and other inspectors (determined by Scottish Ministers) to inquire into the matters set out in section 40. The Order in Council is limited to the appointment of named inspectors and no Parliamentary procedure applies.

Order making power under section 41: Directions for public safety purposes

- Power conferred on: the Scottish Ministers
- Power exercisable by: order made by statutory instrument
- Parliamentary procedure: negative resolution of the Scottish Parliament

Section 41(1) provides the Scottish Ministers with a power, where they consider it necessary for the purposes of public safety to direct relevant authorities about the use and disposal of their facilities and property. The power is exercised by order (a property and facilities order). The power would only be used if it is necessary to do so for the purposes of public safety. For example the power could be used to ensure that the property and facilities of a relevant authority (e.g. fire appliances) are made available to those persons providing emergency fire cover in the event of strike action by employees of any such relevant authority.

Subsection (2) details that the order may include provision about the use or disposal of property/facilities under the control of a relevant authority but not necessarily owned by it. Additionally, provision can be made to allow a relevant authority to make use of property/facilities owned by or under the control of another relevant authority as well as to require payment by the authority in respect of such use.

Since the circumstances in which this power might need to be exercised will vary and cannot be predicted with any certainty, we think that it is appropriate to provide the Scottish Ministers with a delegated power rather than providing for the matter in the Bill to allow a flexible response to the circumstances at the time. It is subject to negative resolution procedure which we consider provides an appropriate level of scrutiny.

Order making power under section 42: Requirements concerning equipment and services

- Power conferred on: the Scottish Ministers
- Power exercisable by: order made by statutory instrument
- Parliamentary procedure: negative resolution of the Scottish Parliament
This section gives the Scottish Ministers a power, by order, to require relevant authorities to use and maintain equipment and facilities or to use particular services. This re-enacts and extends the power given to the Scottish Ministers by section 21 of the 1947 Act. The power might be used to ensure that different authorities are using compatible equipment, for example radio equipment or breathing equipment. This will be essential to ensure that relevant authorities can respond to emergencies outwith their area. The power could also be used to ensure that authorities procure equipment and services from one source, or a limited number of sources – for example at a national procurement level. The power is necessary to assist in promoting economy, efficiency and effectiveness of the fire and rescue services. As these are essentially administrative measures we consider that the negative resolution procedure provides an appropriate level of Parliamentary scrutiny.
Order making power under section 45: Statutory Negotiation Arrangements
Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Section 45 enables the Scottish Ministers to make an order establishing one or more negotiating bodies to negotiate the conditions of service of specified employees of relevant authorities. It is intended to be a power which would only be exercised if the current review of the existing negotiating body for the fire and rescue service does not result in the creation of an effective negotiating body. If the power is exercised, subsection (2) provides that the negotiating bodies established by any such order must be composed of persons representing the interests of some or all relevant authorities, persons representing the interests of some or all employees of relevant authorities and an independent chairperson.

The power in section 45 would enable the Scottish Ministers to establish effective machinery for the negotiation of pay settlements which affect all relevant authorities in Scotland. We consider that it is appropriate to provide that this power is exercised through delegated legislation to allow a flexible response to circumstances which exist at the time any order is made.

Part 3 - Background
As set out in the introductory paragraphs to this Memorandum, one of the aims of the Bill is to consolidate the legislation relating to devolved fire issues, including fire safety. This should help clarify responsibilities in non-domestic premises and therefore help improve the protection of those at work. These provisions are contained in Part 3 of the Bill.

As the policy memorandum explains, Part 3 of the Bill and the regulation-making powers that relate to Part 3 implement provisions on general fire safety contained in a number of European Community directives on worker health and safety. Those directives impose obligations on employers in respect of their employees. The policy that is being pursued in the Bill, and proposed for the regulations on fire safety, goes further than the requirements of the directives but this is considered desirable to ensure that a single regime for fire safety applies in relation to all non-domestic premises to which the Bill applies.

Scottish fire safety policy also mirrors the policy currently being pursued in England and Wales by means of the Regulatory Reform (Fire Safety) Order 2004 (“the RRO”) except where the RRO relates to reserved matters or except where there are particular Scottish aspects which necessitate a different policy. The RRO was laid before the Westminster Parliament on 10 May 2004.

Part 3 - Background to reasons for taking subordinate powers
Part 3 contains a number of subordinate powers. In general, the reasons for this relate to previous precedents in similar areas, the European background and the technical nature of the material that will be contained in the Regulations.
Previous precedents
Since the reform of fire safety legislation in Scotland is being done through primary legislation and since the policy is to replicate as far as possible the effect of the RRO, the Executive reached a view on which matters were more appropriate to be dealt with in the Bill and which matters were more suited to subordinate legislation. Part 3 therefore contains a number of subordinate powers.

The Executive also considered other precedents such as the balance between primary and subordinate legislation in existing fire safety legislation and similar regulatory legislation such as the Health and Safety at Work etc. Act 1974. Part 3 of the Bill in particular covers ground currently covered by the Management of Health and Safety at Work Regulations 1999/3242, which were made both under powers in section 2(2) of the European Communities Act 1972 and under powers in the Health and Safety at Work etc. Act 1974, and by the Fire Precautions (Workplace) Regulations 1997/1840, which regulations were made under powers in section 2(2) of the European Communities Act 1972 and powers in the Fire Precautions Act 1971.

European background
The Executive also considers that it is desirable to have flexibility in the field of fire safety legislation to enable modifications to be made as a result of changes to the Directives which they seek to implement. Such changes could be achieved using powers under the European Communities Act 1972, but this could only be done to implement the changes made to the directives. The powers under the 1972 Act could not be used to amend the subordinate legislation in relation to persons outside the scope of the Directives i.e. non-employers and non-employees. By placing fire safety provisions in subordinate legislation, it is intended that they can be amended quickly so that the provisions continue to apply to all persons given obligations under the Bill.

Nature of the material
In general, the Executive considers that it will be appropriate to use negative procedure for these regulations due to their detailed administrative content, and the fact that they will concern more technical aspects of fire safety policy. This is discussed in more detail with reference to each power.

Part 3 – structure
In order to assist the Committee, we have provided in respect of every power indications of the policy that each may be used to achieve.

We address each subordinate legislative power below, and explain the nature and scope of the power, explain its purpose, and note the relevant Parliamentary procedure. All powers in Part 3 have been conferred upon the Scottish Ministers.

Regulation-making power under section 53: Regulations about the carrying out of risk assessments and reviews
Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Subsection (1) provides that the Scottish Ministers may make regulations in relation to the carrying out of fire risk assessments and reviews of those assessments under sections 49 (Duties of employers to employees) and 50 (Duties in relation to relevant premises).

Subsections (2)(a) – (f) of section 53 detail matters that may in particular be addressed in the regulations.

Subsection (2)(a)
Subsection (2)(a) provides that the regulations may specify matters which persons must take into account when carrying out assessments and reviews in relation to substances specified in the regulations. Such regulations might detail the considerations that must be included in a risk assessment where dangerous substances are present on premises. The matters to be taken into account might include, for example, the hazardous properties of substances, information on safety provided by the supplier and the circumstances of the work, such as the interactions between
substances used, maintenance arrangements where there is a high level of risk and the likelihood that an explosive atmosphere will occur.

Subsection (2)(b)
By virtue of subsection (2)(b), the regulations may specify other matters which persons must take into account when carrying out assessments and reviews. This power might be used to require persons employing or intending to employ a young person to take into account the assessment factors such as their inexperience, lack of awareness of risks and immaturity, the fitting-out and layout of premises and the degree and duration of exposure to physical and chemical agents. These factors can be found in articles 6 and 7 of Council Directive 94/33/EC on the protection of young people at work.

Subsection (2)(c)
Subsection (2)(c) provides that the regulations may oblige those who wish to employ a person of a specified description to carry out assessments and reviews prior to employing them. To give the Committee an example, the regulations may include provision obliging a person who wishes to employ a young person to have taken into account in the assessment the matters relevant to young persons (specified by virtue of the subsection (2)(b) power above) before the young person can be employed.

Subsection (2)(d)
Subsection (2)(d) enables the Scottish regulations to require that information is recorded in certain circumstances. The power may be exercised so that, for example, where an employer employs five or more employees, he or she is obliged to record particular information. The types of information that persons undertaking assessments under the provisions of the Bill are obliged to record might be the significant findings of those risk assessments (such as the action to be taken in order to comply with duties under the Bill as a result of the assessment), and the details of categories of person found to be at risk as a result of the assessment.
Subsections (2)(e) and (f)
Under subsections (2)(e) and (f), the Scottish Ministers may specify how regularly an assessment must be reviewed as a matter of course and in what circumstances a fresh duty to review the risk assessment arises. These powers might be exercised to ensure that assessments are undertaken regularly, perhaps by indicating timescales to be adhered to, and that a duty to review the assessment arises, for example, where the premises are altered or the nature of the work undertaken on the premises changes.

Reason for taking subordinate powers
Due to the detailed and technical nature of the material that will be included in these regulations and the need to have flexibility, it is not thought appropriate to incorporate these matters in the Bill.

Regulation-making power under section 54: Power to make regulations about fire safety
Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Subsection (1)
Under section 54(1), the Scottish Ministers may make regulations about fire safety in premises covered by the Bill. The power is modelled on section 12 of the Fire Precautions Act 1971. This is the main fire safety power in Part 3.

The power to make regulations is limited to the terms of section 54(1), which are that regulations may only concern provisions for fire safety, and they may only apply in relation to “relevant premises” to which Part 3 of the Bill applies (the term “relevant premises” is defined at section 72). Section 54(2) goes on to cite particular examples of provisions that may be made under the section 54(1) power (see below). There is obviously some overlap between the different powers. In general however, it is envisaged that the power in section 54(1) may, for example, be used to make provision concerning:

making and giving effect to arrangements appropriate for the planning, organisation, control, monitoring and review of measures identified as general fire safety measures;
the taking of measures for fire-fighting in the premises, adapted to the nature of the activities on those premises, and their size and layout;
making necessary contacts with external emergency services;
establishing and giving effect to procedures for serious and imminent danger and for danger areas; and
arrangements that should be made concerning safety assistance by persons competent to assist the person bearing fire safety duties.

Subsections (2)(a) and (b)
Moving from the general power under section 54(1) to the specific provisions that may be made under that power, subsection (2)(a) enables the Scottish Ministers to make provision in regulations for precautions that must be taken or observed relating to fire safety in relevant premises. Subsection (2)(b) enables them to impose requirements on persons, including requirements about the enforcement of the regulations. The power may be used, for example, to impose requirements to ensure the elimination or reduction of risks from dangerous substances, and to provide additional emergency measures in respect of dangerous substances. The former requirements might involve requiring that dangerous substances be replaced as far as is practicable with substances or work processes that eliminate or lessen the risk. It might also involve requiring that dangerous substances be safely handled, stored and transported. The latter requirements might cover the supply of information on emergency arrangements (including the supply of that information to accident and emergency services to enable them to plan a response) and the establishment of warning systems when an accident occurs.

The power in this subsection may also be used to require the provision of specified information to employees and other people affected by fire safety. To give the Committee further details, the information that might be required to be supplied to employees might include risks posed to their safety identified by the risk assessment, the fire safety measures taken as a result of the risk
assessments. Information might also be required to be supplied to the parents of a child employed in premises.

Other matters which it is anticipated might be covered in regulations under this subsection would be, for example, the requirements to nominate competent persons to provide assistance to deal with fire safety matters and duties of co-operation between persons who are subject to the duties in Part 3 of the Bill in respect of the same premises.

Subsections (2)(c) and (d)
Subsection (2)(c) sets out that Scottish Ministers may make regulations on the provision, maintenance and keeping free from obstruction of the means of escape from fire. Subsection (2)(d) goes on to provide that Scottish Ministers may regulate the issue of securing that means of escape can be safely and effectively used. This power would enable the Scottish Ministers to specify the requirements that must be met in relation to emergency routes and exits. Such requirements might, for example, include that emergency routes and exits must lead as directly as possible to a place of safety; persons must be able to evacuate premises as quickly and safely as possible in the event of danger; and the number, distribution and dimensions of emergency routes and exits must be adequate having regard to the use and dimensions of the premises and the maximum number of persons that may be present.

Subsection (2)(e)
Scottish Ministers may, in subsection (2)(e), make provision in regulations covering the provision and maintenance of means for fighting fire and means for giving warning in the event of fire. The Scottish Ministers may therefore provide in regulations for premises to be properly equipped with fire-fighting equipment, fire detectors and alarms, with regard to – for example - the substances present and the maximum number of persons who may be on the premises. Another example of the use of this power might be the imposition of general obligations of maintenance regarding facilities and equipment used for fire safety purposes, as well as equipment or measures provided specifically for use by, or the protection of, fire-fighters.

Subsection (2)(f)
This power enables Scottish Ministers to regulate the internal construction of premises and the materials used in that construction, in so far as that relates to fire safety in relevant premises. This is a direct re-enactment of the regulation-making power contained at section 12(3)(d) of the Fire Precautions Act 1971. Investigation and research into the development of actual fires can occasionally identify previously unknown effects or unexpected performance of construction materials. This power could potentially be used, for example, to take action in existing premises to control any such new risks discovered. However, the Committee should note that the Executive has no current plans to exercise this power in the immediate future.

Subsection (2)(g)
Under this subsection Scottish Ministers may make provision in the regulations prohibiting the presence, or use in relevant premises, of equipment of a description specified in the regulations, or prohibiting its presence or use unless specified standards or conditions are met. Again, this will enable specific provision to be made in relation to dangerous substances.

Subsection (2)(h)
Under this subsection, Scottish Ministers may make provision in regulations for securing that employees receive appropriate instruction or training in the event of fire. To give the Committee an example, this power might be used to ensure that the occasions when training must be provided are specified, and this might be when a person is first employed and also when they are exposed to new or heightened risks. Regulations might also provide that fire safety training must take place during working hours, be repeated periodically and be adapted to take account of new risks to employees’ safety.

Subsection (2)(i)
Under this subsection, regulations may provide for attendants to be stationed in parts of the premises in specified circumstances. Such a power might, for example, be used to ensure safety in places of public assembly or entertainment. Currently there is guidance available on such matters: for example chapter 16 of the “Guide to Safety at Sports Grounds” (on the provision of
stewarding), published by the Department for Culture, Media and Sport, and also chapter 13 of the “Guide to Fire Precautions in Existing Places of Entertainment and like premises” (on the provision of attendants at events), published by the Home Office. The provision of such attendants may be an essential element of fire safety; it is therefore appropriate to incorporate a regulation-making power in this area. However, the Executive has no current plans to make regulations on this subject in the immediate future.

**Subsection (2)(j)**
The power in this subsection is closely linked to that in subsection (2)(h), in that Scottish Ministers may require the keeping of records of instruction or training given, or other things done, under regulations.

**Subsection (2)(k)**
Under this subsection, the regulations may require the giving of assistance or information by a person enforcing the Part 3 requirements to any other person concerned with the enforcement, for the purposes of Part 3. This subsection is aimed at ensuring that enforcing authorities can effectively “police” compliance with the Scottish provisions in, for example, regulations that might be made concerning the provision of information to employees and the provision of information to employers and the self-employed from outside undertakings.

**Subsection (2)(l)**
Subsection (2)(l) provides that Scottish Ministers may make provisions in regulations that create criminal offences, and may also specify rules as to the burden of proof in relation to those offences. The power to create criminal offences has been granted in order that, for example, regulations brought forward containing requirements that will safeguard fire-fighters in the event of a fire may be backed up by an offence provision.

There will also be other offences committed by failure to comply with the range of requirements that might be found in regulations made under Part 3 of the Bill, such as offences for failing to comply with duties in respect of maintaining means of escape, and providing fire-fighting and fire detection equipment, breach of which requirements should be an offence. To give the Committee another example, it is intended that Scottish regulations will also make provision in respect of fire-fighters’ switches for luminous tube signs. Regulations should, therefore, also provide that it shall be an offence to fail to comply with those regulations.

Subsection (2)(l) also enables Scottish Ministers to specify “rules as to the burden of proof” in relation to offences created in regulations. The due diligence defence applies to most of the offences in the Bill (see section 67(9)). This defence provides that a person charged with an offence shall have a defence if they can prove they took all reasonable precautions and exercised all due diligence to avoid commission of the offence. The offences created in regulations are currently intended to be subject to the defence of due diligence. However, section 67(10) of the Bill creates a reverse burden of proof in relation to the offence that may be committed by failure to comply with the employer’s obligation – originating in EU law - to ensure the safety of his employees from fire. (This means that it will be for the accused to prove that he or she took all reasonable precautions and exercised all due diligence to avoid commission of the offence.) It is considered necessary to have the flexibility to introduce in regulations further reverse burdens of proof in circumstances where any new offence imposes obligations on the employer that are similarly linked to the employer’s EU obligations. Regulations might, for example, create a reverse burden of proof in relation to the employer’s duty in regulations to eliminate the risk to persons where a dangerous substance is present, so far as is reasonably practicable.

**Reasons for taking subordinate powers**
Much of the material that is to be covered by section 54 is currently contained in subordinate legislation. It is considered that the detailed and prescriptive nature of the type of provisions described above and the need to have flexibility to take account of developments in fire safety and future changes to EU obligations, make them suitable for subordinate legislation.

**Regulation-making power under section 62: Determination of disputes**
- Power conferred on: the Scottish Ministers
- Power exercisable by: regulations made by statutory instrument
Section 62 provides that where an enforcing authority and a person with a duty to comply with the fire safety regime cannot agree what action needs to be taken by that person to comply with their duty, they may agree to refer the matter to the Chief Inspector of Fire and Rescue Authorities, appointed under section 39(1)(a) of the Bill. As the Chief Inspector of Fire and Rescue Authorities is in some situations also an enforcing authority, in order to avoid them acting as judge in their own cause in such a situation the matter may be referred to Scottish Ministers for determination.

Subsection (3) provides that the Scottish Ministers may make regulations about these references, which will set out the procedure for the determination of such disputes. The matters that may be in the regulations may include provision enabling the Chief Inspector or Scottish Ministers to obtain further information from the parties and provision dealing with the implications of any refusal to provide such information. Provision may also be included in regulations about the effect of any determination, such as barring an enforcing authority from taking action that conflicted with a determination.

The provision here is considered to relate to the detail of how the determination process will operate and is therefore considered appropriate to be left to subordinate legislation.

**Regulation-making power under section 70: Procedures which must or may be followed when serving documents**
- Power conferred on: the Scottish Ministers
- Power exercisable by: regulations made by statutory instrument
- Parliamentary procedure: negative resolution of the Scottish Parliament

This section sets out the methods by which documents in relation to Part 3 of the Bill may be served. Subsection (6) enables the Scottish Ministers to make provision in regulations about these procedures. This may include, for example, detailed provisions on electronic service of documents and also the alternative methods of service of documents on a person. As these are essentially administrative measures of detail, they are considered suitable for inclusion in subordinate legislation.

**Regulation-making power in section 72: Power to modify the meaning of “relevant premises”**
- Power conferred on: the Scottish Ministers
- Power exercisable by: regulations made by statutory instrument
- Parliamentary procedure: negative resolution of the Scottish Parliament

This section sets out the premises which are subject to the fire safety regime in Part 3 of the Bill.

Under subsection (6), the Scottish Ministers may make regulations to modify (by addition or deletion) the list of premises subject to the regime. This power is necessary as over time Scottish Ministers may want to bring new types of premises into the regime or exclude premises from the regime. It is therefore considered appropriate to deal with this through a delegated power so that the Scottish Ministers have the flexibility of a power to modify the application of Part 3. Without this power we may find that the meaning of ‘relevant premises’ may be too rigid and would have to rule out options which might in fact be found to be appropriate.

**Regulation making power under section 75: Inquiries**
- Power conferred on: the Scottish Ministers
- Power exercisable by: regulations made by statutory instrument
- Parliamentary procedure: affirmative resolution of the Scottish Parliament

Section 75 provides that the Scottish Ministers may by regulations make provision in respect of inquiries held under specific provisions of the Act including section 74 (but not in respect of inquiries under section 40 which relates to Inspectors). Subsection (3) set out the type of provision which may be made and relates to procedural arrangements at any such inquiry. This in effect re-enacts section 36(19) of the 1947 Act but we consider it appropriate to delegate the power to make regulations to provide a tailored regime in respect of inquiries relating to the activities of relevant
authorities. We consider that the affirmative resolution procedure provides the appropriate level of Parliamentary scrutiny.

Order-making power under section 80: Ancillary Provision

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative/ negative resolution of the Scottish Parliament

Section 80 gives the Scottish Ministers power by order to make any supplementary, incidental or consequential provision and any transitory, transitional or saving provision which they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of the Bill. The power would enable the Scottish Ministers to give full and proper effect to the Scottish Parliament’s intention in enacting the Fire (Scotland) Act. While Schedule 3 contains some of the necessary consequential and minor amendments to primary legislation (and this schedule will be added to at Stage 2 of the Bill), it is possible that some may be missed, given the numerous references to fire authorities and the 1947 Act in other legislation.

The power to make an order under section 80 is subject to the affirmative resolution procedure where the order amends or repeals primary legislation – otherwise it is subject to the negative resolution procedure.

Order-making power under section 83: Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: commencement order
Parliamentary procedure: none

Section 83 empowers the Scottish Ministers to bring the Bill into force by order. Such orders are not subject to any Parliamentary procedure.

Regulation-making power in paragraph (1)(g) of Schedule 2: Power to prescribe by regulations further “fire safety measures” in relation to “relevant premises”

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution of the Scottish Parliament

Once an employer has carried out an assessment of the workplace for the purpose of identifying risks to the safety of employees, section 49(3) of the Bill obliges an employer to take in relation to that workplace such “fire safety measures” as are necessary to comply with their duty to ensure the safety of employees so far as is reasonably practicable in the event of fire. Those under duties by virtue of section 50 have a similar obligation.

The meaning of the term “fire safety measures” is set out in schedule 2 to the Bill, and includes such things as measures to reduce the risk of the spread of fire, measures relating to the means of escape and measures in relation to the means of fighting fires. By virtue of paragraph (1)(g) of schedule 2 the Scottish Ministers may prescribe other measures as “fire safety measures”.

It is not envisaged that this power will need to be exercised initially. However, it enables the Scottish Ministers to amend the fire safety measures if necessary, for example if it is considered that particular measures need to be given prominence or to take account of developments in fire safety. This matter would best be left to subordinate legislation as it would be based on technical assessment of the need for new measures to be prescribed.

Scottish Executive
APPENDIX 2 – SUPPLEMENTARY WRITTEN EVIDENCE TO THE SUBORDINATE LEGISLATION COMMITTEE

FIRE (SCOTLAND) BILL AT STAGE 1

Thank you for your letter of 21 September, concerning the Subordinate Legislation Committee’s consideration of the Fire (Scotland) Bill.

I have attempted to clarify in this response the issues you raised.

Section 10 Conferral of functions in relation to other emergencies

The Committee can be assured that the additional function order will be subject to full consultation and Scottish Ministers would, as a matter of course, therefore consult the relevant authorities on whom the order may impact.

Section 36 Framework document

As the National Framework document will be introduced by an order, we had hoped that it was sufficiently clear that it would be published. The document will be made available to interested parties on the Scottish Executive website (and to MSPs via SPICe) in the usual way. We also acknowledge that without sight of the National Framework, the Scottish Parliament would not be in a position properly to consider the order. A pre-consultation on the draft Framework will also be undertaken with the key stakeholder interests.

With regard to revisions, Scottish Ministers would class a revision as significant if it changed in a material way, the strategic aims and objectives set out in the National Framework.

Any revision of the National Framework (whether deemed significant or not) would be subject to notification to fire and rescue authorities by means of a “Dear Chief Officer” Circular, and would also be published on the Scottish Executive website.

Section 41 Directions for public safety purposes

This power is only likely to be exercised at a time of concern for public safety. An example would be during a period of industrial action, where the required emergency cover has to be provided by an alternative source, e.g. the military. In these circumstances, the ability to react quickly and flexibly will be crucial, hence the use of the negative resolution procedure. It is considered that this will provide an opportunity for scrutiny by the Scottish Parliament, whilst not affecting the speed of response.

Section 42 Requirements concerning equipment and services

We do consider that there is a case for consultation of relevant authorities, and such consultation will take place. Our intention would be to seek the views of those relevant authorities affected by any proposed order under section 42.

Section 54 Power to make regulations about fire safety

In response to the Committee’s first comment, the Executive has undertaken to consult on the draft regulations in due course and a Regulatory Impact Assessment will form part of the consultation material. The Scottish Executive will also be undertaking a publicity and awareness campaign to ensure that all persons affected by the revised legislation are made aware of their responsibilities; although we do not anticipate that this will be a new burden in most cases.

The Committee has also queried the drafting of section 54(2) (l). This power specifically enables the Executive to create criminal offences in regulations. The regulations which are to be brought forward under section 54 will concern fire safety on relevant premises. Requirements or prohibitions in those regulations will be backed up by criminal sanctions. For example, a provision may be included concerning fire-fighters’ switches for luminous tube signs. It is the policy of the
Executive that an offence will be committed where an individual fails, without reasonable excuse, to install such apparatus in a manner that is compliant with regulations.

Sections 67 to 69 make provision for offences that may be committed under the Bill. Section 67(3) supplements this by providing that where a person fails to comply with requirements or prohibitions in regulations, and where that puts a relevant person at risk of death, or serious injury, in the event of fire, an offence is committed. The penalties for this are also set out in section 67.

However, we require the power in regulations to make breach of certain requirements or prohibitions contained therein an offence, even where that breach does not result in such serious consequences. Returning to the example above, failure to comply with provisions on luminous tube signs will be an offence, even if a relevant person is not subsequently put at risk of death, or serious injury.

**Section 72 Meaning of “relevant premises”**

The Committee has queried the use of a negative resolution procedure given that this power will be used to amend primary legislation. On further consideration we would agree that an affirmative resolution procedure would be more appropriate. We intend to amend this at Stage 2.

**Section 75 Inquiries**

The Executive considers that inquiries held under section 74 of the Bill only fall within the scope of section 9 of the Tribunals and Inquiries Act 1992 (“the 1992 Act”) which allows the Lord Advocate (after consultation with the Council on Tribunals) to make rules regulating the procedure to be followed in connection with any statutory inquiry. Any rules made under section 9(1) of the 1992 Act are subject to the provisions of the enactment under which the inquiry is to be held and of any regulations made under that enactment (section 9(2)).

The Executive considers that the procedure under which an inquiry under section 74 of the Bill will be regulated will be by section 75 regulations and will not require rules to be made under the 1992 Act. Thus the Scottish Ministers will not require to consult the Council on Tribunals (although in theory if the Lord Advocate wished to make rules under the 1992 Act he would require to consult with the Council).

**Section 83 Commencement**

On the issue of when the sections of the Bill will be commenced, it is likely that the sections relating to new fire safety duties and also the repeal of the Discipline Regulations will be commenced at a later date to allow those affected to become familiar with the new regimes and associated guidance. With regard to fire safety, the Executive is also keen to ensure that there is some coordination on a UK basis of the introduction of the provisions in Part 3 of the Bill and the related subordinate legislation (the new fire safety regime is being provided for in England and Wales via a Regulatory Reform (Fire Safety) Order).

We agree with the Committee’s view that section 81(2) (a) of the Bill provides the necessary authority for commencing different provisions on different days. Consequently, anything further is unnecessary. (This also reflects the approach taken in the Anti-Social Behaviour etc. (Scotland) Act 2004.)

I trust the foregoing is of assistance to the Committee, and thank them for their comments.

Fire Services Division
Justice Department
**Scottish Executive**

23rd September 2004
APPENDIX 3 - SUPPLEMENTARY WRITTEN EVIDENCE TO THE
SUBORDINATE LEGISLATION COMMITTEE

FIRE (SCOTLAND) BILL AT STAGE 1

Thank you for your letter of 28 September in which you sought further explanation on two matters
within the Fire (Scotland) Bill.

Further clarification and explanation in respect of these issues is detailed below.

Section 41 Directions for public safety purposes

The Committee is seeking further justification for the use of the negative procedure proposed for
this power. As we indicated in our earlier letter of 23 September, this power is only likely to be
exercised at a time of concern for public safety.

Taking again the example of a period of industrial action, where the required emergency cover has
to be provided by an alternative source, e.g. the military, timing is critical. In our recent experience
the length of time between a ballot for industrial action being announced and the first potential
strike date is around 28 days. This is based on 3 weeks for the ballot process and result being
announced and then the statutory 7-day notification period

Based on the requirement for a 40 day period (excluding longer periods of recess) for Committees
to consider instruments subject to the affirmative procedure we believe this would inhibit the
Executive from reacting within the required timescale to ensure that equipment can be provided in
time. The critical factor is the Executive’s responsibility to take measures to protect the public in the
event of industrial action in the fire service. On that basis we continue to consider that the use of
the negative resolution procedure is appropriate.

Section 54 Power to make regulations about fire safety

The Committee has also queried the drafting of section 54(2) (l). This power specifically enables
the Executive to create criminal offences in regulations. The regulations which are to be brought
forward under section 54 will concern fire safety on relevant premises. Requirements or
prohibitions in those regulations will be backed up by criminal sanctions. For example, a provision
may be included concerning fire-fighters’ switches for luminous tube signs. It is the policy of the
Executive that an offence will be committed where an individual fails, without reasonable excuse, to
install such apparatus in a manner that is compliant with regulations.

We do not agree with the SLC’s view that important points of principle and technical drafting points
are raised by the provision. The form of the provision is determined by the policy it seeks to
implement and we do note that no specific ‘technical drafting points’ are identified.

In our view there is no doubt that the power to create an offence includes power to specify the
penalties. Punishment is of the essence of an offence: if a person does X he shall be liable to Y.
The fact is that there are examples of provisions limiting mode of trial and level of penalty. For
example, section 44(8)(a) of the Transport (Scotland) Act 2001 (asp 2)) confirms the proposition
that, absent such a limitation, the power can be exercised so as to make provision about those
matters.

We do not agree with the assertion that provisions of this sort are rare and invariably subject to
restrictions. There are quite a few examples in the statute book of the sort of provision made by
the Bill, for example section 121(2)(b) of the Building Societies Act 1986 (c.53), section 102(3)(b) of
the Friendly Societies Act 1992 (c.40), section 79(1)(d) of the Employment Rights Act 1996 (c.18),
section 129(2)(a) of the Political Parties, Elections and Referendums Act 2000 (c.41), section
2(3)(b) of the Industrial and Provident Societies Act 2002 (c.20) and section 7(2) of the European
Parliamentary Elections Act 2002 (c.24). Under this last example regulation 26 of the European
Parliamentary Elections Regulations 2004/293 creates an offence with penalty and although other
enabling powers are cited, the offence is created by virtue of section 7 of the 2002 Act.
We do not therefore consider that this provision requires any further justification.

We trust the foregoing is of assistance to the Committee, and thank them for their comments.

Fire Services Division
Justice Department
Scottish Executive

30 September 20
ANNEX C – EXTRACTS FROM MINUTES

JUSTICE 2 COMMITTEE

MINUTES

24th Meeting, 2004 (Session 2)

Tuesday 9 September 2004

Present:

Jackie Baillie  Miss Annabel Goldie (Convener)
Maureen Macmillan  Mike Pringle
Karen Whitefield (Deputy Convener)

Apologies: Colin Fox and Nicola Sturgeon.
Also present: Michael Moore, Committee Adviser

Fire (Scotland) Bill: The Committee took evidence on the general principles of the Bill from—

Ian Snedden, Head of Fire Services Division, Scottish Executive; Jill Clark, Bill Team Leader, Scottish Executive; Robert Marshall, Solicitor, Scottish Executive; Rosemary Whaley, Solicitor, Scottish Executive; and Brian McKenzie, Assistant Inspector of Fire Services, Scottish Executive.

Fire (Scotland) Bill (in private): The Committee noted the evidence it had received and agreed a programme of oral evidence on the Bill at Stage 1.
Present:
Jackie Baillie  Colin Fox
Miss Annabel Goldie (Convener)  Maureen Macmillan
Mike Pringle  Karen Whitefield (Deputy Convener)

Apologies: Nicola Sturgeon.

Fire (Scotland) Bill: The Committee took evidence on the general principles of the Bill from—

Brian A Murray, Firemaster, Highlands and Islands Fire Brigade, John Williams, Firemaster, Grampian Fire and Rescue, David Wynne, Firemaster, Dumfries and Galloway Fire Brigade, and Brian Allaway, Firemaster, and David Miller, Head of Corporate Services, Lothian and Borders Fire Brigade, Chief Fire Officers Association;

John McDonald, Executive Council Member for Scotland, Ken Ross, Scottish Regional Secretary, Frank Maguire, Solicitor, and Glyn Evans, Adviser, Fire Brigades Union;

Walter Stewart, President, Derek Chadbon, National General Secretary, and Jim Smith, Station Manager, Cumnock, Retained Firefighters Union.
JUSTICE 2 COMMITTEE
MINUTES
26th Meeting, 2004 (Session 2)
Tuesday 21 September 2004

Present:
Jackie Baillie
Miss Annabel Goldie (Convener)
Karen Whitefield (Deputy Convener)

Colin Fox
Maureen Macmillan

Also present: Stewart Maxwell.

Apologies: Mike Pringle and Nicola Sturgeon.

Fire (Scotland) Bill: The Committee took evidence on the general principles of the Bill from—

Jeff Ord, Chief Inspector of Fire Services, and Brian McKenzie, Assistant Inspector of Fire Services, HM Fire Services Inspectorate;

Jim Robson, Principal, Scottish Fire Services College;

Julie Sturrock, Councillor Dundee City Council, and Chair COSLA Task Group, Stephen Hunter, Firemaster, Tayside Fire Brigade, Cllr Ken Harrold, Fire Convenor, and David Miller, Head of Corporate Services, Lothian and Borders Fire Brigade, and Barbara Lindsay, Corporate Manager, COSLA.
Present:
Jackie Baillie  Colin Fox
Miss Annabel Goldie (Convener)  Maureen Macmillan
Mike Pringle  Karen Whitefield (Deputy Convener)

Also present: Kenny MacAskill MSP and Michael Moore, Committee Adviser.

Apologies: Stewart Maxwell.

Fire (Scotland) Bill: The Committee took evidence on the general principles of the Bill from—

Glyn Morgan, Vice President, and John Russell, Fire Safety Lead Officer, Fire Officers’ Association; and

Hugh Henry, Deputy Minister for Justice, Ian Snedden, Head of Fire Services Division, and Robert Marshall, Solicitor, Scottish Executive.

Fire (Scotland) Bill (in private): The Committee considered emerging issues from the evidence received.
Present:

Jackie Baillie  Bill Butler (Deputy Convener)
Colin Fox  Miss Annabel Goldie (Convener)
Maureen Macmillan  Stewart Maxwell

Apologies: Mike Pringle.

Fire (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.
JUSTICE 2 COMMITTEE

MINUTES

30th Meeting, 2004 (Session 2)

Tuesday 9 November 2004

Present:

Jackie Baillie
Miss Annabel Goldie (Convener)
Stewart Maxwell

Bill Butler (Deputy Convener)
Maureen Macmillan
Mike Pringle

Apologies: Colin Fox
Also present: Michael Moore, Committee Adviser.

Fire (Scotland) Bill (in private): The Committee agreed its draft Stage 1 report.
Fire (Scotland) Bill: Stage 1

14:09
The Convener: Item 3 is our opportunity to take evidence on the Fire (Scotland) Bill from the bill team, and it is my pleasant duty to welcome to the meeting: Ian Snedden, head of the fire services division; his colleague, Jill Clark, the bill team leader; Robert Marshall, a solicitor with the Scottish Executive; Rosemary Whaley, who is also a solicitor; and Brian McKenzie, an assistant inspector of fire services. On behalf of the committee, I welcome you all to our meeting this afternoon.

I know that there are some areas of broad interest to the committee as well as some areas of specific interest on which members will want to comment. Would Mr Snedden like to make an introductory statement?

Ian Snedden (Scottish Executive Justice Department): Yes please. I thought that it might be helpful if I set out for the committee how we reached the position of drafting our new fire service legislation. I intend to cover the consultation process that we embarked on and the responses that we received, and then I shall provide an overview of the key provisions in the legislation. I expect my remarks to take about 10 minutes.

The bill is the first substantive piece of fire legislation in the past 50 years and the culmination of a significant effort to establish a modernisation agenda for the fire service. It began with publication in April 2002 of a policy paper entitled “The Scottish Fire Service of the Future”, which set out the Executive’s blueprint for the fire service in the new millennium. It contained 28 recommendations, all of which were aimed at building on the fire service’s deserved excellent record of service to the community.

Progress on taking forward our policy paper was affected by the industrial action in the fire service, which began in the autumn of 2002 and was not resolved until June 2003. In September 2002, Professor Sir George Bain was appointed to carry out an independent review of the fire service, and he published his report in December 2002. In June 2003, the Office of the Deputy Prime Minister published a white paper on the fire service in England and Wales. All three reports—our policy paper, the Bain report and the ODPM white paper—arrived at not dissimilar conclusions about how to develop the fire service, although perhaps with a different emphasis in each case.

In our policy paper, “The Scottish Fire Service of the Future”, we recognised that many of the proposals would require legislative change. When the threat of industrial action was lifted last summer, we were able again to concentrate on taking forward the fire service agenda. Consequently, in October 2003, we launched a consultation paper on the legislative proposals for the fire and rescue service.

The proposals were debated in Parliament on 8 October. In addition, during November and December 2003, a programme of visits was undertaken by the fire bill team to the eight fire authorities to present and explain the rationale for our proposals. Stakeholders from the main trade unions, staff associations and professional bodies were invited to the same presentation in Edinburgh in December 2003. Those meetings provided an early opportunity for stakeholders to clarify their understanding of the proposals, to provide their initial views and to raise with us issues of particular concern.

The formal consultation ended on 31 December. A total of 62 responses were received—more than double the number received when we published our policy paper. We had permission from 54 of the respondents to publish their responses on the Scottish Executive website. That has been done, and a comprehensive report on the consultation exercise has also been published.

The majority of the respondents were from local government. All six main unions and staff associations also responded. Generally the proposals for the new legislation were welcomed, although some concerns were expressed in some areas and we have tried to address those in the bill.

I would now like to take a few minutes to outline the key provisions in the new legislation. The Bain report was critical of central Government for not providing sufficient strategic direction to the fire service over many years. Under section 19 of the Fire Services Act 1947, fire authorities must seek ministers’ approval to make changes in a number of operational areas, such as the deployment of operational vehicles. We believe that such operational matters should be for local decision.

Consequently, we want the fire service in future to be clear about its direction and objectives. In recognising the way in which the fire service has developed, we propose to rename fire authorities as fire and rescue authorities.

In taking forward our commitment to provide direction and guidance for the fire service, the bill provides for the publication of a national framework. The framework will set out our objectives for the fire and rescue service, what is required of fire and rescue authorities to meet those objectives and the support that the Scottish Executive will provide. The bill will place a duty on Scottish Ministers to keep the framework up to
date and report on it. It will have to be consulted on and published before being laid before Parliament.

14:15

The national framework will set out the key national priorities covering prevention, intervention, the work force, delivery of the service, performance and the role of the Executive. It will make clear that the fire and rescue service is a local authority service. It will not tell fire and rescue authorities what to do but will set out how we will work together in the interests of creating a safer Scotland.

Much of what the fire service has been doing over the past 50 years has evolved simply because of the skills and expertise that the fire service has acquired. We think that it is important to recognise and underpin those tasks with a statutory responsibility. Therefore, the new legislation restates and clarifies the roles, powers and duties of fire and rescue authorities.

We have an appalling record of fire deaths and injuries in Scotland and we must place a much greater emphasis on fire prevention and community fire safety. Therefore, there will be a new statutory duty on all fire and rescue authorities to promote fire safety, with a shift towards a more prevention-based approach aimed at saving more lives by stopping fires occurring in the first place.

As well as the traditional firefighting duty, there will be a new core duty of responding to road traffic accidents. The bill will also provide powers for ministers to make additional function orders, which would confer a responsibility on fire and rescue authorities to respond to other emergencies, such as serious flooding, and to implement measures to plan for and respond to the increased threat from terrorism. We intend to consult on the scope and content of those orders.

The bill also seeks to recognise that, as we are a small country, we need to strengthen the collaborative approach and streamline existing powers to enable fire and rescue authorities to work together more closely. That should secure greater economy, efficiency and effectiveness and should ensure that public safety functions, such as planning for serious emergencies, can be organised on the most effective basis.

The bill provides new powers for ministers in a number of areas, including the area of national resilience. The new powers provide for ministers to direct fire and rescue authorities during particular, specific, emergencies to ensure that there is a co-ordinated and strategic response and that resources are focused where they are needed most. In that regard, the bill also gives powers for ministers to provide equipment and services for fire and rescue authorities and to direct them on the use of their equipment, in order to ensure uniformity of approach across the service, which is crucial to national resilience and public safety.

Among some of the other issues covered in the new legislation, the bill maintains the existing ability for fire and rescue authorities to charge for particular services. However, the bill will continue to exclude the possibility of charging for firefighting and other rescue work where life is at risk. We will shortly be consulting publicly on the charging provisions.

The Scottish Central Fire Brigades Advisory Council has existed for many years under current legislation. Although we do not seek to decry the work of the council, we believe that it has become too cumbersome and is not good at delivering swift, meaningful change. We will consult on how best to put in place more effective and flexible stakeholder advisory and consultative groups to ensure that advice from stakeholders in the service informs the future direction and development of the service. However, we do not believe that that advisory structure needs to be enshrined in legislation.

Finally, in part 3 of the bill, we provide for a new fire safety and enforcement regime for non-domestic premises. The current fire safety legislation—the Fire Precautions Act 1971—has served us well for 30 years but focused attention on getting people out of burning buildings before they came to harm. It is all about providing adequate means of escape and other precautions. The new regime builds on the approach provided for in the current Fire Precautions (Workplace) Regulations 1997. It will place a duty on owners to ensure the safety of their employees, people visiting the premises and the premises, and will impose a duty to carry out a risk assessment. The bill imposes a number of specific duties in relation to the fire safety measures to be taken and provides for enforcement, appeals, offences and connected matters. The intention is that the new fire safety regime will apply consistently across the UK. In England, the new regime will be enshrined in a regulatory reform order.

I could say much more about the bill, but I hope that my opening remarks have been helpful in setting the scene. We look forward to answering the committee’s questions.

The Convener: Thank you, Mr Snedden. Those remarks are helpful and they may have thrown some light on areas that we had questions about.

Let me start with a broad inquiry. The bill’s thrust seems to be to remove centralised control and to give greater local operational flexibility, but it will also provide ministers with some powerful
measures, especially under sections 2 and 35. Section 2 will give ministers the power to combine fire authorities into a joint fire and rescue board that would become the “relevant authority”. Technically, could the bill lead to a very small number of boards?

Ian Snedden: Yes. Technically, the bill’s provisions would allow amalgamation orders to provide for a smaller number of larger joint boards. However, in essence, that part of the bill restates the current arrangements. The current boards are set up through such amalgamation orders.

The Convener: Are those provisions in the bill an identical replication of the existing provisions?

Ian Snedden: They are not quite identical. The current legislation also provides that fire authorities themselves can make proposals for amalgamation schemes. We have not replicated that position entirely in the bill because, even if fire authorities make such proposals, it is essentially for ministers to make the necessary orders to make them happen. Although it is not provided for in the bill, the bill would not prevent fire authorities from suggesting an amalgamation of fire boards, but because it is technically for ministers to make the order, we did not include the provision in the bill. Our solicitor Robert Marshall might want to add something on that point.

The Convener: In referring to the existing legislation, were you referring to the voluntary combination provisions?

Ian Snedden: Yes.

The Convener: Will those be abolished by the bill?

Ian Snedden: The combination of boards will not be abolished, but in removing those provisions, we are identifying the fact that fire authority proposals for such structural changes can be acted on only by ministers.

The Convener: However, the voluntary element that was previously enshrined in statute will disappear under the bill.

Ian Snedden: The advice that we received was that those provisions were technically unnecessary as they did not do anything. Perhaps Mr Marshall can explain.

Robert Marshall (Scottish Executive Legal and Parliamentary Services): It might be helpful to set out how the current administration schemes work. The terminology of the 1947 act is not helpful as it was replaced by section 147 of the Local Government (Scotland) Act 1973. Therefore, the current schemes date from local government reorganisation in 1975.

Although the current legislation provides for voluntary schemes, such schemes were required to be approved—previously by the Secretary of State for Scotland and now by Scottish ministers. Such schemes may have been voluntary in the sense that the authorities that wished to combine could make a proposal to do so, but any such scheme could not have gone further without ministerial approval.

The bill achieves the same policy in a slightly different way. It would not prevent fire and rescue authorities from presenting proposals to Scottish ministers on how they might do business in a more efficient way, and ministers would then have to decide yea or nay. The way in which the matter is addressed in the bill does not represent a difference in how the policy would be achieved.

The Convener: Just to deal with the specific aspect, where does section 5 of the 1947 act relate to all of this? I understand that that was the genesis of a voluntary combination scheme.

Robert Marshall: I hesitate to correct you, but section 5 does not apply to Scotland.

The Convener: Right. It is helpful to know that.

Robert Marshall: The issue is complicated. Section 36 of the 1947 act is where one reads what happens in Scotland. However, it, in turn, has been amended heavily and so it is quite difficult to find out what the 1947 act does for Scotland. I confirm that section 5 applies to England and Wales.

The Convener: Thank you for that helpful clarification.

I return to the broad thrust of where the balance of power lies and what the respective emphases are. I referred to sections 2 and 35. Of course, section 35 provides power to ministers to carry out what is permitted under section 34. I may be quite wrong again, but if one reads section 2 in conjunction with section 35, it seems that ministers are retaining a lot of power.

Ian Snedden: Section 35 is about what we call reinforcement schemes. It is about the arrangements under which fire authorities come together, as they do at present, to put in place mutual aid arrangements that allow them to work together more closely. Essentially, section 35 says that, if one fire authority wants to have a mutual aid scheme and another one does not, they can apply for Scottish ministers to act as umpire on whether the arrangement would be helpful. Ministers can use the powers to put in place the mutual aid arrangement—or reinforcement scheme as it is called.

The Convener: That suggests that the provisions of section 35 are a little gentler than I had thought. The way in which I read the section, it seemed to suggest that powers are available to
ministers to step in and issue directions of their own account.

Ian Snedden: The only situation in which ministers could exercise those powers is if they were invited to do so by one of the authorities.

The Convener: So that is the Executive’s intention.

Ian Snedden: Yes.

The Convener: Ministers would not make a spontaneous intervention.

Ian Snedden: The party to such an agreement would bring forward the provision on his own initiative. Ministers would agree with the provision only for the purposes of securing greater economy, effectiveness and efficiency.

The Convener: Thank you for that.

I know that my colleagues are anxious to get in. My final question concerns the charging order provisions that are to be found in section 15. We know what a charging order cannot cover, but I am a lot less clear about what such an order can cover.

Ian Snedden: Under current legislation, provisions apply for charging and, in essence, those provisions will not be changed. A public consultation will be held on the charging provisions in the bill: we will consult on where charging might and might not apply. Instances in which they would not apply relate to the activities that a fire and rescue service carries out that are life saving or which come under the category of rescue work. However, there are areas of the fire service’s current work for which it might want to consider recovering its costs, for example in helping to drain a pond. The charging regime offers the opportunity to do so. We will set out the charging provisions in our consultation paper and take the views of stakeholders, including the fire authorities.

The Convener: Is it the Executive’s intention to be more specific in the bill? From what you have said, the old lady whose cat has gone up a tree is not in an exempt category.

Ian Snedden: The bill includes provisions that allow fire authorities to carry out specific functions that they believe to be appropriate. Rescuing a cat up a tree is traditionally associated with the fire service, and I would not expect the service to introduce charging arrangements for that sort of thing. The provision relates more to instances in which services might be provided to a commercial concern, when it might not be unreasonable for the service at least to cover its costs.

14:30

The Convener: If an organisation was indifferent to equipment or facilities and was rendering false alarm calls on a regular basis, I presume that the fire service would consider charging.

Ian Snedden: That is a good point, and it is proving controversial. There are issues around responding to automatic fire alarms and whether the alarms are going wrong because they are not being properly maintained and so on. We are aware that some fire authorities would quite like to have the ability to charge for such false call-outs, and we will be consulting on such issues in our paper on charging.

The Convener: Can you tell us about the period of consultation on the charging proposals?

Ian Snedden: We would expect it to be the traditional three months.

Jackie Baillie (Dumbarton) (Lab): Towards the end of your presentation, you mentioned the Scottish Central Fire Brigades Advisory Council. For the purposes of our discussion, I will just call it the advisory council. From the responses that we have looked at, there seems to be a general acceptance that the body should be abolished, yet there is a desire to have it replaced with something else.

Ian Snedden: Yes.

Jackie Baillie: Why have you expressed the view that the existing body is “cumbersome”? If you are going to replace the advisory council, what are you going to replace it with? Unison was concerned that, unless there was a statutory duty on ministers to consult fire service bodies and trade unions, the consultation might be inadequate. Could I have your views on those three points?

Ian Snedden: The Scottish Central Fire Brigades Advisory Council is a big body and its decision making is unwieldy. A minister has always chaired the council and, in many respects, its meetings have become an opportunity for the members of the council to have a go at the minister, quite often on matters over which the minister does not in fact have any control or responsibility. Often, it is concerned with issues about how the fire service responds in particular circumstances. The range of issues that come before the Scottish Central Fire Brigades Advisory Council is diverse. Often, they should be sorted out at a different level. We would like to put in the council’s place arrangements that are more appropriate to the kind of functions that we expect the advisory council to carry out.

We will be consulting, and we have told stakeholders that we will consult, on the whole
question of what replaces the advisory council structure. In England, a three-tier structure has been adopted, which comprises a very small ministerial group; a practitioners' group, which involves staff associations and the fire authorities; and another group that deals with much broader issues around fire safety as it affects industry and businesses.

We are not sure that such a three-tier structure would be the best way to take things forward in Scotland. In our consultation paper, we asked for suggestions. We did not get a lot of help with what we might put in the advisory council's place, although there were calls for some kind of advisory structure to be enshrined in the legislation. I would not say that we would rule that out, but that is for ministerial decision.

Jackie Baillie: I would like to press you on that. You are not wedded to the English model, and no particular suggestions came forward from the consultation, but is a model being developed by the Scottish Executive that you would care to share with us?

Ian Snedden: The short answer is no—a model is not being developed at the moment. We are looking across the Executive to see whether we can get advice from other areas in which there is an issue around consulting stakeholders about the advisory structures that might apply to them. All I can say is that we will produce a paper that sets out some options and we will consult the stakeholders, the staff associations, the fire authorities and others to get their views before we make up our minds.

The Convener: What is the timescale for that, Mr Snedden?

Ian Snedden: We are looking to produce our paper within the next couple of months.

The Convener: Before the legislation is passed?

Ian Snedden: Absolutely.

Jackie Baillie: I would like one final point of clarification. If I have understood you correctly, the issue is not the duty on ministers but the fact that the structure is cumbersome.

Ian Snedden: Absolutely.

Maureen Macmillan (Highlands and Islands) (Lab): My question is on the proposals for the fire brigade control rooms, on which you are consulting. I suppose you are aware that the proposal to have just one, two or at the most three control rooms in Scotland has caused consternation in the area that I represent, which is covered by the Highlands and Islands fire board. I do not know whether you are aware of the response that the Highlands and Islands fire board sent to you, in which it questions whether Mott MacDonald, when it put out the report to consultation, understood what the control rooms do, especially in the Highlands, and the fact that they are more than call centres.

There is a feeling that the control rooms do something very complicated and that in the Highlands—I cannot speak with knowledge of other areas, but perhaps my colleagues can—their work is not just a question of sending a fire tender to a particular area. For example, if there are forest fires or heathland fires, fire brigade vehicles might need to be moved from the west of the country to the east, or from the north to the south, over large areas that have very scattered communities. What are your thoughts on that, having looked at the submission from the Highlands and Islands fire brigade? Have you come to any conclusions about what you might end up doing? At what stage are your deliberations?

Ian Snedden: Mott MacDonald carried out an extensive programme of visits to all the fire authorities and looked at all the control rooms in Scotland. In the report, it acknowledges that fire control rooms do not just answer emergency calls but carry out other duties in relation to gathering information—sometimes they provide a data collecting service for the brigade—and moving other brigade resources around the area. The report acknowledges that, even if the number of control rooms is reduced to one, two or three, there will still be a requirement for those functions to be carried out in the individual brigade areas. It is not the case that Mott MacDonald was not aware of the full role of control rooms.

We published the report in July and, as you say, we invited responses by the end of August. A number of respondents asked for a little more time because the report came out during the holiday period. We have agreed that there should be more time to get the responses in, so we have not received and analysed all the responses yet. We recognise the importance of the matter to the fire authorities and we have stressed that the final decisions, which are for ministers to make, will not be based simply on what cost savings can be achieved in the exercise. The decisions will be about improving the safety of the public, making sure that a proper structure is in place for control rooms in relation to staffing and staff development, and looking at the bigger picture, particularly in relation to the national resilience issues that we unfortunately have to take account of, given the current terrorist threat and the climate in which we live.

Maureen Macmillan: The other point that I want to make relates to safety. How safe would it be in an area as large as the Highlands and Islands to
That is a perfectly fair point. With permission, I will ask my colleague Jill Clark to respond to that. Generally speaking, we thought about that very carefully and did a lot of work on how best to deal with the issue.

**Ian Snedden:** That is a perfectly fair point, which I accept. We considered—and we asked the consultants to examine—fallback arrangements in the event that control rooms failed. It is clear that whatever system we come up with will have to have a foolproof fallback system, so that if one control room were to be taken out of action, there would be an immediate transfer to another control room.

We have had experience of reducing the number of control rooms. In Strathclyde, which covers a large population in a diverse area, the number of control rooms was reduced from five to one. That shows that such reductions work. We must consider such matters carefully before we reach a decision. As ministers have said, any decision that we reach would have to be made in a consensual way with the fire authorities.

**Maureen Macmillan:** I am glad to hear that last sentence. I look forward with interest to the outcome of the consultation.

**Mike Pringle:** I want to ask about the water supply. Who is responsible for supplying the water and so on? Did you give any thought to transferring responsibility for that to the water authorities? What consideration was given to the present arrangement and how it might change in the future?

**Ian Snedden:** With permission, I will ask my colleague Jill Clark to respond to that. Generally speaking, we thought about that very carefully and did a lot of work on how best to deal with the issue.

**Jill Clark (Scottish Executive Justice Department):** Scottish Water is responsible for the purity of the water supply, for ensuring that there is proper pressure and for reducing leakage. We are not aware that there are any problems with the current arrangement; we have certainly not been made aware of any difficulties.

As regards water hydrants, which I think you might be referring to, there is a contention that the fire authorities should not bear the cost of installing and maintaining fire hydrants and that that should fall to Scottish Water as the water undertaker. We have taken the view that, because in the main hydrants are provided for firefighting purposes, it is right that the fire authorities should be responsible for those costs.

Ultimately, the fire service and the water undertakers need to develop good working relationships at ground level, to ensure that costs that are properly incurred are allocated to the appropriate organisation. The Chief Fire Officers Association and Scottish Water are developing a service level agreement, which is taking a pragmatic approach to where costs should lie.

For example, the bill provides that if an authorised user of a hydrant, such as a builder, asks Scottish Water whether they can use its hydrant for three months and damage was incurred during that time, those costs would fall to the authorised user rather than to the fire and rescue authority. The service level agreement will work out many of the practical issues. It is right that the water supply responsibilities should lie with Scottish Water and that responsibility for payment for the hydrants, which are for the purposes of firefighting, should lie with the fire and rescue authorities.

**Mike Pringle:** There is also the issue of areas where there are no hydrants and water is obtained from a local water supply. Although the fire authorities have exemption from prosecution, they are liable for the reasonable costs incurred in repairing any damage that they might do. How will the bill address that?

**Jill Clark:** I am sorry. Can you clarify your question?

14:45

**Mike Pringle:** In a rural area, it may not be a hydrant that is used, but someone's local water supply. It is possible that, in getting to that supply, the fire service will cause damage to fences and so on. I understand that at the moment the service is exempted from prosecution for that but liable for reasonable costs. Is such provision included in the bill?

**Jill Clark:** Yes. For water supply purposes, the bill more or less replicates the provision that exists already; the bill updates much of the language but does not alter the existing situation. In practical terms, if a fire and rescue authority knows that it must cover a rural area and a hydrant is not available, it will have made arrangements concerning the water supply that it will use. If it is planning to use water from a local loch or estate, it will have arranged to do so and will have set up the relevant cost arrangements. That provision is replicated in the bill.

**Karen Whitefield:** Obviously, the Executive’s consultation on control rooms has been slightly...
There will be a power of We are not providing for those Our consultation paper included powers to set up such an organisation. progress the matter. However, we have not taken considered necessary or advantageous, we will establishment of a common fire services agency is issue at a much slower pace and, if the such a body might be hel pful. We will examine the powers to consider with stakeholders whether have said that, in the bill, we will provide for establish a common fire services agency. We have not gone as far as we have in relation to fire prevention. We do not think that it is appropriate that they should have a responsibility in relation to the prevention of road traffic accidents. It is more appropriate that other bodies should take responsibility for that. The police run road safety campaigns and the motoring associations, the manufacturers and the trade associations consider issues relating to road safety. We think that it would not be in the interests of fire authorities for them to get involved in road safety.

Having said that, I should add that, under the Local Government in Scotland Act 2003, fire authorities are involved in community planning. A lot of the community partnerships examine community safety in a wide sphere, which encompasses road safety. That means that the fire authorities have the opportunity to contribute to the discussion around road safety.

Karen Whitefield: You rightly say that the fire service attends a number of road traffic accidents in the course of its normal duties. Do you believe that the powers of fire investigation in relation to road traffic accidents should be extended? Should the fire service have the power to investigate road traffic accidents?

Ian Snedden: We are not providing for those powers specifically in the bill. As I said, the fire authorities and brigades have relevant expertise and might be asked by the police, who usually carry out those investigations, to give their opinion on the cause of road accidents.

The Convener: I notice what is said in the policy memorandum about section 36, which concerns the framework document. If I understand the situation correctly, the spirit of the bill is that operational flexibility should not be interfered with. Is that right?

Ian Snedden: Absolutely.

The Convener: There will be a power of strategic guidance rather than specific instruction as to how the job is to be done.

Ian Snedden: I will give you a little bit of background to our thinking. In his report on the fire service, Professor Bain was critical of central Government for not giving more direction and guidance on strategic matters and letting the fire service simply develop at a local level. We have absolutely no intention of changing the thrust of the fire service. It is a local authority service, run locally and accountable locally and we intend to preserve that. However, bearing in mind Professor Bain’s comments, we believe that it is important that we set out some strategic direction for the fire service and try to reflect the Executive’s priorities for the service. The fire authorities are responsible locally, but the Executive puts a lot of money into the fire service centrally and we are accountable
to Parliament for the way in which that money is used. We believe that it would be helpful, in a spirit of partnership, to set out clearly for fire authorities how we think that the partnership should work.

**The Convener:** As I understand the current position, firemasters, for example, have to be concerned with issues such as risk management processes, integral personal development systems, risk assessment and effective management. Is it intended that the framework document will cover those issues?

**Ian Snedden:** Yes. Standards of fire cover, which were introduced just after the second world war, drive almost everything that the fire service does. Areas are grouped into specific categories that require varying levels of response. For example, in central Edinburgh, which is a category A area, three fire engines will turn up whenever there is a fire call or an alarm, whereas, in rural areas, the response times and so on are less onerous because of the distances. The standards of fire cover determine the number of category As in an area, which determines the number of vehicles that are needed and the number of firefighters who are needed to crew those vehicles for 24 hours. That is how the money flows through.

Through the national framework, we will wind up the standards of fire cover and replace them with integrated risk management plans. Fire authorities are already consulting on how those plans will work in their areas. We believe that the plans will give fire authorities more flexibility about how they undertake their duties across the board and will be more appropriate to the environment in which we live. Because of all the changes that have happened since the war, all the precautions that are now in place and all the things that can now be done, we believe that fire authorities should perhaps gear their responses to the risk in their areas. All that will be set out in the national framework.

**The Convener:** The provision for local training centres in section 44 seems to cut across the broad weave of the bill, which is about strategic guidance from ministers and local flexibility in operation. In what circumstances would the power be used? I would have thought that local training centres were an issue for the relevant authority.

**Ian Snedden:** The training structure in Scotland is and has been for several years based on the fact that the Executive funds national training. The Scottish Fire Services College down at Gullane is the central institution serving the fire service.

Locally, all the brigades have their own training establishments, which vary in size, scope, structure and the way in which they provide training. The brigades all have local training arrangements. In the bill, we are simply trying to acknowledge that the Scottish Executive will provide and pay for centrally funded training either at the Scottish Fire Services College in Gullane or at the United Kingdom Fire Service College in Gloucestershire, and to recognise that local training is important, too. In that context, the fire service is moving to a new system of training—the integrated personal development system—which will be more of a competence-based system for firefighters. The bill will simply reflect the new arrangements that will be in place.

**The Convener:** So the provision is a supplement, not interference. Is that a fair assessment?

**Ian Snedden:** Yes.

**Karen Whitefield:** Community safety and risk assessment are a key part of the bill and respondents have generally welcomed provisions on that. However, our experience is that the reception for such provisions in workplaces and throughout the business sector can be a little patchy. I am keen to know the Executive’s approach to supporting that important change in respect of the production of regulations and codes of practice, the competency to undertake risk assessments, training for employers in the business sector and public awareness, because we all have a responsibility.

**Ian Snedden:** As I said in relation to the fire service’s statutory responsibilities, we want greater emphasis to be placed on fire prevention, risk assessment and reducing risks. That is why we have given fire authorities a statutory duty, although they emphasise those matters anyway.

With the fire safety regime, we want to move in the same direction of risk prevention and risk reduction, using the risk assessment tool as the key to that. Part of the aim of the reform is to consolidate in one bill the fire safety measures that are scattered throughout a range of legislation.

We recognise the fact that, under the new regime that will be in place, we are bringing in new people—the voluntary sector and small businesses—who will all be caught under the new proposals. We recognise the need for guidance and, before that, for the detailed regulations to be put in place. We are working on the detailed regulations and it is our intention to publish them and consult on them during the passage of the bill.

We also intend to launch a publicity campaign after the bill is enacted that will focus on the new fire safety regime, the responsibilities that it places on employers and how it relates to different premises. That will be accompanied by a suite of guidance documents, which we are currently drafting and will consult on. Those documents will be targeted at specific types of premises, such as shops, offices, educational establishments and
residential care homes. We have that very much in mind and we are planning for it at the moment.

15:00

Karen Whitefield: On residential care homes, will you work with the care commission and other agencies that have a view on the matter? My experience from my constituency has been that, sometimes, building control, the care commission and the fire service all see things differently. It is important that they speak with one voice and that there is no confusion for residential care home owners or owners of other establishments. Whether we are talking about nursery provision or day care, everybody needs to know that there is a level playing field and that they are all working towards the same objectives.

Brian McKenzie (Her Majesty’s Fire Service Inspectorate for Scotland): The new fire safety regime for which the bill supplies the framework will apply to residential care homes. It will put the onus on the proprietor of the care home to carry out risk assessment and put in place fire safety measures that are appropriate to the risk assessment. Under the new regime, enforcement of the legislation in the care homes will sit with the fire and rescue authority, whereas, just now, there is a degree of control through the care commission and the Regulation of Care (Scotland) Act 2001.

The bill provides for close communication between the appropriate bodies. For example, if the fire and rescue authority, as an enforcing authority, required a care home proprietor to upgrade their premises, the authority would have to consult various other bodies for approval. Building control, which you mention, is one of those appropriate bodies. The fire and rescue authority would have to speak to building control to ensure that a unified approach was taken to the requirements in that situation.

Ian Snedden: We met the care commission recently; indeed, we have been working closely with it over the past few months, not least because of the implications of the Rosepark tragedy. As you may recall, the minister invited fire authorities to carry out reassurance visits to all the residential care homes around the country. We were brought much closer to the care commission in carrying out that process. We very much appreciate the need to work alongside such bodies.

The Convener: I will pose a question to Mr Marshall and be a boring legal anorak. In part 3, under the interpretation section, although “employee” is defined I could not find any definition of “employer”. Is that embraced within the Health and Safety at Work etc Act 1974?

Robert Marshall: That is exactly right. We are relying on that interpretation.

Mike Pringle: I want to go back to the point that Karen Whitefield raised. The City of Edinburgh Council has expressed concern about the change in responsibility for houses in multiple occupation. At the moment, the council is responsible for monitoring HMOs, but it seems that the bill will give responsibility for fire assessment in HMOs to the fire authority. How will that sit with HMO legislation?

Ian Snedden: You are quite right. It is intended that the new regime will catch HMOs, and we recognise that a regime is already in place. In my earlier remarks about the new fire safety regime, I tried to point out that we want to consolidate the regime and make it easier. We want to make it clear that, instead of being spread across a range of agencies, responsibility for fire assessment will lie with the fire authority. We intend to bring HMOs into the new arrangements, but Brian McKenzie might wish to add some comments.

Brian McKenzie: The situation at the moment is that the HMO licensing legislation that was introduced under the Civic Government (Scotland) Act 1982 is enforced by the local authority, but the local authority is required by statute to consult the fire authority. The changes in the new fire safety regime mean that the proprietor of the HMO will be responsible for carrying out an assessment of fire risk and putting fire safety measures in place. In many respects, HMO licensing will be no different from liquor licensing or care home registration. The scheme will be no different from any number of certification or registration schemes. Responsibility for fire safety will lie with the fire and rescue authority, but nothing will be taken away from the local authority, which will still want to consider fire safety in each HMO.

The changes are a rationalisation. At present, some HMOs are subject to other legislation. The changes for HMOs tie in with the whole ethos of the changes to the legislation on fire safety. The aim is to put in place a single regime and remove the multiple and overlapping regimes that we have at present.

Mike Pringle: Section 47 places a restriction on the recruitment of retained and volunteer firefighters. It is interesting that Lothian and Borders fire board and Highlands and Islands fire board have expressed exactly the same concerns; I am not sure whether there has been collusion. The Highlands and Islands fire board says that not being able to employ policemen could cause difficulties in remote areas where Special Constables may also operate as volunteer or retained firefighters.

It is probably not a problem in Lothian, where there are not very many volunteer or retained firefighters, but it obviously is a problem in the Highlands. However, Lothian and Borders fire
board and Highlands and Islands fire board have both suggested that section 47 should be removed from the bill. Why is section 47 in the bill and is there any intention to change it?

Jill Clark: We considered the section when we drafted the bill and decided to retain it; it was in the 1947 act and we have carried it over. We did so in consultation with ACPOS.

The prohibition is aimed only at serving police constables, simply because there could be a conflict with their other police duties. If they were carrying out emergency fire service duties as a retained firefighter, there could be confusion about which role they should adopt if a situation arose in which they should act as a police constable.

Ian Snedden: Retained firefighters get paged on a call-out. If a police constable was on duty and was paged to call him to his duties as a retained firefighter, a tension could arise as to what he should be doing. We recognised that that could lead to a conflict of interests.

Mike Pringle: I do not know whether anyone else has a view on the matter, as my constituency is not rural. It just seems to me that it will be difficult to get people to volunteer to be retained or volunteer firefighters. What is more important? If a policeman who happens to be on patrol in a rural area gets an urgent call to a fire, going to the fire to save someone’s life might be more important. It is a difficult one.

The Convener: Is there not a statutory empowerment for a constable to do that?

Ian Snedden: There is a statutory empowerment in the existing legislation that we have carried over into the bill giving a constable power to respond to a fire. That is absolutely right.

Mike Pringle: Yes, but presumably a retained or volunteer firefighter will have had training and will know what to do when he gets to the fire. A constable who has not had training would not know what to do when he got to the fire. I suppose that that is my next question. Should there not be some provision in the bill to ensure that policemen have some basic training. Presumably, the first people who arrive at a fire are often policemen and they might act out of humanity and then find that they have problems. Has any thought been given to giving policemen some basic firefighting training?

Ian Snedden: That is a good point and I see that there is a dichotomy between giving police specific powers in relation to fires and not wanting to use them as retained firefighters. Obviously, we will return to that issue.

Karen Whitefield: On retained firefighters, do you agree that it is important that rural communities that do not have a full-time fire service are able to rely on firefighters to attend a fire as quickly as possible? In the urban-rural community that I represent, Shotts, which had a retained fire service, I know that the firefighters would often respond to a fire within three or four minutes. That service would be hard to beat. The priority should be to make sure that people are safe and able to do the job and that should always supersede the potential for someone to be able to do the job in theory but to be prevented by something happening. Communities need to be offered safety and they need to be able to rely on that safety.

Ian Snedden: I would not take issue with you on that. The Executive values the work of the retained fire services. Our fire service inspectorate recently carried out a review of the retained and rural service and made a lot of important recommendations about developing, maintaining and improving the service. Members of the rural retained service are often from families who have served as retained firefighters going back several generations. We are keen to develop that service.

The recent industrial action was resolved by a pay agreement that for the first time produces pay parity for the retained and whole-time fire services. It has also introduced arrangements whereby the whole-time fire service has agreed that there should be mixed crewing so that it is possible for whole-time and retained firefighters to respond on the same truck to the same incident.

We are therefore making progress on developing and improving the retained service.

Maureen Macmillan: I am going to ask a question that you probably cannot answer. When will we know when we are going to get the transitional funding for the Highlands and Islands so that we can decide how many of our retained firefighters we can use?

Ian Snedden: Even the minister would allow me to say that agreement has been reached on the level of transitional funding, including that for the Highlands and Islands upgrade programme. We are still in discussion with the Convention of Scottish Local Authorities about some of the detail of the phasing of the transitional funding. I am happy to say that the Highlands and Islands fire service will certainly benefit from the arrangements that are being put in place.

Maureen Macmillan: I believe you.

Jackie Baillie: We have kind of covered the statutory duty to consult, but I want to return to consultation and the terminology in the bill. The bill talks about consulting such persons as ministers might consider appropriate. The view has been expressed to us that we should include the words “recognised trade unions”. Why is that wording not in the bill?
I understand your point entirely. It is never too soon to call your solicitor. We have had a situation in the fire service over a number of years where certain trade unions have not been recognised by other trade unions. There is always the danger that when we start specifying trade unions that should be consulted, we leave out other trade unions that think that they should be consulted but have not been. The terminology is not designed to preclude any consultation with trade unions; it is to ensure that the consultation is all-encompassing, by using the phrase “consulting all interested bodies.”

Jackie Baillie: When the bill talks about consulting, it talks about consulting appropriate persons. It does not use terminology that some of us would be more comfortable with, such as “a recognised trade union”, as well as others.

Robert Marshall: Indeed. Your question is probably aimed at the negotiating body.

Jackie Baillie: When the bill talks about consulting, it talks about consulting appropriate persons. It does not use terminology that some of us would be more comfortable with, such as “a recognised trade union”, as well as others.

Robert Marshall: When the bill talks about consulting, it talks about consulting appropriate persons. It does not use terminology that some of us would be more comfortable with, such as “a recognised trade union”, as well as others.

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Robert Marshall: When the bill talks about consulting, it talks about consulting appropriate persons. It does not use terminology that some of us would be more comfortable with, such as “a recognised trade union”, as well as others.

Robert Marshall: Indeed. Your question is probably aimed at the negotiating body.
As far as resources are concerned, the fire and rescue authorities are involved in the inspection process of HMOs at present. The responsibility falls directly on them for enforcing fire safety in HMOs. There is no perceived additional burden. In fact, the fire and rescue authorities are expected to enforce the new legislation through a risk-based inspection and enforcement regime. In essence, there may be some reduction in the burden on the fire and rescue authorities, and perhaps on some of the end users, because whereas before the authorities may have inspected at a set frequency, they may decide to inspect low-risk premises less frequently.

**Ian Snedden:** I accept that you are looking for clarity in this area. There is a sense in which some of this is work in progress, because a whole suite of regulations will have to be introduced on the back of part 3 of the bill. We will examine the issues that you raise within those regulations. I guarantee that we will go away and consider the points that have been raised.

**The Convener:** That is helpful, because the issue is important. In the Parliament we are all agreed that we have no desire to make legislation that replicates any form of provision, be it obligation or enforcement powers or whatever. It would be helpful if you could consider those matters.

**Ian Snedden:** We will.

**Karen Whitefield:** I have a couple of questions on things that have not been included in the bill. Can you confirm that section 12(2) of the Fire Services Act 1947 applies in Scotland? It refers to ensuring that the firemaster reports directly to the fire authority. If it does apply in Scotland at the moment, why has it not been continued in the new legislation?

**Ian Snedden:** That is a fair point. It has not been included in the new legislation for a number of reasons. We believe that the fire service is changing and modernising and it may not always be the case that there will be a firemaster who will head up the fire services. Issues to do with the reporting arrangements and the responsibility of the chief officer to the fire authority are matters that are more appropriately dealt with by having duties and responsibilities set by the fire authority rather than by having them provided centrally in the legislation.

We can envisage developments where there may be a change in structure at the top of the fire service. Whereas before, an assistant firemaster may have had responsibility for, for example, all the financial arrangements for a fire brigade, we are already seeing arrangements whereby an assistant firemaster is replaced by a civilian for such responsibilities. We believe that those are employment issues that should properly be part of the conditions of employment set by the fire authorities.

**Karen Whitefield:** I can understand your thinking on that, but my concern is that it is important that there be statutory recognition for the fire board, to ensure that fire boards are given their place, are involved in discussions and know what is going on in the authorities for which they are responsible. You leave it all down to an individual’s terms and conditions of employment, so I am not quite certain that one can always ensure that the requirement for the authority to be involved and to be aware of the decisions that are being taken can be guaranteed.

**Ian Snedden:** I see where you are coming from on that point and I recognise that it is a change from the existing arrangements. However, we believe that the responsibility of the chief officer to report to the fire authority and to be accountable to it is more properly dealt with as part of the employment process.

**Karen Whitefield:** I would like to ask two questions that were asked by Strathclyde fire authority. It asked why the bill does not include an offence of someone masquerading as a firefighter. It may well be that it is not appropriate for such an offence to be included in the bill, but that is something that the authority raised in its written submission. It also asked why there is nothing in the bill that relates to assisting overseas fire and rescue authorities and charitable bodies that seek second-hand equipment that Scottish fire and rescue authorities are disposing of. The board accepts that, at present, such bodies rely on the Local Government (Overseas Assistance) Act 1993, but it believes that that act is inadequate and it would have liked to see something in the new bill that allowed it to help out other countries when old equipment was no longer wanted.

**Ian Snedden:** To give Jill Clark a little more time to think about the answer to the first part of your question, I shall deal with the second part. You are quite right to say that fire authorities have for many years had arrangements whereby vehicles that
were going out of service and were going to be replaced would be handed over to third world countries to assist in their development. Over the years, fire authorities have also released officers to go and help in the development of fire brigades in other countries. We have not had specific representation from brigades that that was a problem or that they did not have enough authority or flexibility to do that. As far as we were concerned, the arrangements were operating quite successfully. However, if Strathclyde fire board believes that it is a problem, we shall certainly look at that.

Karen Whitefield: And on my first point?

Jill Clark: In part 3, we seek to make it an offence for someone to pretend to be an enforcement officer. However, that is really more to do with the fire safety enforcement side of things. We have not made it a general offence to impersonate a public officer in an emergency?

Robert Marshall: I think that there was a common-law offence of impersonating a police officer and there are also offences of impersonation in the Police (Scotland) Act 1967. If one were to pretend to be a firefighter, and any practical result flowed from doing so, that would be fraud. In other words, that person would be obtaining a certain result by fraud. It would very much depend on the circumstances, but off the top of my head I do not think that pretending to be a fireman is a common-law offence.

The Convener: Mr Marshall, is there a common-law offence of impersonating a public officer in an emergency?

I think that there was a common-law offence of impersonating a police officer and there are also offences of impersonation in the Police (Scotland) Act 1967. If one were to pretend to be a firefighter, and any practical result flowed from doing so, that would be fraud. In other words, that person would be obtaining a certain result by fraud. It would very much depend on the circumstances, but off the top of my head I do not think that pretending to be a fireman is a common-law offence.

The Convener: I do not know whether the condition is rife throughout Scotland, but it is a point of interest.

Robert Marshall: Such an offence might stop stag and hen parties all over Edinburgh. [Laughter.]

Jackie Baillie: Does that happen only in Edinburgh?

Robert Marshall: I can act only on instructions.

Jackie Baillie: Let me try and inject a serious note into this discussion. The bill is silent on offshore firefighting and firefighting at sea or in inland waters. However, the Chief Fire Officers Association has provided a helpful and quite detailed submission that explains that you are actually part of the UK sea of change project. Given that, by April 2005, the Scottish fire service will have the facilities to tackle such situations, why do we not put such provisions in the bill now?

Ian Snedden: You are quite right to say that the matter is serious. We are treating it seriously. However, it is also a very complicated matter because of the implications for determining a fire authority’s boundaries and what happens as a result of that. Moreover, it is complicated by the fact that whatever we do to boundaries has a knock-on effect on other pieces of local authority legislation and such like. As a result, we are considering how best we can deliver our commitment to clarify in the legislation the boundaries and the extent to which fire authorities are responsible for firefighting at sea. I can say that we are working very closely and intensely with our legal colleagues to capture that properly and effectively. Subject to the committee’s agreement, we will come back to the issue at stage 2 with various proposals and amendments.

Jackie Baillie: Basically, you intend to do it, but you need more time.

Ian Snedden: Yes.

Jackie Baillie: That is fine.

I want to highlight one other omission. Several organisations, including CFOA, have asked that the legislation should specifically define a role for urban search and rescue. Do you have a view on that?

Ian Snedden: The way the bill is constructed, section 10 sets out powers to make additional functions orders. We intend to consult on what such orders will capture. At the moment, three specific areas in that respect are chemical spillages, flooding and urban search and rescue. I should point out that the fire service has acquired certain responsibilities and roles without having the statutory function; it has simply been taking on those responsibilities.

We do not want to specify everything in the bill, in case another service that fire brigades start to provide comes to the fore. The additional functions orders will allow us to add functions as necessary. However, I assure Jackie Baillie that urban search and rescue will be covered in the order that we will make under section 10, and that we are consulting on that.

Maureen Macmillan: An issue that has been brought up in debates on firefighting is whether
there should be a duty to protect the environment, particularly with outdoor fires, which might not endanger property, buildings or people, but might endanger the environment or animals and birds. That issue is not covered specifically in the bill, but I wonder whether it should be.

**Ian Snedden:** The bill talks about the environment in certain places. When fire brigades go to a fire, they often have to make a judgment about the possible impact on the environment of what they intend to do. The substances other than water that they use to put out a fire, such as foam, might have a detrimental effect on the environment. I expect us to cover those environmental issues in the framework document, but we have not included them specifically in the bill.

**Maureen Macmillan:** I was thinking of a survey that David Stewart MP did about the environmental impact of forest fires and heath fires. He spoke to bodies such as Scottish Natural Heritage as part of a local campaign that was going on about retained firefighters. There was doubt about the future of the various bodies in small towns. An issue that was highlighted was the need to have firefighters in place in rural areas to protect the environment when there were forest, heath or grass fires.

**Ian Snedden:** You are right that that issue arises for the Highlands and Islands fire brigade much more so than for other brigades. I believe that the Highlands and Islands fire authority will look, through its integrated risk management plan, at what more might be done to deal with the impact on the environment of fire in that area. We hope that the integrated risk management plan will provide much more flexibility and will allow local issues to be dealt with locally. All fire authorities are required to consult on their plans. I hope that the issues that you raise will be picked up through that mechanism.

**Maureen Macmillan:** I will think about that.

**The Convener:** Mr Snedden, as there are no further questions, do you have anything else to say by way of conclusion?

**Ian Snedden:** Can I come back tomorrow and answer the questions again?

**Jackie Baillie:** That depends on the answers.

**The Convener:** On behalf of the committee, I thank Ian Snedden and his colleagues for joining us; the session has been exceedingly helpful. We have made a note of aspects of the bill to which further consideration is to be given and we look forward to hearing the outcome of that. The committee has found the session instructive.

**Ian Snedden:** On behalf of the team, I thank you for being so courteous in your treatment of us.
25th Meeting, 2004 (Session 2) 14 September 2004

SUBMISSION FROM THE CHIEF FIRE OFFICERS’ ASSOCIATION (SCOTLAND)

INTRODUCTION

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004.

The stated 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 of our communities;
- To revise fire safety legislation.

The purpose of this paper is to present the views of the Chief Fire Officers’ Association (Scotland) – to the Justice 2 Committee.

The Chief Fire Officers’ Association (Scotland) welcomes the publication of the Fire (Scotland) Bill. The provisions of the Fire (Scotland) Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future). The Chief Fire Officers’ Association (Scotland) had in general expressed its support for the proposals for legislation and consequently the provisions of the Bill are broadly welcomed.

There are, however, a number of issues and concerns, which the Chief Fire Officers’ Association (Scotland) wishes to raise. There are areas of strategic comment; areas of operational dimensions; and a range of detailed points. These are contained in appendices 1-3 attached.

In respect of the ongoing governance of the Service, the clarity of the provision, S19 (2) of the 1947 Act should be maintained in respect of responsibility to fire authorities.

Appendix 1

STRATEGIC ISSUES

Ministerial Powers
There are a number of provisions within the Bill that give new powers to Scottish Ministers in relation to the provision of the Fire Service.

Whilst it is recognised that there are areas where this is a correct and proper arrangement for the overall governance of the service there needs to be a clear understanding provided of when such responsibilities will be implemented and on the extent of the accountability and responsibility which will attach to Scottish Ministers in those circumstances. This will have implications for the management of the Fire and Rescue Authorities. Part of the debate in bringing forward the legislative proposals related to the removal of ministerial power in favour of an increased accountability and responsibility being given to Fire Authorities; the Bill now published does not seem to support that point.

Governance
There needs to be a clear and unambiguous understanding of the responsibilities of Fire Authorities, Scottish Ministers and Brigade Management in relation to the provision of the Fire Service; otherwise there will be a potential diminution in the governance standards which currently operate.

This is particularly important given the current uncertainty in relation to the structure of the Service, the provision of control rooms and the proposals in regard to the Common Fire Services Agency.
Underlying all of these concerns is the aim of providing a more efficient and effective service in accordance with Best Value principles.

Control Rooms
The Executive published their Consultants report on the future of control rooms in Scotland on 8 July 2004. Crucially governance, command and control and operating arrangements will be critical in regard to ongoing efficiency and effectiveness in whatever model is finally decided by Ministers.

Common Fire Services Agency
These proposals were included in the Executive’s earlier consultation paper in regard to a Common Fire Services Agency. The Chief Fire Officers’ Association (Scotland) view was that existing arrangements of governance and practical operation of joint working would allow the objectives of Ministers to be met without the need to create an additional layer of bureaucracy within the service. Any additional bureaucracy would have clear governance and financial consequences.

The Chief Fire Officers' Association (Scotland) view remains that existing governance and operating arrangements will better deliver economy and effectiveness by maintaining ownership within the Fire Service. This could be achieved by the establishment of project/management teams from within brigades, reporting to a strategic board comprising Convenors and Firemasters. This, in turn, would form the link to existing fire authorities. An important element would be the provision of a performance reporting link to the Scottish Executive. We would be happy to amplify this outline proposal. This could be enhanced legislatively by providing a statutory responsibility on Fire Authorities to collaborate effectively.

Appendix 2

OPERATIONAL ISSUES

Section 2 – Schemes to Constitute Joint Fire and Rescue Boards
Existing Legislation makes arrangements for the Firemaster to have a direct responsibility to the Fire Authority for the effective management of the Service, specifically S19 (2): the Chief Officer of the fire brigade…shall be directly responsible to the fire authority…The same provision should be maintained within the Fire (Scotland) Bill to ensure that appropriate professional advice is provided directly to all Fire and Rescue Authorities. This is consistent with and will support the Executive sponsored principles of integrated risk management planning.

Section 8 - Firefighting
It would be helpful to receive a legal definition of the extent of each Fire and Rescue Authority area to allow proper consideration of the provisions which it must make for fire and rescue including firefighting at sea.

To ensure consistency with the principles of integrated risk management planning Section 8 (1)(a) would be better defined as ‘Dealing with Fires………..’

Reference should also be made to the Service’s responsibilities regarding the protection of the environment.

Proposed New Section 9(a) – Urban Search and Rescue
Provision should be made within the Bill for Authority responsibilities regarding urban search and rescue activity. This should be identified as a specific role for the service.

Section 11 (1) – Emergency Directions
We question the need to include the provision for emergency directions in the Fire (Scotland) Bill. Ministers already have such powers in terms of Civil Contingency Arrangements and the inclusion in the Fire (Scotland) Bill seems an unnecessary additional element.

Sections 20 – 22 – Fire Hydrants
Whilst recognising the Service’s responsibility to secure water supplies, it is the view of the Chief Fire Officers’ Association (Scotland) that responsibilities in relation to provision of hydrants etc
should be contained within the Water (Scotland) Act. Responsibility for the provision of said hydrants should lie with the water undertaker.

No provision is made in the new Bill for accessing water supplies on private property. Authorities should be exempt from possible prosecution in these circumstances, but liable for reasonable reparative costs.

In terms of providing water supplies for firefighting, a minimum provision should be determined as being reasonable in the circumstances. The costs of providing these supplies should be defrayed to the water undertaker or developer through possible planning initiatives and not to the fire authority.

Section 23 – Powers of Authorised Employees in relation to Emergencies
The clarity of the provision in S30(3) of the 1947 Act in respect of responsibility of the senior fire service officer for control of all operations for the extinction of fire should be maintained.

Whilst welcoming the provision in relation to obstruction or interference with authorised employees we consider that this section should be extended to include attacks on firefighters. The penalties should reflect those contained within the Emergency Workers Bill.

Section 36 – Framework Document
We would advocate that when enacted, and if applied, that Scottish Ministers should take a wider focus for consultation which would be consistent with the requirements placed upon Fire and Rescue Authorities in context of the integrated risk management planning process.

The Bill should reflect that Firemasters are directly responsible to Fire and Rescue Authorities for the effectiveness of the service which they provide. The retention of the clarity of the provision in S19 (2) of the 1947 Act, in respect of direct responsibility to the fire authority, would achieve this. It is suggested that an additional section be included reflecting, that as well as the Firemasters direct reporting link to the Fire and Rescue Authority (see earlier comment), their responsibilities for integrated risk management planning, IPDS, risk assessments and the efficient and effective arrangements for the Fire and Rescue Service, should also be included.

Section 49 – Duties of Employers to Employees
We support the provision for the imposition of a duty upon employers to undertake and review fire risk assessments and to take necessary fire safety measures to ensure compliance with their general duty. It is our particular experience of the workplace regulations that awareness of, and self-compliance with, such regulations varies considerably across business sectors and workplaces, and these factors underpin our comments in relation to awareness and inspection matters below.

Sections 53 and 54 – Risk Assessments and Power to make Regulations
We note that Ministers may make regulation in relation to the carrying out of risk assessments and fire safety. CFOA(S) considers that it is essential that such guidance is provided to ensure consistency is achieved across Scotland and that it is compatible with guidance issued by the Office of the Deputy Prime Minister for England and Wales. Furthermore, we would strongly emphasise the role and need for the Scottish Executive to publicise the requirements of the regulations.

Section 56 – Enforcing Authorities
CFOA(S) supports the Bill’s intention in respect of enforcement agents/agencies of the new fire safety arrangements.

CFOA(S) would draw attention to the fact that the new responsibilities that fire authorities are being given may have financial implications but it is too early to evaluate the full effect of these new arrangements.

Section 78 – Abolition of Scottish Central Fire Brigades Advisory Council
We note that it is proposed to abolish the Scottish Central Fire Brigades Advisory Council.
We can support this provision on the basis that there should be an appropriate replacement body and that appropriate consultation will take place in that regard.

A model to achieve this could be based on the creation of appropriate and effective communications links between brigades, employers and Ministerial levels. We would be happy to amplify this outline proposal.

**Appointments Regulations**

The Bill does not make any reference to appointments and promotion regulations. We assume that this is an omission which will be corrected as the Bill proceeds.

**Appendix 3**

**OBSERVATIONS**

**Section 2 – Schemes to Constitute Joint Fire and Rescue Boards**

Provision should be made to allow for the development of voluntary combination schemes, as well as the mandatory schemes which can be developed by Ministers under the new Bill provision.

**Section 9 – Road Traffic Accidents**

Clarification is sought on the definition of the preventative role in partnership with other agencies and any powers which would derive to Fire and Rescue Authorities.

**Section 15 - Charging**

We welcome this provision and look forward to contributing to consultation on the proposed charging order. We recommend that provision be made for charging for inappropriate activation of automatic fire alarm equipment. This is necessary to ensure that Fire and Rescue Authority resources are properly directed and to provide an incentive to premises operating automatic fire alarm systems.

**Section 20 (2) – Fire Hydrants**

This should be amended to 'identified hydrants would be marked in an appropriate way'; this would allow the use of all mediums including those derived from new technology.

**Section 27 – Powers of authorised employees in relation to investigating fires**

Clarification will be required on certification of premises within this section.

**Section 35 - Direction**

We question the need for this provision given the provisions and obligations arising from the Local Government (Scotland) Act 2003.

**Section 44 (1b) – Central Institution and other centres for education and training**

This provision seems contradictory to the responsibilities being proposed for Fire and Rescue Authorities; we can understand the need to establish a Central Training Institution but do not understand the reference to local training centres and suggest that this be removed as this appears to be a direct lift from the existing Fire Service legislation. If it were to be implemented then clearly the Scottish Executive would require to take responsibility for the training of all Fire Service personnel. This would include accountability for those arrangements.

This would also duplicate the provision of Section 14.

**Section 47 – Prohibition on employment of Police**

Whilst this provision is contained in existing legislation we question its necessity given the working frameworks within which Scotland now operates. This could cause particular difficulties in remote areas where special constables may also operate as volunteer or retained firefighters. We suggest that this be removed from the Bill.

**Schedule 4 – Repeals**

Does not make any reference to the Fire Services Act 1959.
Section 45 - (Scottish NJC for all Staff)
We welcome the inclusive nature of this section providing equity of status for terms and conditions for all fire service employees particularly in light of single status and IPDS.

August 2004
SUBMISSION FROM FIRE BRIGADES UNION

INTRODUCTION
The Fire Brigades Union Scotland welcomes the Fire (Scotland) Bill as a statutory vehicle to shape new Legislation for the Fire Service in Scotland that will meet the needs of the people of Scotland and Firefighters & Emergency Fire Control Operators alike.

In commenting on the Bill we are anxious to point out both the merits and demerits of the proposals, as we see them, and as a means, not only inform the Committee, but also to offer the Committee issues they may wish to consider throughout this staged process.

We have also taken into account the observations and recommendations of the House of Commons Regulatory Reform Committee regarding Scotland, contained in paragraphs 32 to 38 of the Eleventh Report of Session 2003-4, in respect of the Proposals for the Regulatory Reform (Fire Safety) Order 2004 in England and Wales. We hope that the Committee & Ministers will similarly apply themselves to those observations and recommendations, so that a common and compatible system of Fire Safety Legislation exists across the United Kingdom.

The ultimate aim must be an Act that reflects the needs of the Parliament, employers, employees and finally and most importantly, the people of Scotland.

The Fire Brigades Union wishes to bring the following issues to the attention of the Committee:

PART 1 – “FIRE AND RESCUE AUTHORITIES”
Although many of these Sections have been rewritten from the 1947 Act, it appears from the outset of the Bill that there is a move towards Centralisation, giving wide ranging powers to Ministers, but without maintaining the same level of accountability. This seems to contradict the twin visions contained within the White Paper, of ensuring local decision making and local democracy.

Furthermore, in this part, as with all other parts, consultation issues do not refer to the recognised Trade Union, rather “such other persons that are deemed appropriate”

PART 2 – “FIRE AND RESCUE SERVICES”
CHAPTER 1 - PRINCIPAL FIRE AND RESCUE FUNCTIONS
It is our firm belief that if the Scottish Executive is truly committed to improving the appalling record of Fire Deaths that we endure as a nation, then as part of the Principal Fire & Rescue Functions of the Service, a ZERO tolerance policy to ALL fire deaths, must be adopted as the ultimate goal for the fire services of Scotland.

The inclusion in Sections 7 & 9 of Fire Safety Duties and Road Traffic Accidents as a Statutory Obligation is welcomed. These functions have been carried out for many years by Firefighters and it is right & proper that they are finally acknowledged and enshrined in statute.

The provision of other Services in Section 10 affords Fire Authorities to task Firefighters to carry out any function that they deem appropriate. Whilst Firefighters have always carried out a wide range of tasks & duties this provision has no checks & balances and opens the door to an infinite range of tasks at the whim of a Fire Authority. Does it, for instance, envisage the Fire Service should be involved where there have been acts of terrorism, radiation and chemical incidents, explosions, biological incidents, disease, epidemics, railway, aircraft and sea?

We are also concerned that without proper identification now of areas where the Fire Service can assist, it will be an ad hoc reaction with inadequate preparation, training and foresight for the relevant risk. In addition, whatever Scottish Ministers envisage, may involve reserved questions. The inter relationship between the responsibilities should also be clarified now rather than when it is too late.

For any incident the Bill does not deal with questions of co-ordination, direction and management of incidents. This is particularly so having regard to those who may be involved such as firefighters, police, emergency medical resources, military resources and outside agencies. Without such
provision there is adequate scope for confusion with the consequent repercussion for fire safety and safety for any other functions envisaged by the Bill.

CHAPTER 2 - ANCILLARY FUNCTIONS
The terms of Section 15 will be contrary to Protocol 1 of the Convention and Prevention of Human Rights and Fundamental Freedoms Article 1. The provision does not make it clear, with sufficient clarity, that those likely to be affected by it understand it and regulate their conduct accordingly. It is indeterminate as to who may or may not be liable, the amount for which they may be liable and also as to the nature of the charge. The Scottish Executive and Scottish Parliament are in our view acting ultra vires insofar as this section is concerned.

CHAPTER 4 - POWERS OF EMPLOYEES AND CONSTABLES
We welcome the statutory recognition given to the Fire Service in Section 27, in the role of the Authority to investigate fires and acquire such goods and materials for testing & analysis. This will contribute greatly in expanding the knowledge & future development of Fire Safety measures.

CHAPTER 5 - MUTUAL ASSISTANCE ETC
Section 33 affords the ability for Fire Authorities to call on the assistance of others in carrying out duties on the fireground, which may be invaluable, particularly in the case of collapsed buildings and other similar emergencies. There is also no statutory protection under this section to ensure for the public, and those working with them, that such persons have the relevant experience and training.

Consequently, any such arrangement must ensure that assistance can be provided to the Fire Service at all relevant times and that the persons providing the assistance are properly trained in the duties and tasks that they may be expected to undertake under emergency conditions and may be clearly identified as providing such a service on behalf of the Fire Service, whom they are assisting. A clear line of command at incidents for such persons will also need to be established, both for their protection, the protection of relevant Authority firefighters, other emergency service personnel and members of the public.

Also, for authorised persons, while it may be clear as to which employees are responsible or authorised viz a viz an employer, the position is not necessarily the same where the public are concerned. Indeed this is the reason for uniforms. Given the severe penalties for non compliance by way of obstruction or interference, etc, these sections need further specification.

Section 34 affords a relevant Authority with the power to privatise part or all of the functions of the Fire Service, including the enforcement of fire safety duties under Part 3 of the Bill (Section 34(1) refers to section 56 which details the duties of enforcing Authorities for the purposes of fire safety enforcement). In the case of fire safety enforcement, they may therefore delegate the duties of an enforcing Authority to “any other person”. These proposed powers are contained within Section 34(1) supported by provisions in section 34(2)(a) and 34(2)(b).

Given the avowed intent of Ministers both in England, Wales and Scotland to move the Fire Service away from a culture of intervention to one of prevention and to fire cover arrangements based upon risk assessment in which fire safety enforcement will play a major and pivotal role, it seems most peculiar to allow the statutory potential for the Fire Service functions, both of intervention and prevention, to be hived off to bodies other than other relevant Authorities. No doubt Ministers will be able to explain their thoughts on this issue more fully to the Parliament and the Scottish people, when the Bill is debated.

It is also interesting to note that, by virtue of Section 35, Ministers may only direct two relevant Authorities to enter into arrangements under the Section 34 powers, yet a relevant Authority may hive off any of its functions to almost anyone, as long as, in the case of the relevant Authority’s function to extinguish fires, they employ firefighters.

CHAPTER 6 - CENTRAL SUPERVISION AND SUPPORT
The Framework Document, referred to in Section 36, is fundamental to the Bill.
It is unclear when the Framework Document will be published and, indeed, who is writing it. The Scottish Central Fire Brigades Advisory Council (which is to be abolished – see section 78) should be the body that produces, considers and advises the minister on this important document. This, however, is not the case.

It is still unclear what structure, if any, will replace the SCFBAC and who will be part of that structure. It is an integral and vital part of the accountability and transparency of the Ministerial role that the Minister has an appropriate structure in place to properly analyse, consider and advise him/her on matters concerning the Service. This is entirely necessary to properly and adequately inform, advise and report to (see section 38) the Parliament. This structure should be on a statutory basis and include the principles of Social Partnership.

Any new structure must be fully inclusive of the major stakeholders in the Service and must not be exclusive to one organisation or unelected/appointed advisors.

Such matters as the Framework Document will address are:
- Fire Prevention & Risk Management
- Working Together
- Effective Response
- Resilience & New Dimension
- Fire & Rescue Staff
- Workforce Development
- Finance
- Performance Management
- Research

Given that these vital areas will all form a major part of the Framework Document, it is essential that this is agreed with the recognised accredited Fire Service Trade Union Representatives, to ensure that they are both achievable and relevant.

If meanwhile Scottish Ministers have, or intend to take advice on the Framework Document, they should identify these bodies or persons, what their standing is, when the advice is obtained, its contents and potential interest. Such advice should be open and transparent and not rendered “behind closed doors”.

CHAPTER 7 - EMPLOYMENT
Section 45 affords Ministers the facility to establish a “statutory negotiating body” for the purpose of negotiating the conditions of service of employees of relevant Authorities in Scotland.

What is glaringly missing from this Section is the term “recognised Trade Union”. The explanatory notes state that the body should include “representatives of employers and employees (which may include a trade union)…”

The section is silent on the existence & rights of a Trade Union, which contravenes the Convention of Human Rights. Given that the legitimacy of a Trade Union is underpinned by Legislation, the recognised Trade Union must be recognised in the Section.

It seems that any Scottish body would not reflect the agreed constitution of the present UK NJC. In fact there is no mention at all regarding what the constitution of this Scottish body would be and indeed how it might arrive at an agreement. The presumption is that the Minister will make all decisions regarding these matters, which would be entirely inappropriate.

PART 3 - FIRE SAFETY
In respect of this Chapter of the Bill, we must express our general concern over the way that this has been proposed. The basic proposal is to place all the powers and duties relating to fire safety within this Chapter and then use the powers given to Ministers to make regulations to define specific areas of responsibility. Despite previous pleas to the Executive from the Fire Brigades Union to reconsider their proposals to combine what is essentially two distinct and complex pieces of legislation into one statute, our advice was ignored.
As a result we have this strange approach to Fire Safety Legislation which does not currently share a common direction or approach with that proposed for England and Wales. In England and Wales the duties of Fire Safety Care will fall upon the “responsible person”, whilst in Scotland they will fall upon the employer, then in Section 50(10) we see them falling upon some strange undefined person who has control of the relevant premises.

In view of the paradoxes created by this strange and most unfortunate method of introducing what should be modern and all encompassing fire safety law into Scotland, this part of the Bill needs urgent scrutiny & review.

CHAPTER 1 - FIRE SAFETY DUTIES
Sections 49 & 52 deal with the duties of employer and employees. These sections fail to recognise the changing nature of the working environment and the replacement of traditional working relationships of employer/employee, by relationships which are ill defined or characterised by such terms as franchisees, licensees, self employment, temporary work, contract for services, agencies and casual labour. Such relationships are increasing. They will not be covered by Sections 49 and 52. This is a serious weakness in the Bill.

Section 50 also has weaknesses. It too fails to appreciate the changing nature of the working environment. It rests on the owner and landlord/tenant relationship. Working environments are more characterised by very short tenancies, short leases, licences and fleeting occupation. There is also a number of intermediaries and distance between the landlord/owner and the user of a premise. It is far from sufficient to rest such an important duty on such indeterminate and transitory relationships. They may not identify themselves as being responsible and those who do accept responsibility may have little legal power to enforce safety measures, not to mention the very real practical difficulties in identifying and keeping track of those responsible.

Section 49(1) is qualified by the term “reasonably practicable”. Sub-Section 2 provides for fire safety measures to be taken and compliance with the duty imposed by the duty in Sub-Section (1). In other words any safety measures are always qualified by the term “reasonably practicable”. The reference to Edwards -v- NCB 1949 1 All ER April (Explanatory notes and other accompanying documents) is an economic test and not contained in the Directives to which we refer below. Insofar as therefore this term is used to qualify any regulations seeking to implement the European Directive it would be a dilution of the Framework Directive. The Scottish Parliament and Scottish Executive are therefore acting ultra vires.

Similar problems arise with regard to Sections 56, 58, 59 and 60. Those charged with enforcement will also have difficulty in identifying and keeping track of those who may be responsible. In addition Section 60 depends upon alterations being notified in the first place. This begs the question whether the person or persons can be identified, even among themselves, to give notification of the changes.

In any event the Section is far too wide and will have the effect of demotivating employees who would otherwise be prepared to participate, assist and innovate in fire safety responsibilities. They may also defer to a superior to avoid responsibility.

Section 55 affords a temporary suspension of the Chapter 1 duties to enable the person listed in Section 55(2) to carry out their duties. We have to admit to being completely mystified by this provision as it allows the persons listed in Section 55(2) to suspend the operation of Chapter 1 duties for undefined reasons in pursuit of undefined duties.

CHAPTER 2 - ENFORCEMENT
Section 56 places a duty upon the enforcing Authority (which in the draft Regulatory Reform (Fire Safety) Order in England and Wales is quite clearly stated as being the Fire Authority) to enforce the Part 3 Chapter 1 duties. It does not however place a duty upon the enforcing Authority to inspect premises or indeed a duty upon the Minister or the Executive to ensure that they are carrying out their duties in a proper manner.

We are concerned that the powers of enforcement officers may not extend to regulations made under Section 55, as that Section gives Ministers powers to make regulations and unless the
regulations in turn contain duties, it is not clear if they constitute duties under Chapter 1 to which Section 56(3) and Section 57(1) refer. This issue needs clarification and resolution.

In Section 58, which refers to Prohibition Notices, there has been a subtle and potentially dangerous change of wording from those contained within section 10 of the Fire Precautions Act 1971.

The wording in this section limits an enforcing Authority to only issuing a prohibition notice in respect of matters affecting the means of escape, rather than issues affecting the wider risk of fire, as allowed for in the original wording used in the 1971 Act. We would recommend that the wording in Section 58(3) be replaced with the wording contained in Section 10 of the Fire Precautions Act 1971.

CHAPTER 3 - MISCELLANEOUS

Section 66 also seeks to disapply the Fire Precautions (Workplace) Regulations 1987 and also impliedly disapplying the Workplace Directive 89/654/EEC. The Scottish Executive and Scottish Parliament would also be in breach of Community Law and acting ultra vires.

CHAPTER 4 - OFFENCES
This section appears to be in contradiction to the Trade Union & Labour Relations Act and contravenes Article 11 of the Convention for the Protection of Human Rights & Fundamental Freedoms.

PART 4 - MISCELLANEOUS
Sections 74 & 75 deal with Inquiries. Inquiries are also referred to within Sections 37 and 39 of the Bill.

As we have stated the Scottish Ministers’ role is extensive. This is not only in relation to policy but in operational matters. Reference is made to sections 11, 15, 31, 36, 37, 41, 42, 43 and 44 of the Bill.

Given the Scottish Ministers extensive role in fire safety and other areas including detailed operational matters the difficulty lies where the Scottish Ministers are responsible for a defect in fire safety, wholly or partly, in so far as their actions or omissions have contributed to the fire (or other) safety problem in question. There is no accountability in the Bill and no mechanism by which any such failing can be identified or addressed. This is a serious failing in the Bill.

SUMMARY
It is overwhelmingly apparent to us that Scottish Ministers will be afforded an increased and more direct role not just in relation to policy making, but also with regard to the operational functions of the fire services.

Given that the long standing Scottish Central Fire Brigades Advisory Council is to be abolished with no obvious statutory consultative successor body proposed to replace it, and also taking into account the major role that the Minister and his/her civil servants will have, we consider that this is not adequately underpinned by a statutory obligation to ensure that they have the available expertise to advise on the duties especially in so far as they relate to the operational requirements which they impose in terms of the Act.

It is not in the interests of those within the Service, or the people of Scotland, for Ministers to be involved in the micromanagement of the Fire Service.
This is all the more so given that there is no scope in the Bill for the accountability of the Scottish Ministers, where they may be wholly or partly at fault in complex areas of fire safety and other functions.

There are also serious weaknesses in the Bill by its failure to address modern working relationships and environments.

The Bill provisions, especially in areas of health and safety, are ultra vires by being in breach of Community Law and/or Contravention for the Protection of Human Rights and Fundamental Freedoms.

The Bill also fails to adequately deal with the question of additional functions, apart from road traffic incidents, and fundamental questions of co-ordination and management.

In general it seems that the Bill is very extensive in its powers, in many respects unlawful, but very short on content and accountability.

For the above reason we do not feel that the Bill satisfies the four objectives outlined in the Policy Memorandum.

August 2004
SUBMISSION FROM RETAINED FIREFIGHTERS UNION (RFU)

The RFU sees the Bill as an opportunity for the first time to provide advocacy for Retained, Auxiliary and Volunteer firefighters in Scotland. This will end their second-class status, as well as providing an opportunity for these firefighters to contribute towards a more effective and efficient service to their local communities.

We are pleased to be able to give our views to the Committee on the general principles of the Fire (Scotland) Bill. The RFU broadly supports the reform of existing legislation and the approach that has been taken in the earlier consultation to deliver a modernised fire and rescue service. We have largely confined our submission to matters that directly relate to those that affect Retained, Auxiliary and Volunteer firefighting personnel in Scotland.

There are 3,680 Retained, Auxiliary and Volunteer firefighters in Scotland, some 40% of all fire service personnel, but they provide crews for 80% of all fire stations (314 out of 389). However, Retained and Volunteers cover over 98% Scotland’s land mass (source CIPFA 2003 Fire Service Statistics).

This is a very effective, efficient and economic way of providing a fire and rescue service. Typically, a Retained-crewed fire appliance costs one-fifteenth of the cost of a wholetime-crewed appliance. For Auxiliary and Volunteer-crewed appliances the cost benefits are even greater.

These statistics indicate that Retained, Auxiliary and Volunteer personnel are a vital element of fire and rescue cover to communities in Scotland, but they have largely been forgotten in a Service where the focus has been on full-time staff.

The Independent Review of the Fire Service in December 2002 said The relationship between retained firefighters and their whole-time counterparts must be modernised to remove the implication of a second class service and to allow retained firefighters to play their full-part in providing the service local communities need.

We believe the above statement applies equally to the just over 1,000 Auxiliaries and Volunteers, as well as the 2,600 Retained personnel. The report produced for the Scottish Executive Central Research Unit in 2002 by Lambda Research and Consultancy was based on questionnaires sent to these personnel, and interviews with fire service managers, and particularly focused on the reasons why Retained and Volunteers joined and left the Service. This is important when considering shortages and turnover, and although there are no separate figures for Scotland, the UK shortage of Retained and Volunteers in 20% and turnover is 10% annually.

The above Scottish Executive report raised a number of issues for further consideration, including:

- Provision of training specifically related to management of a volunteer resource
- Provision for Retained, Auxiliaries and Volunteers to contribute to brigade decision making
- Development of promotion routes beyond sub and station officer
- Advertising and selection processes should be reviewed and Retained, Auxiliaries and Volunteer units should be involved in the selection of recruits
- Anomalies in pay and conditions should be addressed
- Brigades should be more pro-active in encouraging local employers to release personnel to be Retained, Auxiliaries and Volunteers, and there should be public recognition for those that do encourage staff to serve
- Public sector employers should take a lead in releasing staff
- Employers who release staff should be given financial incentives
- Family-friendly policies should recognise the disruption to family life for personnel
- Training arrangements should be made clearer and Wholetime, Retained, Auxiliaries and Volunteers should train together to facilitate a team spirit and to dispel misconceptions
- Training delivery should be flexible, by using, for example, computers and distance learning
The concerns of rural and retained firefighters are focused around the extent to which their Brigades and other types of firefighter appreciate their commitment and contribution to the Service – Scottish Executive Research Findings 2002

Some progress has been made in some of these areas, but we believe the Fire (Scotland) Bill offers opportunities for making further progress in the efficient, effective and economic use of Retained, Auxiliaries and Volunteer personnel

Part 1-Fire and Rescue Authorities – we support the change in name and the provisions for combining authorities, subject to consultation.

Part 2-Principal Functions – we agree with all of the proposals for defining the functions of fire and rescue authorities, the arrangements for the provision of water supplies, powers of employees and constables, mutual assistance and central supervision and support

Part 2-chapter 6- The National Framework – we agree it is vital for Minister to set out their expectations of the Service, and to explain what they will do to support fire and rescue authorities. We support the proposed powers of intervention, in Section 37, if an authority fails to act in accordance with the framework. We believe it is also right for Minister to have to report to Parliament on the compliance of fire and rescue authorities with the framework

Part 2-Chapter 7 – we support the power of Scottish Ministers to establish negotiating machinery for the fire and rescue services, and we would strongly recommend this provides for improved advocacy for Retained, Auxiliaries and Volunteer personnel. The current UK arrangements for the National Joint Council provide 27 employee representatives, and it is only in the past couple of years that one of these has been drawn from the Retained. This lack of advocacy is the single biggest reason for their second class status, as referred to in the 2002 Bain Review, and despite the fact that Retained, Auxiliaries and Volunteers comprise one-third of firefighting forces in the UK

We support the proposals in Section 45 for an independent Chair, and we believe this should be extended to an independent secretariat

We believe that recent events indicate that industrial relations and negotiating arrangements in the fire and rescue service are ineffective. They are adversarial, unwieldy and take little regard of the wider issues, especially during a time of major change. We support the powers for Ministers under Sections 45 and 46 to impose arrangements and for the negotiating body to have regard to Ministerial guidance. We believe this should include a fundamental review of industrial relations arrangements, rather than just tinkering with the number of seats that are allocated to representative organisations on a new body

With regard to Section 47, and the proposed continuation of the prohibition of a member of the police force being employed as a retained (or auxiliary/volunteer) firefighter, we take the view that this unnecessarily inhibits the opportunity for police personnel to provide additional support to local communities, especially in rural areas. We do not see difficulties and confusion over roles at an incident. The RFU has been approached by a number of police officers over the years that want to be Retained or Volunteer firefighters and they cannot understand the need for this restriction. If police officers believe they could make this work and overcome these potential conflicts, then we believe the shortage of personnel and the needs of local communities would best be served by lifting this restriction

Part 3-Fire Safety – we support all of the proposals.

Part 4-Miscellaneous – we support the continuation, in Section 77, of the power for Ministers to pay the expenses of any body established to offer advice. Arrangements for local consultation arrangements adversely affect Retained and Auxiliaries/Volunteers who are at a disadvantage when compared with all other fire and rescue service staff, as the latter are given paid leave, whereas the former often have to take unpaid leave or use their annual leave allocation from their primary employment, in order to participate in consultation arrangements.
We support the arrangements in Section 78 for the abolition of the Scottish CFBAC. We believe the new arrangements will provide increased opportunities for Ministers to take account of the views of Retained and Auxiliaries/Volunteer firefighters, which they have not had the benefit of in the past. This should address the issue of their second-class status.

**Financial Memorandum** – we note that funding arrangements will be unchanged, and that there are options for maximising efficiency and promoting collaborative working. We would support the use of any efficiency savings to promote improvements in Retained, Auxiliary and Volunteer support to their local communities, especially in pro-active fire and other safety initiatives, which have largely so far bypassed rural communities. We particularly note the excellent efforts made to upgrade Auxiliary and Volunteer units to the same standard as Retained units, by the provision of modern appliances, equipment and breathing apparatus, but there is still much to be done to provide a safe environment for both the fire service personnel and the communities they serve.

Walter Stewart QFSM, RFU National Officer, Scotland
Derek Chadbon, RFU National General Secretary
27 August 2004
SUPPLEMENTARY SUBMISSION FROM FIRE BRIGADES UNION

I wish to clarify the following points for Members of the Justice 2 Committee in relation to comments made by the RFU in both their written & oral submissions to the Committee on the Fire (Scotland) Bill.

I am concerned that the Committee may be under a false impression with regard to who actually represents Retained Firefighters in Scotland.

On reading the RFU’s written submission, their reference to the “3,680 Retained, Auxiliary and Volunteer Firefighters in Scotland” may lead Committee members to think that it is they who represent all of these Firefighters. This is not the case.

According to the recent Fire Service HMI Report, there are 2,507 Retained Firefighters and 1,175 Volunteers in Scotland (a total of 3,682). Almost 2,000 Retained Firefighters are members of the Fire Brigades Union, as well as several hundred Volunteer Firefighters. Many Retained Firefighters are not represented by any representative body leaving only a few hundred being members of the RFU. There are no Auxiliary/Volunteer Firefighters that are members of the RFU.

The Fire Brigades Union has always been the main representative body for Retained Firefighters in Scotland. Our membership records are always open for scrutiny, if clarification is required. Since the RFU have stated to the Committee that they are the “second-largest trade union in the fire service” the Committee may well wish to clarify just how many Retained Firefighters they actually represent.

Mr Chadbon stated in his oral submission to the Committee that the RFU welcomed the Bill as, in respect of Retained Firefighters, “it will improve their position under the new institutions by giving them some means of inputting into policy and some advocacy, which in the past has been missing”. As representatives of the overwhelming majority of Retained Firefighters in Scotland, and throughout the UK, the Fire Brigades Union has ensured that retained issues have always been raised at all levels (managerial, employers, ministerial, etc). The most recent example of this is that the Fire Brigades Union has secured parity of pay for all Retained Firefighters throughout the UK with their Wholetime colleagues, despite credit apparently being taken by the Fire Branch of the Justice Department (see oral evidence from Bill Team, 9th Sep’04).

Also, the Fire Brigades Union has been fighting to secure a Fire Service Pension Scheme for Retained Personnel. This would not only afford obvious financial improvements for Retained Personnel, but will undoubtedly assist in addressing the recruitment & retention problems, which presently see a shortfall of over 3,000 posts.

I hope this clarifies the matter.

Ken Ross
Scottish Regional Secretary

16th September 2004
Scottish Parliament  
Justice 2 Committee  
Tuesday 14 September 2004  

[THE CONVENER opened the meeting at 14:07]

Fire (Scotland) Bill: Stage 1

The Convener (Miss Annabel Goldie): Good afternoon. I welcome everyone to the 25th meeting of the Justice 2 Committee in 2004. Our purpose this afternoon is to continue our scrutiny of the Fire (Scotland) Bill and I am very pleased to welcome the witnesses from the Chief Fire Officers Association: Brian Murray, from the Highlands and Islands fire brigade; John Williams, from Grampian fire and rescue service; David Wynne, from Dumfries and Galloway fire brigade; and Brian Allaway and David Millar from the Lothian and Borders fire brigade.

Do any of the witnesses want to make an introductory statement?

John Williams (Chief Fire Officers Association Scotland): Yes, convener.

Good afternoon, ladies and gentlemen. First, I thank the committee for giving the Chief Fire Officers Association the opportunity to deliver an oral submission. We welcome the publication of the Fire (Scotland) Bill as a positive piece of legislation that will deliver better fire and rescue services in Scotland and provide a greater focus on the safety of Scotland’s community. We particularly welcome the bill’s provisions on fire safety and fire investigation. However, in our formal submission, we highlight a number of questions and issues that we wish to raise and that we have categorised as strategic comment, operational dimension and detailed observations. Today, CFOA Scotland would like to take this opportunity to amplify the issues that we have already identified as being of strategic concern to us.

As far as ministerial powers are concerned, we acknowledge that it is correct and proper for ministers to have appropriate powers in certain areas for the overall governance of the Scottish fire and rescue service. However, we remain concerned about the range of additional powers that ministers are proposing to take in the bill. Part of the previous debate on introducing new legislative proposals related to replacing ministerial power with increased accountability and responsibilities for fire authorities.

The bill does not appear to support that principle. There are some 27 areas in the proposed legislation in which Scottish ministers intend to take powers to direct the way in which local authority-governed fire and rescue services will be managed. It is considered that those proposals will have significant implications for the management of the fire and rescue authorities. Areas in which ministers propose to take powers are shown in appendix 1 of our submission.

As regards the governance and management of the fire and rescue service, CFOA Scotland supports the need for a clear and unambiguous understanding of the responsibilities and accountabilities of ministers, fire authorities and fire and rescue service managers. Otherwise, a diminution of standards could occur and confusion in areas of governance could arise. In particular, at present, the Fire Services Act 1947 provides for a firemaster to have direct responsibility to the fire authority for the efficient management of the service. Specifically, section 19(2) says:

‘the chief officer of the fire brigade … shall be directly responsible to the fire authority’.

CFOA Scotland contends that the same provision should be contained in the Fire (Scotland) Bill to ensure that appropriate professional advice is provided directly to fire and rescue authorities. We would consider that to be consistent with, and supportive of, the Executive-sponsored principles of integrated risk management planning.

CFOA Scotland is committed to the development of more effective and efficient fire and rescue service provision in Scotland in accordance with the principles of best value. However, we are of the opinion that there needs to be greater clarity regarding the future structure of the Scottish fire and rescue service—in particular, regarding the size and numbers of fire and rescue services as they relate to the minister’s proposals on the number of fire and rescue service command and control centres and to the bill’s proposals on the development of a common fire service agency. Those topical areas are critical to the efficient operation and governance of the service.

Our view of the development of a common fire service agency is that it will be an overly bureaucratic forum that will add very little benefit to the service. CFOA Scotland maintains its view that further development of present arrangements of governance of the service, and the practical implementation of joint working arrangements between brigades, would allow the policy objectives of ministers to be met without the need to create an additional layer of bureaucracy for the service. Such an additional layer, together with an unnecessary financial consequence, is what a common agency would provide. CFOA Scotland
believes that its members can, by maintaining existing governance arrangements with fire authorities, support the delivery of the efficiencies, economies and effectiveness that the Executive seeks. CFOA Scotland has developed a strategic model to support its contention and would be pleased to discuss the details further with the Executive.

Finally, on the issue of fire service command and control rooms, we have submitted—under separate cover to the Executive—a detailed commentary on the Executive’s consultant’s report on the future of fire service control rooms in Scotland. Of the small number of possible options presented, we consider that the option of having three fire service command and control rooms, with a west, east and north distribution, would best meet the resilience and operational requirements of the service.

As with most issues of this kind, some clarity is required on the financial data identified in the consultant’s report, on which the consultant’s recommendations are very much based. CFOA Scotland has difficulty in reconciling the financial information to the human resource needs identified. We are firmly of the view that the projected savings are very much overstated. Detailed comments on the specifics of those matters have been made to the Finance Committee in response to its invitation to provide comment on the financial implications of the bill.

Once again, many thanks for the audience. We now invite the committee to ask any further questions as necessary.

The Convener: Thank you, Mr Williams. Incidentally, I should have passed on to the committee an apology from Nicola Sturgeon. I am sorry that I forgot to mention it.

One of the broad concerns of your organisation is the delicate issue of the balance between local operational flexibility and ministerial control. You mention the 27 instances where the association has identified the potential for ministerial intervention. I presume that the areas of most powerful intervention are under sections 2 and 34, which concern the ministerial power to constitute joint fire and rescue boards, and under section 35, which concerns ministers’ power to issue directions in pursuance of the arrangements mentioned in section 34. Do you have a broad concern that the bill has not got the balance right, or, if individual concerns were addressed, would your association be more relaxed?

Brian Allaway (Chief Fire Officers Association Scotland): It is a combination of both those things. From the way in which the bill is drafted, it appears that the minister will reserve powers to manage just about anything with regard to the service. You have brought to our attention two sections that will grant fairly broad powers. We are reasonably relaxed about section 2. However, I bring to your attention section 11, which gives the minister powers with regard to specific incidents. We are not sure how that would work in practice with regard to the command and control responsibilities that are currently vested with the firemaster.

The Convener: Might you be happier if that section were more precisely defined? Is there a situation in which you would not mind ministerial intervention as envisaged in section 11?

Brian Allaway: Yes. We would not mind the ministerial intervention that is granted in section 2—we think that that is proper. We may want it to be expanded somewhat to allow fire authorities to carry out the actions that are set out without the requirement for ministerial intervention. However, we have more specific concerns about section 11. We would prefer the firemaster’s responsibilities to be more clearly defined with regard to the management of the operational resource on behalf of the fire authority. We would like that section to be redrafted.

The Convener: The issue strikes at the whole question of governance—who is in charge at any one time—which, judging by the introductory remarks of Mr Williams, is a concern. What do you think should be done to clarify the relationship in respect of governance?

Brian Allaway: We believe that the framework document that the Executive signals in the bill is the way forward on that. The Executive has indicated that it will consult on that. The framework would give the Executive the opportunity to give the appropriate level of direction to the fire service. We believe that the governance of the service should rest with the fire authorities and that the management of the service should be delegated to the firemaster.

The Convener: When questioned on the fact that the provision in the 1947 act for the firemaster to have a direct responsibility to the fire authority is not replicated in the bill, the Executive witnesses seemed to be of the view that that would be best left to employment terms and conditions. Is that acceptable to you?

Brian Allaway: No. That will start to take away the responsibility of the firemaster to the fire authority for the effective and efficient delivery of the fire service and it will start to blur the lines and make much less clear where the lines of accountability lie.

The Convener: From what you have said about the balance of power and accountability, it seems
that some of it could be tweaked by more specific drafting in the relevant section and that some of it can perhaps be revealed by the national framework document. Is there any part of the bill that you think is simply irrelevant to the provision of a modern, efficient fire service?

Brian Allaway: It is not about being relevant; it is about being much more specific and making clear the lines of responsibility and accountability between the three levels of governance of the fire service. Currently we have a bill that would provide three levels of governance—an Executive level, a local government level through joint fire boards and a managerial level. We do not believe that the bill makes those lines of responsibility clear enough to enable us to ensure that things do not get clouded and that confusion does not arise as to the specific responsibilities of those three groupings.

Karen Whitefield (Airdrie and Shotts) (Lab): I draw to your attention part 1 of the bill and specifically section 1, which is on fire and rescue authorities. Many of the submissions to the committees have suggested that there needs to be a clear legal definition of the extent of each authority. How do you feel about that? Do you think that part 1 and section 1 have got it right?

Brian Allaway: An opportunity could have been taken to clarify current concerns. At the moment, the fire authorities’ area of responsibility in relation to inshore and offshore incidents is not clear in the legal definition, which we would like to be tightened up so that fire authorities are aware of their areas of responsibility.

Karen Whitefield: Do you believe that the amalgamation scheme arrangements set out in section 2 will provide for joint fire and rescue boards where appropriate?

Brian Murray (Chief Fire Officers Association Scotland): We do not have a great problem with the way in which section 2 is drafted to allow powers to be taken. However, given the fact that this legislation could last for a long time, authorities might see a benefit in combining and they should have the power to do so, if they so wish, in pursuance of best value and meeting the needs of the community.

Maureen Macmillan (Highlands and Islands) (Lab): Sections 7 to 10 outline and define the main fire and rescue functions. Those are promoting fire safety, which is to do with providing information on preventing fires and death or injury by fire and providing advice on how to prevent fires and to restrict their spread in buildings and other property; firefighting, which is to do with extinguishing fires and protecting life and property; and acting in road traffic accidents and other emergencies. Do you think that any other duties or functions ought to be added to that?

David Wynne (Chief Fire Officers Association Scotland): One of the areas that we believe could be improved is the fire service’s role in prevention and protection beyond fires. For example, the fire service could play a proactive role in supporting communities in preventing floods and mitigating the effects of floods before they occur.

Maureen Macmillan: Thank you. Does anybody wish to add to that? Perhaps I could share my thoughts and see whether you want to comment.

The Convener: Could you put that in the form of questions for the witnesses?

Maureen Macmillan: Yes. Do you think that the provision to restrict the spread of fires in buildings and other property and to protect life and property will cover forest fires, heathland fires and grass fires? In the area where I live, which is covered by Brian Murray’s brigade, we have a considerable number of such fires. Should those types of fire be mentioned specifically and should we perhaps address the environmental issue of destruction of flora and fauna? Is that covered in the duties? If not, should it be?

Brian Murray: The bill states:

> “each relevant authority shall make provision for ... extinguishing fires in its area”.

However, on some occasions we need to control fires before we finally extinguish them, in the interests of the environment. That is one of the finer points. The duty to extinguish fires covers forest areas as well—we see that as an important area of work and we have an important role in protecting the environment.

Maureen Macmillan: Would you like that to be included in the bill?

John Williams: We have always assumed that property is taken in its widest possible definition and includes the areas that you referred to, such as heathlands and forests, and that the definition is not strictly confined to buildings, but perhaps that was remiss of us. If the bill was far more focused and defined property in its widest possible sense, we would support that. To support what Brian Murray said, I think that the environmental impact is an important aspect and that we need to consider the way in which other legislation is being taken forward, particularly in relation to the environment. Extinguishing fire can be the last thing that we want to do, as opposed to controlling fire, so we would generally support those provisions if you could get them put in the bill.

Maureen Macmillan: Perhaps we should ask the Executive to define the words “property” and “life”.

Karen Whitefield: I wish, in pursuance of best value and meeting the needs of the community, that you think is simply irrelevant to the provision to restrict the spread of fires in buildings and other property and to protect life and property; firefighting, which is to do with extinguishing fires and protecting life and property; and acting in road traffic accidents and other incidents. Do you think that any other duties or functions ought to be added to that?
Brian Allaway: I will pick up the point about areas that are not well defined, or even not included, in the bill. Part of our work that is very topical is our response to what we call new dimensions incidents, which might be caused by terrorists. The service is working up its ability to carry out search and rescue operations, not only in urban areas but in rural areas, and we had a fairly major example of that at Maryhill in Glasgow recently. Since then we have carried out two rescue operations in my area, one at a collapsed trench in West Lothian only last Saturday and one at a collapsed building in Leith a couple of weeks ago. We think that that area of work should be specifically included in the bill, to give the fire service a duty or responsibility to carry out the wider search and rescue role that we are asked to fulfil. [Interruption.]

The Convener: I am sorry, Mr Allaway. We have some interference, part of which is electronic and is being attended to but part of which is quite outwith my control. One of the clerks will go and investigate. I am sorry about that interruption.

Did I hear the phrase “new dimensions incidents” correctly? Will you clarify that?

Brian Allaway: Yes. Since the horrific incident in New York on September 11 three years ago, the emergency services throughout the entire country have been working up their ability to respond to such incidents. I am sorry for using fire brigade jargon. We refer to new dimensions incidents, which are major explosive, radiological or nuclear hazards that involve a commitment to search and rescue, normally in urban areas but also in rural areas.

The Convener: Would you like that to be included in the bill?

Brian Allaway: Yes, indeed.

Jackie Baillie (Dumbarton) (Lab): That is one of the points that I was going to raise, but I will raise another minor one. We are aware of the United Kingdom sea of change project and I wonder whether you have any views on whether offshore firefighting should be included in the bill, with your boundaries being specified to accommodate that.

Brian Allaway: Part of my response earlier was designed to indicate that we need some clarity so that we can respond to such incidents. Brigades in Scotland are involved in the sea of change project and we believe that the bill should be designed in such a way that that offshore firefighting is not precluded. Whether or not it would become a specific responsibility in the bill is something that I would leave to the draftspeople who are building it up, but we certainly would not want to be restricted in our ability to fight fires offshore.

Karen Whitefield: You will be aware that, prior to the publication of the bill, the Executive consulted at length. One of the aspects that was consulted on was the creation of a common fire services agency. We heard from Executive officials last week that they had chosen not to include those proposals in the bill, and I would be interested to hear whether you agree that there are ways in which you can allow for greater partnership working by authorities without the creation of an agency.

Brian Allaway: Yes, we would be very much in agreement with that. We believe that a common fire services agency could result in nothing but additional bureaucracy and likely additional cost. We have done quite a lot of work on developing a model that we believe could enable fire authorities to move forward with much more collaboration. It may be that the bill could include a section giving fire authorities a duty to collaborate, which would provide the necessary statutory framework for that to happen.

I have a document that puts our proposals into diagrammatic format. There is obviously a lot more detail behind it, but it is basically about joint project boards reporting to a strategic overview committee, with performance reporting to the Scottish Executive—to keep the Executive involved—and final reporting back to the existing fire authorities. We believe that that model could be put in place within existing resources in the main, and it would avoid the need for the additional bureaucracy and costs.

I am not sure whether you would like me to pass the diagrams round at this point, convener, or whether you would like them sent to the committee afterwards.

The Convener: If they are available, the clerk will pick them up. That would be helpful.

Karen Whitefield: Would I be right in thinking, based on your response to the previous question, that you would prefer the bill not to be silent but to have some reference that would allow for your model, to guarantee that there would be cooperation where that would benefit the sharing of resources across authorities in Scotland?

Brian Allaway: We feel that that would be very helpful. Indeed, there is a current legislative model that could be considered as a way of doing that: the Local Government in Scotland Act 2003.

Karen Whitefield: Is the Convention of Scottish Local Authorities discussing those suggestions with Scottish Executive officials on your behalf?

Brian Allaway: We have been discussing them with COSLA and we have also discussed them with Scottish Executive officials. I am not sure, to
be honest, whether COSLA has had any discussions with the Scottish Executive officials on that issue.

Karen Whitefield: Perhaps that is an issue that we can raise with COSLA representatives when they come to the committee.

Maureen Macmillan: I have some questions about fire control rooms, which you mentioned in your introduction. We have seen the separate submission that you made to the Executive, and we have also seen the one from the Highlands and Islands joint fire board. There has been a suggestion that Mott MacDonald’s report did not properly address the functions of a control room. When you say that you are content to move to three centres, I wonder whether that is just making the best of a bad job or whether you feel that there could be benefits from having fewer centres. [Interruption.]

The Convener: I apologise for the noise. We are trying to get it stopped for the duration of the committee meeting, but apparently we cannot get to where it is happening, so there is a physical impasse at the moment.

Maureen Macmillan: Call the fire brigade.

John Williams: We will try to speak above the noise.

The Convener: Our clerks are trying to see what they can do. I am sorry.

John Williams: A move to three control rooms is making the best of the options that were presented to us in the consultants’ recommendations. All along CFOA Scotland has been consistent in saying that each brigade should maintain its own control room for several operational reasons.

CFOA Scotland was also consistent in saying that the Mott MacDonald report was fundamentally flawed because it was developed round the number of incidents that a brigade attends as opposed to the number of calls to incidents that a brigade receives. For example, we could get as many as 40 calls to one incident. Each of those calls has to be dealt with and processed in exactly the same way as they would be if they were 40 different incidents. We have to do that to confirm to ourselves that it is the same incident that is being spoken about. Very little of that work was acknowledged in the original Mott MacDonald report.

The Executive asked Mott MacDonald to do another review and sleight of hand was used in the move from calls to incidents and raising the threshold from 20,000 incidents to 30,000 for no apparent reason. The second report does not say why that was done. I think that it was to maintain some kind of threshold so that the options of one, two or three control rooms could be provided.

Maureen Macmillan: You obviously have concerns about what would happen if the number of control rooms was reduced. What are those concerns?

John Williams: We are concerned about the loss of local knowledge. Perhaps a Welshman is not the right person to speak about this, but, in my area, Grampian, people speak in the local Doric accent and that has an influence with our control room operators. We are considering proposals that calls from Tayside, Grampian and the Highlands and Islands would be received in Aberdeen. We could say that the issues of local dialect and knowledge are covered in my area, but how do we deal with the Gaelic calls that will come from the Highlands and Islands? The same issues exist throughout the rest of the country and must be reflected. The consistent way in which to do so comes back to my original point that each brigade should maintain its own control room.

David Wynne: I have another point to add about what is technically termed resilience, or the ability of the fire service to deliver its services in larger-scale incidents. One of our concerns is that currently the eight fire brigades are coterminal with eight police force control rooms. Fire control makes a significant contribution to the local joint emergency management arrangements that have been developed under the Civil Contingencies Bill. By going to a different model, we would finish up with a different structure for police, fire and ambulance control rooms. We are concerned that that would make a difference to our ability to deliver our services in terms of resilience.

Maureen Macmillan: The ambulance service control rooms were rationalised not so long ago and we have an ambulance control room in Inverness that also covers Grampian. Is there a difference between what ambulance control rooms and fire service control rooms have to do?

John Williams: There is a fundamental difference in that a fire service control room operator provides a different kind of advice from that provided by an ambulance control room operator. An ambulance control operator would tend to give advice on immediate first aid and how to respond to the needs of a patient or casualty. The fire service would give advice on the safety of an individual who might be trapped in the building. We are able to produce tapes of a number of such calls. There is a fundamental distinction between the two. If you are asking me whether one operator could do both functions, I would have to say no.

Maureen Macmillan: No, I was thinking more of the geographical area that is covered by the
control rooms. There is no problem with the ambulance control room covering Grampian and the Highlands and Islands, although there were concerns when it was first set up in that way.

John Williams: It does not make any difference whether the control room is located in Inverness, Aberdeen or Dundee. In our part of the country, the recommendation was made that the control room would probably be located in Aberdeen, but it makes no difference from my perspective if it is in Inverness or Dundee. We need to come back to the basic point that we made at the outset of this discussion, which is that each brigade should maintain its own control room.

Maureen Macmillan: But if that is not possible, what should be the criteria for reaching a decision?

John Williams: The obvious conclusion is to rationalise the number of brigades to the number of control rooms.

Colin Fox (Lothians) (SSP): I am sorry to prolong this discussion, but I have a supplementary question on control rooms. Your submission seems to express scepticism about the savings that the Mott MacDonald report concludes would be available. It seems that going from eight to three control rooms would save us the costs of five control rooms. What savings do you think would be made?

John Williams: I will hand that over to someone who has a far better handle on the financial aspects than I do.

David Millar (Lothian and Borders Fire Brigade): The bill identifies potential savings of £3 million from reducing the number of control rooms to three, but reconciling the figures is difficult. Our view is that they have probably been overstated by about 30 per cent. It is proposed that staff will be redeployed from control rooms to brigade activity, but brigades have no budgets for those staff, therefore that money has got to be found. So there are savings, but they have probably been overstated.

Brian Murray: Control room staff do more than just respond to emergency calls and turn out the fire engines; they perform a range of other duties. The Mott MacDonald report focuses purely on mobilising fire engines—I understand that the costs that it lists for control room duty apply purely to mobilising. The other functions that are performed by control room staff have been left out of the financial calculations, but that work would have to continue.

Brian Allaway: We also believe that the report underestimates the transition costs. If any change is decided upon, costs will be attached to it.

The Convener: I ask members to keep their questions fairly crisp. There is still a lot of material to get through.

Mike Pringle (Edinburgh South) (LD): Section 15 is on charging, which appears in your list as something over which ministers can take ministerial powers. First, are you content with those provisions? Secondly, what should charging orders cover? The answer might be different for each of your areas, so you might all want to respond. Thirdly, subsection 4 of section 15 refers to authorities charging for things. Will it not cause considerable confusion if each authority charges for some things and not others, and authorities charge different amounts for different things?

David Millar: The provisions on charging, while broadly welcome, are restrictive. It is proposed that an order will be made to specify the extent of charges and who can be charged for particular activities. That does not necessarily reflect what happens on the ground at the moment, where brigades have fairly well-developed arrangements for income generation through charging mechanisms, particularly in the realm of industrial training. The bill's provisions seem to prevent us from carrying on with those activities, which is a downside. We wish to maintain our ability to generate income.

Mike Pringle: I do not know whether anybody else wants to respond. Does anybody else have a view on what you should and should not charge for?

14:45

John Williams: Yes. David Millar made points on the general provisions on charging, and part of our response spoke about the lack of a requirement on the minister to consult on developing a charging order in the first instance. We would like consultation on that for the reasons that Mike Pringle has identified. Not being able to apply certain charges will have significant implications for brigades' revenue budgets, because charges are a major element of them. We would like to extend the charging provisions to include charging for attendance at calls that transpire to be false alarms.

A judgment in England and Wales from some years ago precludes brigades there from charging for attending false alarms; that judgment was based on the framing of the 1947 act in respect of brigades attending a fire—it is not known that a call is a false alarm until after it has been attended. Clearly, we would like that aspect to be considered in detail during the bill's development to avoid a similar decision being made in the future. All brigades in Scotland are making efforts to reduce the impact on them of attending false
alarm calls, but what we have is very much a toothless tiger. We can write to and discuss matters with individual occupiers of premises until the cows come home, but only a financial penalty would have the desired effect on them. For example, a business might have to provide a fire authority with, say, £50,000 a year for attending false alarms at its premises.

In Grampian, we spend close on £500,000 a year on attending false alarms. Clearly, when that is replicated across the eight services, it is a huge waste of resources.

Mike Pringle: David Millar referred to the question of the income that his service gets from training—industrial training, I think he said. That is clearly a revenue stream for all the brigades. You mentioned the loss of other revenues. What other areas are you fearful of not being able to continue to charge for if the bill goes through as drafted?

John Williams: The loss of revenue from charging would not happen purely because of the bill, because there is also the impact of the Freedom of Information (Scotland) Act 2002. Currently, insurance company loss adjusters ask brigades to provide information on incidents that we have attended and we charge for that to cover administration costs that, in the worst cases, can be between £40 and £50. However, because the administration cost is less than £100, the 2002 act precludes us from applying a charge at all. We get 300 to 500 such information requests a year and not being able to charge for them has a significant effect on our bottom line. If we cannot generate income to cover the cost of dealing with such requests, the only other place that it can come from is the council tax.

Mike Pringle: Have you thought of just charging more than £100?

John Williams: Yes, but because of how the 2002 act was drafted we might be faced with a challenge to such a charge that could result in our being able to charge only 10 per cent of that. We are between a rock and a hard place on this issue. The bottom line is that our opportunities for income generation are much reduced because of a range of legislation and the bill will not help that situation. I do not know whether the bill can include a provision to disable elements of the 2002 act. Members are shaking their heads, so obviously that is not possible.

Brian Allaway: By the very nature of these things, we tend to give evidence about matters that we are not particularly comfortable with. We are comfortable with many things in the bill, which we think will help us to modernise the service and move forward. One of the charging aspects that we are comfortable with is that fire authorities will be specifically precluded from charging for emergency work and we think that that provision should be supported. I thought that I would try to get something positive in this afternoon.

The Convener: Oh, we are not for one moment inferring that you are not positive. However, it is our business to try to push you on the slightly more contentious areas.

Jackie Baillie: It falls to me to ask you about the thorny subject of water hydrants, on which it appears that there is no agreement. The bill suggests that they should be your responsibility and you suggest that they should be the responsibility of Scottish Water or its successor body. Why do you think that?

John Williams: We currently operate under the provisions of the Fire Services Act 1947 and schedule 3 to the Water Act 1945, which says that the cost shall be defrayed to the fire authority. The service that was provided in 1947 was very different from that which is provided today. Fire hydrants are used for far more mundane purposes than those for which the fire service uses them. I would go so far as to say that there are few occasions on which the fire service uses fire hydrants. Even though they are used by councils and private contractors, if they are damaged, the cost for their repair is defrayed to the fire authority. The water undertaker utilises that clause to ensure that we pay the bill. We do not think that that is right, particularly when the water undertaker has a licensing arrangement whereby it authorises a contractor to use the hydrants. I think that, in that case, the bill should be picked up by the water undertaker.

We have extended our comments to include new developments, whose water mains should be provided by the developer or the water undertaker. In itself, that seems fairly obvious. However, the water main in a new residential area would simply be a 1in-capacity pipeline, which would not provide the volume of water that we require to extinguish a fire. We want there to be a minimum specification of water pipes so that we are able to access the volume of water that we need if we are to extinguish a fire. The minimum that we would be looking for would be about 75mm or, in old money, 3in.

Colin Fox: Earlier, you said that you thought that the national framework document was sufficient for ministers to give direction to authorities. Am I to infer from that, in principle, you support the introduction of a framework document?

Brian Allaway: We support that in principle but we have not yet seen the detail that lies behind it. We would want to be involved in the consultation process as it is developed.
Colin Fox: Are there any specific aspects that you would want to be covered in detail in the bill?

Brian Allaway: I am not sure that the primary legislation would be the place for detail. It would be better if the framework document contained the detail. We are particularly pleased that the framework document will be reported to the Parliament as it is implemented. We are also pleased that the Executive has signalled that it will consult prior to preparing it.

Colin Fox: Would the details relate to the establishment of clear lines of responsibility and a balance between ministers’ centralised powers and local decision making?

Brian Allaway: No, I think that those issues should be dealt with in the bill. The framework document should deal with the responsibilities of fire authorities and their fire brigades, the standards to which they are expected to perform and the audit and public reporting of performance in relation to those standards.

Jackie Baillie: The bill seeks to abolish the Scottish Central Fire Brigades Advisory Council. I gather that you are supportive of that proposal. What negotiating arrangements would you expect to have in place of that body?

Brian Allaway: We have worked out what we have called a three-level approach to the governance of the Scottish fire service. Convener, I am sorry, but I have another diagram—I am a terrible person for diagrams but I think that, sometimes, they can say a lot more than words. Perhaps the clerk could pass it around.

The Convener: I am very happy for the clerk to do that.

Jackie Baillie: I think that we have the diagrams in our original papers.

Brian Allaway: This is a different one.

We believe that there should be a three-level approach to the governance of the Scottish fire service. We describe the first level as a practitioner level, which we believe would take into account the representative bodies and the management areas of brigades. We believe that the outcomes from that level could be consultation and consensus, which should feed into what we have described as an employers’ level, which would consist of representatives of the fire authorities—probably advised by firemasters—and representatives of the work force. We believe that the outcomes from that level could be negotiation and, wherever possible, agreement. The third level would be a ministerial level, at which we believe the minister may wish to set up a ministerial advisory group. The outcomes from that level would be advice to the ministers, including advice on requirements for primary or secondary legislation. We believe that that would be an effective governance model that would take into account all the needs of the various stakeholders and should enable us to move forward with some confidence into the brave new future, if I can describe it as that.

Jackie Baillie: Your literary aspirations are evident.

Although that is one suggestion, I think that there are legitimate concerns about the duties imposed on ministers to consult, because although, in a practical sense, your model could work, there is a genuine fear that, unless there is a specific duty on the minister to consult with fire service bodies and trade unions, the consultation might not be adequate. I wonder whether you accept that, in your brave new world and brave new model, a duty to consult could also be incorporated and would not run contradictory to your proposal.

Brian Allaway: We believe that that could and should happen. I understand that, under the current legislation, when the Executive intends to make regulations or introduce new primary legislation there is a duty on it to consult. We suggest that the Fire (Scotland) Bill does not require a specific requirement to make that happen.

Jackie Baillie: Sure, but rather than have a generic duty on ministers to consult over everything, there would be no harm in focusing on the fire service.

Brian Allaway: Yes. Parts of the bill already do that, which indicates that the minister would consult when he or she is planning major changes—specifically, changes to primary or secondary legislation. We believe that that should be a duty on ministers.

Brian Murray: On consultation, I refer back to the framework document. We would like to see the consultation being widened beyond that stipulated in section 36(6) and therefore beyond the authorities and the persons who represent employees. We feel that there could be a role for wider stakeholders.

Jackie Baillie: Such as?

Brian Murray: Bear in mind the fact that the framework document will lay out directions for the fire service, businesses and the Fire Protection Association. There are other interested parties—communities themselves may wish to have a say in the direction in which their fire service is going.

Brian Allaway: The framework will be a governance model that looks at brigades’ integrated risk management plans. The Executive has already given guidance to fire authorities and brigades about how and whom they could consult.
That model could perhaps also be applied to the framework document.

The Convener: The questioning has surrounded section 45, which is about the statutory negotiation arrangements. The desire of the committee is to ascertain who you think, in the exercise of that function, the Scottish ministers should include as statutory consultees. That is distinct from what might be seen as the more fluid environment of the national framework document. Can we clarify who you think the statutory consultees, under section 45, should be, or would you like to reflect on that matter and drop a note to the committee about it?

Brian Murray: I would prefer to have some time before I commented on that question.

15:00

Mike Pringle: A number of people who have submitted evidence have expressed concerns about section 47, on the prohibition on the employment of police. Section 47 says:

“No member of a police force may be employed by a relevant authority”.

The Executive has already suggested that the role of the retained or voluntary fire officer would conflict with the duties of a police officer. Do you agree, or do you think that section 47 should not be included in the bill? Moreover—

The Convener: Let us keep things simple. How would the witnesses respond to that first question?

Brian Murray: I would certainly welcome the removal of section 47, because it is difficult enough to recruit people in some areas. Those people want to serve the community and might have a number of different roles. Although the provision might not prove a huge barrier at the moment, I do not think that we should have any barriers whatever.

John Williams: Section 47 begins with the phrase

“No member of a police force”.

I think that Brian Murray was specifically referring to special constables, who want to provide a service within the community and could well undertake the role of a retained firefighter. It would help if the phrase “No member” could be clarified or if certain exclusions were specified. We understand why full-time constables cannot become firefighters, and feel that section 47 simply replicates in many ways what is already set out in the 1947 legislation.

Mike Pringle: Is there a conflict between the duties and roles of a police officer and those of a fire officer?

John Williams: There is a conflict between the role of a professional police person and that of a special constable. Allowing special constables to be utilised as firefighters would help matters, because it would mean that people in communities would be available to serve on either force or on both.

Mike Pringle: As the representatives of four fire authorities, do you have any idea of the number of policemen on your force—either special constables or full-time policemen—that this problem affects? You might not be able to answer the question now, but it would be interesting to get the facts on the matter.

John Williams: I can say that Grampian fire and rescue service employs no special or professional constables, simply because the 1947 act precluded us from doing so. Obviously, Brian Murray and David Wynne can speak for themselves on the matter.

By and large, the service that we are able to provide and the equipment that is available to communities, particularly more rural communities, can be described as sporadic. Aberdeen draws so much employment from more rural communities that they become dormitory towns, which means that people are no longer available to provide the service. That takes us back to the point that if some community-spirited person wishes to become a special constable, we see no reason why they should not also be able to become a retained firefighter. However, the fact that section 47 refers to “No member of a police force” would preclude that person from undertaking that role.

Mike Pringle: Did I understand you correctly? Did you say that the 1947 act currently does not allow you to employ police? Is that what you said?

John Williams: Yes, that is what I am saying.

The Convener: The provision just repeats the prohibition in the 1947 act.

Colin Fox: Part 3 of the bill deals with fire safety duties. A number of concerns have been raised with us about whether the powers under that part of the bill will allow people to carry out those duties effectively. Do you have any concerns or remarks to make about that?

David Wynne: I am not aware of any concerns about those powers. In fact, we welcome the duties that the bill will place. Our comments are more about enforcement and the fire service’s performance over a number of years, since a series of tragic incidents and the introduction of legislation. The proposed legislation is an enabling bill and further discussions on the detail will take
place, but we support the fire service undertaking a risk assessment and inspection role, which would maintain public safety standards.

Colin Fox: So it is largely a matter of enforcement.

The Convener: You wanted to ask about the co-ordination of fire authorities and other authorities.

Colin Fox: Do the witnesses have any concerns about co-ordination between fire authorities, about the powers that are being conferred on employers and employees and about how the different parties would liaise? Is there a danger that the proposed arrangements might lead to a duplication of effort?

David Wynne: If I understand your question, I would say that we do not so much have concerns, but we believe that small businesses require particular support, which might be a combination of support from the Scottish Executive, the fire authorities and other parties. Small businesses will find it particularly burdensome to have new duties placed on them if they do not have the capacity to deal with risk assessment or adequate risk assessment expertise. I am not sure whether that has answered your question.

Colin Fox: That is fine.

Jackie Baillie: I will highlight a specific example, which we tried to discuss with the bill team last week: the whole question of the licensing of houses in multiple occupation—HMOs. I understand that, in areas where local authorities have dedicated teams, they have, by and large, seconded fire officers to be part of them and to carry out risk assessments. Our concern, which you have started to develop, would be one of duplication. Do you envisage that risk assessment role as properly belonging to yourselves, or do the current arrangements work? At a practical level, why are we messing with them?

David Wynne: That was a number of questions in one. I am not sure that I will be able to give you an adequate response to all of them today. There is certainly evidence that houses in multiple occupation account for a higher proportion of fire deaths than does the private sector or even other public sector housing. One might argue that the current arrangements are not performing as well as they could, and I would like to take more time to consider how we might improve those arrangements. I believe that the fire service should play an important, pivotal role in contributing to that aspect of risk.

John Williams: The bill goes a long way towards rationalising the issues that you are speaking about. Various agencies are involved in fire safety, and all of the issues are now encapsulated in the framework of the bill. We very much support that approach. For houses in multiple occupation, the duty is placed on the local authority. In other businesses, the duty is placed on the occupier of the premises. If the duty is with a body, that body must be seen to be enforcing the legislation. Our point is that, the smaller the business, the more undertaking risk assessments becomes an onerous burden. The brigades and fire and rescue services are there to support people in doing that.

The concept of risk assessment has been with us for some eight to 10 years now. It is fair to say that we are beginning to see a degradation of general fire safety standards. To be honest, I have no evidence to support that, but that is my intuition. I simply do not want people to have to sit in a forum like this in 10 to 15 years’ time to consider how to develop new fire safety standards as a consequence of a major disaster. That is the last thing that we would want.

We need to make the current regulations work. Those who have a duty under those regulations must enforce that duty. I can assure the committee that we will enforce the provisions of the legislation for which the fire service has a responsibility.

Jackie Baillie: Sorry, but the issue is becoming less clear. At the moment, the duty for HMOs is placed on local authorities and the fire service is a statutory consultee. The system works, not just from the point of view of fire risk assessments but from a whole host of other angles. If our intent is to avoid duplication so that the fire service does not show up one day and someone else shows up the next to inspect the same establishment, why should that duty be transferred to the fire service when the current set of arrangements appears to work?

David Wynne: There are two aspects: people need to be aware of their duties and responsibilities and they need to comply with them. Perhaps I did not make this clear enough, but the fire service can manage a risk-based inspection regime by ensuring not only that people are aware of the duties that must be discharged but that they comply with those duties regularly. For premises that have a poor performance record, such as houses in multiples occupation, we would seek to apply that inspection regime more rigorously to ensure compliance.

Jackie Baillie: Are you suggesting that fire officers that are currently seconded are less rigorous than they would be if the fire service had that duty?

David Wynne: No, not at all. I am suggesting that, through our integrated risk management programmes, we could increase our attention on
poor-performing categories, such as houses in multiple occupation.

Jackie Baillie: I look forward to the written response.

The Convener: Jackie Baillie makes an important point. I seek clarification from Mr Wynne or one of his colleagues on one issue. We recognise that the bill will do a great deal to modernise the provision of the fire service in Scotland. By its very nature, the bill will shift certain relationships so that certain things that were once in broad emphasis will be in less obvious relief. What Jackie Baillie is trying to discover is whether the bill will prejudice in any way the continued operation of the sensible arrangements that exist on the ground for co-ordination among authorities. At the moment, the local authority is the body that is legally liable for the licensing of houses in multiple occupation. Is the bill likely to interfere with the existing arrangements? That is the first question.

John Williams: The short answer is that I do not think that it will.

15:15

The Convener: That is reassuring; thank you. If members have no other questions, on their behalf I thank Mr Williams and his colleagues for their helpful evidence this afternoon, which has assisted us in understanding how the bill’s provisions will operate. We appreciate their presence with us this afternoon.

I welcome representatives from the Fire Brigades Union Scotland: John McDonald, the executive council member for Scotland; Ken Ross, the Scottish regional secretary; and Frank Maguire, a solicitor for the FBU. Many thanks for attending. [Interruption.] I had hoped that the spectre of the phantom drill operator had been successfully transported to some far-flung spot, but apparently not, as we can still hear the noise of drilling. The clerks will do what they can to get it stopped.

Would the witnesses like to make an introductory statement?

John McDonald (Fire Brigades Union Scotland): The Fire Brigades Union represents 95 per cent of the uniformed work force in the fire service. I will begin by making a request to the committee that I think might be helpful, although I am conscious of the time. We have a fire prevention adviser who has 30 years’ experience in fire prevention departments and who is now an independent consultant. After some of the responses that the committee has heard from previous occupants of these seats, I feel that a bit of expertise might be required. I do not wish to lengthen proceedings, but we have issued members with a list of questions that we would want to be explored with the Fire (Scotland) Bill team. If members have any questions, or if they want a short overview, I will request that Mr Evans be allowed to respond on our behalf. We have been told that we can have only three speakers, but doing that would not lengthen proceedings, I do not think, and it would provide greater clarity.

The Convener: There is no intrinsic objection to your colleague sitting at the table and speaking. For the benefit of the committee, we shall introduce him and explain who he is. However, we have allocated time on the basis of the three of you being present, so all I would say is that, in the interest of keeping things moving, if Mr Evans is to contribute, it might be unnecessary for one of the others to contribute. Perhaps you could introduce him.

John McDonald: Mr Glyn Evans worked in the fire service for more than 30 years as a fire prevention officer. He now works as an independent consultant on fire safety issues. If there are any questions on fire safety, I assure the committee that I will have no hesitation in passing them over to Mr Evans.

The Convener: Could you clarify his relationship with the FBU? Is he a member of the FBU?

John McDonald: He is a former member of the FBU. He was a fire officer for more than 30 years and, as I said, the FBU represents 95 per cent of the work force.

The Convener: But he is not currently a member.

John McDonald: No.

The Convener: For the purposes of evidence taking, we need to be clear about who is giving evidence and in what capacity so, although he is here with you today, will he give his comments in an individual capacity?

John McDonald: Yes. We employ consultants on different areas to gain their expertise.

The Convener: And he is here as your consultant.

John McDonald: Yes.

The Convener: Right. The first area, which you probably heard sketched out in the questioning of the Chief Fire Officers Association, is the broad issue of power and responsibility. One of the intentions behind the bill was to try to create, if not to preserve, local flexibility. I would like your response. You have suggested that the bill centralises and that it does not support local decision making and accountability. May I clarify which parts of the bill worry you?
John McDonald: It would be better if I gave a short introduction to where we are coming from, because we have the same difficulty as the committee, which also does not have the framework document. Would that be helpful?

The Convener: Certainly.

John McDonald: The bill, possibly like the Parliament, is a work in progress. We do not have the framework document, but it is our contention that the framework document will be the driving force for ministerial responsibility. We believe that the framework should be up for debate as the bill progresses through the Parliament, because it will give ministers overall powers of direction. Questions have been asked about which areas the framework document will cover. If we look at the UK framework under the Fire and Rescue Services Act 2004, we see that approximately eight areas are covered, including fire prevention, risk management, working together, effective response, resilience and so on. The problem is that we do not have sight of the Scottish framework document, and there is no doubt that it will give ministers powers of direction for the fire service.

The alleged ethos of the bill is to devolve power to the local authorities. In its previous discussions with the bill team, the committee has identified a problem about where accountability moves back to. As it seems to be a day for graphics, I refer members to one of our documents, in which we present a forum in which ministerial accountability can be considered and all stakeholders can express their concerns, if I can use that terminology. Members will note some of the committees in the forum—the Scottish Central Fire Brigades Advisory Council, the fire safety advisory board that we recently set up and the willful fire raising forum that has just been formed. Members will see from the graphic that the various committees feed into a strategic advisory group, into which the Scottish ministers also feed.

I say that because, in areas of resilience, we do not have any difficulty with there being overall direction—we are well aware of the difficulties of terrorism, for example—but it is unfair, from the public’s and the fire authorities’ point of view, to describe the old SCFBAC as cumbersome. We have provided the committee with the agenda for the most recent meeting of the SCFBAC and members will see that the agenda items concerned the core functions of the fire service. If we are to advance the bill, we must do so on the basis of consultation with all stakeholders. Most important among them are the fire service employees who carry out the work and will have to implement the bill.

I am afraid that the English practitioners forum has excluded the Fire Brigades Union from all but the first tier of the consultation process. I was disappointed that Ian Snedden of the bill team stated that respondents to the consultation had provided no meaningful grouping to replace the SCFBAC because that is not the case. Indeed, the CFOA and the FBU have proposed a model that I ask the committee to consider seriously. That would be helpful for the future of the fire service.

I should have started by saying that we welcome the bill, although we have many areas of concern. I do not wish to knock the bill throughout today’s proceedings, but it is seriously flawed in certain aspects. We have grave concerns about health and safety, as members will see from our submission. Perhaps Mr Maguire will be available for questions about that. We believe that it is the bill’s intent to take the fire service out of the Health and Safety at Work etc Act 1974, yet it is so important for our employees to be covered by that act as well as by European directives.

The bill is silent on the involvement of trade unions in consultation processes, and the bill team did not give an adequate response to questions about that. I believe that its final response was that that was a policy decision. I would like to explore that further. Within any organisation, it is fundamental that trade unions and employees have a statutory right of consultation. The Scottish Central Fire Brigades Advisory Council provided that and an adequate replacement is needed.

There are contentious areas, such as the amalgamation of controls, which I was pleased to hear the committee explore. Members will find from Her Majesty’s fire service inspectorate for Scotland that when the options for amalgamating controls are three, two or one controls, the most likely option is three controls. If there are three controls, the logic is that there will be three brigades. If we have a combination of controls, that will obviously impinge on accountability and reporting-back procedures for fire authorities.

The present legislation is explicit on reporting back, the functions of the chief officers and the element of democratic control. We believe that that should be replicated in the bill. The bill team said that it could foresee a point when the chief officer would not have overall responsibility for the fire service. I find that rather unusual. To use simplistic examples, the chief constable is in charge of the police and the general is in charge of the army. I would hate it if someone were put in place and then a quango was set up and there was no direct accountability.

The fire service is the premier emergency rescue service. Audit Commission reports have shown that we meet response time targets more than 94 per cent of the time. The commission determines that we are the highest-functioning public service, so if someone wants to tinker with
such an important service, they had better be careful about what they do. That is why we express concern that ministerial accountability must exist, because the minister is taking direct powers that will impinge on local authorities.

The chief officers said that the controls provide a first-class service. Less than a minute after they receive a call, an appliance is dispatched and sent on its way to an incident. I will not bore you with the details, as the previous occupants of these seats covered this, but the work that the emergency control operators do is not like running a taxi service; they co-ordinate health and safety, deal with chemical information, record statistics and provide advice in the case of fire. Theirs is a detailed and onerous task. The stress levels at our controls are high, because the staff work long hours and face the difficulty of dealing with horrendous incidents. The eight controls are working magnificently and I would hate to see the element of local accountability taken away.

We have seen recently in Lothian and Borders the problems with the police control, and the ambulance service was referred to earlier. The fire service is one of the only organisations that meets the current statutory times for attendance.

The Fire Brigades Union has supported integrated risk management from the beginning. Integrated risk management was adopted from what was known as the pathfinder report. A trial went on for more than four and a half years, cost £3.5 million and identified areas to move away from the present standards of fire cover, which of course are based on buildings rather than life, and had the full support of the Fire Brigades Union. Unfortunately, the report never came back to the Scottish Central Fire Brigades Advisory Council. It recommended a vast increase in resources and I am afraid that its recommendations have been cherry picked, taking away from what was originally intended. That is partly because of the dispute, which we cannot fail to mention. In my opinion, the current legislation in England and Wales is the child of the dispute and much of what is happening there ignores the evidence from the pathfinder trials.

The important point to remember about the pathfinder trials, which were the precursor of the integrated risk management system, is that when 50-year-old standards of fire cover are replaced, despite all the research, the new system must be piloted, tested and validated prior to implementation. That is perfectly clear, but I am afraid that it was not the case with the integrated risk management system.

15:30
The Convener: From the committee’s point of view, you have already covered a number of areas and that will probably shorten the questioning to some extent, but if we are to have the opportunity of full questioning, perhaps you could mention the principal points that concern you.

John McDonald: Questioning would be the best way to explore the matter. We have provided a lot of evidence that I think might be helpful. The particular areas that we are concerned about are integrated risk management and the democratic control and accountability of the service. We have real fears about the future of that control and about the outsourcing or privatisation of certain areas of the fire service, such as community fire safety. We believe that there is a real threat of that in the bill—I think that there were some vague references to that from the bill team. The fundamental position of the Fire Brigades Union is that the fire service must remain under local democratic control.

The Convener: You eloquently covered the area that I am interested in, which is the balance between local independence and flexibility and ministerial control. I hear clearly what you say about that in relation to the bill and I do not think that I need to explore that further as you have been very specific about your concerns.

Karen Whitefield: My question is on the principal fire and rescue functions as determined in the bill. In your written submission, you rightly welcome the fact that the fire brigade is, at long last, being recognised for the job that it has been doing for some time in relation to road traffic accidents and fire safety duties. However, you express concerns about the conferral of functions in relation to other emergencies. Why do you have those concerns?

John McDonald: I will ask Mr Maguire to answer that but, briefly, we have concerns because that seems to be a catch-all for the minister. However, areas such as training and personnel need to be addressed. The bill is rather wide-reaching and we would rather have a more defined role. The fire service has a can-do attitude, but there are limits to what we can do; we talked earlier about firefighting at sea. I ask Mr Maguire to respond.

Frank Maguire (Fire Brigades Union Scotland): Our concern is that if one is to have an additional function it is useful to know well in advance what that function will be, so that proper risk assessments and training can be put in place and operational needs taken into account. That is especially true given that additional functions are being carried out now. Earlier, the firemasters talked about our duties in relation to terrorism.
That work is taking place now. Why cannot it be designated in the bill as an additional function?

Other areas are missing. Recently, we have had landslides; the fire brigade has been involved in work after those. We now recognise that that is an additional function that should be prepared for. We also had the disaster at Stockline Plastics Ltd, which was not a fire but an explosion. The fire brigade played a major role in that incident—another example of an incident that was not a road traffic accident or a fire, in which the fire brigade was involved.

There are other specific examples. In our country, we dealt with the case of firefighter Nicholson, who went into a silo to rescue some employees who were trapped. No risk assessment was done, there was no preparation and he was killed. That was not a fire or a road traffic accident. There was also a case involving retrieval from water, in which a firefighter was killed because a rope that was holding him got caught under the water—another example of a case in which preparation should have been done.

The fire service's problem is that it is now undertaking such tasks over and above road traffic incidents and fires and it urgently needs those tasks to be properly identified and given a statutory underpinning so that it can have the argument and so that resources can be put in place for firefighters to be trained in such areas. Firefighters' big concern is that it is fast becoming the case that they are there to do everything and anything. They are willing to do that, but they need to be trained and they need the proper equipment and resources. They believe that they can get those only through underpinning by statute or by additional functions being designated now so that they can be prepared for.

Karen Whitefield: We cannot, because of their nature, plan for emergencies, but there may be occasions when we can anticipate the types of skills that will be required. It may be that not all firefighters will, in the course of their normal duties, have to attend an offshore fire and will perhaps never have to attend an incident such as the tragic occurrence in Maryhill or the Rose Park nursing home fire, which was attended by some firefighters from North Lanarkshire. However, the fire service would, as an emergency service, want to respond to incidents such as those because it sees such responses as being its duty, and most firefighters would want to do their job. How do you get the balance right and allow for proper training to enable firefighters to develop their skills without confining them so that they cannot respond to emergencies that we might not be able to plan for?

Frank Maguire: Maureen Macmillan highlighted some problems in the Highlands and Islands. There are also problems pertaining to Glasgow whereby risk can occur. There is a geographical dimension—whether specifically geological, industrial or whatever—to the categories of cases, and the emphasis in, for example, the Highlands and Islands might be different from the emphasis in Glasgow.

We can now categorise incidents: terrorism is a category, landslides are a category and explosions are a category. Such incidents generally carry the same risks no matter where they occur. Therefore, in terms of geography, area and category we can begin to anticipate types of emergencies. Firefighters are concerned about everything being an emergency and about their having to take an ad hoc approach to every emergency. We appreciate Karen Whitefield's point that emergencies and unforeseen things will happen, but they will not be totally unforeseen. Firefighters want to foresee and prepare for as much as possible—that is what they need training and resources for. They do not want matters to be left open so that they must run to anything and try to cope with anything.

Karen Whitefield: Are the categories that you would like to be included in the bill terrorism, explosions, offshore incidents and landslides?

Frank Maguire: I am a lawyer. I am saying only where those might fit in. It is for the fire brigades, in consultation with ministers or whoever, to identify the specific areas. The chief fire officers earlier identified terrorism. You might ask the fire brigade about landslides. There are categories that can be identified.

The Convener: The chief fire officers used the phrase "new dimensions". Are you talking the same language in describing incidents that have not previously been in the working environment of the fire service?

John McDonald: The Fire Brigades Union Scotland is supportive of the new dimensions work, with the caveat that we need training and personnel. Unfortunately, no additional personnel have come in, which is a concern of ours. In fact, every brigade in Scotland has reduced its number of firefighters following the dispute.

Firefighting is not quite as simple as it sounds, and the union has great concerns about that. For example, if a ship at sea is on fire, there are problems in identifying the owner, what chemicals are on board and what is being transported in the ship. A number of years ago, Professor Black wrote a report on firefighting at sea. Even from the point of view of safety and insurance, we have grave concerns about it. That is not to say that we do not consider all the issues and aspects of the work that we can take on; however, there seems to be a presumption among employers that we will automatically take on whatever work can be
identified. That cannot be the case in any work force. It is not the case that supermen and superwomen do the job.

The Convener: Is your concern that the bill is restrictive in that respect?

John McDonald: Yes.

Mike Pringle: You have suggested that charging under section 15 will be contrary to the European convention on human rights. Can you explain your concerns to the committee?

Frank Maguire: Section 15(2) says that a charge can

"be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority."

If we do not specify that further, anyone could be charged. Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms says that, when someone's property or possessions are interfered with—which is what is envisaged in the bill—a provision must be formulated with sufficient clarity to enable a person who might be affected to understand and so to regulate their conduct accordingly. It could be that someone will find, out of the blue, that a charge is to be fixed on them—I am talking about another person whom the authority thinks it can fix a charge on. In such circumstances, unless it is further specified whom the other persons might be, we will not be giving notice to the public or to the people who might be concerned that that might happen to them. We would not be giving them the chance to regulate their conduct accordingly. That is missing from the bill.

Other issues arise. Is the charge a penalty, is it recompense or is it reparation? What is it? It does not seem to be reparation because it is not tied to the value of services rendered. For that reason, there is a problem in respect of the Human Rights Act 1998. If a person is to be charged with something, or penalised for it, he or she must know that they are, or might be, in the frame so that they can regulate their conduct accordingly. Who are the “other” people of section 15(2)? We can speculate, but we need them to be specified.

Mike Pringle: We heard earlier from the chief fire officers that they charge for certain things—a good example being training—and that gives them considerable income. Will you oppose any sort of charging at all?

Frank Maguire: No—but the point is that it must be specified who might be charged. For example, it may be the insurer, the employer or—

The Convener: So it is not the principle of charging to which you object, but the imprecision of the bill.

Frank Maguire: I object to the bill’s vagueness and lack of clarity.

John McDonald: I would like to make another point on charging. We are concerned about automatic fire alarms. All brigades are trying to drive down the number of calls that we receive from automatic fire alarms but, because of the nature of automatic fire alarms, there is the danger of mistakes. They can go off by accident or because of wilful action. If a business or factory is charged every time the brigade comes out, there is a real danger that the easiest option will be just to turn off a problematic fire alarm. That concerns us, because of public safety issues.

Charges have always been in place in the fire service, under the existing legislation. As Mr Maguire has said, we are not necessarily against charging per se.

Mike Pringle: I take your point about fire alarms; I once had a factory where a strong wind would set off the fire alarm.

Section 47 of the bill talks about employment of police officers. Do you think that section 47 should be removed, and do you know how many policemen or special constables are employed in fire brigades in Scotland?

John McDonald: I would have to check, but I understand that special constables are not employed by the fire service because of their other duties. However, they might be employed as retained or volunteer firefighters. The likelihood of police officers making any significant impact on recruitment is negligible. It is not an area of great concern for us, but I think that police constables have a specific role outwith the fire service that should preclude them from being employed as firefighters. If you are talking about rural communities, there is a small—

The Convener: So you support the continuing prohibition of employing police officers?

John McDonald: Yes, we do.

Colin Fox: I was going to ask about the national framework document, but you said earlier that you thought that that would be very much the driving force for ministerial decision and dialogue, and that you had hoped that it would be ready by now.

With the convener’s permission I will ask a question related to your presentation. You listed the integrated risk management system, democratic accountability, control room reductions, privatisation and local authority control as your primary concerns. Are we to infer that you feel that those issues have been thrown into sharp relief as a consequence of the dispute? You mentioned the pathfinder report. Were they the principal drivers behind that report?
15:45

John McDonald: I ask the committee to remember that in April 2002 “The Scottish Fire Service of The Future” was published by the then Minister for Justice, and had the support of all parties, from the Convention of Scottish Local Authorities to the Fire Brigades Union to chief officers. That has now been dumped.

I hate to be cynical, but I am afraid that much of the bill has been thistle stamped and taken from the English Fire and Rescue Services Act 2004, which is seriously flawed on issues such as fire prevention. I am suspicious that the framework document will accurately reflect what is contained within that act.

The bill will have to be seriously amended. This committee and the Parliament have the opportunity to drive forward a real modernisation agenda. However, we are concerned that we are discussing a bill on the future of the fire service when we have not seen the framework document, which is one of the pillars of the bill. I heard that it should be ready in three months. All the work that was done prior to 2002 has been got rid of and a 10-week report by Bain during the strike has invalidated four and a half years and millions of pounds worth of validated research that was carried out by the pathfinder group, which is a great concern of ours.

Jackie Baillie: You touched substantially on the points that I wanted to raise about negotiation arrangements, but in so doing you have caused me to be slightly confused—which is easily done. I understood that the FBU wanted to retain the existing advisory council, yet you are providing a model for replacement. Which is it? Do you accept that it needs to go, and therefore you are hanging your hat on your suggested replacement model, or do you not accept that it should be abolished?

John McDonald: The answer is similar to that which you received on control rooms from the chief officers. There was only one answer to the question of whether there should be three, two or one. The fact is that the SCFBAC is dead in the water—it has been shot like a duck—therefore we are looking for a positive alternative. An example of what can happen is the three-tier structure in England, which excludes us from all but the lowest tier. If that goes ahead it will not be positive in terms of openness, democracy or transparency, or in terms of the future of the service. There needs to be a proper structure that can debate all the issues that affect the work force and the general public.

Jackie Baillie: I got the strong feeling that the bill team was open to that, because they did not produce a model from their back pocket and say, “This is the way things would happen.” Given that models will change over time and that, by your own admission, the wilful fire raising forum that you see as being part of this issue is quite a new creature, is it right to prescribe a structure in legislation? Would it be more effective to place a duty on ministers to consult, and specify who they should consult, rather than to prescribe the exact form of your replacement body in the legislation?

John McDonald: The body has to be statutory. It is all very well to say that ministers will consult on certain issues, but there must be an on-going body in which there exists the ability to put items on the agenda and discuss them; for example, fairness and diversity, on which the fire service has had a shocking record over the years. The FBU has been the driving force that has pushed those issues forward. One of the forums at which they were addressed was the SCFBAC, where we got people to take notice of those important issues, but that must be done on a statutory basis. The old SCFBAC was meant to meet every quarter, but when we were in dispute it did not—it was ignored. I would hate to see anything as flimsy as, “Oh, we may have a duty to consult on certain issues.” That duty must be contained in the legislation.

Jackie Baillie: I think the duty can be made robust without specifying the structure, but that is a debating point for another day. The Scottish Trades Union Congress made the point—which you picked up on in your opening submission—about the apparent intention to disapply the Health and Safety at Work etc Act 1974, yet the bill team was absolutely clear that that was not their intention. I assume that one of you will enlighten me as to why that team is wrong and you are right.

John McDonald: As one of the bill team said when the committee asked about consulting trade unions, I will now consult my solicitor.

The Convener: Let us hear from your solicitor, then.

Frank Maguire: Is that me?

The Convener: Indeed.

Frank Maguire: I will give a brief background to the legal framework that we are dealing with. We have European directives that the European Commission issues, as the committee knows. The UK authority is obliged to implement those directives to comply with Community law.

In health and safety legislation, we had a framework directive from the European Commission and a raft of other directives about the use of equipment, the workplace and other matters. The UK authority chose to implement the directives via the Health and Safety at Work etc Act 1974, because part I of that act contains a section that allows the minister to make
regulation. The minister made regulations that implemented the directives. Those regulations are now the cornerstone of our health and safety framework. They started with the Management of Health and Safety at Work Regulations 1992 and went on to regulations that dealt with personal use of equipment and with the workplace and other matters. The directive on fire precautions in the workplace was implemented under the Fire Precautions Act 1971 and instituted by the Fire Precautions (Workplace) Regulations 1997.

To repeal part I of the 1974 act would implicitly repeal all those regulations, which would wipe away all the implementation of the directives from the European Commission. That would be contrary to Community law and Parliament cannot act contrary to Community law. In my view, Parliament does not have the power to disapply part I of the 1974 act in so far as that part implements regulations that were designed to follow European directives.

The Convener: I see why you brought your lawyer, Mr McDonald.

Jackie Baillie: Given what I have heard, it strikes me—perhaps somebody will contradict me—that there was no policy intention to disapply the 1974 act and that the matter might be a debating point between lawyers.

Frank Maguire: It may be a debating point for the courts. If Parliament proceeded to disapply the 1974 act, scope would exist for judicial review of any decision by the Presiding Officer or anyone else to the effect that the legislation is compliant. The matter may end up in that position. If the decision was a mistake, it could be rectified—we would just ensure that part I of the 1974 act was not disappplied. The process has scope for ensuring that that mistake does not occur, however inadvertently.

One answer that the committee heard was that the situation was okay, because the 1974 act will still apply to reserved powers. That misses the point entirely; the point being that the act is being disappplied from devolved functions. That is where anyone made that comment went wrong.

The Convener: Are there no supplementary questions?

Jackie Baillie: I thought that I was doing quite well.

Maureen Macmillan: Mr McDonald spoke at length in his introduction about concerns about part 3 of the bill, which deals with fire safety. One complaint was that many provisions will be included in secondary legislation in Scotland, rather than in primary legislation, which will be used in England. Would you like to elaborate on those concerns?

John McDonald: Mr Evans can elaborate more than I can.

Glyn Evans: If you thought that the last subject was convoluted, this will be worse. Because of devolution and the effect of reserved powers, part 3 of the bill in Scotland can go only so far.

In England and Wales, the draft Regulatory Reform (Fire Safety) Order 2004 is designed to be one-shot legislation that will repeal a substantial number of pieces of legislation and will, in effect, become the premier legislation on fire safety matters.

A report by the House of Commons Regulatory Reform Committee outlines the effect of the reserved powers, which relate primarily to the way in which the Health and Safety at Work etc Act 1974 works. The problem is twofold. The Fire Precautions Act 1971 is a relevant statutory provision for the purpose of the Health and Safety at Work etc Act 1974, as are the Fire Precautions (Workplace) Regulations 1997 (SI 1997/2051), which were the UK’s version of the fire safety elements of the workplace directives that Frank Maguire referred to earlier. The problem is therefore that you cannot repeal all of the Fire Precautions Act 1971 or the Fire Precautions (Workplace) Regulations 1997 (SI 1997/1040) because they contain reserved powers that are based on health and safety law, which is not a devolved matter.

The Convener: Just for clarification, what does the bill purport to repeal?

Glyn Evans: If your bill were of the same nature as the proposal in England and Wales, it would be a reforming bill—the purpose of part 3 of the bill would be to reform fire safety law in Scotland. However, it cannot do so. The problem, therefore, is that your legal draftsmen—for whom I have the greatest sympathy—are trying to balance three sets of legislation to produce a new fire safety framework for Scotland.

Many of the duties that are contained in the draft Regulatory Reform (Fire Safety) Order 2004 cannot be put into your bill because they are, in effect, fire safety duties and underpin the Fire Precautions (Workplace) Regulations 1997, which you will have to keep in force alongside what is proposed in part 3. It is going to be incredibly difficult for the people whom part 3 of the bill is designed to protect to understand their responsibilities. They will have to deal with part 3 of the bill, elements of the 1971 act and elements of the Fire Precautions (Workplace) Regulations 1997, which will all be in force in Scotland at the same time.

The only way in which your legal draftsmen can deal with that is to put into part 3 of the bill those duties that are not reserved duties, and to deal
with the remainder through secondary legislation. That means that, unless your draftsmen introduce the regulations that they intend to put into force to support part 3 of the bill at the same time as the bill comes into force, part 3 of the bill will have effect only in relation to the powers that relate to prohibition and the duties under sections 49 and 51. I would genuinely not relish the thought of trying to translate all of that.

Maureen Macmillan: I understand what you are trying to say—we have had the problem before. Often, when consultation on a bill starts, the subordinate legislation that will accompany the bill has not yet been produced. By the time we get to stage 3, however, it has been produced and we can press the Executive to take action. By stage 3 of this bill, we will know what will be dealt with by regulation in part 3. The problem that arises has to do with of the characteristics of the bill. We have to discuss that with the Executive.

Glyn Evans: I think that is right, because the regulatory process will give teeth to part 3 and we do not know what it will say.

Maureen Macmillan: I appreciate that and we will raise the point with the Executive.

The Convener: I have listened with considerable interest to what you have said, and it is clear that there are hugely technical issues that the bill team will pick up on after this evidence session. I am grateful to you for drawing our attention to those complex issues.

16:00

Glyn Evans: The Regulatory Reform Committee report suggests options—I put it no more strongly than that—about how the Executive might address those issues. Although more legislation would be required, it might be better if you asked the Executive for a report on how that legislation might be produced. You will end up with one piece of legislation once the Fire (Scotland) Bill has been enacted, but it will be supported by two other pieces of legislation and at least one piece of health and safety at work legislation under the Management of Health and Safety at Work Regulations 1999, which underpin the workplace regulations that you have to retain.

The Convener: Did you suggest that it might be helpful to the Executive to consider the report to which you referred?

Glyn Evans: Yes, I have a copy here if your clerk would like to make a note of it.

The Convener: That would be helpful.

Maureen Macmillan: My next question, which is probably for the lawyers, is about the lack of clarity over which persons will have responsibility for fire safety given the increasing variety of business and contractual arrangements. The bill mentions employers and employees, and says "Where a person has control to any extent"

and

"If a person falls within subsection (1)".

In other bills, however, there is a catch-all provision, or a description into which everyone will fit. If we go down the road of making a long list of the people who could have that responsibility, someone is bound to be left out and that would create a loophole. Legislation generally tries to provide definitions into which everyone can fit rather than making a list of all the possible permutations.

Frank Maguire: The two very important duties, as highlighted by the previous witnesses—and the Fire Brigades Union Scotland agrees—are set out in sections 49 and 52, which deal with the duties of employers to employees and the specific duties of employees. No one questions that those duties should be in the bill; they must be there.

Leaving aside premises for the moment, the suggestion seems to be that those sections describe our working environment and capture our working relationships. However, more and more in the working environment, the employer-employee paradigm is becoming less and less. Casual labour is used, and there are ad hoc arrangements and contracts for services with contractors rather than employees. Such arrangements are in use in a great many premises in Scotland and many processes are carried out under them; the emphasis might vary from industry to industry. If we rest on the employer-employee relationship, there is increasing potential that many other current working relationships will be omitted. If we do not attempt to describe those other working relationships, or to include a catch-all phrase to capture them, we are saying that those people—who do the same things as employees and employers—are not under any duty regarding fire safety.

For example, the financial sector seldom has employer-employee relationships. Instead, there is a contractual relationship between a franchisee and an independent financial adviser. There could be 40 such people on the one floor. They will all occupy desks and have a deal that allows them to work there. They will be just like employees on a floor but none of them will have a fire safety duty for anyone else. The working environment has been considered in a way that is a bit too simplistic. An attempt should, and can, be made to describe other working relationships in our society.
Maureen Macmillan: Are such relationships not covered by sections 50 and 51? Section 50 starts:

“Where a person has control to any extent of relevant premises”.

Frank Maguire: We need to ask who has control of the premises in the example that I have just given.

Another point is that someone seems to think that there is a landlord-tenant relationship. Such a relationship may exist, but the people involved can be very distant from each other. There might be a lot of intermediaries between, say, the holding company in London and the tenant who, in turn, might have a licensee, who might have someone else on the premises. Such individuals will have a problem in identifying on whom the duty falls and who is the person who is in control of the premises.

We should not leave it to the parties themselves to think, “Maybe I am the one who is under this duty”; they will not know. Do not forget that the high turnover of people can mean that the individuals involved may change as soon as some action has been taken. We need to think of some mechanism whereby responsibility for fire safety can be fixed. We should not be confined to the mechanism of the legal relationships between employer and employee and between landlord and tenant.

Maureen Macmillan: Do we need a catch-all phrase to encompass every kind of permutation?

Frank Maguire: We have the problem in health and safety legislation anyway. The employer-employee relationship does not capture workers. The term “workers” and other descriptive phrases tend to be used much more.

The virtue of the old licensing system was that the duty was fixed on someone who then knew that they were responsible. Perhaps we need a provision whereby, if the person who has control of the premises cannot be found, the duty is fixed on someone who would be told, “We do not care what your relationships are or what your contract says, but we will hold you responsible.” That could be done by a specific order or identification once someone had investigated the situation. Perhaps if the enforcement officers are unable to find out who has control of the premises—if they are being passed from pillar to post, in a ping-pong situation—they should have the power to say that a particular individual is responsible in terms of sections 49 and 52.

Maureen Macmillan: That brings us to your concerns about whether the duties and powers that are given to enforcement officers are sufficient.

Frank Maguire: There is a problem for enforcement officers too. As well as those in other working relationships not realising that they are under a duty, when enforcement officers come along, they might not be able to find out who is under the fire safety duty.

Maureen Macmillan: I will move on to something—

The Convener: Watch your time and keep it crisp.

Maureen Macmillan: I will do. My question, which is about control centres, has been answered. I was pleased that John McDonald, in his opening statement, spent a lot of time speaking about the need not to amalgamate control centres. Is there anything that you want to add briefly on that?

John McDonald: I do not want to repeat myself, but as I said in my statement, the control centres are under grave threat. Over the past few years, attempts have been made to amalgamate police, fire and ambulance control centres, but that approach has been proved to be nonsense. The Executive has now moved to trying to reduce the number of fire control centres without any evidence to back up the proposal and on the basis of the seriously flawed Mott MacDonald report, which took cognisance only of the number of incidents and calls with which the control rooms deal, not their actual work load.

The control centres provide an excellent response. I do not think that it can be bettered by reducing their number, and I will not go into all the potential difficulties, such as accents and the geography of the east, the west or the north coast. The control centres are such an excellent facility that I believe that it is impossible to improve upon the service that they provide. If the system is not broke, the Executive should not go trying to fix it, because it will make a mess of the control centres if the reduction goes ahead. That is the clear view of every control centre worker and FBU member in Scotland. It is not the case that we are simply opposed to change; the reduction would reduce the control centres’ effectiveness. We will soon no longer have set standards of fire cover, but integrated risk management plans, in which there are no set response times or validation process. Closing the control centres is a frightful proposition, because it will lead to further deaths.

Ken Ross (Fire Brigades Union Scotland): The simple issue is that fewer people will be dealing with more calls, so something has to give. We have seen an admission of that recently, and it is outlined in the documents that we circulated today. A facsimile was sent today to all control rooms in the United Kingdom by London fire brigade, which seems to be taking the lead on this.
It suggested wording for a recorded message for 999 calls. If fewer people are dealing with a greater volume of calls, and if they are unable to respond to that call and have to use a recorded message, that is ludicrous. Someone who was trapped in a house fire and who was phoning up and seeking assistance might get put on hold. If that is the way forward and if that is modernisation for the fire service, we do not want to play any part in it. The simple arithmetic tells us that the present arrangements are the best arrangements.

**Colin Fox:** I am anxious to focus on the question of local training centres, which you mentioned in your submission. What are your concerns about local training centres? Section 44 covers

"the provision of education or training to persons who are not employees of relevant authorities".

Are you concerned about the particulars of local training centres under the bill?

**John McDonald:** We have local training centres at present. The Scottish Fire Services College at Gullane, which is funded by the Executive, is the central point for that.

**Ken Ross:** Could I ask you to say again which section of the bill you are referring to, Colin?

**Colin Fox:** Section 44(2)(e) is about the provision of local training centres. It says:

"the provision of education or training to persons who are not employees of relevant authorities in matters in relation to which relevant authorities have functions".

**Ken Ross:** We are not aware of any concerns about that. Could you refer us to the relevant part of our submission?

**Colin Fox:** I read in your submission that you had anxieties about the use of local training centres. As I understand it, it is proposed to have local training centres in the different fire brigade areas. Is that correct? As I understand it, it is not just about the college at Gullane, where all Scotland’s firefighters are trained, but about moving towards more local training centres.

**The Convener:** Do you have a view on that?

**John McDonald:** I was not aware that we had responded in such a manner on that. We could look into it and get back to you on the issue.

**Colin Fox:** That would be fine.

**The Convener:** You could give us a note about that. That would be helpful.

If there are no other questions from committee members, I invite Mr McDonald and his colleagues to make any further points that they might have.

**John McDonald:** We have a couple of points to make. Indeed, Mr Maguire has a number of matters to raise. The one issue that I wish to raise would certainly attract the public's attention. We should all be aware that Scotland accounts for the highest relative number of fire deaths in the UK. Indeed, it has the worst fire record in Europe. That is something that we wish to address. Our union is making a very strong case for zero tolerance of fire deaths. That has the opposition of the Executive.

Given the dreadful situation that exists in Scotland, we need to look towards such an aim. We had zero tolerance of violence against women. The incidence of fire deaths in Scotland is increasing, and it is at a shocking level. It should be a fundamental aim of the bill to drive down fire deaths, to set a target of zero and to adopt zero tolerance. I am aware from my involvement in discussions and negotiations at a national level, certainly in England and Wales, that there is a perception and a clear objective—

**The Convener:** When you use the phrase “zero tolerance”, what specifically are you talking about?

**John McDonald:** A zero tolerance of fire deaths. One of the clear objectives in England and Wales—but hopefully not here—is to have an increase in the response time of fire engines, with fewer firefighters attending incidents. That is of great concern to the Scottish public, given the horrendous record of fire deaths in Scotland. In Edinburgh and Glasgow, it is not just about fire deaths—

16:15

**The Convener:** In fairness to the Executive, it is clear from the policy memorandum that the Executive is only too aware of the statistics on fire deaths in Scotland and of how those statistics relate to those of other countries. The Executive's intention in introducing the bill is to address such issues.

Do you want to raise other specific issues in relation to the bill?

**Frank Maguire:** I want to make a couple of brief but important points that have not been touched on. The Fire Brigades Union Scotland is concerned about the creation of an offence under section 67(2), which says:

“If—

(a) an employee fails to carry out a duty to which the employee is subject by virtue of section 52; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the employee shall be guilty of an offence.”
Under section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992, an offence is committed if a person breaches a contract of service or hiring and in so doing might “endanger human life or cause serious bodily injury”.

However, section 240 of the 1992 act includes two important qualifications: an offence is committed only, first, if the person breaks the contract “wilfully and maliciously” and secondly, if the person knows that the “probable consequences” of their actions will be to endanger life or cause serious injury. The Fire Brigades Union Scotland considers that section 240 of the 1992 act is sufficient to cover the situation that is envisaged in the bill and, in any event, is concerned that section 67(2) is thought to be necessary, it should section 240 of the 1992 act covers the situation. If section 67(2) is far too wide and is not needed, because section 67(2) of the bill does not include the accepted qualifications that are set out in section 240 of the 1992 act.

There is an important psychological aspect to the matter. We know that employees often take on fire safety duties willingly and voluntarily. Section 67(2) could be interpreted as being very strict and could act as a disincentive to any employee who was considering taking on responsibilities for fire safety, or encourage them to avoid that responsibility by passing it up the line to a superior. The inclusion in section 67(2) of the qualifications in section 240 of the 1992 act would maintain the status quo—that would be okay.

The Convener: You are referring to the words “wilfully and maliciously”.

Frank Maguire: Yes, and the requirement that the person would have to know that the probable consequence of his action would be serious injury or loss of life. Of course it is an offence for an employee to do something that they know might cause serious injury or endanger life, but section 67(2) is far too wide and is not needed, because section 240 of the 1992 act covers the situation. If section 67(2) is thought to be necessary, it should be redrafted to repeat the qualifications that are set out in section 240 of the 1992 act.

The Fire Brigades Union Scotland is concerned that if a firefighter—I am not talking about all employees—or someone who is charged with fire safety duties were to take industrial action, they could be prosecuted under section 67(2). If such a person were to withdraw their labour from incidents or fire safety cover, the section could be used to prosecute them for taking that industrial action. There would be no immunity under the Trade Union and Labour Relations (Consolidation) Act 1992, which provides only civil, not criminal, immunity. That is a serious concern. Section 67(2) potentially contravenes trade union rights and the right to withdraw labour.

I will not go into detail about the term “reasonably practicable”, because it is quite a technical point and we have already been through some similar technical stuff. The interpretation of the term “reasonably practicable” to which the Scottish Executive adheres was set out in Edwards v NCB, but there is a challenge to United Kingdom authority in relation to that interpretation, on the grounds that it is not proper and is contrary to European Community law—that is all that I will say about the matter.

The Convener: Thank you for making those additional points.

Frank Maguire: Finally, it is worth mentioning a matter that touches on the point that was made about centralisation. It is clear that the bill would give the Scottish Executive considerable powers in relation to fire safety. Sections 36, 37, 41, 43, 31 and 11 have been mentioned and would specifically enable the Executive to tell a relevant authority what to do with its property and equipment and the instructions and guidance that it issued. The bill would give strong powers to the Scottish Executive to “cause an inquiry to be held” if a relevant authority were in contravention of a framework document or reinforcement scheme, or in various other circumstances. What seems to be missing from the bill is some kind of accountability on the part of the Scottish Executive. What would happen if the fault lay in part with the actions of the Scottish Executive through its framework document, instructions or guidance—or anything else? The bill contains no mechanism for holding the Scottish Executive to account.

The Convener: I think that the mechanism is called democracy—or such civil rights as may exist under law.

Frank Maguire: That might have an effect some years later, but there should be a mechanism for holding the Scottish Executive to account as it carries out the operational duties that it would give itself in the bill. If there is to be no such mechanism, a very good structure will be needed to ensure that the Scottish Executive is properly advised about what it does.

The Convener: I am sure that your comments are being noted with considerable interest.

John McDonald: Could I say—

The Convener: Mr McDonald, I am worried about time. We have tried to be generous to you, but we have overrun badly.

John McDonald: We want to make one small, brief point about fire prevention, which is important for the committee to hear.

Glyn Evans: I ask the committee to consider carefully the effect of section 34, which would in effect allow a fire and rescue authority to appoint
any person to carry out its fire safety enforcement functions under part 3, were it so minded. That is completely outwith the proposals for England and Wales.

The Convener: I thank Mr McDonald, Mr Maguire, Mr Ross and Mr Evans for an extremely useful session. Much of the technical contribution has—if we are honest—baffled us, but we will certainly read the Official Report with considerable interest.

John McDonald: Thank you.

The Convener: I hear pleas of desperation from committee members who need to attend to intimate functions, so I declare a comfort break of five minutes.

16:23

Meeting suspended.

16:53

On resuming—

The Convener: Ladies and gentlemen, I welcome you back to the meeting and apologise for the longer-than-intended interval, which was for reasons outwith our control. I apologise to our three witnesses from the Retained Firefighters Union.

The schedule has been considerably dislocated. The meeting is quorate and I and my colleagues who are present are happy to continue, but what is the witnesses’ position?

Derek Chadbon (Retained Firefighters Union): We are happy to continue.

The Convener: Fine.

Derek Chadbon: You have had a fire warning and I gather that you have also had a flood—we just hope that you do not get any pestilence.

The Convener: You speak for us all when you express those sentiments.

I formally welcome to the committee Mr Walter Stewart, Mr Derek Chadbon and Mr Jim Smith from the Retained Firefighters Union. As I have said to previous witnesses, we appreciate your appearing. We are just sorry that unexpected events have distracted us.

We have your submission. If you want to make a brief statement, by all means feel free to do so. You will have detected from the previous witness sessions how we operate. I know that there are areas of questioning that committee members wish to explore, but if you would like to make a brief statement that is fine.

Derek Chadbon: I will make a brief statement. We come to this gathering with a slightly different viewpoint from that of most of the other people from whom the committee will take evidence. My colleagues and I represent a bunch of people who have a foot in a number of different camps. They do not earn their primary living as members of the fire service, but work for the fire service makes up a significant part of their activities.

Walter Stewart was the officer in charge at Larkhall and retired two years ago. Just before he retired, he was awarded a Queen’s fire service medal. He is well-respected and is a member of the Scottish Central Fire Brigades Advisory Council. Jim Smith was the station officer at Cumnock, a two-pump retained station. He is also here as an employer of retained personnel. The views of employers of retained personnel ought to receive some prominence.

The RFU is the second-largest trade union in the fire service. As members probably know, we have a no-strike constitution. Two thirds of retained firefighters continued to work during the recent industrial disputes. We did so not because we disagreed with some of the aims of our whole-time colleagues, but principally because our members have a focus on their local communities and find it very difficult to withdraw their labour.

We welcome the bill. We believe that it offers an opportunity to provide an improved service to our local community, something that retained volunteers and auxiliaries have found difficult to do in the past. We have explained some of those issues in our submission and are happy to answer any questions that members have.

The Convener: Thank you. I know that there are a number of areas of interest to committee members. Maureen Macmillan comes from an area where members of the Retained Firefighters Union are very important.

Maureen Macmillan: I represent the Highlands and Islands, where the vast majority of firefighters are retained or volunteer, so I welcome your input. How will the bill improve the position of retained and volunteer firefighters?

Derek Chadbon: It will improve their position under the new institutions by giving them some means of inputting into policy and some advocacy, which in the past has been missing. The institutions that have existed for the past 50 years have tended to focus on the whole-time part of the service. The volunteer element—including retained firefighters, the paid volunteers—has been left out in many areas. Let us not forget that retained firefighters are also volunteers—the only difference is that they are paid. A number of people, including Sir George Bain, have picked up the fact that volunteer firefighters have been
second-class citizens in the fire service. They have been restricted in how they can support their local communities. We believe that under the new institutions proposed in the bill they could take on a wider, more flexible role, especially in the primary responsibility of community safety.

Maureen Macmillan: I am aware that in the area that I represent the retained and volunteer firefighters are often the first responders to fires in rural areas. Will the bill do anything to support that role?

Derek Chadbon: We hope that it will. As we understand it, the bill includes provisions for wider consultation within the new structures that will operate. We hope that, for the first time, retained and volunteer firefighters will have an opportunity to put forward their views. We welcome the opportunity for retained and volunteer firefighters to become more widely involved in protecting their communities and expect that to happen.

Maureen Macmillan: Would you like anything more to be specified in the bill? You mentioned the role of employers. Should the bill give more support to the employers of retained firefighters?

17:00

Derek Chadbon: We have considered that over the years and looked hard at it. One point of view is that it would be helpful to have a legislative basis for employers to release personnel to undertake volunteer fire service duties. The converse opinion is that that might inhibit employers from employing people who might be retained or volunteer firefighters. We believe that rather than placing a legislative responsibility on employers, they should be brought in as part of the process. Under the bill, where we will have new bodies advising ministers, employer groups ought to be part of the process, so that they are encouraged. The public sector should take a lead in that. I was a retained firefighter, and my employer gave me all sorts of grief when I was late coming to work or was in some way delayed—and my employer was a chief fire officer.

The Convener: Mr Smith, as an employer, do you have a view?

Jim Smith (Retained Firefighters Union): I have been in the fire service for nearly 30 years. I am self-employed, and employ two firefighters in my station and another two firefighters attached to other stations. My ambition is to retain retained firefighters and drive forward the standards of fire cover that we provide. An important part of that is communication with the employer. At the initial stages of employment of a retained firefighter the authorities have little contact with the employer, but contact should be encouraged, because it would help to retain the retained firefighters. A lot of pressure is placed on employers when there are many fire calls. It would be appreciated if the authority contacted employers after such periods to acknowledge the release of employees to attend incidents.

The Convener: That is interesting.

Derek Chadbon: The public recognition of employers is important. At the moment it is sporadic. An employer can sponsor a local football team, which will wear football jerseys with “Acme Window Company” emblazoned across them, but there is nothing similar for the fire service. I am sure that if the firemasters were still here they would be mightily upset at such a prospect, but we see the opportunity to acknowledge outside fire stations the support of local employers. That could even be done on the side of fire tenders, and maybe even on some equipment. It needs to be recognised that there is a partnership between the community, the fire service and the volunteers, including paid volunteers. At the moment, the employers tend to get left out.

The Convener: As you know, we pursued with the other witnesses the issue of balance between local operational flexibility and potential ministerial intervention under the bill. What do you feel about that balance?

Derek Chadbon: There is a need to modernise the fire service, but left to its own devices we do not think that that will happen. There needs to be a balance between a legislative framework that provides new structures and reserved powers for ministers, which they can use if the fire service and the constituent parts of the service do not provide the modernisation that the fire service needs. The balance is about right—the bill takes a carrot-and-stick approach. We assume that the ministerial powers will not be used unless there is a real need for them and that, in many cases, they will be used as a last resort. The fact that the powers exist will be sufficient to push people in a direction in which they might not otherwise go of their own accord.

Colin Fox: As you will have heard, earlier this afternoon we explored the national framework. I realise that the details have yet to be produced, but what is your view of the approach of a national framework document?

Derek Chadbon: The national framework will be a good thing because it will allow the Government to lay down its priorities. The details of the framework should not be included in the bill otherwise it will not be a dynamic document. The framework will have to be updated periodically, although there must be proper consultation with all the stakeholders. One feature of the fire service for the past 50 years—and one of the reasons why we have got in the mess that we are in—has been...
We see the need for a risk assessment and more local flexibility? Derek Chadbon: We welcome the process of risk assessment. The old standards of fire cover were too prescriptive and did not really meet needs because, in effect, they were based on protecting us from the Luftwaffe, which I hope is not a threat at present. The standards have led to all sorts of anomalies, which is why the risk assessment approach is the right way forward.

The Convener: I was struck by the FBU’s evidence on the new dimension image. The FBU mentioned a need for more specific roles to be recognised in the bill, such as—from memory—retrieval from water and dealing with acts of terrorism, flooding and landslides. An incident in a silo was also mentioned. My colleague who asked questions on the issue made the fair point that we know that emergencies can happen and we want people to be as well prepared and trained as possible. How do you see the new dimension image, given what your members do? Do your members operate on the basis that they will try to deal with anything that comes up?

Derek Chadbon: That probably encapsulates our members’ feeling. They feel that they are there to protect our communities from whatever comes along. In many parts of the United Kingdom that are away from the main centres of population, particularly in Scotland, any new dimension threat will be dealt with by retained and volunteer firefighters. Even in the major conurbations, it is likely that such firefighters will also be involved. We do not see a problem because we do not think that it is necessary to prescribe a firefighter’s role in legislation. In fact, one could argue that we should not even be called firefighters anymore because firefighting is only 10 per cent of our work load. We have always dealt with anything that comes along and we believe that we can continue to do that under the bill.

Maureen Macmillan: I will explore one or two issues that are contentious in the Highlands and Islands, where there has been a perception that there are too many retained and voluntary units and there is going to have to be a rationalisation—driven partly by financial and partly by health and safety considerations—so not all the volunteer and retained units will have the necessary equipment or training to deal with fires or road accidents. That has caused a lot of ill feeling. People are waiting for the transitional funding announcement to find out how many of the retained and voluntary firefighters can be kept on. The rest see themselves being demoted from firefighter to something else. What is your position on that?

Derek Chadbon: This is a difficult area and we understand the problems. As you say, the matter is financially driven, which brings in a big question about how the fire service is funded.

The effect of modernisation will be felt differently in different areas. We take the view that risk assessment should be the basis of whatever is done, but if that means that in some areas where there is a high dependence on retained firefighters and volunteers there is insufficient funding to provide for the risk that they deal with, we believe that the funding must come from somewhere else, not necessarily from that area. That funding may be something that can come from the Government or from savings in other areas. It is very difficult for us to pin down exactly where that funding should come from, but the same thing applies south of the border. Some of the smaller rural brigades that are predominantly retained are suffering the effect of the recent pay increase and the changes, but have very little scope for making efficiency savings. We think that there must be a reconciliation of finances to account for that sort of position.

Maureen Macmillan: Where the risk assessment says that a retained brigade ought to be kept, would your position be that that has to happen and that the funding has to come from somewhere?

Derek Chadbon: Yes.

Jackie Baillie: I will ask about negotiation arrangements—I have also asked others about this. I gather that the RFU’s position is to support the abolition of the SCFBAC. Do you see the need for a replacement?

Derek Chadbon: We see the need for a replacement and we believe that this is an opportunity for whatever body comes out of this—which involves the stakeholders—to take more cognisance of the opportunities that exist for making better use of retained firefighters, volunteers and auxiliaries. I do not think that anyone could argue but that retained firefighters have been underused, second-class citizens in the past. Any advances for retained firefighters that have been made in recent years have come from European legislation, not because of the consultation and negotiation arrangements within the United Kingdom or Scotland. For example, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551) have at long last put retained firefighters on the same footing—not quite, but mainly—as their whole-time colleagues. If it were not for the fact that the
working time regulations five years ago brought in paid annual leave for all so-called part-time workers, retained firefighters would not have had paid annual leave, which they now get. Those omissions are all due to the lack of advocacy within the current arrangements.

Jackie Baillie: Do you have a particular form in mind, or are you waiting for that to emerge following consultation?

Derek Chadbon: There are two issues. One is consultation and the other is negotiation. We feel that good industrial relations have been lacking in the fire service in the past two or three years. The evidence shows that the industrial relations environment does not work: it is adversarial and combative and is not designed to settle disputes.

We are in an appalling situation of a lack of trust and understanding. The recent dispute has been settled, but we do not believe that that is the end of the matter. We argue for a complete overhaul of industrial relations in the British fire service. That is long overdue. Just changing the name of a committee and shuffling a few chairs around will not provide the industrial relations environment that we need to develop modernisation of the fire service. That environment will be difficult to achieve voluntarily, so we feel that that unfinished business ought to be picked up by a quick means of establishing what the industrial relations environment in the fire service should be.

17:15

Jackie Baillie: Would a statutory duty on ministers preclude such an approach?

Derek Chadbon: That depends on whether reserved powers are involved or whether ministers will implement something immediately. The minds of all stakeholders will be concentrated by the fact that they know that if they do not get their act together voluntarily, ministers may well intervene and impose measures.

Karen Whitefield: We have asked previous witnesses about the prohibition on serving police officers performing the role of an auxiliary or retained firefighter. Your submission to the committee says that section 47 of the bill is unnecessary and that you would like it to be removed. Why do you take a different view from the other witnesses from whom we have heard?

Derek Chadbon: There are two aspects to that. One is the number of serving police officers who have asked us over the years why they cannot be retained, volunteer or auxiliary firefighters. We explain that that is because of the 1947 act. We ask them whether they think that they could perform the role and they say yes. The second aspect is that that is especially true of remotest areas, where a small pool of people can undertake lifeboat, coastguard, retained firefighter and auxiliary ambulance duties. In many of those areas, the pivotal person is often available at the police station. I guess that such people probably do more than their contracted hours in the police, but they have other time available in which they could easily participate in other duties. We and the people whom we have talked to in the police force who want to undertake the role see no clash of responsibility or any reason for the prohibition by statute.

Karen Whitefield: It is obvious that you see no conflict of interest, but the FBU's evidence to us today was that it saw a conflict. What is your understanding of the FBU's view? Why would it think that there was an impediment to prevent a serving police officer from being a retained firefighter, unlike the many people around the country who are retained firefighters and do not work for the police service?

Derek Chadbon: I am not sure whether I have ever heard what the FBU believes the conflict of interest is. For us, there is no conflict. The FBU has said that a conflict of interest exists, but I am not aware that it has articulated what the conflict is. The public would recognise a clear dividing line—they might recognise somebody as a member of the police force, but that man or woman would be wearing the fire service uniform and would fall under the bill's provisions. A clear duty and responsibility to comply with fire service legislation would exist. We see no conflict at all. We fail to understand where there would be a problem.

Jim Smith: Among the recent proposals for modernisation of the fire brigade is one to allow whole-time firefighters also to have a retained or auxiliary fire service role. I see no difference, in a controlled environment, between that and a police officer performing the role of an auxiliary or retained firefighter.

Maureen Macmillan: It occurs to me that quite a lot of policemen in our area are also members of the mountain rescue team. Although members of mountain rescue are not subject to regulations like retained firefighters are, there is a parallel.

Derek Chadbon: We agree entirely. In the end, people cannot be forced, but fortunately there are people out there who have a strong community spirit and who want to serve their community in whatever capacity they can. We feel that it is unnecessary to preclude certain people, such as the police, from doing that. As you said, the police can do mountain rescue work and I believe that some police officers get involved in lifeboat and auxiliary coastguard work. It seems sensible that they should be able to serve their communities in a fire and rescue capacity, too.
Jim Smith: I have a point of clarification: police officers would not be expected to provide fire cover while they were on duty as policemen.

Karen Whitefield: Will you explain how the retained service operates? Is there a restriction on how close you must work to the fire station at which you are retained? That information would help committee members to understand the situation. Perhaps it is the reason why the FBU and others are saying that police officers could not do the job, because if they are patrolling their beat or are on police duties they could not just drop everything to respond to a fire.

Jim Smith: Thank you for raising that point. I had made a note that there is a distinct lack of awareness in the community. Although those of us in this room today understand how the fire service operates in the UK, there is a distinct lack of awareness in the public domain of how it operates. The retained fire service in my area—as, in the main, throughout the UK—operates on the basis that all personnel have a full-time job of some description, or perhaps more than one. They each carry a modern pager.

When a fire call is received at the command and control centre, the station is alerted. All the personnel in that station respond to the station to discover what the fire call is. Usually, the first five respondents to the station will ride the appliance to attend the fire. There is always a good safety margin. In a one-pump station, as a rule of thumb, there are 10 personnel. In a two-pump station, such as mine, there are 20 personnel. That is not standard throughout the UK. The complement can be increased to 12 and 24, sometimes more, depending on availability. All personnel are paged and they provide 24/7 cover. There is a safety factor, because there are 50 per cent more people.

Usually the station manager—in my case, that is me—controls local arrangements that determine who is allowed time off and when they are allowed time off. How much time off is allowed and how it is controlled is determined by how busy the station is. As was mentioned earlier, awkward situations arise with dormitory towns—on islands, for example—where there is no work during the day. It can be difficult to provide cover for one-pump stations and, to a lesser extent, for two-pump stations.

In very rural areas, such as that represented by Maureen Macmillan, volunteer and retained firefighters come from all walks of life. The amount of information and skill that is contained in a retained station is high, because it usually includes an electrician, a plumber and a motor mechanic. All those different skills are provided free of charge, because the firefighters have already been trained in the private sector. Why should the same opportunity not be extended to ambulance men and policemen?

Walter Stewart (Retained Firefighters Union): Karen Whitefield asked a precise question. In Strathclyde, retained firefighters used to be required to work within a mile of the station. In Abington, which is a small village on the way up to Moffat, the time was extended and people from villages further away, such as Crawfordjohn, were employed, purely because of the lack of response in the Abington area. There was a mean distance of a mile within station areas, because fire pumps generally leave within three or four minutes. If someone is staying more than a mile away, it is difficult for them to make it to the pumps before they leave. Some brigades have relaxed the limit and set it at 1.5 to 2 miles, because they could not get crew members who were able to respond within the previous timescale.

Firefighters were employed in two ways. They were either employed 24/7, as Jim Smith said, providing permanent cover and working in the village, or they were taken on board on a 75 per cent retainer, which meant that they worked outside the village for part of the day. Shift workers were bona fide members of the unit because of their shift patterns. They provided cover either during the day or at night, in order to get the balance right and to ensure that the pump was kept manned.

Karen Whitefield: A conflict may arise for serving police officers. There may be occasions when they are on duty and unable to respond. However, as long as the station is not staffed entirely by retained officers who are serving police officers, there should not be a problem. It should be possible to manage numbers to ensure that there are always sufficient firefighters to respond.

Derek Chadbon: It is no different from whole-time firefighters undertaking retained duties when they are off duty from full-time employment. The majority of full-time firefighters in larger towns and cities tend to live outside those towns, often in an area that is covered by a retained fire appliance. They come home, often at 9 o’clock in the morning, having done a shift in the city. Some of them undertake retained duties and they are ideal for that purpose, as they are trained firefighters. There were restrictions in the past, but we believe that those are being removed. Many prison officers are retained firefighters. They, too, work a shift system and are useful members of retained teams. However, one would not expect all 10 retained personnel at a fire station to be police officers, just as one would not expect them all to be postmen or prison officers.

The Convener: I heard a whisper from my right of “10 MSPs”. However, we will spare the Retained Firefighters Union the prospect of that.
**Derek Chadbon:** We would really like to see that happen. We are willing to help anyone who wishes to serve as a retained firefighter.

**Karen Whitefield:** I would not stand a chance of getting into Shotts. They are too fast.

**The Convener:** It is an interesting prospect, and one with which we shall jockey in the future.

In your submission, you indicate that you are content with the proposals in the bill regarding fire safety. Having listened to some of the technical evidence from the FBU, do you have further comments or thoughts on that issue?

17:30

**Derek Chadbon:** No. We try to confine ourselves to the issues that we believe are relevant to retained, volunteer and auxiliary firefighters. This is a specialist area. Leaving aside technical issues, all I will say is that there is a great opportunity for retained and volunteer firefighters to undertake more community safety work than they do now. Some of them have been doing such work voluntarily for donkey's years, but fire brigades in Scotland have not picked up on that work as being part of those people's main duties.

A particular conflict of interest causes our members a great deal of concern, which is that, if they are paid volunteers, they are largely paid according to the number of fires that they go to. That is a perverse incentive for getting involved in community safety work. That is not to say that people do not get involved and that the money side prevents them from doing so. Many of them do community safety work regularly—people at Jim Smith's station have been doing it for many years. There is a great deal of opportunity for—and a great willingness among—those people to do a lot more. I do not know whether Jim Smith wants to explain what they do now.

**Jim Smith:** The retained stations' community fire safety work—the member from the Highlands and Islands will relate to this—mainly involves them in going to schools. The local school looks for the fire appliance to come along and it is great for the kids to get scooting the hose. That is a huge opportunity to get the fire safety message across and we take that opportunity. Our kids go to those schools and we went to them. We live in the community and we love to go along to the local school in our own time. It is easy to arrange that, because people in the station work different shifts. We take fire safety leaflets along with us and distribute them.

Two years ago, my station entered into a community fire safety smoke-alarm project in which we raised money voluntarily through car washes in the station and provided a smoke alarm for all primary 1 and 2 children in our local school. We have continued to do that and to give the children personal smoke alarms for their bedrooms. That has worked well and it has got the local station well recognised. Three retained stations surround my station and they are my immediate support stations, so it is all very much retained personnel in the area. I know that they also get involved in community safety work. For example, they go to gala days regularly and to any sort of community event.

We invite people along to the fire station to show them around, show them the engine and get them involved. The work is very much community driven and we would like there to be more of it. We want to work with our colleagues in the full-time operation much more on that aspect. If the funds were available, we would like some remuneration for the work. However, that is something for long-term discussion.

**The Convener:** Thank you for that. Have members any other questions or have the witnesses any concluding points that they would like to make?

**Derek Chadbon:** No, but thank you for giving us the opportunity to talk to you. We have relished coming along to give you a bit more insight into this strange group of people who are essential for the fire service in Scotland. Given all the problems that we have, the big question that you should probably ask is, “Why the heck do they do it?” The simple answer is that they love doing it and they want to support their communities. They are a bunch of men and women who have great potential for further use in the future.

**The Convener:** On behalf of the committee, I thank you very much indeed. I am sorry that the afternoon has been longer than any of us anticipated. However, I think that we have all found your evidence extremely helpful. It has brought yet another insight to what we are considering. Thank you for attending this afternoon.

**Derek Chadbon:** Thank you very much.
I submit this evidence, not only in my capacity as Her Majesty’s Chief Inspector of Fire Services, but also as someone who has been employed in Local Authority Fire Brigades for over 37 years, the last 15 years of which was serving as Chief Fire Officer and Firemaster.

Overall I broadly welcome the Bill as the cornerstone of a number of changes that are required to improve the Service over the coming years. This Bill, and the accompanying National Framework, will be the first time that the Executive will have published its expectations of fire and rescue services and detailed how the Executive will support Fire Authorities in achieving those expectations. My specific comments are as follows:

• The Bill recognises the role of the fire and rescue service as going beyond the traditional aspects of fire fighting into a much broader service provider with, of course, for the first time associated statutory duties and/or powers. The emphasis upon fire safety and fire prevention is most welcome and will lead to improved protection for communities. This along with Integrated Risk Management will ensure that the correct resources are utilised in the correct manner at the correct time.

• I am aware that some stakeholders are disappointed that the new duty of Community Fire Safety did not encompass the broader community safety remit. However, the duty to engage in these activities is already in the gift of the service through the Local Government in Scotland Act 2003. The combination of this Act and the Fire Service Bill will be a powerful force for safer communities delivered through broad collaborations and opportunities to delegate functions where appropriate.

• I welcome the National Framework and would have liked to see its production in parallel with the Bill. However, the consultation document gave a good indication of its content. I do not believe that stakeholders should fear a perceived centralised approach. I believe it will be balanced. The powers of direction to Ministers are once again in danger of being over-played. They are no more than the powers Ministers currently have for other areas of essential public services. The removal of Ministerial approval being required in terms of variations to establishment schemes (Section 19 of the Fire Services Act 1947) is most welcome as it will allow for local variations to meet local needs.

• In terms of the structures of the service and national resilience issues, I believe that in order for Brigades to cope with the plethora of strategic and legislative changes they face on a day to day basis, it may be more effective to create larger strategic bodies in order to sustain capacity. The concern that this would erode local accountability and/or identity can easily be overcome not least of all through community planning groups and greater empowerment to the local service units.

• The fears over Joint Fire Service Control Rooms are bordering on mythical when we consider that for many years now one control room in Scotland has handled almost 50% of all emergency calls which includes communities with differing dialects and street names that are repeated in many towns and villages i.e. High Street etc. The evidence is that this control is highly efficient, well regarded by those it serves and provides excellent career opportunities for its staff.

• The proposals for a Common Fire Services Agency are generating some concerns amongst stakeholders. However, whilst I accept that there is evidence of good collaboration to be found in various areas of the service, I also feel that some form of Ministers/Central steer or drive is essential for the service to truly achieve the full benefits of collaborations. This area should not be left to chance or continue in a well intended fashion but sporadic in terms of results.
The new powers of investigation are most welcome and should be entered into wherever possible in a collaborative nature. The agreement of protocols between the relevant agencies i.e. police, Fiscals’ office etc is essential.

The revision to fire safety legislation is most welcome but we should not underestimate the workloads involved in achieving this. I also welcome that in most cases the Fire Authority shall be the enforcing authority for fire safety. However, once again this is not without its challenges at a Fire Brigade level. In the past, evidence has emerged that inconsistencies exist across the different brigades when applying Guidance on Fire Safety. Clearly with an enlarged role to play in the new Bill it will be essential that staff are offered opportunities in training to achieve, as close as possible, one standard for Scotland. Failure to address this either through the Scottish Fire Service College and/or at Brigades’ level will soon lead to a loss of confidence from those receiving the service.

SCFBAC

The proposal to dissolve the Scottish Fire Brigades Advisory Council is extremely welcome. However, it does require careful consideration. The prospect of replacing the SCFBAC with Forums similar to England and Wales would be very resource and staff intensive. Whilst I accept the SCFBAC is too large and has lost its focus i.e. "Advisory", I also consider it could remain if:-

- Stakeholder Groups are limited to one person at the meeting;
- meeting should not be chaired by Ministers whose role it is to receive advice not do both;
- allow for specialist attendees according to the agenda items;

I believe this arrangement would be more efficient and could be reviewed after 12 months.

In conclusion, I referred to this Bill as a cornerstone of the reformed fire and rescue service. It has to be considered along with the other changes that are occurring across the service at present i.e. Revision of Conditions of Service, Appointment and Promotion Regulations, Integrated Risk Management, Integrated Personal Development System, Medical Guidelines for the Service. It is only when all these pieces of the reform package come together that we begin to see the wider picture of improved protection for Scotland’s communities.

I would be delighted to enlarge upon the views I expressed in this paper or any other issues should the Committee wish me to do so.

JEFF ORD
HM Chief Inspector of Fire Services
25 August 2004
SUBMISSION FROM COSLA

Many thanks for the opportunity to provide evidence to the Justice Committee on the above Bill. Given that this is a local government service, COSLA has a keen interest in the progress of the Bill and ensuring that and proposals for change are based on the experience we have of running the service.

I attach for the information of the Committee a copy of COSLA’s response to the consultation paper which was prepared by a cross-party Task Group comprising elected members with direct experience of running the fire service and also those with a wider locus of community safety. We have established a further Task Group to consider the detail of the Bill and make recommendations to Council Leaders on the positions that should be adopted by COSLA as the Bill proceeds through Parliament. We hope that by the time we give evidence, the first meeting of that Task Group will have taken place and we will be able to update the Committee where appropriate. However, the attached consultation response will form the basis of any further developments in our position.

I should stress that COSLA will focus on taking a position which reflects our role as a political organisation and therefore looks at the strategic issues the Bill raises for local government. In terms of the technical and operational detail, we are likely to rest on the views of Firemasters.

As you will see from the attached response, the key strategic and political issues for COSLA are:

- maintaining local democratic control of the fire service and therefore any proposals for structural change to the Board structure must be evidenced in terms of improved service delivery and improved local accountability;
- establishing appropriate roles for national and local government which mean that the strategic direction of the service is set jointly and that elected members have maximum flexibility to determine needs and solutions for their area;
- a need for recognition that the fire service cannot make a difference to community safety on its own and that as with crime, health and social inclusion, it needs to be integrated within Community Planning partnerships;
- ensuring that any national framework for the service is not prescriptive; that there is joint work to set national priorities (not central priorities); and that the outcome is not league tables of performance;
- opposition to Ministerial powers of intervention and direction;
- reservations about the establishment of a new Quango in the form of a Common Fire Services Agency.

The issue of rationalisation of control rooms is the subject of a separate consultation by the Scottish Executive. COSLA has not yet responded but I attach for your information a copy of a recent report on this issue which has been deferred for further consideration by Leaders.

I hope this information is helpful for members of the Committee in advance of our evidence session and we look forward to being able to clarify and expand upon it during the oral evidence session.

Barbara Lindsay
Business Manager
31 August 2004

The Scottish Fire & Rescue Service: Proposals for Legislation COSLA Response

COSLA’s response reflects themes raised by Leaders over the course of 2003 such as promoting the value of local democracy, safeguarding local government services, and reinforcing appropriate
roles which mean that the Executive works with us in setting priorities nationally but that local government is then left to deliver locally. This is a local government service and should remain with local government. COSLA would take this opportunity to strongly reinforce the added value of local democratic control of services.

There appears to be little direct reference to the Local Government in Scotland Act 2003 in the response, particularly with regards to Community Planning, Power of Wellbeing and Best Value. In order to achieve the Ministerial vision as set out in the White Paper, we consider that the fire agenda needs to be embraced in a similar way to crime, health, social inclusion, etc. within local Community Planning priorities and partnerships. The Fire Service cannot make a difference on its own, indeed we see Community Planning as a major partnership platform.

There are a number of references in the consultation paper to Ministers taking powers. It is clear that there are a variety of reasons for this. COSLA is not in favour of Ministers taking powers of intervention and/or direction. Where such powers are absolutely necessary, we would want to be involved in jointly agreeing their scope and ensuring that they are exercised in a transparent way.

The Executive proposes a renaming to ‘The Fire & Rescue Service’ and ‘Fire & Rescue Authorities’. COSLA believes that the proposed new name places an undue emphasis on intervention and does not adequately reflect the prevention and community safety aspects of the work of the service.

The consultation paper states that a National Framework will be introduced to provide strategic direction and set out the Executive’s expectations of the service. In line with the model which exists for education, this will place a duty on both Ministers and Fire & Rescue Authorities in relation to improvement; enable Ministers to set national priorities for improvement; and enable Ministers to define and publish measures of performance which provide for a uniform measure of progress across the country.

COSLA will want a close involvement in any national framework to ensure that it is not prescriptive and sets an agreed broad strategic direction only which has been determined in partnership with COSLA. Reflecting national priorities in a framework does not mean setting down central priorities. This is a local authority service and in establishing a strategic direction, the emphasis must be on joint discussion and agreement which takes on board the respective interests of central government and local government. In setting such a strategic direction, we would want to ensure that local elected members have maximum flexibility to determine needs and solutions for their area. In addition, COSLA would stress that while we support the publication of performance information, we do not want to see it presented in the form of league tables.

As a more general comment, the language used in the consultation paper in not positive. Its emphasis on ‘performance’, ‘inspection’ and ‘audit’ does not set a tone of development and continuous improvement of the service.

It is proposed in the consultation paper that reserve powers of direction would be taken to ensure that delivery of the priorities in the national framework is not undermined. These would be exercised through a notice and direction procedure. COSLA has already opposed powers of intervention in a number of service areas; this stance should be maintained and we will oppose powers of direction for the fire service. The Executive already has sufficient powers to intervene in the service if it wants to but these powers have never been used. If the emphasis for the future of the service is on continuous improvement, then reserve powers would never need to be used.

Existing structures to advise Minister are reviewed in the consultation paper and it is proposed that a new strategic group will be put in place to advise on the overall direction of the fire service with a Practitioners Forum involving COSLA and CACFOA. Ministers will be aware of the push from COSLA to secure joint political dialogue with Ministers on important service areas which then directs the work of officers. This has been achieved through structures such as those in the partnership priority areas – a Joint Political group; a high level officer implementation group and a practitioners forum. We would therefore want to return to the issue of consultation and involvement structures in direct political discussions with Ministers as the consultation progresses.
The consultation paper outlines 5 core duties for the service which will be included in the proposed legislation – fire prevention; fire fighting; responding to road traffic accidents; responding to other serious non-fire emergencies; and being the enforcing authority for the new fire safety legislation. There will also be a requirement for Fire & Rescue Authorities to have Integrated Risk Management Plans for their areas. These would reflect a move from an emphasis on property in the existing standards of fire cover to a more balanced approach.

COSLA wishes to see a balance struck between wording which is sufficiently broadly defined to encompass a wider community safety and prevention role and the need to include sufficient detail to ensure that funding follows for activities which the service would see as core activities. As a result, COSLA proposes that the words “non-fire” should deleted in order to better reflect community safety work. We also propose that since the Integrated Risk Management Plans will be the key plans for the service, the definition of integrated risk management should be considered. This would be with a view to ensuring that it is not too narrowly defined and capable of encompassing wider work with the community to improve community safety and reduce the incidence of all emergencies not just fire – for example, the work of coast guards and mountain rescue services.

Here again, COSLA would emphasise the significance of the fire authority role in Community Planning in order to deliver on community safety.

Lastly, the COSLA’s view is that if Ministers are taking powers to prescribe emergencies, then COSLA would want to be involved in the detail of drawing those powers up. We see potential for a clear difference of view emerging between what the Government might see as an emergency and what local communities might see as an emergency. Therefore, the involvement of COSLA and the retention of maximum flexibility locally are very important.

The establishment of a Common Fire Services Agency to undertake certain functions on a Scotland-wide basis is proposed in the consultation paper. COSLA has real reservations about this proposal seeing it as a diminution of local control and the first step on a route to centralisation and control of the service through a Quango. A number of points provide a robust counter argument to the proposed agency.

There are many recent examples of good practice in joint working between Brigades. These rest on collaboration and co-operation and have included purchase of uniforms, safety equipment, medical services and pensions management. A central purchasing agency would be another layer of bureaucracy.

This proposal for a central agency is in direct opposition to the principles of integrated risk management which seeks to provide local services to meet local risks.

Collaboration gives the same benefits as a central agency but maintains local flexibility. It means that decisions are rooted in the needs of the local area and not what central government thinks a local area will need.

This proposal duplicates measures already in place such as government approved provider lists (e.g. for computing) and not least the Duty of Best Value which already exists. In addition, it is important for the Government to appreciate that Best Value will not always be secured by restricting collaboration to fire authorities and the proposal for a central agency is not necessarily therefore the best route. For example, co-operation over purchasing services and goods may be most effectively delivered through collaboration locally between the fire authority and the local authority, the NHS, universities etc.

In summary, therefore, if the Executive has evidence of functions where efficiencies could be achieved through collaborative working, then we would certainly be interested in looking at this evidence. However, the emphasis should be on enabling fire authorities to collaborate voluntarily rather than the structural change of a proposed Common Fire Services Agency.

The Executive has stated that there will be a technical review looking at the potential for efficiency through combined control room operations and Ministers will take any necessary powers to
implement new arrangements. In addition, there will be a review of the Executive’s earlier decision that no change should be made to the number or geographical coverage of the existing 8 fire brigades.

There may be a case for a fewer number of command and control centres but there has been no detailed researched evidence that proves that real efficiencies could be obtained in this way. In the light of this lack of evidence, there is no clarity on what the reduced number would be. Therefore while COSLA accepts that there may be value in having more discussion on this, our current position is that the case for fewer command and control rooms remains unproven. Furthermore, these are “command” and control centres. There is concern that an amalgamation of control rooms will lead to a loss of direct control of resources by Brigade Commanders. Decoupling command and control in these centres to allow a smaller number of control centres to be established is a further issue that requires considerable discussion.

On boundaries, COSLA is aware that some work has already been carried out by consultants and we will want to see the Executive’s analysis of this work and then have joint discussion with Ministers about what it contains. Ministers will be aware of COSLA’s view from other policy areas that proposals for structural change must have clear objectives and be evidenced in terms of the improvements they will bring to the service. Local government’s objectives would reflect wider governance issues such as local democratic accountability over and above the Executive’s stated aims of Best Value. In addition, before embarking on structural change we must be clear that the intended benefits could not be delivered through fine tuning of existing structures. Lastly, our strong view would be that decisions about structural change cannot be made at the centre and then imposed.

Regarding the Best Value issue, we would urge the Executive to consider how the specific duties for Fire Authorities to secure Best Value sits comfortably with a prescriptive national agenda e.g. Common Fire Services or Fire Control amalgamation programme. If the Government dictates, via its powers, a way forward how can the Authority demonstrate Best Value.

The consultation paper advises that there will be a separate consultation with Fire & Rescue Authorities on the formula for distribution of funds and action will be taken in the Bill to allow any changes to be established on a statutory basis. This is a complex issue as it links to transitional funding issues arising from the pay settlement; the Integrated Risk Management Plan will mean a constantly changing situation which makes the connection to GAE difficult; and redistribution is a big issue for Brigades with a large number of retained firefighters.

COSLA has agreed a number of principles in relation to this issue. There must be consultation with COSLA and not just with fire authorities. Any changes must not result in reductions to services – funding changes must be based on improving services and additionality of funding. Any proposals for funding changes must also take account of the additional costs of the pay agreement, including the issue of retained fire fighters. COSLA will be taking a very strong line on funding issues. We want to be clear at the outset that we will expect the requisite resources to be put in place.

Concern is expressed in the consultation paper that the NJC is unwieldy and Ministers have no formal role although they fund the pay settlements. However, from COSLA’s perspective, the issue of the Government’s involvement because they fund pay settlements is scarcely different than for other local government services and any changes here could set precedents. Discussions are currently ongoing between the LGA, COSLA, the FBU and other stakeholders as to a new constitution for the NJC and ACAS is involved. We need to see the detail of that review but whatever changes are proposed must allow for fair representation for Scottish brigades.

- COSLA will be putting considerable efforts into these discussions. However, we are aware that the English White paper gives the DPM powers to impose arrangements including membership for the National Joint Council. COSLA would oppose any such imposition and we would strongly urge the Executive to do likewise. In any event, such a move would raise considerable constitutional issues as DPM has no jurisdiction over Scotland and we would urge the Executive to discuss with COSLA the implications of imposed arrangements for bargaining arrangements in Scotland. COSLA supports national agreements for the service but we would
reconsider that position should the DPM choose to impose a set of arrangements for fire authorities in England & Wales.

The consultation paper provides for the introduction of an Integrated Personal Development System covering the skill and competency requirements of the workforce and provision of direction for the achievement of greater diversity in the workforce through the introduction of multi-tier entry and accelerated promotion. The necessary direction and delivery expectations will be incorporated in the National Framework.

COSLA agrees with the principle of greater diversity but not with its achievement through Direction. There are other and more appropriate routes to addressing the issues impacting on lack of diversity, including the Integrated Risk Management Plan which will start to change structures, working hours etc.

Consultation on The Mott MacDonald Report on:
The Future of Fire Service Control Rooms in Scotland Purpose of Report
This report informs Leaders about the proposals contained within the consultants report on control rooms and seeks a decision from Leaders on the terms of COSLA’s response.

Recommendations
Leaders are asked to:

i) note the contents of this report;

ii) discuss the broad direction of COSLA’s response and agree a position based on the options outlined in paragraphs 5 and 6;

iii) on the basis of decisions on ii) above, agree whether the status quo of 8 control rooms or the option of three control rooms is COSLA’s preferred solution for Scotland; and

iii) agree that the comments in this report form the basis of COSLA’s response to the consultation.

Background
The Scottish Executive has published the consultant’s report on the Future of Fire Service Control Rooms in Scotland. The report can be accessed on http://www.scotland.gov.uk/about/jd/fsep/00019077/page547378006.aspx Comments have been invited by the end of August 2004. The purpose of this report to Leaders is to outline the consultation proposals and seek approval of the proposed COSLA position. The debate about control rooms takes place against a backdrop of change and modernisation in the service as required as an outcome of the fire pay negotiations and as further set out in the recently introduced Fire Bill.

The Broad Direction of COSLA’s Response
The first issue that we would put to Leaders for discussion is to consider the broad direction of COSLA’s response. Do Leaders view the debate on control rooms as being about centralisation or greater efficiency? This needs a political judgement and it then points to a position on the actual number of control rooms COSLA should press for.

Leaders have considered a number of policy proposals over the past few years which we have taken the view have effectively constituted a centralising agenda. Whilst the Scottish Executive’s stated objectives for the rationalisation of control rooms are effectiveness, public safety and value for money, we need to be alert also to a wider backdrop of centralisation and the dangers of piecemeal changes such as this one leading to a more centralised service when taken alongside discussions about changes to the brigade structure, a Common Fire Services Agency, Ministerial Powers of Intervention, and a national framework for the service. A reasonable view to take therefore could be that the control rooms proposals represent the thin end of a centralising agenda and should be resisted.
On the other hand, an equally sustainable view politically could be that efficiencies that would not impact on the service could be gained as a result of rationalisation and indeed, we could press for the savings to be reinvested in the service. Local Government in Scotland Act 2003 places a duty on Fire Authorities in respect of Best Value. It is clear that the consideration of the future of Fire Service Control Rooms falls within that and that the issues of balance between the quality and cost must be fully and properly recognised. Moreover, local government is in the position of having to secure efficiency savings year on year and with the Gershon efficiency initiative as yet another layer, Leaders may consider that it would not be tenable to argue against fewer control rooms.

If Leaders agree a broad direction as outlined in paragraph 5, then COSLA’s response should press for the retention of 8 control rooms. If the discussion at Leaders takes us in the direction outlined in paragraph 6, then we would need to decide between the options in the consultation paper. These are as follows.

One Control Option
This is cheapest option and would result in maximum saving. However, it is not the consultant’s preferred option due to the significant risks involved. If this option were implemented the only back up would be an English control room. We would argue that the constraints of a single control room are incompatible with the accountability required in the delivery of this service within a devolved administration. Additionally, we believe that a single control room for Scotland would not provide the required resilience level and would introduce a large and unacceptable risk not only for the Fire Service in Scotland but for Scottish citizens as a whole.

Two Control Option
This is the consultant’s preferred option. However given the unique geography of Scotland we do not believe this to be the optimum option for Scotland.

Three Control Option
In the consultant’s report, this option only scored one point less than the two controls options when scored against the full range of criteria. We believe that, if Leaders are mindful to agree a direction for COSLA’s response which suggests fewer control rooms than at present, then COSLA should press for three controls which would allow more resilience and therefore a more stable and dependable solution for Scotland.

The geography of Scotland cannot be ignored when considering the location and number of controls. As noted within the consultants report, the geography and demography of Scotland introduce some special issues to mobilisation and incident control. Three controls based on a West-East-North distribution would allow more resilience, and a flexible, responsive structure. Additionally, the three-control solution would allow a control located within a region to handle an incident with the benefit of some local knowledge, whilst to some extent to be insulated against the higher demands of such an incident through the support provided by the other two controls.

We believe that if COSLA’s position is for fewer control rooms they should be managed by a board, which comprise of representatives of both local authorities and brigades within the geographical area. This would clarify accountability and responsibility without compromising the standardisation of procedures and methods, allowing greater collaborative work between brigades. This management structure would remove an additional layer of costs inherent within the establishment of a Common Fire Services Agency, thereby minimising costs and achieving Best Value.

Lastly, we consider that the option of 3 control rooms may well be the best option in terms of political and public acceptance.

Additional Considerations
The consultant notes that it may be advantageous for a new agency – a ‘Common Fire Services Agency’ - to manage control rooms in order that Fire Services can concentrate on their core functions. We do not agree that this would prove to be practical, and that the effective response to an emergency call could not be considered anything but a core function of the Fire Service. We do not believe that the separation of the management structure from the brigades, just because technology can facilitate it, to be anything other than adding a further layer of bureaucracy and distancing the control rooms from the brigades of which they are a part.
We have concerns that the report estimates staffing levels to cover the core functions of control rooms does not take into account the additional duties that they perform, thereby providing an unreliable estimate from which to take evidence.

On page 63 of the report reference is made to training costs for new staff, which is estimated to be approximately £900,000. These costs do not appear to be included in table 6/7 used to estimate potential savings. The capital costs in this table appear to include only building and system costs. We would therefore have some concerns about the financial information provided and would recommend in COSLA’s response to the Executive that costs are scrutinised more closely and clarified.

**Conclusion**
If Leaders political judgement is that the broader picture here is one of centralisation, then we would recommend that COSLA’s response argues strongly for the retention of 8 control rooms. If Leaders view is that this is imply an issue of securing efficiencies that would not impact on the service then COSLA’s response should support the rationalisation. Under that set of circumstances, we would recommend arguing for 3 control rooms.

Claire Downs, Policy Officer
31 August 2004
LETTER FROM JEFF ORD, HM CHIEF INSPECTOR OF FIRE SERVICES

At my recent opportunity to submit oral evidence and answer questions to the above Committee, a Member of the Committee indicated that they believed sickness and absence levels in the control room in Strathclyde were higher than control rooms elsewhere in the Scottish Fire Services and perhaps the reason was that the control room was so large and handled such a large volume of calls. I responded that I did not believe that to be accurate and I was not aware that the sickness levels were any higher than elsewhere in control rooms across Scotland. I now attach the returns from the 8 Fire Brigades across Scotland for absence levels in their control rooms for the financial year 2003-04. I hope Members will be able to see clearly from these figures that Strathclyde is by no means the highest amongst those with absence rates due to sickness.

I trust you find this information useful.

4 October 2004
Control Room Staff: Mean Shifts Lost per Staff Member in 2003-04

<table>
<thead>
<tr>
<th>Region</th>
<th>Short-term Sickness</th>
<th>Long-term Sickness</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central</td>
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<td>2.00</td>
<td>6.00</td>
</tr>
<tr>
<td>Dumfries &amp; Galloway</td>
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<td>6.00</td>
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</tr>
<tr>
<td>Fife</td>
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<td>8.00</td>
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<td>Grampian</td>
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<tr>
<td>Highland &amp; Islands</td>
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</tr>
<tr>
<td>Lothian &amp; Borders</td>
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<td>14.00</td>
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</tr>
<tr>
<td>Strathclyde</td>
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<td>34.00</td>
</tr>
<tr>
<td>Tayside</td>
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<td>18.00</td>
<td>38.00</td>
</tr>
<tr>
<td>Scotland-wide</td>
<td>22.00</td>
<td>20.00</td>
<td>42.00</td>
</tr>
</tbody>
</table>
Control Room Staff: Percentage of Shifts Lost to Sickness in 2003-04

Note: These figures assume that each staff member works 146 shifts per year.
LETTER FROM STEPHEN FITZPATRICK, COSLA TO IAN SNEDDON, SCOTTISH EXECUTIVE

Future of Fire Service Control Rooms in Scotland
Mott McDonald Report

First of all, many thanks for allowing an extension to the deadline for the COSLA response on the above consultation. This has allowed time for it to be thoroughly considered and debated by leaders and we now welcome the opportunity to put forward our view regarding this essential fire function.

Leaders deliberations were based around whether the proposals in the consultation paper represented a piecemeal centralisation of the fire service. Over and above that, the professional advice we have received and which was conveyed to Leaders was that both the technical and financial evidence to support the assertions within the study are seriously flawed and fail to acknowledge a wide variety of elements unique to the Scottish situation.

Leaders’ decision therefore was that COSLA should strongly argue for retention of the status quo. We would, of course, revisit the issue if with more compelling and robust evidence becomes available to support the claims that rationalisation would provide enhanced efficiencies and not negatively impact on the service. Leaders also made it clear that if there were any further future considerations of the issue, the Executive would need to detach proposals for centralisation of the fire service from the debate on control rooms.

I trust this response clearly outlines COSLA’s position in respect of control rooms.

Stephen Fitzpatrick
Team Leader (Community Resourcing)
27 September 2004
SUPPLEMENTARY SUBMISSION FROM FIRE BRIGADES UNION

SCFBAC & Pathfinder

I write regarding the above matters and ask for the Justice 2 Committee’s kind consideration of the following.

On 21st September 2004, at the Justice 2 Committee Oral Evidence Session on the Fire Scotland) Bill, Mr Jeff Ord, HMI Chief Inspector for the Fire Service in Scotland, was asked the following question by Colin Fox MSP: "...I wonder if it (SCFBAC) has produced something worth while that you could show us..."

His answer was rather puzzling: "...I am struggling to find an example of good practice or dynamic change that the advisory council has been able to implement in the service...". He went on to say that "It is extremely difficult to get consensus or find a way forward if meetings are as large as those of the SCFBAC".

I have attached a list of papers discussed at the SCFBAC over 9 meetings, from March 2001 to July 2004, that are a matter of record, which illustrate the work done by the SCFBAC. All of the papers listed are examples of issues that have been agreed and acted on by the “large” SCFBAC, by consensus, all attended by Mr Ord.

A recent example worth highlighting is Paper SCFBAC 1063 “Appointments & Promotions (Scotland) Regulations 1978”. This was discussed by the SCFBAC on 28th July 2004. Subsequently, a Draft Amended Regulation was circulated on 9th September 2004 for comments (also attached), which was 12 days prior to Mr Ord being questioned by the Justice 2 Committee. It is surprising that Mr Ord omitted to mention this matter when asked the above question.

Furthermore, it is clear that Mr Ord is strongly of the opinion that there is a need to “slim down” the membership of whatever replaces the SCFBAC (if it is replaced), in order to make it less "cumbersome". Mr Ord has accused the SCFBAC of being ineffective and difficult to find consensus. The Fire Brigades Union is unclear as to how, by removing the Council’s statutory status and removing a number of stakeholders, that this will make it more effective.

The Fire Brigades Union considers it appropriate that any restructuring of the SCFBAC should be a matter for the SCFBAC. Indeed, Justice Department Circular 4/2002, dated 17th October 2002 (attached) details proposed changes, as discussed at that previous SCFBAC meeting. Unfortunately, this matter was never progressed due to the National Pay Dispute taking place.

With regard to the Emergency Fire Cover Review (Pathfinder), it is worth clarifying a couple of points for the benefit of the Committee.

The Pathfinder project was initiated as a result of the Audit Commission Report “In The Line of Fire”, which was published in 1996. The Report criticised the Fire Service’s process for assessing Fire Cover arrangements, using Buildings in any given area as the Fire Cover measurement. It concluded that Fire Cover arrangements had to be reassessed and based on a Life basis.

Subsequently, a comprehensive programme of assessments took place, utilising Firefighters & Emergency Fire Control Operators in every station area throughout the UK. These assessments took 5 years to complete. Mr Ord, rather insultingly, refers to this thorough and professionally carried out process as an “arduous process that was equivalent to using a sledgehammer to crack a nut”. When it comes to assessing the safety of the people of Scotland, I don’t think it is appropriate to criticise its thoroughness or describe the process as “arduous”.

Confusingly, he goes on to describe the Pathfinder process as “excellent”!

The resulting report was due to be published in late 2002, however, by this time the National Fire Service Pay Dispute was underway and the Pathfinder report never saw the light of day. It was shelved before publication and replaced with the flawed “Bain Report”.

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The Pathfinder project was the most comprehensive undertaking by Fire Service personnel in 50 years. At no time during the 5 year process did anyone (Government, Fire Service employers, management or personnel) ever criticise or question its validity.

The preliminary outcomes of the process indicated that there was a dire need to increase resources in the Service in order to meet the needs of the modern UK. This included a requirement for an increase in the number of Fire Stations, Fire Appliances, Personnel and better positioning of many Fire Stations, in order to cope with the ever increasing and diverse incidents that the Fire Service attends.

The Bain report, which was compiled in only 8 weeks, by 3 people with no previous experience in the Fire Service, suggested that “efficiency savings” & “reductions” would deliver a modern Fire Service. This was in complete contradiction to the findings of the professional Pathfinder findings.

Despite what Mr Ord has intimated, the Pathfinder process did carry out accurate Life based Risk Assessments and took into consideration Standard Operating Procedures and operational requirements of standard incidents. The Bain Review did not.

The Bain Review contradicts the ethos of both the Fire Service for the Future in Scotland 2002 document and the Pathfinder Findings, which was widely agreed to be the way forward for the Fire Service in Scotland, until the National Pay Dispute took place. Unfortunately the Fire (Scotland) Bill is weighing heavily on the findings of Bain and disregarding the other 2 documents.

The Integrated Risk Management Planning process is a welcome process, however, it is already being used by all Brigades in Scotland to instigate reductions in both operational & non-operational posts.

Reducing resources will not afford improved service delivery.

Ken Ross
Scottish Regional Secretary

20 October 2004
Below is a selection of Papers agreed at the SCFBAC since March 2001, over 9 meetings:

SCFBAC 982: Arson Control Forum.
SCFBAC 984: Implementing Rick-Based Fire Service Emergency Planning (Pathfinder).
SCFBAC 992: Joint Thematic Inspection – Wilful Fire Raising
SCFBAC 993: Modernising the Fire Service.
SCFBAC 995: Revised Structures for the (S)CFBAC.
SCFBAC 999: Procurement Arrangements.
SCFBAC 1003: Replacement Radio System.
SCFBAC 1004: Thematic Review of Rural & Retained Firefighters.
SCFBAC 1030: The Integrated Personal Development Advisory Board.
SCFBAC 1032: Replacement Radio System.
SCFBAC 1034: Experimental Investigation of Backdraught.
SCFBAC 1035: Developments on the Arson Control Forum.
SCFBAC 1038: Joint Thematic Review – Raising the Standard.
SCFBAC 1047: Rural & Retained Study.
SCFBAC 1049: Fire Cover Review (Pathfinder).
SCFBAC 1051: Research on Part Time Firefighters.
SCFBAC 1053: Integrated Risk Management.
SCFBAC 1054: New Dimensions Project.
SCFBAC 1055: The Future of the SCFBAC.
SCFBAC 1061: Integrated Risk Management Plans (IRMPs).
SCFBAC 1062: Joint Thematic Review – Raising the Standard.
SCFBAC 1063: Appointments & Promotion Regulations.
Scottish Parliament
Justice 2 Committee

Tuesday 21 September 2004

[THE CONVENER opened the meeting at 14:07]

Fire (Scotland) Bill: Stage 1

The Convener (Miss Annabel Goldie): Ladies and gentlemen, good afternoon and welcome to the 26th meeting in 2004 of the Justice 2 Committee. By way of introduction, I remind members of their technological obligations in respect of our new equipment, with which I think everybody is now familiar.

I intimate apologies from Nicola Sturgeon and Mike Pringle. I welcome to the meeting Stewart Maxwell. He can ask questions if he so desires but he is not permitted to vote on any issues that arise in the course of our business.

We have a little bit of housekeeping. I want to check that all members saw the letter from Mr Ian Snedden of the bill team, whom I thank for his promptness in clarifying the issues that he mentions in his letter.

By prior arrangement, our witnesses this afternoon suggested that we dispense with opening statements, because we all want to get on with the questions. I thank Mr Jeff Ord, whom I shall welcome formally in a moment, for his cooperation in making available a copy of what he would have said if the rapacious convener had not put her foot down. That has been extremely helpful, and perhaps has pointed us to a useful practical arrangement, because seeing it in advance has helped all committee members in their continuing consideration of the bill.

It is my pleasant duty this afternoon to welcome on behalf of the committee Mr Jeff Ord, who is Her Majesty’s chief inspector of fire services for Scotland, and his colleague, Brian McKenzie, who is the assistant chief inspector of fire services. I am grateful to both of you for coming along to this afternoon’s meeting.

I know that individual members of the committee are interested in specific areas, but Mr Fox would like to explore some general issues with you.

Colin Fox (Lothians) (SSP): Welcome, Mr Ord. I will start with a very broad question. The pathfinder report on the fire service took many years to draw together and cost us some £3.5 million. In 2002, a document entitled “The Scottish Fire Service of the Future” was produced after many months of consultation, as I am sure you are aware. The bill and the current proposals, which you support, follow on from the Bain report, which took 10 weeks and was produced without input from the Fire Brigades Union, as was mentioned last week. Do you agree that the Bain report appears to go in a different direction from the pathfinder report and from “The Scottish Fire Service of the Future”? Why is that the case?

Jeff Ord (Her Majesty’s Chief Inspector of Fire Services for Scotland): The pathfinder project was a long, arduous process that was equivalent to using a sledgehammer to crack a nut. However, it was never allowed to develop beyond consideration of what operational response might reduce loss of life, injury or damage to property. The project was somewhat corralled at Scottish Central Fire Brigades Advisory Council level. In its evidence, it was not allowed to take into account compensatory factors, such as the fact that premises had sprinklers, good fire behaviour training, automatic fire alarms, fire teams, fire marshals and so on. We were never allowed to do balancing checks.

A good operational response is essential, but you would be forgiven for believing that the larger and faster the response the more lives will be saved and the fewer injuries will be incurred, which is sadly not the case. More than 90 per cent of all fatalities in fires in the home have already occurred before the fire brigade is called. We were never given the opportunity to balance fire safety, fire prevention and fire education and awareness against operational response. In that sense, the work of the pathfinder project was not concluded. It was felt that there was sufficient evidence of the importance of fire prevention for us to go ahead with fire prevention measures, underpinned by a good operational response.

I do not agree that any parts of “The Scottish Fire Service of the Future” have been ditched in the Fire (Scotland) Bill. Following the consultation exercise, a great deal of the report has been included in the bill, in so far as that is possible with a strategic document. Even more of it will reappear in the framework document that everyone is looking forward to seeing, and that will put flesh on the bones of the bill.

Bain’s review may have taken only 10 weeks, but he was quite unashamed about saying that good reviews—in particular, the Audit Commission’s 1995 review “In the Line of Fire”—had been undertaken previously in the fire service but that almost none of their recommendations had been enacted. Sensibly, in my opinion, Bain examined the Audit Commission report and others going right back to the 1970s, such as the Holroyd and Cunningham reports, and reached a view on the fire service as it was at the time.
The pathfinder work has allowed us to be more confident than we would otherwise have been in moving to fire service emergency cover software and integrated risk management planning. Under IRMP we can include fire prevention, fire education and awareness, fire safety and so on, which provides us with checks and balances.

Colin Fox: If I may encapsulate that, you are saying that the Fire (Scotland) Bill is the continuation of the pathfinder review and “The Scottish Fire Service of the Future”, rather than a complete change of direction from what they proposed.

Jeff Ord: Absolutely. There is more information to come in the framework document and some of the orders, but the bill is certainly not a change of direction.

The Convener: One of the broader issues arising from the bill is a debate about where power lies, whether it has shifted and whether the provisions of the bill will lead to centralisation. I understand that you think that some of those concerns have been overstated. Why do you think that concerns about centralisation have arisen?

14:15

Jeff Ord: Quite rightly, local authority organisations are concerned that fire brigades should remain under local authority control. To be honest, the events of the past two or two and a half years have not helped matters in relation to people’s perception of the direction in which the fire service is heading. In England and Wales during that time, ministers have taken on various powers. However, those ministerial powers are no greater than what many ministers already have in relation to other essential public services. Some of them are obviously last-resort powers that would be used if, heaven forbid, we got into a situation such as the one that we were in during the past two years. The powers have an underpinning public safety rationale. I think that ministers would be remiss if they did not secure public safety in the case of tragic events such as those that have occurred over the past two years and which, I repeat, we do not want to happen again.

The issue of resilience is important. We face a new threat. In Scotland, we do not simply view the new threat in terms of the aftermath of the terrorist attacks but in relation to climatic changes and so on. Sometimes, for reasons relating to resilience, ministers might want to have powers to encourage and, as a last resort, direct fire authorities. What happened in relation to the Stockline Plastics factory is a good example. The commander at that incident, Brian Sweeney, entered willingly into an agreement with us, and all fire brigades in Scotland, and some outwith Scotland, pulled together. In relation to resilience, however, if the incident had been much larger—if we had been dealing with a terrorist attack or some other significant event—ministers would surely need such powers for public protection.

I repeat, those powers are no different from the ones that ministers currently possess in relation to other services and which they very rarely use. Ultimately, however, in the interests of public safety, they might have to use them. When you consider the issue in the round, you can see that the centre, far from taking control of the local authorities, is carrying out its ultimate duty to the public, through Parliament. If the circumstances merited the use of the powers that I have talked about, the minister would have to be minded to consider using them.

The Convener: If local operating flexibility is important, are you satisfied that the provisions of the bill do not conflict with that?

Jeff Ord: They do not conflict with that at all. In other evidence to the committee, people expressed concern about the possibility of the minister having powers over an emergency incident because the bill could be read in that way. That is a fair point to raise, but I imagine that no minister would ever want such powers. In dealing with major disasters, a ministerial department will be the sponsoring department, but that does not mean that a minister would take control of the inner cordon where firefighting, rescue and recovery are taking place. There are concerns over the finer points of the wording in the bill but I believe that they can be resolved quickly.

The Convener: What would be the consequences of the bill not being drafted as it is?

Jeff Ord: It is important that the bill goes through in a form that is similar to its present form. As I said in my submission, it is the cornerstone of the further modernisation of the service. The service stands at the threshold of being able to deliver an even better service than we have done traditionally. It will do so in a way that is different but underpinned by the operational response that the public have always expected.

Although there will be a lot of detail in the framework and the orders that will follow the bill, it pulls together all the changes, such as integrated risk management planning, the integrated personal development system, the alterations to the existing statutory advisory council, and so on. I could go on: the minister does not have direct involvement with the National Joint Council for Local Authorities’ Fire Brigades that considers pay negotiations, but he is responsible for establishing such a committee. I hope that the minister will encourage the total involvement and engagement of all stakeholder groups in that committee.
The bill is not absolutely correct—clearly, the purpose of the current examination of the bill is to consider carefully the various paragraphs and sections—but it is essential that the form in which it is passed is similar to its present form.

Karen Whitefield (Airdrie and Shotts) (Lab): In your written submission, you express your belief that it might be better to amalgamate some fire brigades across Scotland as that would allow them to deal with certain strategic issues. Understandably, people will have concerns that such a move will lead to less accountability in the fire service and might have consequences for communities’ ability to have a greater say in how the fire service responds and does its job. Why do you believe that amalgamating brigades is right for the fire service?

Jeff Ord: As far as community involvement is concerned, I think that the size of the body corporate or the organisation is irrelevant to the ownership, identity and accountability of the local unit. From my own experience, most recently in Strathclyde, it is clear that although the fire board is responsible for delivering the service, the community planning groups established by the Local Government in Scotland Act 2003 are quite rightly having more and more of an influence over the way in which the fire and rescue service attempts to secure greater safety for communities. As a result, although the fire authority is the ultimate authority, it is not as if we cannot have an organisation that allows local delivery of policies, local engagement and local fire service staff to determine how best to deliver fire safety and even, to an extent, operational response in their area.

Amalgamation might be necessary because the fire and rescue service has gone through massive changes. I used the phrase “further modernisation” in my submission because I do not believe that the service has not modernised. It has, to an extent, despite the age of the legislation in question. However, there is no doubt that the fire brigades’ strategic management teams face the same challenges as those in any large local authority chief executive’s department and that the various brigades do not always have the resources to deal with them. There have not been many early or ill-health retirements in the service’s principal management but those that have been have taken place in the smaller units. I speak on behalf of some of the larger management teams when I say that the larger teams are barely coping as it is. We need a larger corporate body and team to give the service the strategic direction to guarantee to the taxpayer that it is facing up to obligations under the Disability Discrimination Act 1995, freedom of information legislation and so on.

The budgets of larger bodies offer more flexibility to prioritise the areas into which people wish to put their money. For example, Strathclyde fire board has prioritised money for improving volunteer fire units in very remote areas at the expense of other budget areas. However, at least the budget is large enough to give the authority the flexibility to make such a decision, which in any case is what the local communities said that they needed.

I just believe that the challenges, strains and stresses are so great that the larger teams are struggling to cope. I take my hat off to the smaller teams, but I think that such an approach will have a price at the end of the day.

Karen Whitefield: Do you agree with some of the evidence that we heard last week from representatives of the FBU and from the Chief Fire Officers Association, who did not agree that amalgamation was the right course of action and who felt that the Executive’s proposals on the common fire and rescue services agency were right? They did not believe that the proposals that the Executive had originally consulted on were correct and were pleased that the Executive had not included them in the bill. However, that did not mean that they could not sometimes work together and share expertise and resources where necessary to allow them to respond to issues where and when they arose. In fact, some of those issues and joint working can deliver some of the changes that you want without necessarily having to make radical changes, which, after all, would not guarantee better joint working or the introduction of a modern and responsive fire service.

Jeff Ord: I heard some of that evidence and I agree that the consultation on the common fire and rescue services agency appears to have resulted in a pretty resounding response along the lines of, “Well, we don’t think we need this and we’re not sure it’s efficient anyhow.” I agree that, if that is the case and if that is the evidence, that is fine. I have no problems with that. Of course, the Executive is not saying that there should be amalgamated brigades—far from it. The Executive has said that that is an issue for fire authorities. However, as a professional and an adviser, and given the work loads, capacity and strains and stresses that I see, I genuinely feel that it will be more and more difficult for the smaller units to operate.

Local accountability, identity and delivery of service lie with the fire stations. I do not know any firemaster who is not delighted when the local officer in charge of the fire station is referred to as the firemaster for that village, that town or that island. That is the way that it should be. I stress that it is not the Executive that is saying that; it is Jeff Ord, chief inspector, who is saying that. That is the reasoning behind my comments. I am not
saying that the common fire and rescue services agency should be thrust upon everyone. In fact, the evidence seems to be that there are better arrangements, although, as I say in my evidence, there needs to be something a little bit more robust than just a voluntary movement.

Karen Whitefield: You have highlighted the stresses and strains that are placed on chief firemasters across the country, particularly in smaller authorities, and your own view is that by amalgamating those authorities we might be able to relieve them of those stresses and strains. Would you be willing to consider that there might be other managerial ways of dealing with those issues that would not lead to amalgamation if it was not in the best interests of the fire service?

Jeff Ord: If amalgamation was not in the best interests of the fire service, I would reverse my view. At the moment, I rest my case on that one, because I definitely see more—not fewer—strategic issues, challenges and demands placed on authorities. However, I would certainly be willing to alter my view if the evidence existed to persuade me to do so. I would not close my mind to any other method of dealing with those issues but, from where I sit at the moment, amalgamation appears to be a model that would work.

Jackie Baillie (Dumbarton) (Lab): I think that it would be safe to describe you as an enthusiast for the abolition of the Scottish Central Fire Brigades Advisory Council, and I would like to probe that in a bit of detail. First of all, why? Secondly, if you were to replace it, what would you replace it with? Thirdly, you seem to be dead set against the minister chairing any successor body. Why is that the case?

Jeff Ord: I am not dead set against it, but one way of dealing with the matter might be to take away the statutory requirement to have such a body, because we have lots of other bodies that give advice on specific things, such as the Central Training and Advisory Committee. However, there are other ways of delivering advice, and that could be done by a slimmed-down SCFBAC or by something that replaces it.

To give a specific answer to your question, the SCFBAC is too large. There are far too many people on the council to make it meaningful, and one wonders why organisations need anywhere between one and eight people to represent them at one council meeting. It is an advisory council, not a negotiating body, and it has undoubtedly lost that focus. It is unreasonable to expect a minister both to chair a meeting and to receive the advice that comes out of that meeting. My view is that, if we were to keep it, that body should have an independent chair or a rotational chair, perhaps from among the stakeholders, but a person should be in the chair for long enough to become experienced.

As for what could replace the SCFBAC, I have genuine concerns about using the English model, as I said in my evidence. In that model, there are practitioners’ forums and the business and community safety advisory forum, and I do not think that we have the resources to support and underpin such a model, which would be a large commitment for many organisations. We should slim it down, with smaller representation from each organisation and preferably with an independent chair. Some external agencies should be brought in, as they will be able to bring something to the table. The one thing that the English business and community safety forum has achieved is to bring in some specialists, who do not necessarily come from a fire service background.

14:30

Jackie Baillie: A number of points flow from that. Now that you work for the Executive, you will appreciate that the fact that a committee is chaired by a minister sends a particular signal to civil servants about the importance of that committee. We do not necessarily want to lose that. I think that ministers are capable of doing two things simultaneously—particularly female ministers, who are good at multitasking. I am not asking you to respond to that last point, however.

The Convener: It depends entirely on political allegiance, I think.

Jackie Baillie: That is a shame.

I understand that you do not wish to specify the form and function of any committee in the bill, because you wish it to evolve over time, but do you think that there should be a duty to consult, which would underpin any successor body to the advisory council? That would make for a much more powerful duty for the future.

Jeff Ord: You would expect me to respond on the multitasking issue, and I certainly would not say that ministers could not do that. However, my answer relates to what you have been saying about consultation, because that is exactly what the role of the advisory council is: it is advisory and consultative. However, it has lost its focus. It has become a negotiating body—even a secondary negotiating body. It is unreasonable to expect a minister both to chair it and to receive the advice that comes out of it.

We have had a strong minister, who has chaired the past few meetings, although, because of the circumstances of the organisation and the recent dispute, there have not been many meetings. If the body was to refocus as an advisory council, that would send a message, but its role is to take
advice, not to negotiate. Another body does the negotiations: the National Joint Council for Local Authorities’ Fire Brigades, which is responsible for pay and conditions of service.

Jackie Baillie: Could I ask you to respond to the question about statutory underpinning and consultation?

Jeff Ord: I am personally absolutely committed to consultation. In my role as chief inspector, if I failed to find an audit trail of consultation in any area of the service that I look at, I would be very concerned. I expect to see consultation at that level.

Colin Fox: Like Jackie Baillie, I found your submission quite contradictory on the subject of the Scottish Central Fire Brigades Advisory Council. You say that you find it “extremely welcome” that it will be dissolved. However, you go on to say that, but for one or two minor reforms, “it could remain”. The advisory council has been called cumbersome, and it has a really bad reputation. I wonder if it has produced something worth while that you could show us. Presumably, it must have been in place for some time.

Jeff Ord: Yes.

Colin Fox: Has it always been useless and cumbersome?

Jeff Ord: Perhaps rather than finding examples of what has been worth while, which is difficult, it might be better if I were to give the committee two glaring examples of the difficulties that have been experienced with such a large advisory council. In 1991-92, an improvement notice was served on the London fire brigade regarding the death of two firefighters attending an incident. From that was born the integrated personal development system. However, it is only in the past 18 months that that has really begun to be implemented. It has taken more than 10 years for that system to come to fruition.

The other example is the pathfinder scheme, which was mentioned earlier. By the time the excellent pathfinder research work was undertaken, covering operational response and the balance between loss of life, injury and damage to property, events had overtaken the research team, as risk assessment had been introduced elsewhere in the fire service.

I have been struggling with this issue and I do not mean to be derogatory. However, I have been a member of the Central Fire Brigades Advisory Council for England and Wales and the Scottish Central Fire Brigades Advisory Council over a number of years, so the blame lies in my seat as much as anywhere else. I am struggling to find an example of good practice or dynamic change that the advisory council has been able to implement in the service.

Colin Fox: In your submission, you suggest that changing just three things could turn the advisory council around. Your submission suggests that “Stakeholder Groups are limited to one person at the meeting; meeting should not be chaired by Ministers whose role it is to receive advice not do both; allow for specialist attendees according to the agenda items”. Is that not inconsistent with what you just said?

Jeff Ord: No, I do not think so. I say that I welcome the removal of the statutory advisory council. I accept what you say about the submission possibly seeming contradictory, which I cannot deny. However, all I was trying to do there was give you options.

I genuinely believe that the system in England and Wales is too large for us to support. We just do not have the numbers of people or the time to support two forums and the various task groups. If we had to keep the SCFBAC, a way to do so might be to make it non-statutory and to oblige it to consult at every juncture—I have no problem with that—but to limit the number of people at the table. I really do not see why an organisation has to bring along more than one or two people to every meeting. If a specialist from an organisation is required, they should be allowed to come as a substitute or to come in for the part of the meeting. It is extremely difficult to get consensus or find a way forward if meetings are as large as those of the SCFBAC.

Colin Fox: Forgive me, convener—

The Convener: I am conscious of time. Do you have a question?

Colin Fox: Yes. To a layman it looks as if the body itself could address that relatively straightforward issue, instead of its being scrapped.

Jeff Ord: It could discuss being slimmed down. The issue is whether the advisory council needs to be statutory. My view is that it does not. What we need is a trail of consultation, because the council is an advisory council, not a negotiating body.

Maureen Macmillan (Highlands and Islands) (Lab): I have questions about your attitude to the amalgamation of the fire control rooms. No one who has given evidence has supported the idea. It was not supported by the Chief Fire Officers Association or the Fire Brigades Union and it is certainly not supported by the joint fire board in the Highlands and Islands—the area that I represent—which has sent me a lengthy submission. The joint fire board also said that the Mott MacDonald report was based on a superficial investigation, that the complexities of the procedures in the control room were not properly
understood and that there was a need for the people in control rooms to have local knowledge and for back-up from the police if the system went down.

**The Convener:** Can we have some questions?

**Maureen Macmillan:** Now I have lost my train of thought and I will take even longer to deal with this.

**The Convener:** I apologise, but there was a lot of material there.

**Maureen Macmillan:** Yes, but it is material that Mr Ord will recognise as needing to be addressed.

Your submission states:

“The fears over Joint Fire Service Control Rooms are bordering on mythical”.

**Why do you take that view?**

**Jeff Ord:** My experience with joint control rooms is in Strathclyde, where in 1975 five fire brigades merged into one and then in 1985 five control rooms merged into one, so the fire control room has now been functioning for almost 20 years.

The issue that many local people talk about is local knowledge, but the local knowledge lies in the database, which is created from many sources, including geographical systems and firefighters and fire service staff, all of whom play a part in creating and maintaining the database. In the 20 or so years that Strathclyde fire brigade has been running, I am not aware that any problems have arisen with local addresses, dialects or accents, even though not all the staff there have personal local knowledge.

I doubt whether all the staff in the eight fire control rooms at the moment have personal local knowledge. Under equal opportunities legislation, we employ people from all areas and do not necessarily employ people to work in their home area. There is no evidence that in larger control rooms—whether Strathclyde, London or Northern Ireland, which now has one control room—local knowledge is lost or diluted. I cannot deny that such knowledge is a benefit—of course it is—but, equally, operators are trained to use the database to interrogate the caller to get the correct address.

I have heard people say that the Mott MacDonald report is fundamentally flawed, but Mott MacDonald is probably one of the most renowned consultants on emergency service command and control centres. The first report that came out was for England and Wales and our advisory council rightly said that it was not applicable to Scotland. Much of the content was applicable, I suppose, but it was not used by the Scottish Executive for Scotland. A further report was then done for Scotland; and, indeed, a second report has been done for England for the regional fire control rooms. I see nothing in the report for Scotland that is fundamentally flawed. Some of the challenges to the figures for savings and efficiencies might be justified, but so might some of the challenges to the figures for costs. Some believe that the costs could be less than the report indicates.

The report took a snapshot about 12 months ago. It looked into the history of control rooms and their capacity, work loads and so on, and I think that it is one of the best reports that we will get. It will allow strategic decisions to be made on how to move forward. If that means that we have eight control rooms, that is fine. That will be a political decision. However, when people talk about a requirement for local knowledge, or say that one control room cannot do the job, that is a slur on Strathclyde and I challenge it strongly. It is also a slur on London and Northern Ireland. I am not aware of any complaint from anyone—from a member of the public, or from someone in the business or commercial sector—about the performance of Strathclyde’s command and control centre. That centre is a living example of how we can cope.

As I have said in further evidence, the Strathclyde centre serves an area that is not just a mainland area; it also serves about 32 inhabited islands. In that sense, it is not dissimilar to Maureen Macmillan’s area. Dialects, accents and cultures are all taken into account.

I understand the emotions that have been expressed. It is very nice if we all have our own command and control centre, and I am sure that everybody would be more comfortable with that. However, you cannot turn away from the fact that the amalgamated centres work. There is no evidence to say otherwise. Correction—there is no evidence that I know of to say otherwise; I would not say that you are wrong in your opinion. However, that the amalgamated centres work is underpinned by evidence.

**Maureen Macmillan:** There are serious concerns. Perhaps Strathclyde, with its 20 years’ experience, now has a database built up, but I am told that the level of stress among staff in the control room in Strathclyde is significant. Perhaps that is to do with the large area that it covers.

What back-up do you envisage there would be if the control centre went down? If we have a single control centre for the whole of Scotland and the system fails, what do we do then? I know the Highlands and Islands example best, and the Northern constabulary would be used to back it up. There are several police forces in the country, but how would a single control room be supported?
In the document “The Scottish Fire Service of The Future”, from 2002, it was decided that eight control rooms—the status quo—was the best option. Nobody disagreed with that but, all of a sudden, we have a change of mind.

Jeff Ord: It is well documented that stress and strain among command and control centre staff are common throughout the United Kingdom. The job is stressful. I am not aware that average sickness levels in Strathclyde are higher than in other areas. However, sickness and absence levels among command and control centre staff are higher than among operational firefighters. That does not surprise me, given the stress of the job.

You asked about back-up. If there were to be one control room for Scotland, I imagine that it would be totally entwined, or golden-threaded—call it what you like—in the resilience issues of the nine command and control centres in England and Wales. They will be totally interoperable. If there were a terrorist attack in London, the command and control centre handling calls for things other than the terrorist attack would be best placed as far away from London as possible; that is, in Scotland.

The plan is for the control rooms in England, Wales and Scotland to be able to fall back on one another. The Mott MacDonald document gives us options: we could have one, two or three control rooms. One appears to save more money, but two and three have attractions and efficiencies built in. With two or three control rooms, we would have the fallback option. The control rooms would still have to be interoperable with England and Wales, because of resilience issues and the increased threat. If we went for more than one for Scotland, resilience would be built in.

Jeff Ord: The Scottish Fire Service of The Future signalled that the option of eight control rooms was satisfactory. I recall being in a meeting about two years ago—around the time that the document came out, or perhaps a little later—when it was felt that eight would provide great resilience, and we would be able to fall back on one another. However, we have seen examples of the service’s extended duties, such as the incident at Stockline Plastics in Glasgow. That was a tragedy, but it was a compact incident on a compact site and did not have the number of casualties that you might expect in the aftermath of a terrorist attack, for which greater back-up and resilience would be required.

The thinking moved on from, “Eight would be okay, wouldn’t it?” to “Would a larger command and control centre be a better way forward for resilience and managing incidents? If that is the case, what back-up would be required?” Options in the Mott MacDonald report could achieve back-up for Scotland in Scotland, while ensuring the control rooms are interoperable with the rest of the United Kingdom, because we need to be aware of intelligence and information.

Maureen Macmillan: So the model that you would go for would not be the single control room for the whole of Scotland, but possibly two or maybe even three.

Jeff Ord: I know that one control room for Scotland would work. However, if at the end of the day, based on all the evidence, the political decision is that we should move from eight control rooms, given the geography of Scotland it might be that we should go for chunks that we can handle, so moving to three or two control rooms might be a better way forward for the service, particularly at this time.

Colin Fox: The public want to see evidence that amalgamation would provide a better service. That is the key issue for them and that is what we are looking for. We want to protect what we have or provide a better service. Where is the evidence that we would provide a better service by amalgamating? Would it not be the case that a greater volume of calls would be going to fewer centres and fewer staff if the control rooms amalgamated?

Jeff Ord: The evidence has to be that we can at least sustain the same level of service, or improve it. I repeat that Strathclyde, Northern Ireland and London are living evidence. Strathclyde is the best of all, because it is on our doorstep and has the cultures that we have in Scotland. Evidence exists that the service can be sustained or improved, and that can be done more efficiently.

As for fewer operators taking more calls, at the moment Strathclyde takes about 48 per cent of all 999 calls in Scotland and the other seven control rooms take the rest. With the three control rooms model, they would not be taking large numbers of calls. The Mott MacDonald report—as challenged as it has been by many people—clearly identifies what is a reasonable call-handling rate and rate for other work, because we know that the operators do more than just answer 999 calls and deploy fire trucks. The report identifies the number of staff that would be required. That model was used by the Home Office, the Office of the Deputy Prime Minister and the Scottish Office for many years. Each operator is able to handle a particular number of calls. I do not accept that it would be unreasonable for the suggested number of staff to handle the suggested number of calls.

Colin Fox: Do you accept that there would be a reduction in the number of staff following...
amalgamation, compared with the number we have currently with decentralisation?

Jeff Ord: Yes, the report clearly states that. More staff would be available in the control room at a particular time, but overall there would be fewer staff. That is inevitable.

Colin Fox: So under your proposals fewer staff would accept the same volume of calls, and by your estimation that represents an improvement in the service?

Jeff Ord: Look at the model in Strathclyde. Pro rata, the operators are handling more calls than are operators in any other area of Scotland, and they are doing so efficiently, with no complaints from the public. On the point about absences, I stand to be corrected, but I do not believe that the absence rate there is any greater than that across command and control centres.

Any amalgamation would have to be reviewed, but it should not be considered in isolation. If integrated risk management planning is the success that we all believe it will be, the volume of calls should reduce, not increase. However, I do not have a crystal ball; I am not saying that eventually there will not be other work and duties that the Parliament and fire authorities might wish the fire brigades to undertake. However, the intention is to drive down not only the number of hoax calls and false alarms, but the amount of wilful fire raising.

The Convener: Has that been done in England and Wales?

Jeff Ord: Yes, but what they refer to as arson we refer to as wilful fire raising. Under the integrated risk management plans that have been in place there since March, the number of arson incidents in large urban and city areas has been reduced significantly. Therefore, there is evidence that, even in these early months, the integrated risk management plans are beginning to have success.

Karen Whitefield: Can we move on to the sections of the bill that relate to fire safety? In your written submission, you welcomed the additional powers of fire investigation that the bill will give. Can you say a bit more about the improvements that those new powers will deliver and what protocols you believe will be needed between, for example, fire authorities, procurators fiscal and the police?

Jeff Ord: They will lead to something that we just about touched on in relation to integrated risk management planning, which is that they will help us better to identify and work out trends. Whether the trend is in wilful fire raising, for example abandoned stolen vehicles being set fire to, or in house fires, for example if there is a problem with a cluster on a scheme or estate, fire investigation will help us to identify the trends. Obviously, it will also help us to bring about prosecutions and to identify appliances or situations that, unknown to us, are potentially dangerous. That information will be transferred to the front end of the service—the local fire station—which, with a bit of direction from strategic management, will decide how to address the trends.

On the protocols, we are already there. Even though it was not a duty, one brigade and its authority made great provision for fire investigation, because they could see its benefits. They already have protocols that have been agreed among the Association of Chief Police Officers in Scotland, the Crown Office and Procurator Fiscal Service, the fire authority and a couple of other agencies that are involved. The Chief Fire Officers Association is considering that model and can either adopt or improve it.

The model is probably about 14 months old now, and there are lessons to be learned in the light of experience, in particular of tragedies such as the Rosepark residential care home tragedy, in which there was fantastic joint working among the agencies involved in the investigation, which has yet to come to fruition. I know that CFOA, ACPOS and the COPFS are willing to write the model into a protocol.

Karen Whitefield: My second question relates to the consistency with which fire safety legislation is implemented. I know that you, in your world, would probably say that we could get consistency across Scotland if we amalgamated most of the fire authorities. However, there appears to be no political will to do that, either from the Executive or from members of the Justice 2 Committee. Therefore, how can we ensure that fire safety standards are implemented consistently across Scotland?

Jeff Ord: I highlighted that issue in my written evidence. I welcome fire authorities being the enforcing authority. That will be great because, unlike the current confused position, people will be in no doubt about which is the enforcing authority. However, a fear about inconsistency must remain, because even at the moment we get criticism that standards are not applied in the same way across the eight fire authorities. The situation here is not unique; it is the same in England and Wales, where there are the same allegations—which sometimes have substance—that fire safety standards are not identical. There will always be a difference of opinion. The position is rather like that of trading standards officers’ interpretation of legislation and guidance; there will always be small differences.

My evidence hints at two ways to overcome that. First, I believe that we will need improved and
increased training on the enforcement role. That can hammer home the message that businesses and the public not unreasonably will expect the same standards to apply in Aberdeen, Glasgow and Edinburgh. We will be able to achieve that only through training. Equally, the problem will be overcome through the bill’s provision for resolving disputes, which will come to me as chief inspector. It will fall to me to hear disputes between a fire authority and the person who receives the service. However, training is the way to overcome the problem.

Another possibility, which is tried and tested in the area of trading standards, which I mentioned earlier, is to make one brigade the lead authority. There are already examples of that practice among some Scottish fire brigades. For example, if a business that looks after elderly persons wants to meet the standard that is required by the enforcing authority, the fire authorities could agree that one authority should be the lead authority and that the other authorities should accept its standard. That should not appear peculiar to the committee because I know that it happens already among Scottish fire brigades in some small areas. Operating the principle of having a lead authority would save time and would be efficient. It would also allow businesses to understand what the rules and standards are.

Jackie Baillie: I want to develop that point. I can understand what seems, on the face of it, to be the reasonable desire to consolidate enforcement powers for fire safety with the fire brigade. However, concerns have been expressed that there is a danger of duplication. That can be illustrated by the example of houses in multiple occupation, for which local authorities already have dedicated teams. Fire officers are seconded to those teams and, jointly, they inspect properties and conduct risk assessments. Are not we in danger of over-egging the pudding and of duplicating arrangements if two lots of people are sent in for the same thing? Would that be efficient and effective?

Jeff Ord: That would not be efficient and effective and it would totally defeat the purpose of what we are trying to do, which is to pull together 100-odd pieces of legislation into one bill and to make one authority the single enforcing authority.

Having been present during the evidence in which the example of HMOs was given, I made some inquiries about the matter. As I suspected, under section 34—I do not pretend to be knowledgeable or to be a lawyer, so I look to Brian McKenzie, with his experience of fire safety, to correct me if I am wrong—a fire authority may discharge some or all of the functions that are mentioned in the relevant sections. One such function is fire safety. Why on earth would a fire authority look to go over the top of a competent multi-agency team that is working effectively? In that situation, why would the fire authority want to duplicate the service that is being delivered or deliver it differently if the service is effective?

I can provide examples of effective teams that I would support as being the body that should discharge a duty, but there are other examples of a fire authority having made recommendations that might have been listened to, but have not always been taken on board. I am concerned about that. If, for a competent reason, such as public safety, a fire authority has made a recommendation on means of escape, firefighting or fire extinguishing, that recommendation should be listened to and acted upon. However, let me repeat that, where agencies are seen to be working effectively and in harmony for the safety of the public and the occupants of an HMO, I see no reason why the duty could not be discharged by a multi-agency group.

Jackie Baillie: To turn that round the other way, if I may, surely in that case the issue is not to provide a function that will then be removed under section 34 but to raise standards across the board, so that the standards of those who are not performing reach those of the best.

Jeff Ord: Yes, but a fire authority currently has no statutory ability to enforce its recommendations in such cases because it is not the enforcing authority. In the months to come, it will become clear that there have been examples of a fire authority having made recommendations that were not acted upon. As the fire authority is currently only a statutory consultee, its recommendations need not be acted upon.

As long as it is not abused, and provided that standardisation is achieved, it is important that the fire authority carries that ultimate responsibility. It has the most experience of what occurs during a fire. However, I would not duplicate; I would be prepared to delegate a function if other people are discharging it competently.

15:00

The Convener: We are already slightly over the time allowed for this session, but I am aware that Stewart Maxwell is present and would like to ask a couple of questions. If they are very brief, I am prepared to allow them, but the committee has other evidence that it must get on to.

Mr Stewart Maxwell (West of Scotland) (SNP): I will be as brief as I can. On your first point, when you talked to Colin Fox about speed, you said that 90 per cent of those who are in fatal fires are already dead before the fire brigade is called. Surely speed and the numbers who attend are still an issue, because the remaining 10 per cent have
a right to expect the service to attend as quickly as possible. We might be talking about saving one in 10, but surely that one in 10 is worth saving. Also, surely there is an issue about damage to property.

On your point about the power to take control of property and equipment, I want to ask about the training of users of such equipment, given that it takes 16 weeks at Gullane and then at least two years to train a firefighter to use much of it. In situations such as the recent strike, would that power have been valuable and how would it have operated?

The Convener: We will stop there and let Mr Ord deal with those questions.

Jeff Ord: I would not want to give the impression that what we call the speed and weight of attack—the number of fire trucks and how quickly they can get there—are irrelevant; they are not irrelevant. Equally, we could throw more fire trucks and more people at a fire and get there faster, but we would still not have a major impact on the number of fire fatalities or the loss of life. We will have a major impact by spending more time on fire safety and prevention education and awareness, and by using more fire alarms, smoke detectors and, especially, sprinklers.

It is about getting the balance right. The pendulum does not just swing from one extreme to the other. If the committee has concerns about the situation and about whether integrated risk management planning will give us flexibility in deploying our people in the right place, at the right time and with the right attack, I refer it to the English and Welsh model. England and Wales are several months ahead of us and, thankfully, there is no evidence that more people are dying or are injured, or that more property is lost in fire. The evidence shows quite the opposite; as I said, it shows a considerable reduction in arson.

It is unfortunate to home in on the dispute that we have had during the past couple of years. There are approximately 26 or 27 powers, some of which lie with other ministers, which, as I said, is not unusual. The one to which you refer is one that we hope we will never have to use if it is approved. The reason why the training of users can be considerably reduced—as it was during the strike and during the run-up to the ballot on a strike that thankfully never occurred, because the negotiations concluded successfully—is purely to attempt to save life. The defence fire services that were engaged by the Office of the Deputy Prime Minister and the Scottish Executive never said that their mission was to go beyond that. Their mission was purely to try to save life from fire and road traffic accidents. That is all that they had the resources to do. It was never intended that they would turn out to vehicle fires, fires on open ground, rubbish fires or whatever, although, during the first strike, a combination of publicity, public awareness and their performance allowed them to extend their original mission. Nevertheless, their mission was still very limited, and it was only by gaining experience that they were allowed to extend it. If we ever returned to that situation, there would be a similar training period and a similar limited mission, not the broad mission that local authority fire and rescue services currently have.

Mr Maxwell: I did not mean to suggest that it was an either/or situation, and I hope that you did not mean to suggest that I asked an either/or question about fire safety initiatives versus speed and size of response.

I spent in excess of two years working in the fire control room in Strathclyde, so I have some background knowledge. I have to say that I find your faith in the database touching. Yes, it is good, but it is not fantastic and it has its problems. When I was working there, it seemed to me that the loss of local knowledge due to being in such a large control room was partly offset by the shared knowledge of people who lived in various parts of Strathclyde—people did not come from outwith the area. However, the loss of local knowledge was not wholly offset, and the area is probably as big as it should get.

We talked about the fallback position if, for example, something terrible happened and there was a terrorist attack on a control room. In the 9/11 scenario, we saw four or even five attempted attacks, although only three of them were successful. You said that if two or three control rooms in Scotland were taken out, we would fall back on England and Wales. Why not retain eight control rooms in Scotland and fall back on the rest of them? Would that not be a better scenario, so that you would not—

The Convener: Could we deal with that question?

Jeff Ord: If you want to retain eight control rooms, that is for you and others to decide, but it is not necessarily the best way in which to secure resilience, because of the difference in the control rooms’ size. I will not name names, but it is obvious that a certain control room could not handle another control room’s calls, because it simply does not have the operator positions, the technology or the staff to do so.

As I keep saying, the matter must be examined in the round. I think that the right way forward is to have one, two or three control rooms—you will have gleaned what I think the right number is—with the ultimate back-up falling to England and Wales. In Scotland, we have eight differently sized control rooms, and it would be difficult to accommodate all the calls in one or two of them.
Mr Maxwell: I have a small question on control rooms. Is not the logic of what you said about large control rooms working perfectly well in London that we should have just one control room for the UK?

Jeff Ord: I dare say that we could—I do not think that there are any technical reasons why we should not do that. The number of control rooms in England and Wales has been determined for the purposes of resilience—I keep repeating that, but it is true. The London model exists and it has been determined that there should be eight or nine control rooms. Scotland has a choice between eight or fewer.

Mr Maxwell: So you think that it is a feasible and viable option to have one control room for the UK.

Jeff Ord: Technically. I am not aware of any technological reason why there could not be one control room for the UK, although I would not prefer that.

Mr Maxwell: Do you think that that would work on a practical, day-to-day basis?

Jeff Ord: It would be very difficult, given that we have devolved powers in Scotland, which—

Mr Maxwell: I was not talking about the political situation. I was talking—

The Convener: It is important to base the discussion on actualities and the practical situation as it exists. What is your question to Mr Ord?

Mr Maxwell: I am trying to determine how many control rooms Mr Ord thinks there should be.

The Convener: I think he has already indicated that. He has given clear evidence.

Mr Maxwell: His logic seems to be that large control rooms are perfectly acceptable. I think he has answered the question by saying that, technically, one would be okay. It is—

The Convener: I am trying to be indulgent by giving you a little latitude because of your background and experience.

Mr Maxwell: That was the last question.

Jeff Ord: In case anyone is in any doubt, I reaffirm that I want Scotland’s resilience to lie in Scotland, with the ultimate fallback that we will go beyond Scotland should that ever be required, as it was at the Stockline Plastics factory. I pay tribute to the command and control centre staff throughout Scotland, not just in the large control rooms but elsewhere, but we must consider the evidence and there is living proof.

The Convener: Would you or Mr McKenzie like to make any concluding remarks?
Jim Robson: The term has been used quite a lot about the old system of developing people. Irrespective of someone’s experience and how long they had been in the service, a training course was a course of three, six, nine or 14 weeks’ duration. Courses were sequential events and once someone had done one course, they went and did the next one, irrespective of their experience.

The Convener: The bill allows for the provision of local training to be contemplated; can smaller brigades adequately deliver training across a widening range of functions?

Jim Robson: Until very recently, there were occasions when training was delivered to a different standard and to a different programme in one place than it was somewhere else. What is happening within the integrated personal development system, especially in Scotland, is that the development programmes for the roles are being applied consistently wherever they are delivered.

In Scotland a working group that is made up of representatives of all the brigades and the Scottish Fire Services College is about to deliver a firefighter development programme covering all areas of the role. The development packages, which will be available on the internet and in hard copy at all levels, will ensure that, wherever they are done, the delivery of the programmes that are needed for the roles will be consistent. However, there is a role for a central establishment, such as the Scottish Fire Services College, to quality assure the delivery of that material. Each authority that has a training centre of its own is an opportunity for fire service or brigade-specific development to be done for that area.

Karen Whitefield: I will continue on the theme of training. What is the Scottish Fire Services College doing with regard to training for the new dimension of firefighting, which is preparing to deal with incidents of terrorism and the like, which I hope will never occur?

Jim Robson: Some instructional staff at the Scottish Fire Services College have been developed to deliver training in mass decontamination, urban search and rescue techniques and tool skills. That development has been done in partnership with the Fire Service College in England and a training provider in Texas that has a great deal of experience and knowledge in the area. In other words, the trainers have been trained.

We have a programme of courses in Gullane in which we deliver urban search and rescue training, tool skills training and mass decontamination training. As I said, that training is being developed consistently across the brigades but, obviously, areas that have the response vehicles are prioritised for development. We are also going to introduce it into the basic training course at a much lower level so that when people go out into the stations, they will have some knowledge and experience of using the equipment.

Karen Whitefield: Last week, the committee heard evidence from the Fire Brigades Union Scotland, which raised concerns about the conferral of new powers to agencies and the difficulties that they face. Limited training might be given, but in an emergency, people might not be fully trained to deal with situations that arise. Is enough priority given in the bill, and in the fire service as a whole, to ensuring that firefighters are properly trained to deal with emergencies when they arise?

Jim Robson: Earlier, I referred to national occupational standards, which are very detailed and are being used, and there are the vocational qualifications that are awarded in Scotland. A person cannot get a vocational qualification unless they can demonstrate in the workplace that they can apply the skills, knowledge and understanding that they have derived from the programme of learning.

In addition, there are four key areas in which people work towards being competent in the integrated personal development system: understanding the task, task management, contingency planning and environmental skills. Contingency planning is particularly important. If a person has achieved a competence within their role and applies those four areas, theoretically—I stress the word “theoretically”—they should be able to deal with any incident that they come across, given the knowledge, skills and equipment that they possess. Therefore, the short answer is that I do not have any particular concerns about the term “properly trained” being an issue.

Jackie Baillie: You have sort of answered my question but, for the sake of clarity, I will pose it in a slightly different way. My question is about the balance between local and national training centres. Section 14 will allow individual fire authorities to designate local training centres and section 44 will allow ministers to establish both central and local training centres. Do you see any inconsistency in the sections, or do you think that a balance must be struck and that the proposals can work effectively?

Jim Robson: There is a balance to be struck and I think that it is being struck effectively because training delivery will be at national, local and regional level, as it is now. What should be delivered nationally, regionally and locally should
be focused on. We are achieving that aim with our IPDS and development programmes.

**Jackie Baillie:** That moves me neatly on to my next question, which is about the IPDS. I understand that the successful introduction of the IPDS might have implications, some of which are cost related. We have heard that people are not sure what the costs will be and whether you expect or will receive additional resources to implement the proposals. Training the trainers at a local level is resource intensive—I have done that in a different context. Do you have any concerns in that regard?

**Jim Robson:** I think that costs were talked through at the Scottish Central Fire Brigades Advisory Committee stages some years ago and it was agreed by chief officers and firemasters that the costs of the IPDS would be borne within the current budget.

That brings me to the next point. Training and development programmes are very expensive. If there is a transition from one to the other, as there should be, there would not necessarily be an increase in costs at the local level.

**Jackie Baillie:** I do not know whether this is true, but I have heard that Strathclyde, for example, is saying that it will need an additional 250 officers to implement the proposals successfully.

**Jim Robson:** Can you give me a breakdown of that figure?

**Jackie Baillie:** I have no idea how it was arrived at. It is simply a figure that was quoted to me. Training is resource intensive.

**Jim Robson:** In Scotland, it has been agreed that the award of vocational qualifications will be the outcome, rather than the driver, of the new development system, so there is certainly a need for qualified workplace assessors. Providing those will be cost neutral to local authorities, because we do it centrally from the Scottish Fire Services College. We have peripatetic trainers who go out to develop people in the role of workplace assessors.

The cost of registration of candidates on the system is borne centrally. Again, it is an issue of realigning budgets, roles and responsibilities to meet the requirements of the IPDS, once we have moved from the training phase to the development phase.

**Maureen Macmillan:** How do retained and volunteer firefighters fit into this system? I know that in rural areas concerns have been expressed about the training of retained and volunteer firefighters, not least by the men themselves. In particular, there are concerns about the need to be trained to use certain kinds of equipment. If firefighters are unable to get that training, they may, in effect, be stood down. Is training for retained and volunteer firefighters delivered locally or nationally? Will there be changes in how it is delivered?

**Jim Robson:** There is no consistent approach across Scotland. Some brigades send their volunteer and part-time firefighters to the Scottish Fire Services College for training, whereas some provide it in-house. However, all brigades train people to the same standard.

We are reviewing what is known as the phase 1 course—the trainee course—which we deliver at the Scottish Fire Services College, to modularise it further. There is a view that we can deliver the right tool skills and safety skills and the minimum level of safety requirements within that programme. For example, in weeks 4 or 5 of the trainee course we could invite candidates from the part-time and volunteer service to come to Gullane to get exactly the same training that full-time fire service candidates receive, so that they have the same skills, knowledge and understanding. With a bit of vertical planning, we can do both things at the same time.

When I first took up my role, I was taken to Cromarty fire station, where I was shown a 6ft-by-8ft shed containing some equipment and challenged to apply the IPDS to it. That can be done, because the IPDS is about role maps. It is about what people must know and understand in order to carry out their role effectively and safely. We need to consider what people must do and know to discharge their function safely under the integrated risk management plan. If we apply that principle, we can provide the right training to the right people with the right equipment for their role.

**Iain Gray:** That moves me neatly on to my next question, which is about the IPDS might have implications, some of which are cost related. We have heard that people are not sure what the costs will be and whether you expect or will receive additional resources to implement the proposals. Training the trainers at a local level is resource intensive—I have done that in a different context. Do you have any concerns in that regard?

**Maureen Macmillan:** I am pleased to hear you say that.

**Colin Fox:** I draw your attention to part 3 of the bill, on fire safety. What new skills will be required to deliver the enforcement duties in that part of the bill?

**Jim Robson:** Fire safety is not my area of expertise, so I will talk about development of fire safety people in general.

Historically, fire safety training in Scotland has been delivered in Gullane on an outreach basis by the English Fire Service College. This year we have not done that. Instead, we have asked the CFOA fire safety committee to allow us to reinvest the money that would have been spent on training fire safety officers—the sheep-dip approach that I described earlier—in producing a Scottish fire safety development programme. On Thursday, I will interview an individual who will be invited to design, develop and, probably, deliver fire safety training for fire safety officers in Scotland.
It is a case not of providing new training, but of providing on-going training. As I said earlier, there are national occupational standards for all roles, including fire safety officers. Those standards include a requirement on officers to understand, know and practice what they need to do to fulfil their role. Officers will receive not extra new training, but more of the training that they already receive.

Colin Fox: Do you share the concerns of the chief inspectors about the uniformity of training in the new skills and whether it will be of the same high standard throughout Scotland?

Jim Robson: There is a national occupational standard, which means that people have to apply what they know and understand consistently in the workplace and be assessed against it. The standard includes a quality assurance element that is applied by the Scottish Qualifications Authority, so that if there are inconsistencies, those can be recognised and dealt with at local level.

Colin Fox: What role do you envisage the fire service playing in training employers? The bill contains provisions that relate to employers’ responsibilities in their premises.

Jim Robson: By employers, do you mean fire service uniformed personnel or the likes of the Convention of Scottish Local Authorities?

Colin Fox: No. I was thinking about the new responsibilities that employers will have for maintaining safety in their premises.

Jim Robson: That is not my area of expertise, so I cannot comment on it.

The Convener: Would you like to make any concluding observations?

Jim Robson: No, thank you.

The Convener: On behalf of the committee, I thank you for joining us. The session has provided us with a helpful illustration of another dimension of the bill’s implications. We are grateful to you for your evidence.

I declare a comfort break and suspend the meeting for five minutes.

15:25

Meeting suspended.

15:34

On resuming—

The Convener: I welcome representatives from the Convention of Scottish Local Authorities. They are: Councillor Julie Sturrock from Dundee City Council, who is chair of the COSLA task group; Stephen Hunter, who is the firemaster at Tayside fire brigade; Councillor Ken Harrold, the convenor of Lothian and Borders fire board; David Millar, who is head of corporate services for Lothian and Borders fire brigade; and Barbara Lindsay, who is corporate manager of COSLA. We have a positive array of talent this afternoon to divert us.

In accordance with the format that we have adopted, I assume that the witnesses are relaxed about not making introductory statements.

Councillor Julie Sturrock (Convention of Scottish Local Authorities): We were aware that such statements have been dispensed with for the previous witnesses, but Councillor Ken Harrold has a very small opening statement, which covers the spirit of our approach. It lasts only about six minutes; it is very short. It might be helpful if he could give that opening statement, although the decision is obviously in the convener’s hands.

The Convener: I am conscious that COSLA was advised before the meeting of our desire to press on with questioning. I would not be content to have an opening statement of six minutes, but I will be happy for Councillor Harrold to encapsulate the principal points in two minutes.

Councillor Ken Harrold (Convention of Scottish Local Authorities): I will attempt to do that in two minutes, although I cannot promise that I will.

COSLA wants local democracy to be maintained; we want control of the fire service to be in local government hands. The bill needs to establish the roles of national Government and local government so that the strategic direction of the service is set out jointly and so that local elected members have maximum flexibility to determine the needs of, and solutions for, their areas. There is a need to recognise that the fire service cannot make a difference to community safety on its own and that as with the police, the health service and social inclusion work, it needs to be integrated with community planning partnerships. We are also opposed to overtly prescriptive and centralising ministerial powers of intervention and direction and we have grave reservations regarding the establishment of any new quango in the form of a common fire and rescue services agency.

We also point out that audit of the Scottish fire service is continuous. So far in this financial year there have been seven audits—although some of them were part of the pay claim—and Mr Ord and his team will go out to do an eighth inspection during this financial year. If the reports on other local government services meeting targets were as good as those for the fire service, many of my fellow councillors would be very pleased.
I am sorry for the abbreviated version of the statement, but that encapsulates our position.

The Convener: I will hold you up to all future witnesses as a model of what can be achieved, Councillor Harrold. I thank you, because you have encapsulated your approach to the points that are of interest to the committee and have referred to areas on which committee members will undoubtedly want to ask questions. Thank you for your brevity.

I will go straight in and follow on from your important point on the balance between local democratic accountability and ministerial power. I noticed that, in your introductory comments, you used the word “prescriptive”. What powers in the bill are of particular concern to COSLA?

Councillor Sturrock: That has been an issue of great debate. We note that the bill will allocate the minister 27 separate powers over the fire service. We were considering that before we came in, and we have concerns about section 2 and about how section 34 is wrapped up with section 35. In fact, all the debate about the structure of the fire service could be purely academic because, if the bill were passed, the minister could completely restructure the fire service at will. That is an illustration of how wide and sweeping the ministerial powers will be. The minister could, in fact, outsource the entire service if she wanted to.

The Convener: Earlier this afternoon, Mr Ord gave his opinion on the issue, which was that it is highly unlikely that the powers will be exercised because the consequences about which you are apprehensive are unlikely ever to come about. Do you share Mr Ord’s opinion?

Councillor Sturrock: No, because I feel that legislation must be based on all contingencies and not on the good will of present or foreseen incumbents. Legislation must be based on what is possible and on what it can be used for. The bill is such a wide and enabling one that the outcomes could be different, given a completely different political complexion. Who am I to foresee what may happen in 10 years? We are updating legislation from 1947; if it was to take another 60 years to update the present bill, anything could happen. At present, the bill is simply an outline and contains little detail. We are considering issues such as control rooms and the structure of the service, but with few concrete plans to go on in the bill, which simply contains wide enabling powers.

The Convener: To follow on from that, does the bill support local accountability?

Councillor Sturrock: Local accountability is threatened because of ambiguity or lack of detail in the bill. The fire service must be locally accountable but, under the bill, a local firemaster will not be accountable to the fire board. However, the accountability interface comes when the chief officers of a fire brigade meet elected members to discuss the shape of the service. If that system is to change, the idea that the service is locally accountable would lose credibility completely. COSLA wants to enable the fire service to be part and parcel of community planning in a real sense. As soon as we take away local power, we will take away the ability for local self-determination and the ability to shape the service for local needs.

Colin Fox: Consultation has been carried out, but the national framework document has not yet been produced. What operational objectives and targets and other details would COSLA like to be in the framework document?

Councillor Sturrock: We welcome many elements, such as integrated risk management. Stephen Hunter might be able to give a clearer outline of all the elements.

Stephen Hunter (Convention of Scottish Local Authorities): We have not seen the national framework document for Scotland; we have seen only the national framework document for England. Some of the wide-ranging powers in the bill may, when flesh is put on the bones—as the chief inspector of fire services put it—be of concern to COSLA. Although COSLA supports integrated risk management planning and the move from intervention to prevention, and it hopes that more lives will be saved and that there will be fewer injuries and fires, we are concerned that COSLA may not be able to play as effective a part in the production of the framework as it would like.

Colin Fox: Is it your feeling that the wide-ranging powers for the minister will upset the balance between local operational control and central control?

Stephen Hunter: COSLA is concerned that if it cannot sit in with ministers and the Executive team during production of the national framework, certain elements of it may be imposed through the ministerial powers.

15:45

Councillor Sturrock: Basically, we are going back to the normal COSLA standpoint on many such issues, which is that we see a need for a national strategic approach but hope that COSLA and the Scottish Executive can work out the approach together and hand it to local authorities to allow them to work out what is most appropriate at their level.

Jackie Baillie: The proposal in the bill is to abolish the Scottish Central Fire Brigades Advisory Council. Does COSLA agree with that proposal? If so, would you replace the council with
an alternative structure and what would that structure look like?

**Councillor Sturrock:** There is a need for such a structure. Either we could have a reformed version, if that were felt necessary, or we could attempt to create an interface between COSLA and ministers, which would examine the strategic approach and future planning, and would set up an advisory body made up of professionals and fire brigade members who would provide technical back-up. We would not be averse to fine tuning the body so that we could examine its tasks and perhaps deal them out differently to various bodies before bringing them together under a different heading.

There appears to be a certain impatience with the present set-up, but that does not mean that it can be disposed of or replaced by some completely different groupings. It should be possible for existing groupings to work in a different way.

**Jackie Baillie:** I want to be clear: you think that, as well as COSLA, stakeholders such as the trade unions, the firemasters and so on should continue to be involved. You would not change that, but would simply change the form.

**Councillor Sturrock:** That is correct. As I said, it might be possible to have parallel working groups whose work was presented differently.

**Jackie Baillie:** It is a matter of debate whether the form and function of any subsequent advisory body should be set out in statute. Do you think that it should be or would it be more useful to name the various stakeholders and place on ministers a duty to consult?

**Councillor Sturrock:** I am not sure. Barbara Lindsay might know whether we have had any guidance on that matter.

**Barbara Lindsay (Convention of Scottish Local Authorities):** The model that Councillor Sturrock refers to—a political forum with national and local focus and an officer implementation advisory group below it—is one that we have developed with the Executive in a number of important policy areas. Obviously, those groups are voluntary rather than statutory. They seem to work well in their areas.

**Colin Fox:** Councillor Sturrock mentioned the impatience that exists with the current set-up. Do you share that impatience? If so, does COSLA intend to suggest a model that it would like to replace the Scottish Central Fire Brigades Advisory Council?

**Barbara Lindsay:** The model that we suggested in the consultation response that we submitted previously was broadly similar to that which I have just outlined. That is our suggestion; if people were open to that, we could examine how it has been applied in other areas and we could flesh it out with a bit more detail.

**Karen Whitefield:** Councillor Harrold said that one of the key priorities for COSLA in assessing the bill’s proposals is the need to maintain democratic local control. Do you believe that the retention of the eight fire authorities across Scotland will allow that democratic and local control to be maintained?

**Councillor Harrold:** The figure of eight fire authorities in Scotland is not set in tablets of stone. COSLA is not currently advocating that there should be eight, three, one or whatever number of authorities. The important matter is who is in control. Control must be concentrated locally if we want to continue to get the message across about community safety. Brigades can work together—there are a number of recent examples of that in relation to matters such as purchasing—but governance must remain with local government. It would be ironic if we witnessed the demise of the municipal fire service, given that the first such service in the world was set up in Edinburgh in 1825. That was many years ago and the fire service has moved on, but the only way of providing a good service to our constituents—and members’ constituents, obviously—is by retaining local government control over the fire service.

**Councillor Sturrock:** In essence, any change must be proven to lead to an improvement. There is no point in change for the sake of change. Unless improvement is the demonstrable outcome, change is not advisable. We welcome the focus on prevention, integrated risk management planning and other such matters, but we are extremely proud of our response times in the current system. We should be careful about dismantling a system that is working well.

**Karen Whitefield:** COSLA had understandable reservations about proposals for a common fire and rescue services agency and the Executive chose not to press ahead with those proposals. Is COSLA content with the proposals in sections 2 to 5 for the establishment of joint fire and rescue boards?

**Stephen Hunter:** COSLA is content with the fact that the eight fire brigades—six joint boards and two unitary fire authorities—can be maintained. COSLA would be concerned if there were to be changes to that structure. The bill would provide the power to change the structure of fire brigades, but the national framework document might contain more information about the proposed changes. COSLA would certainly want a seat at the table if discussions about proposed changes were to take place. We mentioned powers of intervention; section 2 would give ministers the power to intervene to create the
structure that they want. COSLA has concerns about that.

Jackie Baillie: Sections 7 to 9 set out the principal functions of fire authorities. Is COSLA content in general with the provisions, or is anything missing?

Stephen Hunter: COSLA has considered the provisions, which set out specific statutory duties. The bill would extend the duties that are set out in the Fire Services Act 1947—which was predominantly about firefighting—to include statutory duties in relation to road traffic accidents. The bill would also provide for conferral of functions in other emergencies. We hope that COSLA would be able to sit at the table to discuss the powers to deal with other emergencies that would likely be conferred on the service.

Jackie Baillie: Are you happy that such matters would be dealt with through secondary legislation, rather than in the bill? We have heard representations that suggest that urban search and rescue should feature in the bill, as should flooding, which is of particular interest to some local authorities. The UK sea of change project, which is due to report in April 2005, and which has implications for coastal communities, should also feature in the bill.

Stephen Hunter: The difficulty that arises in putting the bill together is in having an exhaustive list of emergencies to which the fire brigade would be capable of responding. Should we try to be exhaustive or should we try to be more general in respect of the emergency role of the service?

Councillor Sturrock: I add the rider that—as COSLA always says—if something is to be a core function, it should carry with it appropriate funding.

Jackie Baillie: Absolutely.

The Convener: I think that we would take that in tacit parentheses, Councillor Sturrock.

Councillor Sturrock: I would not like to let that past.

Jackie Baillie: Are there any concerns about the interaction of authority functions as specified under the bill and those that are specified under the Local Government in Scotland Act 2003?

Councillor Sturrock: Earlier, my colleagues and I were discussing the ability to charge, particularly in relation to some aspects of training. Under the 2003 act, we would be allowed to charge, but there are certain problems with that. I will hand over to Stephen Hunter, who will give you the details on the subject, which has been a bit bothersome.

Stephen Hunter: One of the issues under the 2003 act was community planning, in which the fire brigade wishes to remain actively involved. The statutory duty to be a key player in community planning at local level is supported and we also support the power in respect of best value. As Councillor Harrold mentioned, there are concerns about the possibility of a common fire and rescue services agency. If there were only one agency, which all the fire services in Scotland would address for the purposes of procurement, for example, that might not offer best value; we might not be able to demonstrate best value if we have to buy through one particular route.

With regard to what Councillor Sturrock was talking about, the 2003 act gives local authorities the ability to set up trading accounts and to trade for profit in competition in the open market. We feel that, in some respects, the bill will restrict fire authorities’ ability to charge at market rate. It stipulates that charging will be just at cost to the brigade and not necessarily at the market rate.

Colin Fox: Councillor Harrold made it clear that you have grave reservations about the proposed common fire and rescue services agency on the ground that you do not see the need for such a quango, which would centralise things more than necessary. The Executive has indicated that there exists the option for the agency not to be in the bill and for the proposal to be explored further. The pace of exploratory talks would be much slower than has previously been the case. Would that satisfy COSLA’s concerns?

Councillor Harrold: I would always have major reservations about such a body. In order to set up a common agency, a large bureaucracy must also be set up. We have, working in partnership with seven of the eight brigades, purchased protective clothing for firefighters and saved something like £51.50 per unit by doing it that way. If a bureaucracy had to be set up, where would that £51 of savings come from? That would slow things up.

Over the 25 years of my involvement with the fire board, there have been a number of examples of insular or inward-looking fire authorities, but despite all the problems of the dispute, brigades working together is the way forward and the setting up of an agency—I was going to say in Edinburgh, but it could be in the Orkneys or anywhere—is not. Working together is the way forward. It would be of no benefit to the fire service to have a central agency.

16:00

Colin Fox: So—further discussion is not really necessary because you believe that, as things stand, there are sufficient grounds for collaboration without establishing an agency to ensure that collaboration happens.

Councillor Harrold: Yes.
Councillor Sturrock: We would prefer that that option be discounted now rather than the question be prolonged. If such a body is not regarded as a favourable option, we would greatly prefer that it be discontinued as an option rather than held over.

Stephen Hunter: It is important to add to what Councillors Harrold and Sturrock have said; many collaborative initiatives in the fire service are not just between fire brigades. Many fire brigades collaborate with their local authorities, national health service boards, the police and the academic institutions in their areas to get economies of scale in purchasing, for example.

Maureen Macmillan: What is COSLA's position on the Mott MacDonald report on the possible amalgamation of control rooms?

Councillor Sturrock: We have yet to make a formal decision. There is a feeling that the eight control rooms that exist at the moment have served us very well, but we have to consider the options that are proposed in order to work out whether they will bring benefits.

The question creates a difficulty for me in that I would have preferred to have come to the committee with a strong opinion, but the question has to go through the normal decision-making process. Although I can represent the feeling of the task group, it is difficult to provide the committee with COSLA’s position.

However, it is my understanding that there is no support for there being only one control room because of the grave difficulty that would ensue should that control room ever be out of order. A great many representations have been made to COSLA on behalf of the eight control rooms on the link between the control room and command. At the moment, the control rooms serve many different functions and they are geographically dispersed. The figures that sit behind the estimation of the number of employees to be redeployed, should the number of control rooms be reduced, are not accurate, according to the firemasters. Because the control rooms are so widely dispersed, if one was to be closed, it is unlikely that people would want to travel to be part of the new one.

There would also be problems related to the kind of thing that Mr Fox mentioned in that there might be a range of shared expertise within a geographical area. If people do not move from an area, the knowledge from that area would essentially be lost.

There are many concerns about reduction of the number of control rooms, but we do not as yet have an official stance on the question. Those are the concerns that have been voiced. There is also a problem in that we are not at all sure that the estimated savings can be made, at least not in the way that is proposed, and there are difficulties with determining how any reduction in the number of control rooms should be made. There are also capital costs involved; they do not appear to have been addressed. We cannot create an amalgamated control room just by putting extra people in the same room. I do not know whether Stephen Hunter has more to say on that.

Stephen Hunter: COSLA is concerned about the future governance arrangements, as any proposals to reduce the number of control rooms would reduce democratic control and result in a loss of local accountability. Although COSLA has not reached an official position, it is currently considering the issues. COSLA would be opposed to any continuation of the centralisation agenda, but it would not be opposed to evaluating any proposals that evidence showed would provide a more effective service.

Maureen Macmillan: When will COSLA come to a conclusion on that?

Councillor Sturrock: The issue is due to be discussed at the leaders’ meeting on Thursday.

Maureen Macmillan: It would be helpful if we could be sent a note of COSLA’s decision.

The Convener: Further to that, I want to cast back to Councillor Sturrock’s earlier observation that a demonstrable case should be made before any change is proposed. In my area, Strathclyde, for 30 years we have had one brigade instead of the five brigades that we used to have and, for the past 20 years, we have had one control centre instead of five control centres. I am anxious to tease out from you—in the sense of gently extract, rather than torment—whether that has been a bad arrangement.

Councillor Sturrock: The fact that the Strathclyde area came to its own conclusion on that arrangement may have had something to do with its success. Many other functions in Strathclyde, such as transport, are arranged along that regional boundary. My understanding was that, given that there was a layer of regional government at the time, the arrangements in Strathclyde reflected the political reality. That would not be the case if the control rooms were restructured as suggested under the bill. From the performance of Strathclyde’s control room—whether that be good, bad or indifferent—it would be difficult to extrapolate the future performance of arrangements across Scotland.

The Convener: That is interesting. If I understand you correctly, you do not necessarily object in principle to the possibility of having a smaller number of control rooms. Your concern is that any conclusion that is reached should be
arrived at on the basis of a local discussion. Is that correct?

Councillor Sturrock: Yes. The fire service is a local government function that should be for local determination. Otherwise, it ceases to be a local government function in quite the same way. There is a difference between proposals that are technically feasible and proposals that are democratically valid or locally accountable.

The Convener: But you are not saying that, in principle, reducing the number of control rooms is a bad thing.

Councillor Sturrock: It would be difficult to say whether it is a bad thing or a good thing on the basis of the sketchy information that we currently have. Most people fear that, if it were a bad thing, it would be too late to do anything about it afterwards, whereas we know that the current control rooms work. They are part and parcel of an integrated management system within each brigade. That is a very different system from one in which the control rooms are extracted from the brigades while the brigades are left as they are. Such a system almost presupposes that the whole brigades system would also be streamlined—a very emotive word. Streamlining implies improvement, but that has not yet been proved either. The proposals might better be described as the reduction of the local accountability process. The geography and sparsity levels of different parts of the country can create very different problems for each brigade. For those who believe in local government, the solution has to be one that fits each situation.

The Convener: Maureen Macmillan has a further question on fire safety and co-ordination.

Maureen Macmillan: How well do the fire safety enforcement duties fit with other local authority functions, such as the regulation of houses in multiple occupation and licensed premises? Is there likely to be a duplication of effort under the new fire safety regime?

Councillor Sturrock: With HMOs in particular, there is a determination in local government to ensure that what tenants and their neighbours are offered is safe and appropriate to the area. Local authority involvement in that covers a lot of different functions, such as environmental health, planning, licensing and the fire board. The idea is that we are all working together to ensure that the public are protected properly and that everybody is kept safe.

A reorganisation of that system would be much bigger than is hinted at in the bill. It is not something that can be covered in a sentence, because the other bodies would become the statutory consultees and the fire brigade would become the judge and jury. With the licensing system as it sits, we at least have a legal system that can address appeals. I will let Stephen Hunter come in, but that is my take on the matter. If there are faults, the whole system should be reviewed and checked. It has not been running for that long and we have to give it time to bed in so that we can check whether it is working. If it is not working, let us try to improve it, rather than start a completely different system.

Stephen Hunter: The fire service is only one agency that inspects and decides whether it is appropriate that HMOs or licensed premises should be granted a licence. Building control, environmental health and the police are involved in considering the licence and whether the licence holder is a fit and proper person. We would like recommendations to be given more force under the bill. As the chief inspector said earlier this afternoon, there are concerns that recommendations will be disregarded where the fire service carries out only an agency inspection.

There are many areas where more parties need to be considered, as equal partners, before a licence is granted. However, we need more than just recommendations; a fire brigade should be allowed to set out requirements before a licence is granted. The issue is all about working in effective partnerships, because the groups that are issuing the licences are the local authorities—the police come under the local authority functions. Where the system is not functioning effectively, action needs to be taken. More emphasis should be placed on fire brigade comments; rather than being treated as recommendations that can be disregarded, they should have to be considered extremely seriously.

Maureen Macmillan: Do you have evidence that those comments are not being considered seriously? Are the fire brigades’ recommendations not being followed or is that just a supposition based on anecdotal evidence?

Stephen Hunter: The original question was whether the fire brigade wanted to have the powers. Where, under the Fire Precautions Act 1971 or the Fire Precautions (Workplace) Regulations 1997, we are the enforcing authority, we carry out our duties. I do not have any local examples of where there is not an effective partnership arrangement where we are an agency inspector.

Jackie Baillie: Are you saying that you would stop short of being the enforcement body if—given that currently local authorities are the enforcement body for HMOs—your status were enhanced beyond a statutory consultee?

Stephen Hunter: Yes.

The Convener: Do you want to make any concluding clarifications?
Councillor Sturrock: We have covered many of the things that have been covered before, but our overwhelming feeling is that the bill is vague. It is concerning that the bill is so vague and that the minister would stand to have such sweeping powers. As I said, if the powers were to be used, much of the committee’s detailed discussion would become academic, because it would be within the minister’s power to make the decisions that the committee has discussed. That is worrying for local government. We believe in local democracy and feel that, as the fire service is a local service, its future should be determined at local government level, obviously in consultation and collaboration with the Scottish Executive. That is one of the most worrying aspects of the bill. Everything else can be discussed, but the vagueness is a major difficulty.

The Convener: On behalf of the committee, I thank David Millar, Stephen Hunter, Councillor Harrold, Councillor Sturrock and Barbara Lindsay for attending the committee. Their evidence has been extremely helpful.
27th Meeting, 2004, (Session 2) 28 September 2004

SUBMISSION FROM FIRE OFFICERS’ ASSOCIATION

Part 1

Section 1

We are content with the proposed change of name to “fire and rescue service” since it more accurately reflects the services that that informally been provided for many years. This bill’s proposed increase in statutory duties make the title change even more important.

Section 2

We must express some concern over use of the word “appears” in the first line of Section (2). It seems inappropriate that Ministers are not subject to the same Best Value principles and evidence-based decision making requirements that apply to local authority services. We believe that the Section might be better worded – “Where there is evidence that it would be in the interests of greater economy, efficiency and effectiveness that the areas of two or more fire and rescue authorities, the Scottish Ministers may order make an amalgamation scheme for that combined area.

Whatever the wording, we would prefer to see some requirement for the decision to make an amalgamation scheme to be based upon a process requiring appraisal of evidenced options.

Fire and rescue authorities themselves might be better placed to identify potential benefits of combination and we feel that it would be appropriate to make additional provision for fire authorities to voluntarily amalgamate. We would, therefore, suggest that an additional Section be added. Such provision might be; where two or more authorities consider that there is evidence that it would be in the interests of greater economy, efficiency and effectiveness, they should be able to request that Scottish Ministers make an amalgamation scheme for their combined area.

Part 2

Chapter 1

Sections 7 – 10

The fire service has long been seen as the organisation that will respond and deal with any emergency that cannot be dealt with by other services. Sadly, the call to assistance often occurs after other services have exhausted their options and some time may have elapsed during which a casualty’s discomfort continues more than is necessary. When called upon, the fire rescue service always responds but there are occasions where doing so raises questions over personal indemnity in situations that fall outwith the service’s area statutory function and where specific training provision is not made.

We are, therefore, content with the proposed statutory duties of the fire and rescue service. However, in relation to Section 9, Road traffic accidents, we feel absence of any responsibility for preventative work is a serious omission. Where fire and rescue service resources are, by statute, required to be deployed, there should be some accompanying responsibility to actively reduce or minimise the number of such deployment occurs.

In this case, the primary beneficiary of preventative work would be public safety but benefit would also be derived from reduced cost to the public purse. Leaving responsibility for prevention with other agencies does not make sense, particularly, in an age when partnership working between public services is encouraged. We feel that prevention should be divided between the fire and rescue service, police and possibly health services since we believe that close partnership between these organisations will be necessary to develop common demand reduction objectives.
Whilst we make specific reference to road accidents, the above principle should apply to other areas of responsibility since those bodies with an interest in reducing activity should be able to invest in initiatives geared towards prevention rather than intervention, much in the same way as the fire and rescue service is reviewing this balance in relation to fire-related incidents. The Community planning model might be considered where one body takes a leading role and others have a duty to participate in the planning process.

We would also like to see the inclusion of a specific duty to deal with incidents related to ‘New Dimensions’ such as incidents requiring mass decontamination. Inclusion of such a duty would place the provision of equipment and training on the same footing as other activities. It is recognised that ‘New Dimensions’ is currently a central responsibility but we would not foresee any difficulties from its delegation to fire and rescue authorities, bearing in mind the Scottish Ministers’ power to direct fire authorities on the use of resources.

The existing Scottish fire service is introducing equipment and training for dealing with ‘urban search and rescue’ incidents. We regard this as legitimate role for fire and rescue services and believe that it would be beneficial to include search and rescue from collapsed structures to the service’s statutory functions. This would ensure that all authorities, in terms of equipment and training, make provision for such incidents.

We trust that, even without our suggested additional responsibilities additional equipment and training are likely to be required if the service is to properly prepare for additional rescue responsibilities. It is hoped that the Scottish Executive will be sympathetic to the inevitable requests for additional capacity building funding.

We believe that proper funding will be required if the service is to effectively deliver all statutory functions. However, it would be much better if the Fire (Scotland) Bill’s enactment were accompanied by centrally funded support arrangements that remove the need for competitive local funding bids.

Dealing with emergencies in coastal areas

We feel that there is a need to clearly define the geographical area of a fire authority’s jurisdiction to ensure that provision is made for dealing with fire (or other emergencies) occurring at sea. This has long been a problematic situation as the existing Fire Services Act does not allow fire authorities to act outwith their immediate coastal area. Accepting that the service has not been empowered to operate at sea, it has been difficult to obtain a clear definition of where a local authority’s area ends. Different interpretations seem to have been taken, e.g. ‘within the arms of land’ or ‘the low tide mark.

Irrespective of the above definition, it is considered that the huge potential risk to life from fires occurring at sea has never been properly addressed. Some fire services have voluntarily dealt with offshore incidents whilst others make no provision. This is far from satisfactory, considering the amount of sea traffic through Scotland’s waters and recent increases in the numbers of cruise liners calling at Scottish ports.

The UK “Sea of Change” project seeks to address this situation and by April 2005 it is envisaged that there will be offshore firefighting capabilities within the Scottish fire and rescue service. It would, therefore, be helpful if the Fire (Scotland) Act anticipated this by defining powers and responsibilities in relation to offshore fire and rescue work.

Chapter 2

Section 11

We are concerned over the presence of this Section and its wording since it implies that the professional opinion and judgement of fire officers may be overridden at operational incidents.

We cannot see why it should be necessary for Ministers to interfere in the management of an individual emergency incident. Where there is no fire, we accept that other agencies such as the
police service will have overall authority for incident management. However, the senior fire and rescue service officer present at an incident should remain the point of responsibility and accountability for the management of operational fire incidents.

We understand that it may, on occasion, be necessary to direct a fire and rescue authority as to how its resources should be employed. In such instances, the Scottish Executive might consider the provision of regulations or statutory guidance as a means to direct on the use of its resources, for example, where Ministers determine that all fire and rescue services should not send more than two appliances to an automatic fire alarm call.

We seek clarification of the purpose of this Section and greater definition of the circumstances in which it might be used.

If it is intended to retain this section then we must make the point that we would expect Ministers to be fully accountable for the consequences of any emergency direction.

Section 12

We fully support the inclusion of the power to respond to other eventualities as it allows the service to respond to much wider range of incidents, indeed any where life or the environment is endangered. This should remove any concern that exists over the services power to act in situations not specifically defined by statute.

Section 15

Subject to defined criteria, we believe that fire and rescue services should be empowered to levy charges upon occupiers/owners of premises to which the service repeatedly receives fire calls arising from faulty automatic fire alarm systems. Often the cause of these false alarms is poor maintenance or housekeeping. It is hoped that the proposed Section will result in the making of an order covering such circumstances as we feel that it would greatly assist the service’s drive to reduce unwanted fire alarm calls, freeing resources for more productive activities.

Chapter 3

Section 18 and Section 20

We are aware that under new water legislation, there will be a commissioner of water who is able to grant licences allowing companies to operate water tariffs. We are concerned that granting such licences may result in fire authorities having to negotiate several agreements for the supply of water. It might also be the case that licensees install non-standard fire hydrants and security devices.

If this is the case, it would be preferred that the Fire (Scotland) Act were to provide that any license issued includes a condition for the supply of water on the terms agreed between fire and water authorities. Such terms should also stipulate that any installation provided for fire and rescue service use should be subject to section 20 subsection (5) to ensure compatibility with fire and rescue service equipment.

Chapter 4

Section 23

The powers of fire service personnel appear to be in line with the 1947 provisions for firefighting purposes and we are content that this be so since the arrangements have worked well for almost 50 years.

In relation to powers for other emergencies, we believe that parallel powers are necessary to ensure that necessary intervention action can be taken and we, therefore, support the proposals of this Section.
We note that the proposed legislation no longer makes reference to the “senior fire brigade officer having sole charge and control of all operations for the extinction of fire”. Absence of this, or an equivalent phrase, raises concerns similar to those expressed in response to section 11, above. We believe that there is a need for clarity of jurisdiction and control at the various types of incident attended by the fire and rescue service.

Section 26

We consider that the wording of Section 26 may compromise the safety of constables who are not currently trained for firefighting or rescue from fire. Conferring powers similar to those of a fire officer may tempt constables to attempt firefighting or rescue activities beyond their capabilities. There are many examples of fire incidents where constables have become fire casualties as a result of attempting rescue from fire.

It is appreciated that a constable may be able to extinguish small fires or effect rescues at the early stages of fire development but in most areas the fire and rescue service will respond quickly with appropriately trained and equipped staff. However, this may not be the case in rural areas and it may be tempting for constables to intervene pending arrival of the fire and rescue service.

Consideration might be given to the provision of enhanced training for constables in remote rural areas or the introduction of a dual role as constable and volunteer/auxiliary firefighter.

In any event, it is considered that the proposed powers should be modified to include a proviso that the powers may only be exercised where a constable is satisfied that his personal safety will not be compromised or where a constable has received adequate training in assessing the risks to personal safety associated with firefighting and rescue activity.

Section 28

The fire service has to date, referred the security of unoccupied premises to the police or arranged for the local authority to make premises secure. These arrangements appear to work well on the majority of occasions and we are not aware of any significant problems having arisen.

Waiting for the relevant organisation to arrive can result in appliances and staff being unavailable for further calls but we do not believe that the fire and rescue service would knowingly leave premises insecure and every effort is made to trace the owner/occupier or arrange for the premises to be temporarily secured.

Making fire and rescue authorities responsible for security might seem sensible for incidents where no criminal acts are suspected. We envisage that, on many occasions, the premises affected will be local authority owned and the process of securing premises will be unchanged, however, with responsibility falling to the fire and rescue service we fear that local authorities may raise a charge for services rendered. In other cases, a private company may need to be called upon. In either event it seems likely that new costs will be incurred by the service and it is hoped that these are taken account of in the Scottish Executive's funding assessment.

Chapter 6

Section 35 and 37

We do not consider that the provision of these sections is necessary provided the service is subject to a similar audit regime as local authorities, i.e. that the audit of Best Value is applied to the fire and rescue service. The intervention powers bestowed by the Local Government in Scotland Act should, in our view, be more than adequate to allow action to be taken against any poorly performing service.

In England and Wales, Comprehensive Performance Assessment of fire and rescue authorities is using seconded fire and rescue service staff to advise on technical aspects of the audit. We believe that similar arrangements within Audit Scotland would deliver a robust and objective audit.
Section 36

This Association welcomes the introduction of a Fire and Rescue Framework for Scotland as we believe that it will bring greater integration of fire and rescue authorities and their services. It is considered that the absence of a national agenda for the service has, perhaps unintentionally, allowed fire brigades to become insular and somewhat possessive of in-house systems. Recent years have seen some improvements in openness and information sharing across the service but examples of meaningful collaboration towards the creation of common systems and approaches remain limited.

All fire and rescue share the same core duties and we believe that this should result in very similar organisation service delivery objectives. We, therefore, consider that there is much scope for collaboration on the development of common solutions to common problems. This would avoid existing duplication of effort which we believe to be extremely wasteful of the services limited resources.

This argument goes further and we urge that the Scottish Executive actively seeks opportunities for collaboration with the Office of the Deputy Prime Minister and the devolved administration in Wales to ensure that potential for the development of common approaches is maximised.

As the reader might expect we ask that, in relation to subsection (6) paragraph (b), Scottish Ministers consider this Association as representative of employees.

Section 39

We are not convinced that the scrutiny role of Her Majesty’s Inspector of Fire Services has previously been effective. Long-standing failings have been known to many in the service and identified in reports, such as the Audit Commission’s “In the line of fire” and “The Future of the Fire Service: reducing risk, saving lives” in 2002. Had the Fire Service Inspectorates operated a robust audit and inspection regime, it might be expected that failings would have been reported and addressed. However, reports have consistently failed to identify key areas for improvement and we have seen a series of relatively minor recommendations which were accompanied by a requirement to produce corrective action plans.

We believe that our comments against sections 35 and 37 applies here, as the real test of performance will be management effectiveness in delivering against planned or expected outcomes. Knowledge of the service is not essential since the audit focus should be on the processes and management systems employed by each fire and rescue authority. However, as previously mentioned, including people with a service background in audit teams would help to cut through any ‘smokescreens’ that might be erected.

We consider that Audit Scotland is best placed to conduct the fire and rescue service audit but can accept that the Inspectorate could retain its current role if more rigour were applied to the audit and reporting processes.

Section 44

For some time, we have held concerns that some local fire service training facilities might not be primarily focused on developing the skills and knowledge of fire service employees. Indeed, we hold suspicions that training facilities are being used as a source of additional income where relative success feeds one-upmanship amongst chief officers.

We tend to favour consistency of approach towards common issues and training is no exception. We, therefore, support greater centralisation of the training function as the present arrangements tend not to recognise the commonality of fire service functions and individual responsibility for development of local training packages leads to duplication of effort. This is also true of training strategy. Several years ago we saw the introduction of a national strategy for competency-based training which failed to include direction on local implementation with the result that 58 fire brigades dedicated resources into the development of 58 different systems intended to deliver the same outcome.
We feel that, wherever possible, work in common areas such as training should be done once and shared between fire and rescue service. Since many of our members are involved in service development areas, we believe that this will help to reduce the pressures on staff during a period of initiative overload.

Chapter 7
Section 45

The Fire Officers’ Association holds strong views on the matter of national negotiating bodies as we consider that the present National Joint Council arrangements have been a major factor in bringing the service to a position where wholesale change has become necessary to bring modernisation to the service.

Many of the issues highlighted by the 2002 Independent Review of the Fire Service have been known about for many years. Indeed, as far back as the early 1970s, the Holroyd and Cunningham reports identified areas in need of improvements. Since then, as mentioned previously, the Audit Commission made recommendations for change and in recent years there have been tentative attempts to reform elements of conditions of service.

The voting and disputes arrangements within the NJC made it impossible to make change without the agreement of both sides and any attempt to introduce change has been met with opposition and threats of industrial action. It should be obvious to any observer that this style of adversarial forum is antiquated and unlikely to deliver meaningful progress when either side can effectively block initiatives of the other.

In our view, the 2002-2204 dispute clearly demonstrates the ineffectiveness of the present system. We cannot understand how, in the 21st century, the only way of resolving differences in the fire service is through confrontation and negotiation between two of the service’s stakeholders with no mechanism for considering alternative viewpoints or alternative solutions.

Now that the dispute has been settled, it would be relatively easy to maintain the status quo in terms of industrial relations and continue as before. However, despite agreement on central change issues, we believe that it would only be a matter of time before there is disagreement over a supplementary matter relating to modernisation which again stifles progress.

We support the recommendation of Sir George Bain that the new negotiating arrangements are required and that these should be inclusive of all stakeholders. A new format allowing full and open debate would represent real progress in that matters might be decided after considering several points of view rather than what often amounts to an exploration of common ground between two entrenched viewpoints.

In practice, debate does not currently occur as agreements tend to be made outside the NJC between the joint secretaries to be brought back to allow the membership to exercise block votes.

We are pleased to see that the wording of this section provides for the inclusion of other bodies and we hope that the Scottish Ministers’ intent is to adopt a modern approach whereby decisions are based on evaluation of evidence and options received from several sources.

We respect management and employers’ right to manage and make decisions on the future direction of the service but we expect similar recognition of the need to engage the workforce and their representatives in the decision-making process. Disharmony in an organisation is in nobody’s interests and all parties in any negotiating machinery need to recognise that all available evidence must be considered in a mature manner. The Fire Officers’ Association works to the principle of working in partnership with other stakeholders and engaging in constructive dialogue to arrive at mutually acceptable solutions.

The Scottish (and UK) fire and rescue service has the opportunity to change its approach towards industrial relations by abandoning adversarial systems in favour of a system based on co-operation and consensus. We sincerely hope that this opportunity is not wasted.
In considering the introduction of negotiating machinery we believe that it would be in the interest of the UK service for Scotland to work in partnership with other UK administrations through the retention of a single UK negotiating body, provided that such a body supports the modern approach outlined above. We consider that separate bodies would lead to duplication and divergence of direction. The issues for individual fire authorities are very similar throughout Great Britain and cooperation would continue to provide the human and financial economies derived from common approaches towards development and problem solving.

Whilst we recognise that there may be political differences within and between employers groups and national administrations, we believe that the provision of effective and efficient fire and rescue services should not be a political issue and that such differences should not affect evidence-based decision-making at national level.

Section 47

For the reasons stated in the third paragraph of our response to section 26, we suggest that the need for section 47 be reconsidered.

Part 3

We support the inclusion of Fire Safety Duties within the Bill, believing that it is beneficial to bring fire-related matters into a single piece of legislation. We have no specific observations to make on the content of this Part.

Part 4

Section 77

We favour a Practitioner Forum approach to the provision of advice to Ministers with specific issues being handled via ‘task and finish’ groups comprising practitioners in the subject area. Such groups being charged with research and development of options for consideration by the main body. In the case of the FOA many of our members currently serve on or chair CFOA committees and are heavily involved in service development. We therefore consider that the lead role on ‘task and finish group’ should not be the exclusive domain of CFOA who may propose our members as their representative. Partnership working within the advisory body would be encouraged by sharing responsibility amongst the constituent organisations where suitable people are available amongst those nominated.

Our opinions on Scottish arrangements for the provision of advice to the Scottish Ministers are essentially, the same as those given in relation to Section 45. We feel that there will be few exclusively Scottish matters arising in relation to fire and rescue service issues and we see no reason why advisory arrangements cannot be shared with the rest of the UK. If a Practitioner Forum approach is favoured, UK organisations would wish to select the best available person as their representative on any forum established and separate forums for Scotland, England and Wales could create an individual who might dilute their contribution. However, we think it more likely that each body would duplicate the efforts of the others and create unnecessary expenditure that might be better directed into development work.

Regardless of the body represented, persons nominated to sit on advisory bodies tend to have large individual workloads in their full-time employment and it would be preferred that any advisory meetings are combined but provision made for members to deal with any regional issues before or after the main meeting. Given the promotion of the Fire Service Colleges as centres of excellence we suggest that would provide appropriate venues for meetings.

Section 78

Whilst the FOA has not been involved with the Scottish Central Fire Brigades Advisory Council (SCFBAC) as constituent member. We have experience of the CFBAC and awareness that neither body has effectively delivered results. Many issues appear to have been dormant for long periods
and we believe that matters would be more effectively concluded through adoption of a project-managed approach such described above. We therefore agree with the proposal to abolish the SCFBAC.

27 August 2004
LETTER FROM SCOTTISH EXECUTIVE

We have had an opportunity to study the additional written evidence from the Fire Brigades Union (FBU) and listen to the oral evidence session. I thought the Committee might find it helpful if I set out the Scottish Executive’s position on some of the issues they raised on the Fire (Scotland) Bill (“the Bill”).

Competence of the Bill

The written submission by the FBU asserts in places that certain provisions in the Bill are out with the competence of the Parliament. Whilst what we say below refers to some of the issues relating to the reserved/devolved elements of fire safety and in particular discusses the consequential restriction of the application of Part I of the Health and Safety at Work Act 1974, the Committee will be aware that the Minister has signed a section 31(1) statement under the Scotland Act 1998 indicating that the Bill, on introduction, would, if passed, be within the legislative competence of the Scottish Parliament.

The Presiding Officer has reached the same view and has issued a statement that the provisions as being within competence in terms of section 31(2) of the Scotland Act. We do not address those individual concerns here but if there are particular issues, among those raised by the Fire Brigade Union, about which the Committee has concerns, we would be happy to go further into those matters with the Committee.

Section 15 Charging

The situations in which third parties may be charged and the identities of such third parties will be laid down by order and this is where the FBU can expect to see greater detail.

Section 45 – Statutory Negotiation Arrangements

The FBU criticise section 45, stating that trade unions have a right to be heard. Section 45 gives Scottish Ministers a power to make provision for the establishment of one or more negotiating bodies for the purposes of negotiating the conditions of service of employees of relevant authorities.

Regulations made under that section must provide for the composition of a negotiating body to include persons representing the interests of some or all employees of fire and rescue authorities. Those representatives may be, but need not be, union representatives.

Employees of relevant authorities remain free to join a union. Unions representing these employees retain the freedom to lobby employers and, if not already represented on a negotiating body, to lobby that negotiating body. They can also bring pressure to bear on employers by means of a strike action. The Executive does not, therefore, consider that this section affects trade unions’ rights to be heard. We would also note that any order made under section 45 must itself be compatible with the European Convention on Human Rights, and must comply with international conventions on collective bargaining.

Fire Safety

Duties on employer/employee

The FBU comment on the definition of “employee” in section 73(1). They suggest that the sections do not take into account the nature of modern working relationships. This formulation of the duty on employers reflects that in the Health and Safety at Work etc. Act 1974, which the United Kingdom regards as implementing the Framework Directive. We are satisfied that our approach complies with European Community law in this regard, and with its implementation in domestic law.

Duties in relation to the relevant premises
In relation to any premises where there is no employer, the individuals with fire safety duties under Part 3 will be persons who have control of the premises. This is covered by section 50 of the Bill. This would include those with control in connection with the carrying on by them, whether for profit or not, an undertaking. This might also encompass the owner of the property. If a person has control of the premises, but they are not in control in connection with the carrying on of an undertaking, and they are not in control by virtue of being an owner, the owner is also to comply with the duties. Other people, such as landlords, may be in a position to exercise varying degrees of control over premises, and the Bill therefore proposes that they should bear a relevant share of the duties under the Bill. However, this would not detract from the primary responsibilities and duties placed on employers, those operating undertakings, and owners.

Equally, people might be appointed or employed to undertake duties which bear on the safety of relevant premises. These might include contractors employed to install, maintain or test fire safety equipment or systems. It would be for the person in control to ensure that any person he or she employs to carry out such work is competent to do so. However, where it can be established that an offence has been committed in respect of fire safety duties, and this has been caused by the negligence, failure etc of the contractor, the enforcing authority should be able to take action against the contractor. Action could also be taken against the person in control of the premises if that seemed to be justified in the circumstances of the case.

Scottish Executive, Scottish Parliament and Community Law

Section 66 provides that certain enactments have effect only in their application in relation to reserved matters. The Executive acknowledges that, as a consequence, it will be necessary to implement these Directives afresh for Scotland. The requirements of European Directives, if not already addressed in the Bill, will be implemented by means of regulations under the Bill. In so far as these European Directives deal with devolved fire safety matters, Scottish Ministers can competently legislate to implement them. There is no intention to disapply any fire safety Directives. We intend that the new regulations implementing their provisions will come into force at the same time as the repeal of the relevant current regulations.

Section 65 of the Bill disapplies, in its application to Scotland, fire safety aspects of Part 1 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). This is because, in a general sense, fire safety is covered by Part 1 of the 1974 Act in so far as that Part is concerned with the safety of persons at work, and others, from risks to their health and safety arising out of work activities.

Fire safety, however, is generally a matter devolved to Scottish Ministers. The reservation in the Scotland Act (section H2 of Schedule 5) makes it clear that the reservation of the subject matter of Part 1 of the 1974 Act includes certain aspects of fire safety but does not include any other aspect of fire safety. The reserved aspects of fire safety are not covered by the Bill.

In the context of creating a new Scottish code for general devolved fire safety in the Bill, it was considered advisable to have a provision in the Bill that makes clear that the 1974 Act is disapplied in so far as it trespasses on matters that can properly be dealt with in the Bill. This ensures that general devolved fire safety is dealt with under the Bill and not through health and safety legislation.

It is therefore not correct to say that the Bill is seeking to disapply the Workplace Directive. Nor is it correct to say that any other Directives are being disapplied in relation to fire safety. General health and safety matters will continue to be dealt with under the 1974 Act. However, it is Scottish policy that fire safety matters within devolved competence will be dealt with under the Bill.

It is not the policy intention for there to be a period during which there will be no fire safety provision for Scotland. There is also a distinction between the date that a Bill is passed and the date that an Act comes into force.

Criminal offence of non-cooperation, section 67 and industrial action

We do not agree with the FBU’s interpretation of sections 67(2) and 52(b).
Section 52(b) imposes a duty of co-operation on the employee, so far as his or her co-operation is necessary for the purpose of enabling the employer to comply with requirements imposed on him or her by virtue of Part 3. Section 67(2) provides that where an employee fails to carry out their section 52 duty, and that failure puts a relevant person at risk of death, or serious injury, in the event of fire, the employee shall be guilty of an offence.

The duties of an employer under Part 3 – whether in the Bill or in regulations – are, generally, to ensure so far as is reasonably practicable the safety of their employees in the event of fire in the workplace. The employee’s duty is limited, so that they only need co-operate so far as is necessary to enable the employer to meet their obligations. The offence is only committed when the consequences of their failure to co-operate with their (limited) duty is particularly serious. The duty to co-operate with the employer, and to take reasonable care for one’s own and other people’s safety, is proportionate to the desired outcome. The offence will also be subject to the due diligence defence in section 67(9).

It would be appropriate to impose criminal sanctions on an employee of a fire and rescue authority/joint board - as it would with any other employee - where their own dereliction of duties in relation to fire safety in their own workplace led to risk to relevant persons of death or serious injury in the event of fire. It is not considered that the offence would automatically be committed by those on strike. The “due diligence” defence would be made out if they acted reasonably, for example, before they left their posts.

Finally in my letter of 16 September I undertook to get back to the Committee on the issue of whether it would be appropriate for the Bill to include an offence of ‘masquerading as a firefighter’. We have now had an opportunity to give this issue some consideration.

Currently impersonation of a firefighter is not a statutory offence. As a parallel, impersonation of a police officer is and the offence can be found at section 43 of the Police (Scotland) Act 1967. In the case of the police, exceptions are made in respect of wearing a uniform in a stage play, music hall or circus, or on television. Our concerns would lie where pretending to be a firefighter brought about a practical gain - for example a bogus caller attempts to gain money from an elderly person, dressed as a firefighter and purporting to check the smoke alarm. However we think in such cases that the common law offence of fraud would be sufficient to cover these and similar circumstances.

I hope this information is helpful.

Ian Snedden
Head of Fire Services Division
LETTER FROM HUGH HENRY, MSP, DEPUTY MINISTER FOR JUSTICE

When I appeared before the Committee last week to give evidence on the Fire (Scotland) Bill, I indicated that I would reflect further on some of the issues raised. I thought it might be helpful to set out where we are in respect of these considerations.

Section 67(2)

My officials wrote to the Committee on 24 September and confirmed that it was not our policy intention that industrial action per se should be an offence under the Bill and we do not believe that the Bill makes such a provision. I think that the matter is clearly set out in the letter of 24 September, and having had an opportunity to consider whether the wording of the Bill requires clarification, we have concluded that it does not.

Section 47 – Prohibition of Employment of Police

It is clear that there is a difference of opinion between the main stakeholders here. Whilst ACPOS and the FBU favour the status quo, CFOA and CoSLA are keen to see this section removed from the Bill. I am keen to see if there is a way forward which balances the views expressed. I will therefore ask my officials to go back to the main stakeholders and explore possible solutions. If a resolution can be agreed we would bring forward a Stage 2 amendment.

Part 3 – definition of employer/employee

The Committee were concerned that the definitions of employer and employee were too vague and did not reflect the full range of ‘working relationships’ within the workplace. I am satisfied that the approach remains consistent with the Health and Safety at Work etc Act 1974 as well as with EC law in implementing the necessary Framework Directives and at this stage see no reason to amend the position in the Bill. I do however note the concerns of the Committee.

Local Government (Overseas Assistance) Act 1993

My officials indicated during their evidence session that if Strathclyde Fire Brigade, whom I understand raised this issue, were able to clarify what their specific concerns with the Local Government (Overseas Assistance) Act 1993 were, that we would be happy to look at this further.

Subject to clarification of the Brigade’s concern – which we will seek – I am content that the provisions of that Act, which apply to fire authorities and joint boards in Scotland, are sufficient to ensure that advice and assistance can be provided to overseas local government activities.

I hope this information is of help to you and the Committee

October 2004
Fire (Scotland) Bill: Stage 1

14:02

The Convener: Item 2 is the Fire (Scotland) Bill. I welcome to the meeting Mr Glyn Morgan, who is the vice-president of the Fire Officers Association, and Mr John Russell, who is the association’s fire safety lead officer. We were to have been joined by Mr Setterfield, the chief executive, but unfortunately he is unwell. We are sorry to hear that. We are grateful to you for agreeing to appear before us.

I know that the committee has a number of areas of questioning for you. We tend not to proceed on the basis of introductory statements, unless there is any burning point that you wish to raise or any clarification that you would like to seek about the meeting.

Glyn Morgan (Fire Officers Association): I have no major issues to cover in an opening statement, but I thank the committee for providing this opportunity to speak at this stage of the bill’s passage. It is worth pointing out that we have members from all parts of the service, including support staff, but primarily we represent middle managers within the fire service, who will be charged with the day-to-day implementation of anything that emerges from the bill and the wider modernisation agenda.

We welcome the bill and the agenda for change that is upon us, as we believe that they will enhance the service’s role and empower us to deliver services that are better tailored to the community’s needs.

The Convener: I was remiss at an earlier stage. I should have observed that Nicola Sturgeon has left our committee and that we will be joined by Stewart Maxwell as her successor. I think that we would all want to record our appreciation to Nicola for her contribution to the committee’s work for the time that she was with us.

Members indicated agreement.

The Convener: We look forward to Stewart Maxwell joining us in due course. He sent his apologies because he is at a Health Committee meeting this afternoon, at which I presume the member’s bill that he introduced is being discussed.

Karen Whitefield has some questions on fire authorities.

Karen Whitefield (Airdrie and Shotts) (Lab): Good afternoon. I draw the witnesses’ attention to section 2 of the bill, which outlines proposals for schemes to constitute joint fire and rescue boards. Last week, the committee heard conflicting
evidence on that issue. A fire inspector told us that there would be benefits from having a smaller number of boards, but the Convention of Scottish Local Authorities raised reservations about limiting the number of boards and said that, although it accepted that allowing fire authorities to work together occasionally would have genuine benefits, there was no need formally to amalgamate boards. What are your views on that matter? Do you think that section 2 gets the balance right?

Glyn Morgan: We have no firm view on what the ideal number of fire authorities in Scotland would be. The main issue, from our perspective, is the impact of the structures on our members, who are faced with the work involved in developing the service and in implementing proposals and policies that come to fruition. It is true that, in some smaller brigades, people are asked to multitask. The ability to develop common approaches would certainly ease the pressure on those members if arrangements were in place to allow collaboration to come up with Scottish answers to Scottish problems. The issues involved in delivering services should be largely the same across Scotland.

We are aware that there is a degree of collaboration between brigades at the moment and that, in some areas, it is quite effective. There have to be economies of scale as a result of the expectation that has been placed on fire authorities in the past few years that they should look at how they might work better together, share common functions and consider taking a common fire and rescue services agency approach, which is mentioned in some of the consultation papers. There will be benefits from working together. Over the past few years, the expectation has been that brigades will do so voluntarily, but we are not convinced that brigades are going far enough and we think that it might be necessary to enforce collaboration. If that has to be done through amalgamation schemes, so be it.

From a day-to-day point of view, I can say that operational needs will dictate the management arrangements. The number of brigades and fire authorities does not really affect the people who are delivering services at the sharp end; it affects the administration and support systems and the principal officers most. The service will be delivered regardless of the size of the authority that is in place.

Given the establishment of an arrangement to develop shared systems, policies and approaches, there should be no need to change the number of brigades. If no such arrangement arises through voluntary means, the powers that are outlined in the bill will need to be used to ensure that that happens in the long term.

Karen Whitefield: Do you think that the bill strikes the right balance by allowing for joint working where appropriate but ensuring that fire boards will be able to address local need in their own way where appropriate?

Glyn Morgan: I agree that provision has to be in place to allow local needs to be addressed in a flexible way. However, there is scope to work together in relation to the wider issues that are common to all services and the bill strikes the right balance by containing a power to make it compulsory that fire authorities work together where that does not happen through voluntary arrangements.

John Russell (Fire Officers Association): There is no suggestion that anyone wants there to be more than eight brigades. However, there is also no suggestion that the brigades do not collaborate well at the moment in order to develop the service. The issue that has been raised is whether through voluntary amalgamations or legislative arrangements to amalgamate brigades we could realise economies of scale.

Jackie Baillie (Dumbarton) (Lab): Sections 7 to 10 define the fire and rescue functions. Do you think that there are other functions or responsibilities that fire authorities should have set out explicitly in the bill?

Glyn Morgan: As we said in our submission, we welcome the extension of the core duties of the fire service—or fire and rescue service, as it is likely to be. We certainly feel that the bill enhances the service’s role in the community and gives us a wider scope to protect the community that we serve. There is provision to introduce new duties and responsibilities as they are identified and as they arise. However, there are areas such as offshore firefighting that are being developed throughout the UK now—Scotland hopes to have a provision for offshore firefighting by April next year—but which the bill does not really address. It would be useful to define better the scope of the service with regard to offshore firefighting and where the local authority area finishes, which has long been an issue. This is a good opportunity to define what the service’s role would be and the extent of local authorities’ jurisdiction in line with that.

Jackie Baillie: Should that definition be in the bill now or are you content for the Executive to develop it through secondary legislation, which would provide the flexibility to add to it if and when it was required?

Glyn Morgan: Given that the bill is proposing to introduce responsibilities and duties to respond to road traffic accidents, we do not see any good reason why a duty to fight fires offshore, which we know we will have to do, should not be included
now while the bill is being considered. Likewise, we know that the fire service will perform functions in other areas, such as urban search and rescue. It would be helpful if as many areas as possible were identified and included in the bill.

The Convener: Section 11 concerns the power of ministers to issue emergency directions. Are you content with that as a statutory provision?

Glyn Morgan: No. In our written submission we express concern about the way in which the section is worded, which implies that ministers will have the power to intervene in or direct operational incidents. We are concerned that that might override the professional managers’ role at incidents. We are not sure what the intent of the provision is; it should be made clear.

The Convener: Do you envisage circumstances in which it would be necessary for a minister to have such powers to issue directions?

Glyn Morgan: From the operational command point of view, we do not envisage a situation where the professional opinion on best protecting the public would need to be overridden in or direct day-to-day incidents that we attend and will attend while carrying out the new rescue functions. Surely any ministerial intervention would be subject to the advice of professional people. The accountability for the decisions would lie with the fire service professional at the scene. I do not really envisage a situation in which the ministerial powers would be necessary.

The Convener: I am thinking of one of the new dimensions events, such as a terrorist attack or some other form of disaster. Is that a situation in which ministerial power could be helpful in having overall authority and in giving a strategic direction to the individual fire authorities to work together?

14:15

Glyn Morgan: I do not think that that would be an issue. As we have seen at incidents, the service works together and resources from other authorities are brought in without the need to dictate that they should be. Arrangements are in place to support one another and other agencies are involved. It may be helpful to bring in other agencies that would not necessarily form part of a response, but the operational decision making would not be affected by that; it is the logistical support provision that would be in question there.

The Convener: My next question, which is related but slightly at a tangent to that, concerns the role of the firemaster. Concerns have been expressed in previous evidence about the role of the firemaster in the context of the proposed new measures. Is that a role that you think is in some doubt at the moment, and would the problem be aggravated by the exercise of section 11?

Glyn Morgan: Perhaps the bill does not make it clear that a firemaster is responsible for operational service delivery on behalf of a fire authority. That could be clarified better so that it is clear where the jurisdiction starts and finishes. The fire authority itself has other responsibilities, but the firemaster should be held accountable and be responsible for the delivery of operational services. If that were defined in the bill, that would settle any concerns that exist.

Karen Whitefield: In your earlier answers, you touched on the issue of a common fire and rescue services agency. You will be aware that the Executive consulted on the possibility of establishing a common fire and rescue services agency but chose not to include those proposals in the bill in the light of the number of responses that it received suggesting that such an agency was not necessary or appropriate at this point. I understand that the Executive plans to consult further on that issue, but the committee has certainly heard evidence from a number of agencies, trade unions and local authorities saying that they believe that the establishment of such an agency is entirely inappropriate and that there could be joint working anyway. I would be interested in your views on the establishment of such an agency. Do you think that there needs to be further consultation or do you think that the Executive is right not to include such a provision at the moment?

Glyn Morgan: We certainly would not rule out the possibility of introducing a common fire and rescue services agency. Whether that is a separate body with its own structure is another question, which might be subject to consultation. It is certainly worth proceeding with further consultation. As I mentioned, there are areas of the service where collaboration has not been as effective as it might have been. In procurement, for example, it is difficult to get all eight fire authorities to work together or to get authorities to devolve responsibility to another authority for delivering something by taking a lead.

It may be possible that, rather than having a separate body, we could have a lead service that would take on functions such as payroll. We certainly would not rule that out, because it seems that economies of scale could be realised through that type of joint working. They might not be the economies of scale that are envisaged, because whatever arrangements are in place there would still need to be local administrators available to implement the systems on the ground. A lot would depend on how well brigades work together under voluntary arrangements. As I said, it is a case of waiting to see how well they work together, but we need to have the facility to introduce something—or to impose it, if need be—to make authorities
work better together, short of amalgamating or combining brigades.

Karen Whitefield: At last week’s meeting, COSLA witnesses raised concerns that creating a common fire and rescue services agency would set up a new bureaucracy, which might hinder the service, rather than aiding it. They provided examples to illustrate their point. They were aware, for example, that Lothian and Borders fire brigade had purchased uniforms jointly with other brigades. That had allowed for a cost saving, as unit costs were reduced, given the number of uniforms being bought. They suggested that such projects could be undertaken in cases of different fire authorities working together, so as to save money and deliver the best service. It is about getting the balance right by allowing such joint initiatives without necessarily having a bureaucracy that needs to be staffed and whose running incurs costs, which would take away from the development and resourcing of services. How would you respond to that view?

Glyn Morgan: I referred to the possibility of having a lead service, which would do exactly what you say and take over responsibility for procurement. Joint working groups could perhaps be established among authorities without requiring a new bureaucracy. That sort of arrangement can work on a voluntary basis. However, history has shown that we have not been particularly good at that in the fire service. Over the past seven years or so, and certainly since the review of police and fire service structures in 1999, there has been an increased expectation that brigades will work together in such ways. Ministers gave out a strong message in 1999 about working together better, with the implication being that if brigades did not do so, they would find themselves amalgamated.

Some progress has been made, but I am not convinced that we have been working together as effectively as we might. Perhaps the framework document will enforce that need. There is scope to work together better. We are not sure whether that needs to be imposed or whether a common fire and rescue services agency is necessary for that. There are examples of where services can work together well, but there needs to be a stronger message that they need to do so.

John Russell: Sending out the message that the Scottish brigades should collaborate and work together would be sufficient at this point. There is very good evidence that brigades are working together in such areas as contingency planning, joint procurement and community safety development. There is a range of issues on which the eight brigades are working very well together. It is a lot easier in Scotland than it is in England, where there are 50 brigades. The issue of joint working is also relevant down south. In Scotland, however, I think that the eight brigades would be capable of getting together, developing a service and collaborating with one another.

Maureen Macmillan (Highlands and Islands) (Lab): Perhaps you could give us your views on the report by Mott MacDonald, which suggested reducing the number of fire control rooms to one, two or three. You will possibly have heard the evidence from previous weeks. Most witnesses were not in favour of what Mott MacDonald suggested. In fact, they were not terribly happy about the way in which Mott MacDonald had gone about gathering its evidence. Do you see any potential benefits from reducing the number of control rooms?

Glyn Morgan: That has been a contentious issue in the service throughout the United Kingdom for some time. Reducing the number of control rooms is not something that we would rule out. Indeed, as far as resilience is concerned, we think that the structure of control rooms needs to be examined. The Strathclyde control room deals with half the population of Scotland. Could any of the other control rooms take over that function, should the Strathclyde control room not be available? It may be that economies of scale could be made through reducing the number of control rooms. The service has expected some change for a few years now.

Our control room members have been consulted on the issue and they would not automatically defend the retention of the status quo. There is support for change and they can see that there might be some benefit. We would not comment on what the optimum number of control rooms might be. Provided that there is a proper business case behind whatever is proposed and that resilience issues are covered, change could be sold to the service. Our main concern is that staff should not lose their jobs; you would expect us, as a trade union, to say that we do not want any redundancies to result. If it turns out that there is a surplus of staff after amalgamation, there are other roles that staff can perform. Their role can be enhanced with other skills, perhaps by giving them training in community fire safety. Presumably, in that case, they would also have a standby function as control operators and there might be scope to utilise those resources elsewhere.

The argument about local knowledge raises its head regularly, but we find it difficult to accept, given that there have been changes in the control room set-up over the years. Many years ago, the control function was down to the watch room in each fire station. When that changed and centralised controls were created for each brigade, it was argued that local knowledge would disappear. The change happened, but we do not seem to have had major difficulties. Any change
would have to be properly resourced and if any new controls are established, they will need the support of a proper infrastructure with systems, such as global positioning systems and geographic information systems, that give the information that would otherwise be available through local knowledge. The concerns must be addressed by proper resourcing of the system that supports arrangements. We do not rule out or oppose change for the sake of it. However, any change must be based on a sound business case and, given recent events, resilience issues must be tackled.

Maureen Macmillan: That is a full answer. You seem to think that the idea that local knowledge is necessary has been overstated. Other witnesses have said that although the control rooms in, for example, Strathclyde and the Highlands and Islands cover wide areas, local knowledge has built up over the years and there would be gaps in knowledge if there were only one or two control rooms in Scotland. Several years might be needed to build up such knowledge, and global positioning system technology might not be good enough to cover that.

Glyn Morgan: As I said, those arguments have been used, but there are examples of control rooms and facilities being merged and it does not appear that a problem has been produced. If there is sound evidence, it must be considered, but we have not seen anything other than the perception of a problem.

Maureen Macmillan: So it is a perceived problem rather than an actual problem.

Glyn Morgan: We consider that the case for changing the number of control rooms should be based on evidence. If the evidence shows that local knowledge is an issue, that should influence the decision. However, I have not seen anything concrete that would stand in its way and in past amalgamations there do not appear to have been serious difficulties due to lack of local knowledge.

Mike Pringle (Edinburgh South) (LD): We have heard some conflicting views on charging. The Chief Fire Officers Association, which said that it charges for training and other things, thought that the provisions in the bill might be a bit restrictive. The Fire Brigades Union was very much against charging; it said that the bill was vague and lacked clarity on the issue. Does the Fire Officers Association have a view on whether we should charge, how we should charge and what we should charge for?

14:30

John Russell: I will answer with respect to fire safety legislation. For example, we know that there will be a loss of income from fire certification and the amendment of fire certificates when the new legislation comes into force and the Fire Precautions Act 1971 is superseded.

Currently, developers, architects and various others can ask for information and advice, often in respect of substantial developments in which there are fire-engineered solutions. Architects, developers and consultants often pass on to a client or a third party a consultation charge for advice that has been gained from the fire brigade for free. When such a charge is levied, we think that it would be right and proper for the fire service to be reimbursed the costs of providing that advice, just as we are for providing other special services.

We must consider how we will deal with the loss of income from fire certification and the amendment of fire certificates. We must also consider how we will enforce the new legislation. We have talked about what is in the legislation, but another issue is how we will resource its enforcement and how we will capacity build to be able to inspect and enforce the legislation effectively and efficiently. Chief officers are looking at offsetting that with revenue generation. Reimbursement of costs that have been incurred by the fire service is right and proper. If revenue from charging is used to bolster the capacity to deliver the aims and objectives of the bill, that is all well and good.

Mike Pringle: You raise an interesting issue, which I do not think has been raised before. I am sure that the Executive will take note of your comments, in particular in relation to developers and architects. How do you see charging happening across Scotland? Do you envisage there being an agreement about fixed charges, or would you leave it up to each fire brigade to decide on its charges? You referred to architects. Are there any other areas that you think are relevant to the information on charging?

John Russell: There are a number of areas in relation to which we can currently levy a special service charge. It would be simple for the eight brigades to get together and agree what the charges would be for the provision of equipment, resources, the time and expertise of operational officers, operational equipment or the advice of specialist fire safety officers. The eight brigades in Scotland are capable of getting together and agreeing a scale of charges that would be reasonable for the services that are provided.

The Convener: For the avoidance of doubt, the Executive has indicated that it would, by statutory instrument, detail the circumstances in which charges would arise and the persons against whom they would be levied. If that is done in the form of a statutory instrument, it will have to go
through the parliamentary process. Would that reassure you to some extent?

**John Russell:** Yes. I think that that is the case.

**Glyn Morgan:** In many aspects, the devil of the bill will be in the detail; I see the bill as an enabling document. In the drafting of statutory instruments that are made under the legislation, and any guidance that is issued, it is important that there is consultation. For example, in relation to charging, the detail of who is charged and exactly what they are charged for will have to be agreed. It is difficult to envisage all the circumstances that might arise. The service has made charges for services over the years, so we do not see a fundamental problem in having a charging regime.

An issue that has been raised before in the committee is that of repeat offenders in terms of automatic fire alarms. There is a desire to have the power to impose a penalty on people who deliberately refuse to maintain alarm systems. That provision should exist, but the guidance on how it would be used would be important. There is a fear that people might just turn off alarm systems to avoid a penalty. Careful consideration would need to be given to how such a provision might be applied, but it would be worth including in any scale of charges.

**The Convener:** I remind members that we have the minister coming later. Without hassling individuals, I ask that members keep their questioning as crisp as possible. I am sure that our witnesses will co-operate by being as brief as they can in their responses.

**Colin Fox (Lothians) (SSP):** I am sure that it is a coincidence that you say that just as I am about to speak, convener.

I take my cue from what Glyn Morgan just said about the devil being in the detail. A lot of witnesses have told us that the bill is restricted by the lack of a national framework document to run in tandem with it. Do you agree with that? Is the Fire Officers Association looking for anything specific in the national framework document?

**Glyn Morgan:** We do not have a problem with the bill as it stands in so far as it empowers or enables services to perform the duties that they need to perform. However, as you rightly say, the framework will define better what is in the bill.

I presume that the framework document will contain a set of expectations and anticipated outcomes that the service is working towards. We would like to see those in there. A consistent approach and a consistent set of outcomes and expectations would be useful for the service. How those are delivered in each fire authority is not the issue; the issue is whether we are all working towards the same objectives. Given the fact that the core functions of a fire and rescue service are pretty much the same anywhere in the world, not only in Scotland, we should be able to work towards a common set of objectives. I imagine that those will be defined by the framework document.

**Colin Fox:** Do you think that what will be in the framework document is already largely understood and out there?

**Glyn Morgan:** It is, but I am concerned that service development is not particularly well integrated. There are often groups working in isolation throughout the UK that do not tie up particularly well. For example, in some of the equalities work that has been going on, different groups have been working towards the same objectives without communicating. It is hoped that having the organisation laid out within a framework will help to avoid fragmentation and enable those in the service to see the common areas, participate in joined-up thinking and demonstrate a joined-up approach. We are concerned that there is not always communication between the groups that are working around the country.

**John Russell:** The bill is quite vague on the fire safety legislation requirements—

**The Convener:** Excuse me for interrupting, Mr Russell. Fire safety is a specific area that one of my colleagues wants to ask about. Could you reserve your comments until we reach that subject? My colleague has several questions about that issue.

**John Russell:** Yes, I will do that.

**The Convener:** Does Colin Fox have any further questions?

**Colin Fox:** I was crisp and succinct, and I am now finished.

**The Convener:** Thank you very much indeed.

**Jackie Baillie:** I will be equally succinct. The bill proposes to abolish the Scottish Central Fire Brigades Advisory Council. Do you agree with that? Would you replace the council and, if so, with what?

**Glyn Morgan:** We do not think that the Scottish Central Fire Brigades Advisory Council arrangements have worked particularly effectively over the years. We have had only limited involvement with the council, but we feel that it does not seem to have produced. It is not especially dynamic and it is not project based. When there has been an issue, the council has tried to deal with it and produce an answer, but many issues have dragged on for years and years. In practice, the council probably amounts to no more than a talking shop.

We agree that the council should be replaced with something else that might be more
productive. The practitioners forum approach that has been adopted in England and Wales has been going for about a year now. We are part of that and consider it an effective way of making progress. The key stakeholders are involved at high level, and the task-and-finish group approach to dealing with issues is project based. We feel that the bringing together of practitioners is the way in which Scotland should proceed. There are people with the skills and knowledge to work together and come up with answers within a defined timescale.

As I think I mentioned earlier, the fire service is pretty much the same throughout the UK, so many of the issues that arise are the same throughout the UK. We would therefore support a joined-up approach through an agreement with practitioners in the rest of the UK to share in the practitioners forum. Some specifically Scottish issues will arise—for example, the legislation and regulations on fire safety are different in Scotland from those in the rest of the UK. Such issues might be dealt with by a standing group on Scottish affairs.

We try to avoid duplication wherever possible. Many of the groups and bodies in the English and Welsh practitioners forum are the same groups that would be involved in a Scottish practitioners forum, or in whatever advisory body is established. In service development, we would favour as consistent an approach as possible across the UK. For example, it is proposed to have a standing committee in England and Wales on health and safety, and we would see no good reason for having a separate health and safety committee for Scotland or for Northern Ireland. Safety issues are pretty much the same in all areas, so collaboration would be useful in allowing a consistent approach.

As I said, the way forward will be to have a task-and-finish approach to dealing with issues, and to come up with project-managed solutions.

Mike Pringle: The prohibition on the employment of police, which is described in section 47, reinforces the measures in the Fire Services Act 1947. The Chief Fire Officers Association wants that section to be removed entirely, whereas the Executive and the Fire Brigades Union suggest that the roles of a police officer and a fire officer conflict. Do you think that the section should be removed? If it is removed, we very much support the overall aims and objectives of the bill’s fire safety provisions. We believe that the detail will be laid out in regulations and guidance on fire safety provisions in specific premises, although we have yet to see any draft versions. However, we know that the Office of the Deputy Prime Minister has been working on a suite of documents in that respect. Most people are aware that there will be difficulties in writing the regulations and guidance over to Scotland, where building regulations—and, indeed, the legal system—are different. Some other fundamental differences will also have to be taken into account.

Mike Pringle: I presume that such people’s training as fire officers would help them in their police duties at a fire incident.

Glyn Morgan: I cannot remember the exact wording, but legislation implies that police officers have powers and responsibilities in dealing with a fire, in investigating whether there is a fire, and in protecting safety in a fire situation. We are concerned that police officers do not have the training to deal effectively with fire matters. Indeed, police constables who have entered premises have sometimes ended up being rescued themselves. If they were performing a dual role, the fire officer training that they would receive would benefit them in the other role that they play and perhaps allow them to operate more safely.

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Maureen Macmillan: I will now ask that question on fire safety. You did not raise any specific concerns about part 3 in your written evidence, but when you were about to talk about the issue earlier, you used the word “vague”. Is there sufficient clarity in the bill about the respective duties and responsibilities of employers and fire authorities?

John Russell: We very much support the overall aims and objectives of the bill’s fire safety provisions. We believe that the detail will be laid out in regulations and guidance on fire safety provisions in specific premises, although we have yet to see any draft versions. However, we know that the Office of the Deputy Prime Minister has been working on a suite of documents in that respect. Most people are aware that there will be difficulties in writing the regulations and guidance over to Scotland, where building regulations—and, indeed, the legal system—are different. Some other fundamental differences will also have to be taken into account.
Overall, any legislation should be enforced on a UK basis. Some of the detail in the bill's fire safety provisions could be improved and we hope that we can feed some of those improvements into the process. We are quite happy to provide the committee with a detailed list of the sections of the bill in which the wording could be improved.

**The Convener:** It would be helpful if that could be done by letter.

**Maureen Macmillan:** So you would want to see the proposed regulations and guidance before the bill was passed.

**John Russell:** We need to be assured that there will be on-going dialogue and consultation with the fire service in Scotland to allow us to inform and shape regulations and the guidance on specific fire safety provisions within premises.

**Maureen Macmillan:** Some witnesses were concerned that the provisions on the relationship between employers and employees did not cover all the possible relationships within a premise. For example, franchisees or self-employed people could be there. Does that wording need to be improved?

**John Russell:** We share some of the concerns that have been expressed. As an ex-enforcing officer, I know that it is sometimes difficult to decide who the responsible person is. We would welcome any improvements to the wording of the bill that would aid clarity and give us wider powers to identify the right and proper person on whom enforcement action should be taken. Enforcement has proved to be almost impossible a number of times in the past. For example, as quite a few employers do not reside in the UK, it can be difficult to trace the right and proper person on whom to take enforcement action.

Moreover, as many premises have registered persons or licensees, it would make sense to be able to take enforcement action against them in certain cases. In any event, there is room for us to examine the matter closely and ensure that any loopholes are dealt with.

**Maureen Macmillan:** That is helpful.

Concerns have been expressed about the co-ordination and duplication of effort between fire authorities and local authorities in, for example, the regulation of houses in multiple occupation, licensed premises and care homes. Is there any possibility of duplication or conflict in that respect?

**John Russell:** We have no concerns about that whatever. In fact, the bill has been drafted to remove any such conflict or duplication; a large number of legislative and statutory provisions that have small fire safety elements have been taken and put together in one bill. In effect, enforcement of the legislation will be far easier and communities will be better protected.

As you rightly say, fire safety in HMOs and care homes is dealt with in other legislation, but those fire safety provisions invariably contain a requirement to consult the firemaster; the firemaster already provides guidance on fire safety. The bill will enable us to do that better and will avoid duplication, because anyone who wants to know what the fire safety provisions are will know to come to the one-stop shop of the fire authority.

**Maureen Macmillan:** What you say is interesting, in that it conflicts with other evidence that we have had.

**John Russell:** Do you want an example of how the HMO legislation operates?

**The Convener:** Briefly.

**John Russell:** Glasgow has a large number of HMOs. The fire service reports on fire safety within HMOs and submits reports to the enforcement team. In effect, if we have responsibility for all buildings and premises, as described in the bill, we will be carrying out inspections of HMOs, which, invariably, are classified as high risk. That means that we will be in the premises more often and that we will be able to report back more effectively and more quickly to the local authorities and to give them better advice. The fire service will be a one-stop shop for owners and occupiers—they will know whom to consult.

The situation is not really any different at the moment. The Civic Government (Scotland) Act 1982, for example, requires the firemaster to be consulted before an HMO is licensed. The fire service provides the necessary fire reports.

**Jackie Baillie:** My understanding is that there would need to be HMO inspections as well as the fire inspections, so there would be duplication. You say that the present system works. Is there a way of strengthening the existing system rather than tearing up the legislation and starting again?

**John Russell:** I said earlier that the thrust of the bill is to put everything to do with fire safety in the one piece of legislation. That aim is right and proper and it is supported by the FOA.

At the moment, HMOs are inspected by a team, which could contain a fire officer. That fire officer—either as part of the team or individually—reports on the fire safety precautions, so the bill would not mean that there would be any duplication. Through the HMO team and the licensing provisions, the fire officer reports and gives advice on fire safety. That would continue.

**Jackie Baillie:** Alternatively, the system could be left as it is and the present inspections could continue.
On behalf of the committee, I do members have any in, the fire service. What is your view on that?

John Russell: The present arrangement causes confusion; some people go to the local authority for advice on HMOs, because local authorities have overall responsibility for licensing. However, the local authority cannot give an answer on fire safety provisions; it checks with the fire authority, which passes on that information. The system that is outlined in the bill would speed things up and provide a more direct route for people to obtain advice on fire safety provisions.

Karen Whitefield: The 1947 act includes arrangements for the firemaster to report to the fire authority, but the bill does not include similar arrangements. The committee has heard from a number of witnesses that they feel that such arrangements are necessary and that they allow for better democratic control of, and involvement in, the fire service. What is your view on that?

Glyn Morgan: The firemaster is an employee of the fire authority, so surely the authority would define what was expected in the job description for the firemaster’s post.

The reporting to the authority does not need to be specified in the bill. I find it difficult to believe that a fire authority would employ a firemaster without imposing conditions on what they are responsible for, when they report and how they report. I do not consider that to be a major issue that needs to be defined in statute; the terms of employment would cover it.

Mr Kenny MacAskill (Lothians) (SNP): I have two brief points. Karen Whitefield and Maureen Macmillan both asked you about Mott MacDonald and control rooms. Given that the SCFBA produced reports indicating that the number of control rooms should stay at eight, why are you now suggesting that a reduced number might be acceptable?

Glyn Morgan: It was considered that the current arrangements might not provide the resilience that we need to deal with the removal of a resource as large as the one that Strathclyde has, for whatever reason. For example, could Dumfries and Galloway’s control room take over the function of Strathclyde, or what arrangements would be put in place to share the function?

The system works okay as it is now, so if there is evidence that it is resilient enough, there is no need to change. Perhaps economies of scale will be realised through reducing the number of control rooms. It comes down to balancing the books of the fire service. The service considers many areas to be under-resourced at the moment, and we are trying to develop and enhance our role so that any savings can be redirected into areas of high priority for us, but it is not for us to determine the best arrangements—that is a decision for the Executive and the fire authorities. If it is considered that things are fine as they are, we are okay with that.

Mr MacAskill: How many members do you represent? Given that we have the FBU, what percentage of the fire service do you cover?

Glyn Morgan: I do not want to get dragged into a numbers game, because numbers have been used mischievously between other representative bodies. We represent a significant proportion of middle managers in Scotland—perhaps around 20 per cent—and they are the main group with whom we deal, although we have members in other areas of the service. That number is rising, and has been rising over the past few years. We consider that we are a significant stakeholder.

The Convener: Do members have any concluding points to raise with the witnesses? Mr Morgan, would you or Mr Russell like to make any concluding points?

Glyn Morgan: No, I am okay.

The Convener: On behalf of the committee, I thank you for joining us and for co-operating in getting us through the session efficiently and swiftly.

I welcome the Deputy Minister for Justice, Hugh Henry. The minister is accompanied by Ian Snedden, who is head of the fire services division of the Scottish Executive Justice Department, and Robert Marshall, who is a Scottish Executive solicitor—I note that he is not just any Scottish Executive solicitor. We are pleased to have you with us. I understand that you want to make some comments, minister. We were told that your introductory statement would be brief, in which case it will be welcome.

15:00

The Deputy Minister for Justice (Hugh Henry): How could I refuse such a request? I will make a brief statement.

The bill team has submitted further written evidence that addresses some of the FBU’s concerns about the legislative competence of the bill. I hope that that submission clarifies the situation.

Concerns have been expressed that some of the bill’s provisions seem to point towards a centralisation of the fire and rescue service. I put on the record that that is not the case—[Interuption.]

Mike Pringle: There are two people having a go at you now.
The Convener: The person who is drilling outside is not one of my near relatives.

Hugh Henry: I thought that the noise might have something to do with your approach to recalcitrant witnesses—perhaps you drill into their knee-caps.

We want to make it clear that the fire and rescue service will remain a local government service and that its day-to-day operation and management will take place at local level. In response to criticisms about the lack of strategic direction from Government, I hope that the national framework will set out the objectives for the service, what is expected of fire and rescue authorities and the Scottish Executive’s role in the achievement of those objectives. The framework will form the basis of the future partnership between the Executive and the fire and rescue authorities. It is vital that the framework is prepared in consultation with local authorities and other key stakeholders. The draft framework document is currently being drafted and we expect to issue it for pre-consultation within the next few weeks. Full consultation will follow before the end of the year.

The bill includes 19 provisions that confer ministerial powers to make subordinate legislation. I acknowledge that that is a significant number and I understand the concerns that have been expressed. However, I assure members that the bill is not a mechanism for the centralisation of the service. Seven of the 19 provisions re-enact or update an existing power and a further provision places existing practice on a statutory footing. Of the remaining 11 provisions, five relate to administrative procedures, one is technical in nature and relates to the making of fire safety regulations and five confer powers that we consider to be powers of last resort.

Only one of the 11 new powers potentially would not be subject to consultation and parliamentary process. That is the power in section 11 to make an emergency direction. I hope that the power will never be needed, but it would be reckless of the Executive to ignore the reality of global terrorism and the possibility of an incident that was of such proportions that local services could not cope. In such circumstances, an emergency direction would provide the necessary flexibility to ensure an effective and co-ordinated response.

The committee received evidence about the advisory structure and our intention to abolish the SCFBAC. We undoubtedly need a forum in which we can discuss issues of strategic importance to fire and rescue services and ministers will need advice about the development of the service. However, the advisory council has long since lost sight of its remit and its machinery is cumbersome. We want to explore more effective methods of enabling all stakeholders appropriately to discuss issues of concern. We will consider alternative models and consult stakeholders shortly.

I noted with interest the reservations that the committee expressed about the new fire safety regime that the bill proposes—for example, the concerns about fire and rescue authorities being given a statutory role as an enforcing authority and concerns about the implications for licensing arrangements for houses in multiple occupation. The aim of the proposed regime is to remove multiple and overlapping fire safety provisions and it is clear that the fire and rescue authorities would be best placed to inspect and enforce the new regime. The committee also expressed its concern about the need for consistency in the application of fire safety standards. I believe that having one primary enforcement authority is key to achieving that consistent approach.

Finally, although the bill makes no direct reference to control rooms, I am aware that the future structure of control rooms has generated a great deal of discussion in evidence-taking sessions. We first indicated our intention to explore the potential for collaboration in respect of control room facilities in our consultation paper “The Scottish Fire Service of The Future”. During subsequent consultation on our legislative proposals, we advised that we were in the process of appointing consultants to undertake a review of the future of fire service control rooms in Scotland.

The consultants have substantial experience in this area. Their review included consideration of how control rooms operate in the ambulance and police services as well as of arrangements in other countries. They produced a detailed report that recommended a rationalisation of the number of control rooms. A number of options were explored and we invited stakeholders to comment. The consultation period has ended and we are analysing the responses. There will be further consultation with stakeholders before any final decision is made.

The Convener: Thank you, minister. That was a commendable attempt to quell the natural inquisitiveness of committee members. However, I know them well and I am sure that they will not be suitably deterred. On behalf of the committee, I thank you for the helpful letter that we received from Mr Snedden, which addressed issues that were raised in evidence. Mr Fox has a general introductory question.

Colin Fox: Before I turn to the remarks that you made about the national framework document, minister, I have a general question. It has been suggested that the bill is motivated by afters from the national fire brigades dispute and that it represents an about-face from the pathfinder report on which £3.5 million—
The Convener: I am sorry, Mr Fox, motivated by what? We could not hear.

Colin Fox: I am saying that a lot of the bill has arisen from issues that were raised during the national fire dispute. I am happy to reiterate that more clearly for the convener.

The point that I am making is that the bill is an about-face from the essence of the pathfinder report and the Scottish Executive’s “The Scottish Fire Service of The Future” document. Does the minister share that view? Will he explain the apparent about-face?

Hugh Henry: Colin Fox raises two separate issues. On the generality of the bill, much of what it contains was in the public domain before the dispute started. We have simply built on a consensus that has been developing over a number of years. I categorically refute the suggestion.

The point about the pathfinder report is probably linked to some of the issues relating to integrated risk management. Undoubtedly, things moved on as a result of the dispute: a number of issues were raised and a number were accelerated. All of us need to live with the consequence of the way in which things have changed as a result of the dispute. We accept those consequences.

I believe that we are proposing a sensible set of suggestions that will help to deliver an efficient and effective fire service. If we were to try to go back to some of the work that was done around the pathfinder project, that would delay the modernisation and improvements that are needed. I see no justification in that suggestion.

Colin Fox: I will press you on that point. You do not accept that the bill is motivated by the dispute but you accept that it addresses issues that were raised by the dispute. Is that a fair comment?

Hugh Henry: No, what I said was that many of the issues were already in process long before the fire services dispute. On the specific point, I accept that some issues were accelerated as a result of the experience of the dispute, but they were not motivated by it.

Colin Fox: I appreciate that the national framework document is in its draft stage and note that we can anticipate its publication in the next few weeks. As I am sure you are aware from the Official Report, previous witnesses have expressed the anxiety that the national framework document is not available to be read in tandem with the bill. What are your feelings about those concerns? Is consideration of the bill restrained because the detail of the bill and the document cannot be examined at the same time?

Hugh Henry: I do not see it like that. The first draft is being prepared and we hope to issue it early in October. It will go out to stakeholders for pre-consultation. Once we have received comments from key stakeholders, the revised draft will be issued for wider consultation. That is probably consistent with the progress that is being made on the bill at stage 1 and stage 2. Nothing significant should be read into it and I am sure that it will not cause any great difficulties.

Colin Fox: I will press you on that point. Last week, the chief fire officers suggested that we could largely guess what is in the national framework document and that it might not be significantly different from what we have anticipated. I am not asking for an exclusive today—I am sure that we can wait six weeks—but is that fair comment or does the result really depend on what comes out of the stakeholders’ input?

Hugh Henry: The stakeholders’ input will come when we put the document out for consultation. We have reflected on what has been happening in the fire service in recent years. We have tried to reflect the relationship that exists at national and local level. There is a need for a consistent set of objectives so that, at a local level, people can see a consistency of approach while local brigades are left with the right to manage and deliver the service for their local needs.

As member will recognise, since the Scottish Parliament’s inception, although there has been agreement that there should be subsidiarity in decision making and that decisions should be made locally on a range of services and not just on the fire service, people have been increasingly unwilling to accept differing standards of service in different communities across Scotland. They do not accept the argument that that is up to local decision makers. We are trying to balance what we believe are the rightful objectives of the service and a framework that will address all the key issues with ensuring that local decision makers can make appropriate decisions for their local communities using an understanding of what is expected of the fire service throughout the country.

Karen Whitefield: The Executive consulted on the possibility of establishing a common fire and rescue services agency, but the proposals have not been included in the bill. What is the Executive’s thinking on that?

Hugh Henry: You are right to indicate that, following some initial suggestions, we have not included that agency in the bill. Our view is that, if we can encourage better co-operation for more effective and efficient delivery and procurement of services, we should examine that carefully. However, we do not want to set up another bureaucracy or another infrastructure that becomes so complex that it defeats our purposes.
We have deliberately not gone with the proposals, but we are still alive to the possibility of encouraging co-operation between brigades and other organisations where appropriate.

At the moment, we are not making any suggestions that would set up a superstructure or a bureaucracy. There are already examples in local government where services co-operate with one another in the procurement, design and delivery of services; those examples might well suggest to us what could be applied to the fire service in future. However, the last thing that anyone wants to do is to impose yet another bureaucracy that militates against improvements.

15:15

Karen Whitefield: Most of the witnesses who have come to the committee over the past few weeks have said clearly that they do not believe that there is a need for the agency, because they think that there are already examples of situations in which fire authorities have worked in partnership to ensure that there are related benefits to all authorities and that they save money. Last week, COSLA representatives gave us an example of that when they spoke about the procurement of uniforms.

Today, just before you came to the committee, we heard evidence from representatives of the Fire Officers Association, who suggested that, although there was evidence of joint working, there was sometimes a need to ensure that joint working actually happened and was not just spoken about. How will you get the balance right without establishing a bureaucracy that nobody wants, to ensure that there is joint working where that is appropriate and necessary?

Hugh Henry: We need regular correspondence, communication and discussion with all those charged with the delivery of the service. In the first instance, that would mean the brigades specifically. However, you will know that in Strathclyde, where there is a lead-authority model, one authority provides much of the support infrastructure for the brigade. Do arrangements such as that offer a solution? I think that we should look at that. Are there other ways for one brigade to take a lead—in the provision of information technology services, pension organisation, procurement or training, for example? If such a model worked and could be demonstrated to be effective, we would prefer that degree of informal flexibility.

If a model was not proving effective, we would clearly have to make other arrangements, in the interests of the service. However, I repeat the point that any such arrangement could not involve another huge body that had a life of its own, separate from the brigades, and that spawned all sorts of off-shoots with chief executives and senior managers, so that before we knew it the whole service became top heavy. The issue is about trying to get a balance.

The Convener: In your introductory remarks, you spoke fully about ministerial powers and I think that you said that there was no intention to interfere with what you described as day-to-day activity. However, various witnesses have expressed considerable concerns about ministerial powers. In what situation do you envisage the powers under section 11, on emergency directions, being invoked?

Hugh Henry: It would be hard to specify all the situations where the powers under that section could readily be invoked. If we were able to foresee precisely everything that might happen, we could easily just spell it out in an exhaustive list. Part of the problem in dealing with emergencies is that it is often the unforeseeable and unexpected that causes the problem. In those situations of unexpected emergency, we need to be able to respond. There could be natural catastrophes that no one could ever have imagined, or there could be terrorist incidents. Although we might argue about whether the authorities in the United States knew of what was about to happen before 11 September, the reality is that it was unexpected and that no one could have anticipated the precise nature of that attack. I would therefore hesitate before giving a precise definition of those circumstances, other than to say that the situation would be one to which the response would be beyond the normal activities of any of our brigades or other agencies.

The Convener: So you expect section 11 to be used in extraordinary situations that are over and above the normal incidents that our fire servicemen and women are asked to deal with.

Hugh Henry: That is correct. We do not expect the section to be invoked frequently or lightly.

Colin Fox: Do you consider a national firefighters’ strike to be an emergency in which a ministerial power would be needed? You referred to unforeseen and unexpected emergency. We did not have a strike for 25 years, but you must know from negotiations whether a strike is coming up, so I presume that you would not envisage covering it under the section.

Hugh Henry: I do not imagine that we needed the power in that situation, because a previous strike had taken place, as you say. The arrangements that were put in place were appropriate to the circumstances, without the need to invoke ministerial powers. A lack of preparedness because people were on strike or equipment had not been properly deployed would
require a reaction, but that was factored into all the discussions that took place locally and nationally. I do not see that as a situation in which ministerial powers would come into play.

Could an unforeseen threat to life, limb and public safety result from an industrial dispute? God forbid that that should happen, but if it did, we would need to react. However, most trade unions take a sensible view of such situations. Although they may have a dispute with an employer, they are always willing to respond to situations in which people are under threat.

**Colin Fox:** Notwithstanding the length of time that it takes for a national dispute to come to fruition, you seem to be leaving the door open a little—you say that you would not rule out using powers.

**Hugh Henry:** I think that I made it clear that it would be foolish of me to rule out exercising ministerial powers in the unlikely event that a catastrophe that neither you nor I can envisage occurred during an industrial dispute and could not be coped with in the normal course of events. You raised that in the context of the firefighters’ dispute, during which nothing happened that would have justified the use of ministerial powers. I repeat that trade unions have always taken a responsible attitude to threats to life and limb, although they may have disputes with employers, and I do not expect that to change. If you can tell me that a catastrophe will never happen during a dispute, you are a better person than I am and you are imbued with powers that many of the rest of us do not have.

**Colin Fox:** I am tempted, but you are here to answer the questions, not me.

**The Convener:** We will move on to the actualities of the bill.

I will return to situations that might involve issuing a ministerial direction, not just under section 11, but perhaps under sections 2 or 35, for example. Concern has been expressed about where the exercise of that power would leave the operating responsibilities of the other individuals in the service. For example, we have the authorities and the fire and rescue service managers—I will come to the firemaster later. A genuine concern is being expressed that, if ministerial directions were issued, nobody might know who was in charge. Do you share that concern?

**Hugh Henry:** No. On the contrary, if ministerial powers were invoked in a situation of potential confusion, that would probably ensure that responsibility was clearly allocated in the middle of a crisis. I hope that, in the extremely few situations in which the powers would be invoked, we would be able to give guidance and direction. I do not see that as being a recipe for further confusion.

**The Convener:** Because this is all unfamiliar territory for the committee, I would like to outline a possible scenario. An offshore incident occurs and your advisers tell you that that is a circumstance that would merit exercising the ministerial power of direction under the bill. Already dealing with the incident are the existing personnel, such as the fire authority, the firefighters and the firemaster. Who is in control? Will the people on the ground be free to take operational decisions about what needs to be done or will you and your advisers preside from Edinburgh from the moment the power is exercised? That is a genuine matter of concern.

**Hugh Henry:** The example that you gave is not the best one because the arrangements that would be put in place in many of the situations that can occur in that example are already tried, tested and planned for by local agencies. However, I take the general thrust of what you are saying.

If something catastrophic happened and there was a major disruption of services—for example, water supplies were contaminated, energy supplies were disrupted, houses were left without electricity and gas and there was a threat to public health as a result of the combination of circumstances—everyone would rightly expect ministers to be able to assume some kind of control in order to ensure that emergency services were co-ordinated and better able to respond. That is where the power of direction would come in. The way in which that arrangement would translate into activity in a local area would be a matter for the local decision makers. Certainly, they would refer to the centre, but they would be best placed to know exactly what was happening in any locality.

We would all expect that, if such a catastrophe happened in the north of Scotland, services in the south of Scotland and central Scotland would be on standby and would have cleared the ground in order to be able to provide the necessary support, that each of the services was being co-ordinated, that we knew exactly who would be responsible for the activities that were taking place and that the room for confusion was minimised. However, I do not envisage ministers or politicians of any description being sent out to manage the services in a locality. We need to rely on the people with the appropriate training, skills and experience. The approach is to combine all the available skills.
the view of other witnesses to whom we have listened. Can you explain the thinking behind that explanation? I think that that line of accountability is something that the committee can understand. In relation to what you were saying about day-to-day operational activity, there is concern that accountability and lines of authority have become a little blurred.

Hugh Henry: We believe that the areas to which you referred are more in the nature of employment practice, which should be a matter between the firemaster and the board, or whatever other arrangement exists. The relationship between the firemaster and the board could be specified in the board’s standing orders or in the contract of employment; after all, the accountable body is the board rather than ministers.

The Convener: That implies that different parts of Scotland could have separate arrangements.

Hugh Henry: Separate arrangements for what?

The Convener: Could there be separate arrangements for relationships between firemasters and boards?

15:30

Hugh Henry: Absolutely, if such arrangements were felt to be justified by local practice. However, no arrangements should be inconsistent with the national framework that we seek to develop. I am not sure that it is wise to speculate on what completely outrageous things might happen. However, if, say, a board were to grant the firemaster such arbitrary and authoritarian powers that the firemaster started to act without reference to normal employment practices or good employee relationships and the board could do nothing about the resulting drop in morale because of the firemaster’s relationship with the board in the contract, the conditions of service or in the board’s standing orders, we would seek to exercise our reserve powers to make the arrangement consistent with the national framework. However, day-to-day directions on what the firemaster should or should not do would be entirely a matter for the board.

Jackie Baillie: Further to Ian Snedden’s helpful letter, I have some quick questions to clarify things for my simple mind. First, as the minister will be aware, there are concerns about section 45’s lack of reference to the need to consult recognised trade unions. I understand that the section contains a generic description. Some organisations are part of the service and some are not recognised for the purposes of bargaining on pay and conditions. We feel that it would not be right to exclude all organisations from the wider aspects of the bill.

Jackie Baillie: Would it be possible to include phraseology about recognised trade unions within a much wider general context?

Hugh Henry: That would depend on the purposes for which the trade unions were recognised. Some trade unions that are not recognised for the purposes of pay bargaining might be recognised for other purposes, so one would need to define further what was meant by recognition.

Jackie Baillie: I want to move on—

The Convener: We are under pressure of time, but Colin Fox may ask a brief supplementary question.

Colin Fox: I have a brief question that follows Jackie Baillie’s line of inquiry. What is the relationship between the Executive and the major trade union—the Fire Brigades Union—following the dispute?

Hugh Henry: You would need to ask the Fire Brigades Union. I see no problems.

Colin Fox: I am asking the Executive.

Hugh Henry: I have met FBU representatives on several occasions. They have probably had more access to ministers and officials than most trade unions and I do not detect any great problems that have arisen as a result of the fire dispute. The union’s representatives may seek to differ on that, but that is a matter for them.

Jackie Baillie: Returning to the substance of the bill, I want to move on to the contention that the bill seeks to disapply the Health and Safety at Work etc Act 1974. I want clarification. I made a valiant attempt to understand the Executive’s elegant explanation, but am I correct in saying that section 65 of the bill will disapply only the fire safety aspects of part 1 of the 1974 act? That is my first, technical question.

The Convener: Perhaps we should let the minister and his colleagues respond.

Hugh Henry: I am advised that Jackie Baillie is absolutely right.

Jackie Baillie: That is great, because it means that I read the explanation correctly.

Secondly, aspects of part 1 of the 1974 act will be applied specifically elsewhere in the bill. Will there be no effect from that?
Hugh Henry: We do not want, either intentionally or unintentionally, to disarray health and safety legislation.

Jackie Baillie: It is helpful to have that clarified for the record.

I have another concern about sections 67(2) and 52(b), which also have helpful explanations. I want to be clear that you are saying that a person being on strike would not in and of itself be treated as an offence.

Hugh Henry: There is no intention to create an offence of a person being on strike.

Jackie Baillie: Okay—people would want to avoid that provision being misinterpreted at some future point.

Hugh Henry: We will have another look at that matter, but it is not our intention to create such an offence, nor do we believe that it will be created. If there is a requirement to clarify the matter further, we will do so to ensure that there are no unintended consequences.

Jackie Baillie: Thank you. That would be helpful.

Finally, we have heard a number of differing views on fire and rescue services and what functions should be specified in the bill. For example, it has been said that sections 7 to 10 should be expanded, particularly to include urban search and rescue and to take on board the outcomes of the on-going work of the sea of change project, which will report in April 2005. Do you have a view on whether that should be included in the bill?

Hugh Henry: Such matters will be in a section 10 order.

Maureen Macmillan: Before I come to the question that I was going to ask, I have a supplementary to Jackie Baillie’s question about the fire and rescue services. As the minister will know, we have many retained and voluntary fire services in the Highlands and Islands and we are not sure of their future because we are waiting to hear about transitional funding for those services. Can you tell me whether that will be announced in the near future?

Hugh Henry: Yes. You lodged a parliamentary question on the matter for Thursday, but it is fairly low down on the list, although I intended to answer that point if the question was called. Obviously, if the question was not called, you would have received a written answer. However, I can put it on the record today that I confirm that the Executive will release £15.12 million in new funding to support the modernisation of the fire service, with the possibility of a further £1.68 million next month. That would include up to £3 million in extra money for the Highlands and Islands fire brigade to fund station improvements and the costs that are associated with the upgrading of staff from volunteer to retained firefighter status.

Maureen Macmillan has pursued that issue vigorously. I hope that what I have announced will go some way towards assuring her and others in the Highlands and Islands fire brigade that we intend to see our commitment through.

Colin Fox: That was a lucky question.

Maureen Macmillan: I asked the question more in hope than in expectation.

Members: Oh!

Colin Fox: What are the chances of that?

The Convener: The phrase “pulled out a plum” comes to mind.

Maureen Macmillan: I have also written to the minister about fire control rooms. You will realise that the Mott MacDonald report has probably raised more hackles than anything else has—in or out of the bill. What is the driver behind the proposals? Why, all of a sudden—as it seems to some people—are we looking to reduce the number of fire control rooms? Is the present system not working?

Hugh Henry: The present system is working up to a point, but it requires further investment to continue to work effectively. The immediate driver was not the bill, but the necessity to fund the firelink project. We thought that it would be inappropriate to invest in and upgrade eight control rooms throughout Scotland under the current structure, but then to feel in the near future that experience and investment decisions were pushing us towards having fewer control rooms. That is why we commissioned the consultants’ report.

The report has come back, information has been circulated and the consultation is now complete. My view is that that work demonstrates clearly that in a country the size of Scotland we could operate with one fire control room and that resilience and back up could be provided by other parts of the United Kingdom. That would release significant savings that could be invested across the piece in the fire service, or used to help to maintain the record levels of investment that we are putting in.

Half the population of Scotland is already served effectively by one fire control room; it services something like 12 local authorities, ranges from Oban in the north to south of Girvan and covers a significant number of islands and disparate communities. That experience has shown that centralisation of the service could work well.

On the other hand, we have seen a number of submissions that argue that resilience would be
better provided within Scotland, rather than other parts of the United Kingdom. I know that fire boards representing 23 of the 32 local authorities in Scotland have suggested that we should consider having three control rooms. A minority have said that the status quo should remain. We will obviously reflect on that, but it is only fair to say that I am not, at the moment, persuaded that the status quo is justified. We will announce our proposals in the near future.

Maureen Macmillan: When will you make your decision?

Hugh Henry: We will need to do so fairly soon, because we are being pressed contractually for investment in the firelink facilities. The sooner we can clarify matters, the better.

Colin Fox: It has been said that centralisation of control rooms would lead to a greater volume of calls with fewer staff to take them. Do you accept that and do you accept what is perhaps the critical point, which is that the public want to be reassured that they will have a better service as a consequence of reducing the number of control rooms from eight to three—or even to one, as the chief inspector of fire service would prefer?

Hugh Henry: Perhaps you could clarify something for me before I answer that. You said that the centralisation of fire control rooms would lead to more calls. I do not understand that.

Colin Fox: I asked whether you accept that centralisation would lead to a greater volume of calls being taken by a reduced number of staff.

15:45

Hugh Henry: You have the advantage of me—I have seen no evidence that suggests that centralisation would lead to a greater number of calls. That is obviously a matter that I shall go back and look at, but I am not aware of that argument.

There would certainly be fewer staff. In 2001-02, the eight control rooms that we have at the moment handled nearly 122,000 incidents. More than 61,000—or 50 per cent—of those were handled by one control room, with the other seven handling the other 61,000. The smallest number of incidents—2,000—was handled by Dumfries and Galloway fire brigade, which has 18 staff. Strathclyde’s control room’s cost per incident is £30, compared to Dumfries and Galloway’s cost per incident of £80. I do not think that there would necessarily be a reduction in efficiency or effectiveness. The same arguments were made when Strathclyde reduced and centralised its control rooms, but that centralisation seems to have worked fairly well.

Colin Fox: Do you accept that, even with the same volume of calls, we may be talking about a smaller number of control-room operators?

Hugh Henry: Yes. If there are fewer control rooms there will be fewer control-room operators.

Colin Fox: Thank you.

Mike Pringle: I am sure that the minister is aware of the question of charging and of the conflicting views that have been given by the Chief Fire Officers Association Scotland and the Fire Brigades Union, and I am sure that the committee welcomes the comments that were made by Ian Snedden in his letter. When are we likely to get the greater detail that is referred to in that letter? There is also some concern about limits and when fire brigades can charge. Will you also comment on whether or not the £100 figure will be the same?

Hugh Henry: One of the things that we are quite clear about is that there should be no charging for the core functions of the fire service when it responds to emergency calls in relation to threats to life and putting out fires. If other ancillary activities were to be carried out—such as services to businesses—or in cases in which businesses may currently pay for some aspects of the service, it will be a matter for local organisations to determine exactly how much should be charged. I imagine that brigades would want to look at recovery of their costs, but I am not sure that I, as a minister, would necessarily want to say that a certain charge could be made for giving advice about a major economic or property development, for example. The market in Edinburgh may well be able to sustain a lot more than the market in Oban or in Arbroath, so that matter would be for local service providers to determine.

As far as income generation and means testing are concerned, I know that we have some politicians in the Parliament who want to encourage blue-sky thinking. Mr MacAskill is already on record as suggesting some of that, but to suggest that we should charge for going out to fires might be to go a bit too far, even for Kenny MacAskill. However, he makes a legitimate contribution to the political debate. I think that there are circumstances in which charging would be appropriate, but it would be for local people to determine that. As to when charges will take place, it will be fairly soon. We shall have further consultation on exactly how the change will operate and under exactly what circumstances.

Mike Pringle: I move on to the prohibition on the employment of police, which is covered in section 47. Some witnesses said that they are happy for that section to be retained, but the CFOA and, today, the FOA said that it is unnecessary and that in some areas it would be useful for serving police officers to be used as retained firefighters, perhaps in their spare time. Do you have a view on that?
Hugh Henry: We have not reached a conclusion, but to the best of my recollection the Association of Chief Police Officers in Scotland came out to oppose that and said that it is concerned about the consequences of serving police officers acting in that capacity. Obviously, we will try to balance the views that we are starting to hear from the police and the fire service. I have no wish to introduce to smaller and more rural communities rigidity that would affect individuals’ ability to play a wider role. Equally, it would be wise to reflect on the advice about the consequences that has been given by senior practitioners in the relevant services. We have not come to a conclusion, but we are aware of the different views that have been expressed.

Maureen Macmillan: We heard in evidence that part 3 of the bill will need to be accompanied by a raft of regulations and guidance. The FOA talked about the need to have regulations written over from England to Scotland. When will those regulations be available for inspection? Will we have the secondary legislation to examine before stage 3?

Hugh Henry: We anticipate that the regulations will be available by the end of the year, given that stages 1 and 2 will be fairly close together.

Maureen Macmillan: That is helpful, because we do not want to pass the bill without knowing exactly what we are letting ourselves in for. My other question was answered in Mr Snedden’s letter, but perhaps you will elaborate. Do the bill’s definitions of employer, employee, landlord and tenant simplify matters in relation to who is responsible for fire safety in premises? Mr Snedden’s letter says that the formula that is used in the bill complies with European Community law, but others have said that the bill is too vague and that other terms should be used to cover the different types of relationship that exist, including franchisees and people who work in a building but who are all self-employed.

Hugh Henry: On you go.

Maureen Macmillan: I think that that covers it. It is the duty of an employer to make sure that premises comply with fire safety regulations.

Hugh Henry: I do not have Ian Snedden’s letter to hand.

Maureen Macmillan: May I read out what it says?

Hugh Henry: Yes.

Maureen Macmillan: It says:

“The FBU comment on the definition of ‘employee’ in section 73(1). They suggest that the sections do not take into account the nature of modern working relationships. This formulation of the duty on employers reflects that in the Health and Safety at Work etc. Act 1974, which the United Kingdom regards as implementing the Framework Directive. We are satisfied that our approach complies with European Community law in this regard, and with its implementation in domestic law.”

Hugh Henry: We remain satisfied that our approach complies with European Community law and we do not anticipate any problems, but it would be wise for us to go away, have another look at that and then come back to the committee. I understand what has been said, but I believe that there is nothing to cause concern. However, it is worth our having another look.

Karen Whitefield: I ask for some clarification on how the fire safety enforcement regime will operate, particularly for houses in multiple occupation, residential care homes and nursing homes, and on the interaction between the fire service and other agencies such as the Scottish Commission for the Regulation of Care. The committee has had evidence that suggests that there will be duplication, and it would be helpful for us to have a clear indication from you of how you envisage the regime working.

Hugh Henry: It is important that we have a degree of consistency, because we want to ensure consistent application across all relevant premises. Whether someone is in an HMO or a care home, they will want to have the same degree of assurance about safety as they would have in their own home. It would be invidious if other bodies that license premises, such as local authorities, were to take on the responsibility for ensuring fire safety; it is right that that responsibility should lie with the fire authorities.

Concerns have been raised about duplication, but that will not happen. In many instances, someone from the fire service is part of the team that does the initial inspection of an HMO, so they will be responsible and will make the decision during that inspection. If we took the responsibility away from the fire service and gave it to another agency, it could cause problems. Consistency is important, as is the understanding of who exactly is responsible for fire safety.

Karen Whitefield: I will give the minister an example of something that happened recently in my constituency, which raised my concerns about the difficulties that exist and which could continue to exist.

An out-of-school club has operated in one of the towns in my constituency but, in order to operate, it needs to register with the care commission. It wanted to operate out of a local primary school, but the school does not have a sprinkler system. The local authority’s building control service says that the school does not require to have sprinklers and that the building is compliant. The fire authority believes that there is no need for there to be sprinklers in the school and that there are no
fire safety issues, so it agrees with the local authority. However, the care commission says that it will not allow the out-of-school club to register because there are no sprinklers in the building.

We have conflicting evidence. Who will have overall control of the system and who will ensure that the system is enforced, is workable and does not give rise to duplication? Somebody must be right in the example that I gave, which is an example of the system not working particularly effectively.

Hugh Henry: That is a good example of exactly why we have concluded that one agency should be responsible and that it should be the fire service. If such an example were to arise in future, the fire service would determine whether or not the building was fit for purpose. You have given a very good example of different agencies having different standards and requirements, which is not in anyone’s interest.

16:00

Jackie Baillie: I will posit a slightly different example—it is important that we get to the bottom of this.

It is not the case that fire brigades will have something removed from them; currently, the responsibility for HMOs is with local government. I would have thought that the Executive would be interested in promoting joined-up working across a variety of agencies, so that there would be something quite useful in having one inspection regime, with the fire authority co-operating with local government. However, I see some difficulties with the proposals. I understand the attractiveness of concentrating all the powers but, although that might work in theory, there might be a very contrary result in practice. There are genuine concerns about how the arrangements will play out.

Hugh Henry: I understand what Jackie Baillie is saying. She made a point about different people working together for a particular purpose, which is exactly how we anticipate that things will develop. We want to address the detail of the working relationship among the various authorities through guidance, which will be produced in partnership. I reiterate the point that it is best if we know exactly who has responsibility for fire issues, and we believe that that should be the fire service, although the regulatory work that needs to be carried out should be done in partnership, and there should be a joint understanding at local level of how it is done.

I remain to be convinced that the proposals could cause the problems that Jackie Baillie perhaps anticipates in her question. I would hope that some of the concerns will be addressed when we discuss the guidance. If problems remain, we will be able to reflect on the matter further. However, I would be concerned about those who are not responsible for fire safety having responsibility for fire-related matters.

Karen Whitefield: I refer to matters that I raised with your officials when they came to the committee. In a letter, Mr Snedden has responded to a point that I raised about there not being anything in the bill that will make it an offence for somebody to masquerade as a firefighter. His response was helpful, and addresses points that were raised by Strathclyde fire brigade. However, Strathclyde fire brigade also felt that the provisions for overseas fire and rescue authorities and charitable bodies do not allow acceptably for the disposal of equipment that brigades no longer require. Officials said that they would respond to the committee on those points, but there was no mention of that in the letter that we received, so I wonder whether you can give the committee further information on that.

Hugh Henry: That requires further discussion. I know that a degree of confusion has been caused in some communities by the disposal of pieces of equipment that people think still pertain to fire services. There are different issues here. One is about the disposal of equipment; the other is about those who deliberately impersonate someone in the course of their duty. We will be having further discussions on those points.

Jackie Baillie: I think that this is almost your final question, minister, if not the final question. You would expect me to mention the fact that the bill abolishes the Scottish Central Fire Brigades Advisory Council. If I picked you up correctly earlier, you made some welcome comments about the need for ministers to have advice and for a forum where such advice can be put. What alternative models are you considering? When will they see the light? Will they be consulted on before stage 3? Do you intend to make the arrangements for giving advice to ministers statutory, by including them in the bill?

Hugh Henry: To answer your last question first, no, we do not intend to make that statutory. You asked about whether there would be consultation on alternative models before stage 3, and the answer is yes.

Your first question was about the type of model. We still have a relatively open mind on that. We are examining experience from elsewhere in the United Kingdom to see how other models are developing. We want to ensure that the process is not cumbersome or bureaucratic, that it is well focused and that it encourages the discussion of relevant issues in an appropriate manner and forum. It should engage with and not exclude all those with a legitimate interest in fire services.
There have been suggestions about different layers. I do not know whether different layers are needed for different types of activity. We should remember that relatively small groups of people who are burdened with other responsibilities are involved. I do not want to create a professional circuit in which the same people meet in different bodies in an almost perpetual round of meeting activity. The arrangement needs a proper focus. Last but not least, we should question what the relevant contact is. One of my concerns is the fact that, through the current body, ministers have been inappropriately engaged in various issues in a way that did not make a great deal of sense. We want the widest possible discussion with all stakeholders so that the end-product improves fire safety in this country.

Jackie Baillie: There is genuine concern about this. Some people want statutory underpinning for the arrangements, but I understand that we want flexibility, so I suspect that ministers will prefer to go down the route of not specifying the exact form of the body in legislation. That said, could a duty be placed on ministers to have an advisory forum? Would such a generic duty fit with the broad direction of travel that you appear to be outlining?

Hugh Henry: We would be required to consult on orders or regulations made under the powers in the bill. In respect of the national framework, the bill expressly states who would be consulted. It is not clear that going in the direction that you suggest would be helpful—I do not see the value of that, although I see the value in having the widest possible consultation. As I said, we will reflect on experience elsewhere. We are already building in a significant degree of consultation and discussion at all levels, which is appropriate.

Mr MacAskill: I think that it has been suggested by the fire service inspectorate that response time to a fire can be slower if the fire is not likely to result in death. Do you accept that, or do you disagree?

Hugh Henry: It is appropriate for such suggestions and for decisions to be made by the experts. Clearly, the fire service inspectorate has a wealth of experience in that regard. In other words, I suspect that it is being suggested that, where there is a threat to life, that should be a priority. If the suggestion is that threats to life should take priority over other incidents, I would agree: threats to life should always have a higher priority.

Colin Fox: I have a brief question about the advisory council, to follow up on Jackie Baillie’s line of inquiry. I found the evidence on the SCFBAC curious. It seems that the body has been universally held in low esteem for a long time. Last week, I asked the chief inspector of fire services whether he could point to anything that the advisory body has done well or to any of its successes. I understand that there is a fairness and diversity forum, a retained and rural firefighters research group, a fire safety forum and a wilful fire raising forum. I take it that such forums and opportunities to do good work will be continued in whatever proposals you produce.

Hugh Henry: The intention is to draw on the widest possible range of experience, including trade unions, employers, local government, private business and people who receive the service, in order to, I hope, come up with suggestions for improvement. The suggestions might relate to how the fire service operates as an equal opportunities employer, how to provide an effective service in a fast-changing world or how to improve public consciousness of fire safety so that fire prevention becomes more of an issue than it is at present. I hope that, whatever shape the advisory body takes, it will continue that type of work.

The Convener: Do you or your advisers have any final points to make, minister?

Hugh Henry: No, we are fine, thank you.

The Convener: In that case, I thank the minister, Mr Snedden and Mr Marshall for appearing before us. The meeting has been extremely helpful.
WRITTEN SUBMISSIONS TO THE JUSTICE 2 COMMITTEE

THE ASSOCIATION OF BRITISH INSURERS

The Association of British Insurers (ABI) is the trade association representing over 400 insurers who between them write 91% of the general insurance business in the United Kingdom. This paper gives insurers views on the important reform programme proposed for the Fire and Rescue Service in Scotland set out in the Fire (Scotland) Bill and sets out the ABI view on the key implications for insurers and their customers.

Insurers welcome the overall aim of the Fire (Scotland) Bill set out in the Policy Memorandum, that 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’.”

8. Fire-fighting

ABI welcomes the requirement, as set out in 8.1(b), on each relevant authority to “make provision for the purpose of protecting life and property in the event of fires in its area.” Insurers note that life safety has always been, and rightly continues to be, the first priority of the Fire Service, but stress that the objective of protecting the economic assets and capacity should be a key concern in future.

Integrated Risk Management Plans

Insurers are anxious that activities such as Community Fire Safety, which are core to the activities of a modern Fire & Rescue Service, should include business and the voluntary sector, rather than the narrower definition that has been used to date in many parts of the UK. Around 8 in 10 large fire losses occur in businesses with less than £100 million annual turnover. It is unlikely that many of these businesses have in-house risk management expertise. This has implications for the promotion of fire prevention in businesses, particularly as regulatory reform leads to the new risk based approach to statutory inspections.

In drawing up IRMPs and risk maps as predictive tools for future fire and other emergency incidents it is important to assess potential hazards rather than being driven by historic events. Risk assessment should take account of the impact or damage that will occur as well as the probability of something happening. For many areas safeguarding the economic base of the community will be a high priority as the social and environmental impacts of business closures and relocations can be significant.

Community fire safety and arson reduction funding should be available to undertake initiatives targeted at priorities identified in IRMPs and other local strategy plans. The emphasis should be on undertaking initiatives that address the behaviours that are giving rise to the identified problem, evaluating their effectiveness and sharing the outcomes so that best practice can be developed and promulgated.

11. Emergency Directions

ABI supports the guidance given on resilience and terrorism issues. Insurers are actively engaged in work with the Cabinet Office and ODPM on Civil Contingency issues in order to support all planning and responding organisations. ABI welcomes the power of the Scottish Ministers to issue emergency directions. ABI notes that, while Civil Protection is largely a devolved matter, the definition of emergency in the Civil Contingencies Bill is concerned with consequences rather than with its cause or source. Therefore, an emergency inside or outside the UK is covered by the definition. ABI strongly supports this work done on Civil Contingencies and it is essential the Fire (Scotland) Bill provide legislative support that allows the Scottish Fire & Rescue Service to carry out all planning and responding functions fully and effectively.
15. Charging

ABI welcomes the qualification in 15.3(c) that a “charging order may not authorize charging for protecting property in the event of fires”. Charging for non-firefighting activities is an issue of concern to insurers. ABI is particularly concerned about charging for risk improvement advice and training, as this could deter SMEs, in particular, from taking it up. Despite a long term commitment by insurers to improving fire and arson prevention ABI research suggest that only around 40% of businesses suffering large fire losses in the UK have any fixed fire protection installed in the building, contrasting significantly with the 81% level achieved of homes having smoke alarms (ODPM statistics for England and Wales). In around two thirds of cases fire protection is restricted to an automatic fire alarm. With the exception of large, specialist consultancy, insurers strongly believe that this type of advice should be free, as it is essential in protecting property in the event of a fire.

Insurers would expect Fire Authorities to benefit from resources released by regionalisation and efficiency improvements.

27. Powers of authorised employees in relation to investigating fires

Better prevention of both accidental and deliberate fires can only be achieved where there are comprehensive and accurate assessments of causes, with supporting legislation and regulations being amended to address emerging problems. Improving the level of expertise and deployment of fire investigation services will be crucial. Arson Prevention Bureau research into arson investigation illustrates that the procedure in the UK investigation stands in contrast to the United States of America, which has an arson detection rate of 17%, almost double that of the UK. Police investigators, under the current system, are unlikely to have any specific training in fire investigation. The initial fire investigation officer may be withdrawn from the case at an early stage of the investigation. This contrasts with the role of fire marshals in the US, who will be responsible for the investigation throughout, until it is passed to the relevant prosecuting authority.

In order to improve the detection and prosecution rate in the UK, insurers regard it as essential that those involved in investigation have specialist knowledge of fire scene investigation, and investigate a sufficiently high number of cases each year to maintain the currency of their skills. Insurers wish to contribute to the continuing development of this expertise and best practice through a partnership approach, including the publication in April 2004 of an independent research report into “Fire Investigation in Scotland” by The Forensic Institute. The key findings of this report were:

- There should be a single agency responsible for fire investigation in Scotland, which should be within the Fire Service;
- This should embrace both fire investigation and analysis of data;
- Fire investigation should be underpinned by a significant research programme which should form part of a wider UK and international research function;
- Community fire safety and Integrated Risk Management activities should be informed by the fire investigation analyses and research programme;
- This specialist resource should support the prosecution of the criminal investigations of the Police and Procurator Fiscal, in a manner similar to the role of the pathologist.

A copy of the full report is available from www.arsonpreventionbureau.org.uk.

79. False Alarms

Insurers recognise the need to reduce the unnecessary burden of false alarms on limited public resources, but are anxious to maintain the standards of protection afforded to our customers. We believe that significant improvements can be made without recourse to measures such as charges or fines that could jeopardise the operation of fire prevention and detection systems. It will be essential to ensure that measures to manage false alarms focus on changing the behaviours and design features that give rise to such call-outs, rather than simply resulting in systems being switched off.

Insurers strongly believe that fire prevention must be the guiding principle in the implementation of initiatives to reduce the incidence of false alarms, in particular Unwanted Fire Signals (UFS) from Automatic Fire Alarm systems. Combating the effects of UFS alone, which may involve the SME
simply turning off their alarm to avoid a fine, or a blanket policy of reduced response to AFAs by Fire Authorities, is likely to result in non-attendance at a real fire by a Fire Service, resulting in loss of life and property. The focus must be on the cause, so Fire Authorities have the confidence that calls from AFAs are genuine, and resources can be deployed effectively. Once a risk-based response plan is implemented, the resources saved can be directed back into fire prevention work.

Association of British Insurers
September 2004

**SUBMISSION FROM ENVIRONMENTAL & CONSUMER SERVICES DEPARTMENT, CITY OF EDINBURGH COUNCIL**

This Department leads on HMO Licensing for the City of Edinburgh Council and has serious concerns regarding the implications for fire safety enforcement given the implications of the Bill. Since the introduction of Mandatory Licensing in 2000 a total in excess of 5,500 Houses in Multiple Occupation have entered the Licensing Scheme and have either been granted a licence or are in the process of obtaining a licence. A dedicated team with a full time seconded fire officer are actively pursuing landlords of unlicensed properties which we have identified through a city wide ward inspection programme. As a result the quality and safety of accommodation in the private rented sector has significantly improved over the past four years.

The recently published guidance from the Scottish Executive on the Mandatory Licensing of Houses in Multiple Occupation explains that if the bill is passed in its current form that responsibility for fire prevention and fire safety will be consolidated in the hands of the Fire Brigade. This will result in Licensing Authorities changing their procedures when the Bill comes into effect and will duplicate the effect of the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order with respect to Fire Safety.

It is my understanding that the implications of the Bill in respect of Houses in multiple occupation hinges upon the definition of fire safety enforcement given the implications of the Bill. Since the introduction of Mandatory Licensing in 2000 a total in excess of 5,500 Houses in Multiple Occupation have entered the Licensing Scheme and have either been granted a licence or are in the process of obtaining a licence. A dedicated team with a full time seconded fire officer are actively pursuing landlords of unlicensed properties which we have identified through a city wide ward inspection programme. As a result the quality and safety of accommodation in the private rented sector has significantly improved over the past four years.

The conclusion arrived at that a tenanted house with two or three unrelated tenants is not a private dwelling and not domestic premises appears to be at odds with the position in the Building Standards (Scotland) Regulations 1990. In the regulations a tenanted flat with up to 6 unrelated people living together as a single household would constitute a dwelling. It would need to be licensed as an HMO, but it would still be a dwelling, and would be licensed by the local authority, with the fire brigade as a statutory consultee.

Is it the intention that all flats or houses occupied by two or more unrelated people should have a fire risk assessment carried out by the person with control, and that the brigade are then obligated to enforce the duty of that person in relation to those premises such as the fire safety measures are reasonable for him to take to ensure the safety of relevant persons in the event of fire? Is it correct that the definition of ‘domestic premises’ should be read in the way described above?

Consolidating enforcement by the brigade will remove existing powers available to Local Authorities to serve notices under section 162 of the Housing (Scotland) Act. This is an extremely useful enforcement tool which is frequently used to require landlords/managers to upgrade fire safety measures in the poorer standard accommodation at the lower end of the market and protect vulnerable groups.

27 August 2004
SUBMISSION FROM DUMFRIES AND GALLOWAY AUTHORITY

The Scottish Executive’s invitation for written evidence in relation to the Fire (Scotland) Bill was considered by the Dumfries and Galloway Fire Authority on 31 August 2004.

The Authority welcomed the publication of the Fire (Scotland) Bill, the provisions of which follow the main themes set out in the Executive’s previous consultation papers, “The Scottish Fire Service of the Future 2002 and Legislative proposals for the Scottish Fire and Rescue Service 2003.” Dumfries & Galloway Fire Authority has responded in general support to both consultation documents and the provisions of the Bill are also generally supported.

There are a number of specific comments or points which the Fire Authority would wish to make and these are set out under the following headings:

Strategic Issues
Service Delivery Issues

Strategic Issues

Ministerial Powers

The Bill contains a number of provisions which give new powers to Ministers in relation to the provision of the Fire Service. Whilst it is recognised that there may be areas where this is correct and proper (for example for Scottish or UK resilience purposes), it is strongly believed that the responsibility for and accountability for the Fire Service should remain within Local Government in Scotland.

Dumfries and Galloway Fire Authority would wish to see clearly defined circumstances upon which any Ministerial power would be exercised, to ensure clear lines of responsibility and accountability are maintained.

One of the key principles, which has underpinned the debate concerning Fire Service legislative proposals, relates to the removal of Ministerial powers in relation to local determination of service provision (Section 19 of the Fire Services Act). The Fire (Scotland) Bill is in areas at odds with this principle and this should be addressed.

Governance

Dumfries and Galloway Fire Authority consider that the current arrangements and standards for governance of the Fire and Rescue Service in Scotland, serve our communities very well.

They are particularly concerned with regard to where areas of responsibility will lie in relation to the Bill’s stated intentions and proposals:-

The Local Government Act (Scotland) places a clear duty upon Local Authorities and Fire Authorities to secure Best Value from their services. Given the uncertainty that currently exists in relation to the provision of Fire Controls, Common Fire Services Agency and structure of the Service in Scotland, it is considered that the Bill must provide clear definitions of responsibility for Fire Authorities and Scottish Ministers in relation to the priorities of the Fire Service.

Common Fire Services Agency

Proposals for a Scottish Common Fire Services Agency were included in the Scottish Executive’s previous Fire Service consultation paper. Whilst the Bill does not make provision for the first stages of the establishment of a Common Fire Services Agency, Dumfries and Galloway Fire Authority believe that existing arrangements of governance and collaborative working would enable the objectives of Ministers to be met without the need for the additional layer of bureaucracy which would result from the establishment of a Common Fire Services Agency.
Service Delivery Issues

Part 1  Section 2  Schemes to Constitute Fire and Rescue Boards

The Fire (Scotland) Bill should reaffirm current arrangements for the Firemaster to report directly to the Fire Authority to ensure appropriate advice is provided on professional fire matters.

Part 3  Sections 53 and 54  Fire Safety Regulations

The Fire Authority notes that Ministers may make regulations in relation to the carrying out of fire safety and risk assessments. This Authority considers that it is essential for such guidance to be provided and widely publicised.

Given the high proportion of small businesses across Dumfries and Galloway, it should be stressed that such guidance should be clear, concise and easily understood so as not to be burdensome upon small businesses.

Chapter 2  Enforcement

The Fire Authority acknowledges the provision of the role of local authorities as enforcing authorities for the purposes of key elements of the fire safety duties set out in Chapter 1.

Dumfries and Galloway Fire Authority considers that the Fire Service has, through the implementation of a risk assessment based inspection regime, contributed to improved workplace fire safety standards and outcomes. While the inclusion of the powers of enforcement officers (Section 57) is welcomed, it is considered paramount that Fire Authorities should continue to apply a proactive inspection regime, based upon an assessment of fire risk and level of compliance.

Thank you for providing the Fire Authority with the opportunity to respond to the Fire (Scotland) Bill provisions. Subject to the above comments, it is considered that the Bill goes some considerable way towards meeting the Scottish Executive’s stated policy objectives.

I shall be obliged if you will bring these comments to the attention of the Justice 2 Committee and would be pleased to expand on the issues raised should they consider this necessary.

Philip N Jones
Chief Executive and Clerk to Fire Authority
13 September 2004

SUBMISSION FROM FIFE COUNCIL

Introduction

The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June 2004. The stated 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 of our communities;
- To revise fire safety legislation.

The purpose of this paper is to present the views of Fife Council (The Fire Authority) – to the Justice 2 Committee.

Fife Council notes, and in general terms welcomes the publication of the Fire (Scotland) Bill. The provisions of the Fire (Scotland) Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future). Fife Council had in general expressed its
support for the proposals for legislation and consequently the provisions of the Bill are generally welcomed.

Fife Council will respond to the consultation document by exception. Where no comment is provided we generally support or concur with the approach adopted by the Executive. The areas that we would wish to make comment on are contained within the following subject headings: General Comments; Operational Matters and Further Observations. Where appropriate the relevant sections of the Fire (Scotland) Bill are identified.

General Comments

Ministerial Powers
There are a number of provisions within the Bill that give new powers to Scottish Ministers in relation to the provision of the Fire Service.

Although we recognise that there are areas where this is a sensible arrangement for the overall governance of the service there needs to be a definition provided of when such responsibilities will be implemented and on the extent of the accountability and responsibility which will attach to Scottish Ministers. This will have implications for the management of the Fire and Rescue Authorities. Part of the debate in bringing forward the legislative proposals related to the removal of ministerial power in favour of an increased accountability and responsibility being given to Fire Authorities; this part of the Bill now does not seem to support that point.

Governance
There needs to be a clear understanding of the responsibilities of both Fire Authorities and Scottish Ministers in relation to the provision of the Fire Service; otherwise there will be a potential diminution in the governance standards, which currently operate.
This is particularly important given the current uncertainty in relation to the structure of the Service, the proposal for a reduction in the number of controls and the proposals in regard to the Common Fire Services Agency.

Controls
The Executive published their Consultants report on the future of control rooms in Scotland on 8 July 2004. It is imperative that governance, command and control and operating arrangements are clearly identified.

Common Fire Services Agency
These proposals were included in the Executive’s earlier consultation paper in regard to a Common Fire Services Agency. This would have major governance and financial consequences. Ministers have decided to investigate the proposal to investigate a Common Fire Services Agency with stakeholders. The Bill does make provision for the first step in this process: Provision of powers for Scottish Ministers to establish and maintain (or contribute to the establishment and maintenance of) a body to promote the economy, efficiency and effectiveness by the Fire and Rescue Service Authorities. Fife Council’s view is that the existing governance and operating arrangements will better deliver economy and effectiveness by maintaining ownership within the Fire Service.

Operational Matters

Part 1 Section 2
Existing Legislation makes arrangements for the Firemaster to report directly to the Fire Authority. The same provision should be maintained within the Fire (Scotland) Bill to ensure that appropriate professional advice is provided directly to all Fire and Rescue Authorities. This is consistent with the principles of integrated risk management planning.

Part 2 Chapter 1 Section 8
It would be helpful to receive a legal definition of the extent of each Fire and Rescue Authority area to allow proper consideration of the provisions that it must make including firefighting at sea. Reference should also include Fire and Rescue Services responsibility for environmental protection where appropriate.
Urban Search and Rescue – New Section 9(a)
Provision should be made within the Bill for Fire and Rescue Services responsibilities for urban search and rescue activity. This should be identified as a specific role for the service, particularly when one considers the service's role at the recent explosion and building collapse in Grovepark Street, Glasgow.

Chapter 2 Section 11 (1)
We query the need to include the provision for emergency directions in the Fire (Scotland) Bill. Ministers already have such powers in terms of Civil Contingency Arrangements.

Chapter 3 Water Supply
Although recognising the service responsibility to secure water supplies Fife Council believe that responsibilities in relation to provision of hydrants etc should be contained within the Water (Scotland) Act. Responsibility for the provision of said hydrants should lie with the water undertaker.

Chapter 6 - Central Supervision and Support – Section 36 (i)
We would advocate that when enacted, and if applied, that Scottish Ministers should take a wider focus for consultation, which would be, consistent with the requirements placed upon Fire and Rescue Authorities in context of the integrated risk management planning process. The Bill also requires to reflect that Firemasters are responsible to Fire and Rescue Authorities for the effectiveness of the service, which they provide. We believe that it would also be prudent to include responsibilities for integrated risk management planning, IPDS, risk assessments and the efficient and effective arrangements for the Fire and Rescue Service.

Part 4 Miscellaneous – Section 74
We are unclear as to the circumstances in which this provision would be required. Existing legislative requirements make provision for enquiries into all aspects of the services operations.

Section 78
We note that it is proposed to abolish the Scottish Central Fire Brigades Advisory Council. We can support this provision on the basis that there will be an appropriate and adequate replacement body formed.

Further Observations

Section 9
Clarification is sought on definition of preventative role in partnership with other agencies and any powers that would derive to Fire and Rescue Authorities.

Section 15 – Charging
Fife Council welcomes this provision and look forward to contributing to consultation on the proposed charging order.

Section 20 (2)
This should be amended to ‘identified hydrants would be marked in an appropriate way’; this would allow the use new technology to mark and indicate hydrant location.

Chapter 4 – Section 27
Clarification will be required on certification of premises within this section.

Chapter 5 – Section 35 Section 34: directions
We question the need for this provision given the provisions and obligations arising from the Local Government (Scotland) Act 2003.

Chapter 6 – Section 44 (1b)
This provision seems contradictory to the responsibilities being proposed for Fire and Rescue Authorities; we can understand the need to establish a Central Training Institution but do not understand the reference to local training centres. If it was to be implemented then it appears that the Scottish Executive would require to take responsibility for the training of all Fire Service personnel. This would also appear to duplicate the provisions of Section 14.
Part 5 – Section 79 False Alarms
We suggest that a provision be made for charging for false automatic fire alarm calls. This would provide an incentive for reducing spurious activation of automatic fire alarm systems.

Schedule 4 – Repeals
Does not make any reference to the Fire Services Act 1959.

Conclusions
Fife Council welcomes the opportunity to comment on the proposed contents of the Fire (Scotland) Bill and hope that that these comments are found to be relevant and appropriate. However we have serious concerns on the potential use of Part 1 section 2(1) of the Bill which states “Where it appears to the Scottish Ministers that, for the purposes of this Act, it would be in the interests of greater economy, efficiency and effectiveness that the areas of two or more fire and rescue authorities be combined, they may by order make an amalgamation scheme for that combined area.” Particularly when read in conjunction with the Mott MacDonald report which states on page 55 (iv) Opportunities; This option does open the way to review the structure of the eight brigades in Scotland, and whether they should be rationalised into three. If one makes the linkage in these two, albeit, separate documents the inference could be drawn that there is a plan to rationalise the Fire and Rescue Services in Scotland. We strongly believe that the current structure and governance of Fife Fire and Rescue Service best meets the needs of the communities of Fife. We would therefore urge the Executive not to contemplate making any changes to the structures of Scottish Fire and Rescue Services.

August 2004

SUBMISSION FROM GRAMPIAN FIRE BOARD
I enclose for your attention the comments of Grampian Fire Board on the Fire (Scotland) Bill.

In respect of amalgamation schemes the Board does not support the proposal that Ministers lead on the setting up, amendment or revocation of amalgamation schemes. The Board would prefer to maintain the current arrangements of fire authorities being able to develop amalgamation schemes as is currently the position under the Fire Services Act 1947.

The Board supports the inclusion in the Bill’s provisions of clauses which provide fire authorities with the appropriate powers related to borrowing. Such powers are provided in the 1947 Act under section 36 sub sections (10) (11) and (13) and the Board supports the inclusion of similar powers in the Bill. It is considered that without these powers being provided that authorities would not be able to borrow.

With regard to Additional Function Orders the Board considers there should be:

- provisions for consultation with the Authority concerned, and,
- provisions on the time the Order should remain in force and,
- provisions for financial assistance for authorities who are required to carry out any additional functions.

In respect of the proposed powers being taken by Ministers in Section 11 of the Bill the Board seeks clarification of whether the emergency direction being taken by the Ministers would take precedence over the statutory duty of an authority.

In respect of the Charging Order provisions, the Board supports the proposal for powers to be taken by Ministers to enable fire authorities to make charges (other than for extinguishing fire, protecting life or property in the event of fire). The Board supports the development of these powers to charge for:

- attending incidents which are found to be caused by inappropriate activation of fire alarm systems,
- charging for services connected to property protection and preventing the spread of fire, provided to individuals or agencies who are themselves professional advisers or where it is considered they should engage professional advice. An appropriate exclusion to this being advice to private homeowners.
In developing a Charging Order, the Board considers it appropriate that a requirement for consultation takes place with fire authorities as to what can be charged for in an Order should be included in the Bill.

In respect of water supplies provision the Board considers it appropriate that there should be included in the Bill provisions that define reasonable minimum standards of water supply in order for a brigade to fight fires. Costs associated with the development of water supply infrastructures should be defrayed to the water undertaking or developer through planning gain initiatives and not charged to the fire authority.

With regard to the Minister’s involvement in the development of mutual aid schemes the Board wishes to comment on:

- the possible conflict might arise from the powers available to a Minister to develop an Additional Function Order and its relationship to a mutual aid scheme, and
- whether an Authority (which has statutory authority) can itself delegate the carrying out of functions to another body when it is responsible for ensuring the function is carried out.

With regard to a National Framework document, the Board rejects proposals that provide for a Minister to take powers to make an Order requiring an Authority to take or refrain from taking action in a certain manner when it is considered that an Authority is failing or likely to fail to act in accordance with the Framework Documents.

The Board also rejects proposals that provide for Ministers to have a greater say in the way a fire authority runs its day-to-day affairs through the utilisation of a combination of powers being considered under Section 2, Section 34 and Section 36 of the Bill. The utilisation of such powers are seen to be contrary to local accountability and to date as far as this Board is aware there has been no precedent which gives rise for such powers to be used. The Board reinforces its commitment to a decentralised, locally accountable, locally representative Fire Board and rejects the Scottish Executive’s premise that centralisation and direction from Edinburgh is best for Grampian Fire and Rescue Service. The Grampian Joint Board is a well defined, extended community and the existing boundaries are best for the people of Aberdeen, Aberdeenshire and Moray.

The Board expresses its concern and reservations on the development of Property and Facility Orders, as it may leave Grampian Fire and Rescue Service exposed with a shortage of resources in the event of such an Order being raised. The Board would wish to see incorporated in the Bill provision for consultation with fire authorities as a matter of course.

The Board supports the Bill’s proposal to abolish the Scottish Central Fire Brigades Advisory Council and to develop a replacement forum that advises Ministers on the development of fire service policy.

The Bill omits completely the provisions contained in Section 18 of the 1947 Act. This section related to the appointment and promotion of fire service personnel. There requires to be incorporated in the Bill’s provisions a clause which facilitates a Minister to draw up an appointment and promotion regulations.

The provisions for an Authority to develop an establishment scheme for its area are not incorporated in the Bill’s arrangements. These are included in Section 19 of the 1947 Act. The Board supports the inclusion of a clause in the new Bill that facilitates an Authority to develop and establishment scheme for its area.

The absence of an establishment scheme raises dubiety over the position of a Firemaster and that post holders responsibility to the fire authority. The Board supports the current statutory arrangement incorporated in s(19)(2) of the 1947 Act “the chief officer of the fire brigade to which a scheme relates shall be directly responsible to the fire authority maintaining the Brigade or to a committee thereof”.

Thank you for the opportunity to comment.

6 September 2004
SUBMISSION FROM COLIN E HANNIGAN BSC (HONS); DIP SYS PRAC; MIFIREE

Part 1
Section 5 (1) - wording of paragraph difficult to comprehend.

Part 2
Section 7(2)(b) in particular (ii) - may be a need to differentiate ‘advice, on request’ from ‘consultancy service’ so that expected extent of provision should not be misconstrued.

Section 9(2)(e) - seriously jeopardises the extent to which officers may act to rescue if they think cutting through and taking apart vehicles (standard practice to create space and movement) is liable to be misconstrued as ‘deliberate damage’ and liable to civil action etc through the courts.

Section 12 (1) - is there a conflict here with the powers of environmental legislation e.g. those invested in Environmental Health departments or SEPA.

Section 12 (2) - the extent of these powers need more clarification e.g. does this include power to commandeer vehicles.

Chapter 3 Water Supply:
General: the opportunity should be taken to make Scottish power responsible for the provision of hydrants as part of its infrastructure in the same way as telephone providers must provide the 999 call system. The tax payer is in effect paying through a third party for hydrants and these would be provided at source a part of the water network, installed owned, operated tested and maintained by Scottish water, available to the Fire Authorities free of charge at no notice or to third parties at what ever charge is deemed appropriate to Scottish water and under such terms and conditions as they determine.

Section 18, 19, 20 etc; Use of the term Scottish Water is likely to quickly date the legislation as the term is non generic. e.g. Scottish water its self has only been in existence for a short while, and like many companies is prone to name change. Suggest the term Statutory water Undertaker would be a better term.

Section 21: Previously the responsibility rested with the water undertaker to initiate action with respect to obstructing hydrants, I am still unclear whether this has now been transferred to the relevant fire authority for enforcement and action.

Chapter 4:
Powers of employees and Constables:
Section (23) - Terminology is very vague “authorised employee on duty.” could be misinterpreted as any Fire authority employee (janitor, typist notwithstanding), and makes no regard to appropriate control structures or who has ultimate authority. "If the employee reasonably believes" seems to leave all actions open to interpretation of individual employees, where as a clear command structure is essential. Need to carry around authority in writing is a further impractical burden in certain circumstances, and would tend to infer if the Senior Officer present forgot his / her ID card then they would no longer have authority and control, despite their presence. paragraphs in the 1947 act were much clearer. Suggests “The Senior Fire Brigade Officer present of the relevant authority has power to...”

Section (24) - Appears to give police constables the same powers and authority but does not clearly indicate the limits and boundaries of each occupation if both present.

Section (34), (35), (36), (37): gives impression of a distinct privatisation agenda and drive to reduce number of Fire Brigades and to bring them under Ministerial Control with local authorities footing the bill. Not much indication of local or parliamentary accountability.

Section (46) (1) - Negotiating bodies will not therefore be independent or autominous?
Part 3

Fire Safety Duties:

Chapter 1

Section 50 (1) Reference should be made to section (72) and (73) on first usage of term ‘relevant premises’. I further suggest terms used as meanings are indicated by commas or italics or similar to distinguish them.

Section 50 (3) - not readily comprehensible.

Section (55) - Should perhaps include limited exemptions for prisons and other secure units, where the risk to the person freely escaping is greater that the risk of their confinement until released under control, e.g. dementia units. This would bring into line current provisions under the Technical Standards to the Building Regulations, and advice issued in Health Technical Memoranda.

Chapter 2

Section 56 (5): I do not understand the provision or the reason for its inclusion?

Section 62(1): Utilisation of the HMI as an arbiter may prove over onerous, not least upon the inspectorate.

Section 66 (1) (2) Need clarification, are these enactments dissolved along with all their provisions i.e. statues, and as a consequence are fire Certificates no longer a requirement? If so why does this section not form part of the repeals annex.

Chapter 4

Section 69 - why not in my experience its quite often the deliberate or intentional act of an employee that has bought about the problem despite clear procedures, training and instruction by the premises management, especially in the case of hotels.

Chapter 5

Section 72: Does not allow interventionist and enforcement action in shared domestic premises e.g. the Act should also seek to protect Communal areas where premises are not regarded as HMO’s e.g. The staircases of existing tenement and similar buildings where little control or authority currently exits although fires in these situations tend to are responsible for a great number of operational difficulties, injuries and deaths due to a current lack of detection, passive or active protection, ventilation, separation or any outright authority to quickly have removed voluntary or otherwise combustible items which pose a threat to occupants. e.g. accumulation of rubbish, motor cycles, disposed of furniture.

Section 73: Line 22 onwards needs reworded to make it clear its referring to Subsection (2) of Section 73 and not subsection (2) of Section (50).

Section 73 (2) - not readily comprehensible.

Section 79 - Seem a strange place to situate the provisions for false alarms. The end of Chapter 1 appears at first glance a more suitable location.

Section 81(3) - appears to be the only constitutional safeguard.

Section 82 (1) and (2) : refer to comments in Section 66 above.


SUBMISSION FROM THE HIGHLAND AND ISLANDS FIRE BOARD

Highland and Islands Fire Board welcomes the introduction of the Fire (Scotland) Bill as a basis upon which to build a modern, locally controlled fire service that works effectively with partners to provide a safer Scotland. The Board welcomes the recognition of the widening role of our fire services and the
reform of fire safety legislation. The Board submits the following comments to assist in the
development of the legislation.

**General comment on Governance and Ministerial Powers**

Whilst acknowledging that there is a place for central advice and guidance this Fire Board believes
strongly that fire and rescue services are a local authority responsibility and wish to see this
consolidated in the legislation.

There needs to be a clear and unambiguous understanding of the responsibilities of both Fire
Authorities and Scottish Ministers in relation to the provision of the Fire Service; otherwise there will be
a potential diminution in the governance standards that currently operate.

This is particularly important given the current uncertainty in relation to the structure of the Service, the
provision of controls and the proposals in regard to the Common Fire Services Agency.

There are a number of provisions within the Bill that give new powers to Scottish Ministers in relation
to the provision of the Fire Service. Whilst it is recognised that there are areas where this is a correct
and proper arrangement for the overall governance of the service there needs to be a clear
understanding provided of when such responsibilities will be implemented and on the extent of the
accountability and responsibility which will attach to Scottish Ministers in those circumstances. Part of
the debate in bringing forward the legislative proposals related to the removal of ministerial power in
favour of an increased accountability and responsibility being given to Fire Authorities; the Bill now
published does not seem to support that point.

**Part 1 Section 1  Fire and Rescue Authorities**

Existing Legislation makes arrangements for the Firemaster to report directly to the Fire Authority.
The same provision should be maintained within the Fire (Scotland) Bill to ensure that appropriate
professional advice is provided directly to all Fire and Rescue Authorities. This is consistent with the
principles of integrated risk management planning.

**Part 1 Section 2 Schemes to constitute joint fire and rescue boards**

There appears to be no explicit route for the formation of voluntary combination schemes. Given the
desire for local accountability this would appear to be an omission.

**Part 1 Section 4 Joint fire and rescue boards: supplementary provision**

There is no apparent right of compulsory purchase for fire authorities.

**Part 2 Chapter 1 Section 8 Firefighting**

It would be helpful to receive a legal definition of the extent of each Fire and Rescue Authority area to
allow proper consideration of the provisions which it must make including firefighting at sea.

For consistency with the principles of integrated risk management planning the Section 8 (1)(a) would
be better defined as ‘controlling and extinguishing fire in its area’. The reason for this is that on
occasions extinguishment is not always the best way to protect life, property, land or the environment.

Reference should also be made to our responsibilities to protecting the environment.

**Part 1 Section 9 Road Traffic Accidents**

Where the authority is given a duty to attend road accidents it should also be given the power in
partnership with other agencies to reduce such events happening in the same way that it is
empowered to undertake fire safety initiatives.

**Chapter 2 Section 15 Charging**

The provision for charging is acknowledged and the Fire Board looks forward to future consultations
regarding what can be charged for. In particular the Board feel it would be appropriate to allow
charging whereby the Brigade is obliged to attend regular false alarms at premises due to neglect or
disregard for Brigade advice.
Chapter 3 Water Supply
Whilst recognising the service responsibility to secure water supplies it is the view of this authority that responsibilities in relation to provision of hydrants etc should be contained within the Water (Scotland) Act. Responsibility for the provision and funding of said hydrants should lie with the water undertaker.

Chapter 3 Section 20 (2)
The marking of hydrants needs to be more flexible. New technology now allows for electronic identification which aids fire crews.

Chapter 4 Section 23 Powers of authorised employees in relation to emergencies
This provision replaces section 30 of the 1947 Act with the notable omission of Section 30 (3) where ‘the senior fire brigade officer had sole charge and control of all operations for extinguishing fire’. No similar provision is made in Section 23 of the Bill. This has the potential to blur the command and control element with the attendance of other agencies.

Subsection (3) Whilst welcoming the provision in relation to obstruction or interference with authorised employees we consider that this section should be extended to include attacks on firefighters. The penalties should reflect those contained within the Emergency Workers Bill.

Chapter 4 Section 27 Powers of authorised employees in relation to investigating fires
This power appears to be too narrowly defined and may not extend to outdoor fires including vehicles.

Chapter 5 Section 33 Assistance other than from relevant authorities
This section limits the availability of assistance for firefighting to those employing firefighters. This will hamper firefighting operations where the use of helicopters or forestry workers is required. It is this Board’s view that this must be amended.

Chapter 6 - Central Supervision and Support – Section 36 (i)
We would advocate that when enacted, and if applied, that Scottish Ministers should take a wider focus for consultation with the Framework document which would be consistent with the requirements placed upon Fire and Rescue Authorities in context of the integrated risk management planning process.

Chapter 6 Section 40 Functions of Inspectors of Fire and Rescue Authorities
This section directs Inspectors to inquire and report upon the state and efficiency of relevant authorities generally. It is felt that the main focus of the inspector should be effectiveness.

Chapter 6 – Section 44 (1b) Central institution and other centres for education and training
The need to establish a Central Training Institution is understood but not the reference to local training centres and suggest that this be removed. It appears to be a direct lift from the existing Fire Service legislation that applies to the UK rather than only Scotland. If it were to be implemented then clearly the Scottish Executive would require to take responsibility for the training of all Fire Service personnel. This would include being accountable for those arrangements.

Chapter 7 – Section 47 Prohibition on Employment of Police
Whilst this provision is contained in existing legislation we question its necessity given the working frameworks within which we now operate. This could cause particular difficulties in remote areas where special constables may also operate as volunteer or retained firefighters. We suggest that this be removed from the Bill.

Part 4 Miscellaneous – Section 74 Inquiries
We are unclear as to the circumstances in which this provision would be required. Existing legislative requirements provide for enquiries into all aspects of the services operation.

Section 78 Abolition of Scottish Central Fire Brigades Advisory Council
We note that it is proposed to abolish the Scottish Central Fire Brigades Advisory Council.

We can support this provision on the basis that there will be an appropriate replacement body which allows fire authorities and Brigades a mechanism to participate.
SUBMISSION FROM SCOTTISH BRANCH OF THE INSTITUTION OF FIRE ENGINEERS

Part 3
Fire safety

In the Policy Memorandum one of the objectives of the Bill was to revise fire safety legislation and there is no doubt that the content of the Bill does make some significant revisions. In the Memorandum there is also a mention (para 32) that the proposal for the Bill included the consolidation and rationalisation of much of the existing fire safety legislation as well as the enabling revision. In Part 3 of the Bill moves towards such consolidation and rationalisation can be seen. However, there is only a list of two of the current statutes that will be repealed, in part or wholly, by a new Act. This may be an insufficient list as there are many more parts of legislation that deal with fire safety. In the Memorandum also it is noted (pages 11/12) that subordinate legislation will, or may, implement various aspects of the listed EC directives. It is taken that in relation to the Fire (Scotland) Bill (Act) that such aspects will be confined to fire safety provisions. If this is so could this be made explicit in the Bill?

Chapter 1
Fire safety duties

Duties

s. 49 and 50 These sections give the clear message of the responsibility of the employer. There is no mention of the need for ‘competence’ in the person carrying out the risk assessment. Should the issue of competence be included?

s.51 (3) (b) The word ‘evaluating’ appears at this point. Is it possible to incorporate a phrase that indicates that the outcome of an evaluation does not always result in works that need to be carried out but that the outcome could be a fire safety deficiency that is agreed to be an ‘acceptable deficiency’?

s.51 (3) (d) Here there is the phrase ‘adapting to technical progress’. This phrase can be interpreted and applied in different ways. Where will some help in the interpretation be found?

Regulations

s. 53 (1) (2) The intended content of the Regulations is clear. What is not clear is the need for any Regulations. It is noted that in the Regulatory Reform (Fire Safety) Order (currently laying before the Houses of Parliament) it is stated that government will prepare some 12 guides that will help in the technical application of the proposed new fire safety regime. There is also the intention to harmonise the requirements of the new regimes in both Scotland and England and Wales. The introduction of Regulations that specify what is to be done is likely to be helpful to define the absolute minimum requirements but it is most unlikely that such Regulations will cover all aspects of fire safety with respect to the safety of the people in the event of a fire. Guides could be better, technically, than regulations.

s. 54 (2) Although this list is a list of aspects of fire safety about which Regulations may be made, it might be helpful if the list could be made into part of the proposed Act as most of the items may be of great importance in some situations but would not be covered by the general lists of provisions. Similarly, the list in s. 53 (2) could be made part so the mandatory requirements. However, in both lists there would need to be a statement to the effect that ‘all these aspects need to be considered but may be discounted if they can be shown to have no relevance to any specific premises’.
Chapter 2
Enforcement

s. 56 (2) Here there is a reference to ‘guidance’. Although this refers to the ‘duties’ of an enforcing authority perhaps the fact of using guidance for the enforcing authorities supports the need for guidance for the employers and not Regulations.

s. 56 (6) This section is to do with enforcing authorities and sports grounds. Can it be ensured that both the general and the ‘special’ enforcing officers receive the same level and extent of training? Similarly, the training of an s. 39 (1) (a) person needs to be similar to the ordinary enforcing officer.

s. 58 (3) The use of the word ‘anything’ may make it very difficult for the employer to present an opposing view to that of the enforcing officer. The scope of the relevant matters should be limited to those aspects of fire safety that are listed in the proposed Act and those that may be addressed in any Regulations from time to time.

s. 59 (c) There is a reference to 28 days as the time period for taking action. This could be a very short time for some aspects of fire safety to be improved. It may be helpful to an employer to reword the phrase as ‘a period of 28 days or a shorter or longer period as may be agreed between the employer and the enforcing officer’.

s. 60 (5) This sub-section is to do with changes. One change that is not listed but is very important is the change in the number of people who occupy a building. There are numerous examples of the increase(s) in the number of people to a level when the ‘escape capability’ of the building is far exceeded. Such a change is not regarded by Building Control people as a ‘material change’ and the Fire Authority may be persuaded to accept increases that could lead to dangerous situations. It is recommended, therefore, that ‘any increase in the number of people that occupy a building’ be added to the list.

s. 62 Determination of disputes

s. 62 (1) (b) Where there is a technical dispute the matter may be referred to an s. 39 (1) (a) person for determination. There can be no guarantee that such a person will be competent to make a determination. What is the alternative? Could the alternative be technical arbitration decided by a person (or 3 persons) who is agreed upon by both the employer and the enforcing authority? This suggestion has been included in several of the fire safety consultation documents in past years.

Chapter 3
Miscellaneous

s. 66 (2) Here only one Act and one set of Regulations are referred to. There are many other sections in various Acts that apply only to Scotland. Will these be repealed by the Regulatory Reform (Fire safety) Order or should the list in this section be much longer?

It is noted that for the Fire Precautions (Workplace) Regulations only 1997 is mentioned. Should this be ‘1997 as amended’?

s. 80 (2) Would such changes in the provisions be subjected to the consultation process? If not, why not?

August 2004

SUBMISSION FROM THE LOTHIAN & BORDERS FIRE BOARD

Introduction
The Fire (Scotland) Bill was introduced in the Scottish Parliament on 28 June, 2004.

The stated 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 of our communities;
• To revise fire safety legislation.

The purpose of this paper is to present the view of Lothian and Borders Fire Board to the Justice 2 Committee.

The Board welcomes the publication of the Fire (Scotland) Bill. The provisions of the Bill are substantially those that were identified in the earlier consultation paper (The Scottish Fire Service of the Future). The Board had, in general, expressed its support for the proposals for legislation and, from this perspective, the provisions of the Bill are broadly welcomed.

In particular we welcome the provisions relating to Fire Safety and the clarification of the broad role of a modernised fire and rescue service. However we urge the Scottish Executive to ensure that arrangements for discipline and appointments and promotions are properly maintained in this transitional period.

There are, however, a number of issues and questions which The Board wishes to raise, including areas of strategic comment; the operational dimension; and a range of detailed observations.

Strategic Issues

Ministerial Powers
There are a number of provisions within the Bill which give new powers to Scottish Ministers in relation to the provision of the Fire and Rescue Service.

Whilst it is recognised that there are areas where this is a correct and proper arrangement for the overall governance of the Service, there needs to be a clear understanding provided of when such responsibilities will be implemented, and on the extent of the accountability and responsibility which will attach to Scottish Ministers in those circumstances. This will have implications for the management of the Fire and Rescue Authorities. Part of the debate in bringing forward the legislative proposals related to the removal of ministerial power in favour of an increased accountability and responsibility for Fire Authorities; the Bill now published does not seem to support this principle.

Governance
Again, there needs to be a clear and unambiguous understanding of the responsibilities of Fire Authorities, Scottish Ministers and indeed Brigade Management Teams, in relation to the provision and management of the Fire Service; otherwise, there will be a potential diminution in the governance standards which currently operate.

This is particularly important given the current uncertainty in relation to the structure of the Service, the provision of Control Rooms and proposals in regard to the Common Fire Services Agency. Underlying all of these concerns is a collective aim to provide a more efficient and effective service in accordance with best value principles.

Common Fire Services Agency
Proposals were included in the Executive’s earlier consultation paper in regard to a Common Fire Services Agency. The Board’s view was that existing arrangements of governance and the practical operation of joint working would allow the objectives of Ministers to be met without the need to create an additional layer of bureaucracy within the Service. Any additional bureaucracy would have clear governance and financial consequences. Ministers have decided to investigate a Common Fire Services Agency with stakeholders.

The Bill does make provision for the first step in this process: Provision of powers for Scottish Ministers to establish and maintain (or contribute to the establishment and maintenance of) a body to promote the economy, efficiency and effectiveness of the Fire and Rescue Service Authorities.

The Board’s view remains that existing governance and operating arrangements will better deliver economy and effectiveness by retaining governance and ownership of the Fire Service with Fire
Authorities. This collective aim could be enhanced by providing a statutory responsibility on Fire Authorities to collaborate effectively.

An illustration of how this could operate in overview is provided and attached on the following page.

We would be happy to give oral evidence in developing these arguments

**Finance**
The Brigade has been requested to submit its views on finance issues relative to the Bill to the Finance committee of The Scottish Parliament. A submission will be made accordingly.

**Section 2**
Existing Legislation makes arrangements for the Firemaster to report directly to the Fire Authority. That provision should be maintained within the Fire (Scotland) Bill to ensure that appropriate professional advice is provided directly to all Fire and Rescue Authorities. This is consistent with and will support the Executive sponsored principles of integrated risk management planning.

**Section 8**
It would be helpful to receive a legal definition of the extent of each Fire and Rescue Authority area to allow proper consideration of the provisions which it must make for fire and rescue, including firefighting at sea.

For consistency with the principles of integrated risk management planning, the Section 8(1)(a) would be better defined as ‘Dealing with Fires……’ Reference should also be made to service responsibilities regarding the protection of the environment.
Proposed New Section 9(a)
Provision should be made within the Bill for Authority responsibilities for urban search and rescue activity. This should be identified as a specific role for the service.

Section 11(1)
We question the need to include the provision for emergency directions in the Fire (Scotland) Bill. Ministers already have such powers in terms of Civil Contingency Arrangements and the inclusion in the Fire (Scotland) Bill seems an unnecessary additional element.

Sections 20-22
Whilst recognising the Service responsibility to secure water supplies, it is the view of the Board that responsibilities in relation to provision of hydrants etc should be contained within the Water (Scotland) Act. Responsibility for the provision of said hydrants should lie with the water undertaker.

Section 23(3)
Whilst welcoming the provision in relation to obstruction or interference with authorised employees we consider that this section should be extended to include attacks on firefighters. The penalties should reflect those contained within the Emergency Workers Bill.

Section 36(1)
We would advocate that, when enacted and if applied, Scottish Ministers should take a wider focus for consultation which would be consistent with the requirements placed upon Fire and Rescue Authorities in the context of the integrated risk management planning process.

The Bill also requires to reflect that Firemasters are responsible to Fire and Rescue Authorities for the effectiveness of the service which they provide. It is suggested that an additional section be included, reflecting that, as well as the Firemasters’ direct reporting link to the Fire and Rescue Authority (see earlier comment), their responsibilities for integrated risk management planning, IPDS, risk assessments and the efficient and effective arrangements for the management of the Fire and Rescue Service should also be included.

Section 74
We are unclear as to the circumstances in which this provision would be required. Existing legislative requirements provide for inquiries into all aspects of the Service’s operation.

Section 78
We note that it is proposed to abolish the Scottish Central Fire Brigades Advisory Council. We support this provision on the basis that there will be an appropriate replacement Body, and that appropriate consultation will take place in that regard. An illustration of how the replacement body could operate is attached on the following page.
A Three Level Approach to the Governance of the Scottish Fire Service

Ministerial Level → Advice / Regulation / Legislation

Employer Level → Negotiation / Agreement

Practitioner Level → Consultation / Census
Detailed Observations

Section 2
Provision should be made to allow for the creation of voluntary combination schemes.

Section 9
Clarification is sought on the definition of the preventative role in partnership with other agencies and any powers which would derive to Fire and Rescue Authorities.

Section 15
We welcome this provision and look forward to contributing to consultation on the proposed charging order. Care should be taken not to remove the services’ ability to trade and offer certain services on a commercial basis. We recommend that provision be made for charging for the reckless or careless use of automatic fire alarm equipment.

Section 20(2)
This should be amended appropriately to allow the use of all mediums including those derived from new technology.

Section 35
We question the need for this provision given the provisions and obligations arising from the Local Government (Scotland) Act 2003.

Section 44(1)(b)
This provision seems contradictory to the responsibilities being proposed for Fire and Rescue Authorities; we understand the need to establish a Central Training Institution but do not understand the reference to local training centres. If it were to be implemented then, clearly, the Scottish Executive would require to take responsibility for all of the training of all Fire Service personnel. This would include accountability for standards, arrangements etc.

This would also duplicate the provision of Section 14. We suggest that subsection (1) para (b) be removed.

Section 47
Whilst this provision is contained in existing legislation we question its necessity, given the working frameworks within which we now operate. This could cause particular difficulties in remote areas where Special Constables may also operate as volunteer or retained firefighters. We suggest that this be removed from the Bill.

Schedule 4
Does not make any reference to the Fire Services Act 1959.

Section 57
Subsection (6) should include (2) (d) & (e) in its wording. This would increase the actions that must be carried out in the presence of a relevant person.

Section 59
Subsection (3) the final sentence of this subsection gives the enforcing authority the ability to include ‘requirements relating to that workplace or those employees’. This is prescriptive and at odds with new fire safety and building standards direction – i.e. risk assessment and ability to show compliance. The following wording is therefore offered for potential inclusion at subsection (7).

‘Where an enforcing authority serves an enforcement notice, the authority may – (c) deem that any steps taken are sufficient to warrant withdrawal of the notice whether or not any specific requirement of the notice has been met.’

Section 60 + Section 58
These sections require clarity. Section 60 allows enforcing authorities to serve alteration notices on an appropriate person. The explanatory notes indicate that this would be done where ‘premises pose a serious risk to relevant persons’. Explanatory notes for section 58 suggest that a prohibition notice
would be served ‘where there is serious risk to relevant persons’. Further guidance on the definition of ‘serious risk’ may be required to allow fire authorities to recognise the implied distinction between the two circumstances.

In addition, this section appears to give the fire authority the power to issue a notice requiring notice of change (ref subsection (4)) where the fire authority is already aware of that change. The purpose of the notice is therefore unclear.

Section 73 (1)
Lines 17 to 24
This area also requires clarification. It attempts to define relevant persons but states ‘but does not include an employee of a relevant authority carrying out functions of the authority…’ As it stands this would appear to exclude our staff who should be relevant persons within our properties and implies an inappropriate exemption.

August 2004

SUBMISSION FROM RODDY ROBERTSON, SCOTTISH REGIONAL CHAIR OF THE FIRE BRIGADES UNION
(submitted in a personal capacity)

I have been a serving operational Firefighter for 22 years, I entered the service with the retained unit in Elgin and moved to full time and Aberdeen. I then transferred back to Elgin Day crews system, back to Aberdeen and ultimately to Paisley for the last 12 years.

I have felt compelled to submit my views as an individual to the questions posed as to whether the Bill meets the objectives and what areas have been omitted.

Has the bill met the objectives

This depends on whither you are asking if the Bill fits the objectives of the first consultation or the Bain review or the final consultation?

The Executives first consultation was on the whole welcomed by most in the service, however in order to understand the 2nd consultation then you must have knowledge of the Bain review.

The Bain review

The UK Government in an attempt to head off possible industrial action and for the first time in industrial relations history, tasked Professor Sir George Bain to chair an ‘independent review’ of the fire service.

The review was not asked for, commissioned by or reported to the Scottish Parliament, Scottish Central Fire Brigades Advisory Council or any other Scottish stakeholder. The review attempted to prevent the first national strike since 1977/78. They produced an interim report prior to the first date for industrial action. This added to the anger of Firefighters and was seen as being insulting.

The review took 3 months to complete and relied on management only evidence due to the dispute. As a result the review was neither independent nor a review. It has been used to push an agenda that is designed to remove the input of the workforce.

Fairness and Equality

An example of this is the removal of any reference to entry standards. I know of no Firefighter or Firemaster that wishes to see multi tier entry or accelerated entry. I have only ever heard this from a very small minority of Individual Chief Fire Officers in England.
The Bain Review suggested that this would be good for the service, mainly to address skill needs of middle management and to reduce training commitments.

As if by magic and even after the Scottish Stakeholders had debated and agreed the priorities for fairness and equality in the Scottish service, in which multi tier entry and accelerated promotion was never a priority, it appears in the consultation and in the Bill as the champion part of the Bill on Equality.

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

It is no more than a crude method to cut conditions and wages.

**Accountability/Democracy**

The removal of the Scottish Central Fire Brigades Advisory Council from statute means that the direction and priorities will come from the Scottish Minister but that there will be no requirement to consult with any of the stakeholders and be left to the advice of the civil servants and the Inspectorate, the head of which is appointed by the head civil servant and the Scottish Minister.

Yet it is being projected as a Bill to put the decisions back to local democracy.

Much has been made about the removal of Section 19 of the 1947 Act, section 19 fully involved local democracy and it was only when an Authority went below the agreed national standards for fire cover that the Scottish minister would become involved. This would be on the advice of the Her Majesty’s Inspectorate of Fire Services. The same powers have been retained in various sections within the Bill.

What has changed is the approach to fire cover, which formally the SCFBAC advised the Minister and agreed the standards.

During the first consultation every respondent agreed with the move to the pathfinder project, which was a multi million pound study into fire cover. This project was destroyed by one short paragraph within the Bain review. In short what we have now is one half of the project, which is the categorisation of the risk. The second part, which detailed what resources were required, has been ditched. When you have no national standards their will be no accountability.

It is a proud boast of Firefighters that, the fire service is the only emergency service that has a requirement to attend when you call. The ambulance service and the Police have target times to try to make, where as we have times we must make. That is about to be removed in the name of local democracy. I disagree.

**Number of Brigades**

It is totally unfair to state that

The Scottish Ministers were disappointed that stakeholders did not take advantage of the opportunity presented to reconsider the structure of the Service.
Comments were made (again it would appear that this has come from the Bain review) that suggested that Scotland should look again at the number of Brigades. Were the Scottish Ministers disappointed because no one suggested a reduction of Brigades?

It is clear from the following sentence that the agenda to reduce the number of brigades to one or three is the desire of the fire branch/HMI/Scottish Minister?

However, the Bill makes provision for the combination of authorities in amalgamation schemes (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).

What they forgot to add was that the Minister will have the power to force an amalgamation within the Bill.

I fail to see how amalgamation into super brigades can enhance the local accountability and democracy.

Emergency Control Rooms

A report into Emergency Fire Control Rooms was ‘with the Minister’ for five months, it was published shortly after the Bill was published. The terms of reference were drawn up by HMI without consultation, the consultants chosen were the same consultants used south of the border previously in which they recommended a reduction in the number of emergency controls. Indeed this report was discussed by SCFBAC and no desire to follow was indicate by any member of the Council.

The report has been issued and only 8 weeks given for views. This report recommends a reduction from 8 emergency controls to one, two or three. It further concedes that it would be folly to have more than one brigade per control. Why was the report held and published after the bill was published?

Areas the Bill has not Addressed

Areas that I feel are missing from the Bill include, any provision for appointment and promotion and ranks.

If the Bill was truly about local democracy, openness and transparency, then why has the Bill no section to deal with complaints against the Service for the public to access, throughout the Bill there is little to allow access for accountability. Even a section to require the service to access its effectiveness with the communities it serves.

Given the nature of the increasing assistance offered globally both through humanitarian and learning situation, I find it surprising that no provision for either financial or legal eventualities has been made.

Summary

I started by giving you my service. A service that used to have some respect, so much so that last week I was given a long service & good conduct medal (given to us all after 20 years service) all be it 2 years over due. Then again we have all been a bit busy over the last few years.

For 20 years of my service I have represented Firefighters to Firemasters, the last 15 as a Scottish Official of the FBU. My union relies on a lay official structure and as such I have been operational the vast majority of that time. I have met and negotiated with people who have come and gone and I have looked forward to a Fire Services Act for Scotland. I did think that we had the chance to get it right in Scotland.

What I did not anticipate was the reaction to Firefighters asking for a wage rise. Whilst the dispute can not be ignored it should not be used as the backbone of the legislation. We have a dedicated, almost unique workforce, I am truly hope the Executive do not chose to follow the example of the political vindictiveness being shown to the service from Westminster and address the needs of the people of Scotland and the Service that cares for them.

August 2004
SUBMISSION FROM SCOTTISH TRADES UNION CONGRESS

Introduction

The Scottish Trades Union Congress is Scotland’s Trade Union Centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland.

The STUC represents some 630,000 trade union members in Scotland, the members of over 40 affiliated organisations. We speak for trade union members in and out of work, in the workplace and in the community, as workers and as citizens. Our affiliated trade unions have members in every sector of the economy.

We welcome the opportunity to give our view on the proposals set out in the Bill, noting with concern that Scotland continues to suffer more fire deaths per head of population than other countries in the UK.

Effective fire and rescue services are vital to the safety and well-being of the Scottish population. All our members and their families rely on the work done by fire-fighters and emergency control staff. The way in which the fire service is organised and supported in the future will impact on us all.

As stated in our previous submission to the consultation “The Scottish Fire and Rescue Service: Proposals for Legislation” we believe that the main aim of legislative change relating to Scotland’s fire service should be to support the reduction to zero of the rate of fire deaths in Scotland.

We are aware that a number of our affiliated trade unions with a direct membership interest and representational role in the fire service will be submitting detailed written evidence and we strongly support their views. We have included a resolution, which was passed, at our most recent Congress and are in a position to expand on our written evidence orally.

Trade Union Recognition and Employment Issues

We are particularly concerned there is no specific reference to “recognised trade unions” when consulting issues such as a potential amalgamation scheme. This appears to be the case throughout the Bill a specific reference to trade could, in our opinion, supplement or replace the reference to “such other persons as they consider appropriate.”

There are a number of other general employment related concerns within this Bill. These include the arbitrary power of Scottish Ministers to establish a negotiating machinery and the composition of such a body for the fire and rescue service in Scotland. The STUC have concerns, along with our affiliates, that statutory body can decide which conditions of service should be negotiated locally rather than nationally.

Again, what is glaringly missing from Chapter 7 is the term “recognised Trade Union”. The explanatory notes state that the body should include “representatives of employers and employees (which may include a trade union).”

The section is silent on the existence & rights of a Trade Union, which contravenes the Convention of Human Rights. Given that the legitimacy of a Trade Union is underpinned by legislation, the term Trade Union must be recognised in the section.

It seems that any Scottish Body would not reflect the agreed constitution of the present UK NJC. In fact there is no mention at all regarding what the constitution of this Scottish body would be and indeed how it would be agreed to. The presumption is that the minister will make all decisions regarding these matters, which would be entirely inappropriate.

The STUC strongly supports equal opportunities and diversity within the workplace but would like to see more detail on how the Executive propose to achieve this. We would also like to see the Executive address the issue of equal pay within the fire service. In general the STUC regards such HR issues as primarily the concern of fire authorities, their employees and the relevant trade unions.
There is also some concern that provisions within the Bill remove the obligation for the certification of premises. Staffing resources which would have been required for this would be available for deployment elsewhere. Further clarification on this issue is desirable and we would expect the involvement of the relevant trade unions in any future discussion on the re-deployment of staff.

**Health and Safety at Work Act**

The STUC is concerned that the Bill in appears to intends to dis-apply Section 1 of the Health and Safety at Work Act 1974, a piece of reserved legislation that we feel has been instrumental in protecting workers health, safety and welfare of employees since its introduction.

The Health and Safety at Work Act 1974 and subsequent regulations along with European Council Directive 89/391 were designed to ensure that all workers in the United Kingdom can expect minimum standards of protection to be applied. The European Directive also encourages minimum standards of improvement to be taken by employers across all Member States and in all business sectors.

The STUC is in particular concerned that the removal of any group of workers any Section of the Health and Safety at Work Act, to be replaced by powers in our devolved administration may be seen as a contravention of European Commission Directive 89/391/EEC and could be seen nationally as another example of fragmentation of the current consistent approach to application of health and safety law or enforcement in the United Kingdom.

**Composite H (41 & 42) Fire Services**

“That this Congress recognises the appalling record of fire deaths in Scotland - currently twice the national average.

“Congress notes the major changes to the Fire Service taking place with National Standards of Fire Cover being abolished and replaced with individual Brigade Integrated Risk Management Plans (IRMPs). Congress welcomes this move from standards based on property to standards based on life.

“Congress demands that the Scottish Executive ensure that during the current and impending fire service modernisation process and, in particular, IRMP there be no deterioration of any kind in the services currently provided under present standards of fire cover and that the whole process be used to secure a serious upgrading and improvement of the equipment and the training of fire-fighters, especially into remoter, rural areas of Scotland and, in particular, the Highlands and Islands. Congress is particularly concerned about the current threat to any of the 32 auxiliary/volunteer units which are seen as indispensable.”

“Congress calls on all affiliates to campaign with the Fire Brigades Union for the Scottish Executive to include in the forthcoming Bill on the Scottish Fire & Rescue Service, as its ultimate goal, the target for all Fire Authorities of ZERO fire deaths.”

August 2004

**SUPPLEMENTARY SUBMISSION FROM SCOTTISH TRADES UNION CONGRESS**

The Scottish Trades Union Congress having had the opportunity to discuss the above Bill would like to ask the Committee to consider the following as a supplementary submission. We feel that certain points given in oral evidence may indicate provisions within the proposed Bill that may have serious consequences for trade union members.

The first additional point relates to the proposed criminal offences in Chapter 4. We believe that any breach of contract committed wilfully or maliciously that results in death, injury or damage to property is already an offence under the trade Union and Labour Relations Act (Consolidation) Act 1992, if the
individual was aware that the probable consequence could be to endanger life or cause injury to other individuals.

Under Section 67(2) of the proposed Bill any breach of contract carried out by an employee, as a result of any omission of duty, that results in death or injury is an offence without any of tests contained outlined above. We would agree with the oral evidence given on behalf of the Fire Brigades Union that this is overly strict and, if it is deemed necessary to include this section, requires further consideration.

Our second additional point is also in relation to Section 67(2)(b) and the effect that this may have on fire-fighters and any workers involved in fire safety duties during industrial disputes. The STUC is concerned that such workers withdrawing their labour could possibly face criminal charges under this legislation and our affiliates feel that this essentially undermines the right to strike.

The STUC feels that if Section 67 remains unaltered this will be a major disincentive for many workers, including trade union members, who carry out fire safety duties voluntarily and unpaid.

13 October 2004

SUBMISSION FROM JAMES B SMITH

Section 24 Powers of constables in relation to fires.

This power was invested in constables in the Fire Services Act of 1947 because historically up till 1939 there were in the UK police/fire brigades under the direction of the Chief Constables. The only place in Scotland where this existed till that date (1939) was Lanarkshire County Council (that responsibility was replaced by the fire arrangements invoked for the second world war) This provision to enable the Council to meet its obligation for provision of fire cover in remote areas of Lanarkshire and presumably also as a back up for the burgh brigades.

It is 65 years since the cessation of physical involvement by the police in fire fighting in Scotland.

Because of constables’ inclusion in the 1947 Fires Services Act it has been necessary to instruct police recruits on their induction course at the Scottish Police College on their conduct and safety on the fire ground. This instruction being given by a Fire Brigade officer on invitation by the College. This is a fairly brief introduction to fire and the dangers of engagement in tackling fire lasting approximately two hours. Not much more instruction than would be given to any lay body.

The genesis for this lecture being given at the Police College was that because of the powers of the 1947 act invested in constables an incident occurred in Glasgow in the late 60’s early 70’s whereby two police officers entered a building on fire as they were allowed to do under the act. They were there within the fire area unbeknown to the fire brigade and were only discovered when the fire brigade officers in breathing apparatus stumbled over them. The Brigade were able to revive one officer but the other officer unfortunately died at the scene.

I lectured at the Police College for eight and a half years from 1985 to 1993 till my retirement from the Fire Brigade and felt whilst their it was my duty to dissuade constables from enacting the powers invested in them under the act as it was interpreted in 1947 and focussed my talk on their own personal safety and responsibility of their actions in current times.

I am surprised that the opportunity to review the powers of the 1947 act for the actions of constables at fire appears to have been missed or glossed over for whatever reason, particularly in the light of the changes since 1947 and the dangers of fire in domestic or industrial properties involving new products which produce intense heat and great volumes of smoke. (polyurethane furnishings)

We live in a safety conscious era and in a suing culture where your actions can be challenged and compensation retrieved from you if the wrong course of action is taken.

You can also sue your employer if action you are permitted to take places you at risk.
I don’t think that you can justify the bald statement within the Powers of constables in relation to fire (section 24) nowadays and I think that section 24 be removed. The constable neither has protection for engaging in opening up premises involved in fire. He does not have the training to engage in active fire fighting. He is placing himself the public and the premises at risk if he takes the wrong action.

The attendance time for the fire brigade is sufficiently robust to preclude the need for a constable’s involvement in fire and that he be confined to common sense action which we would expect from any member of the public without the need to specifically legislate for his actions. The danger in this legislation being that the constable perceives that he is required to do something.

9 July 2004

SUBMISSION FROM JAMES B SMITH

I have read with interest the various submissions to the Bill.

I think my written submission is the only one which suggests removing the Power of Constables from the proposed legislation.

My response was a knee-jerk submission after reading the proposed Bill as I was very surprised to see it still there under a banner of ‘A modern Fire Service – fit for the 21st Century’ – something which should have been dealt with long before this new Bill was introduced. I didn’t even give myself the opportunity of editing my script before submission.

I had lectured at the Police College for eight and a half years as an invited speaker on the safety and conduct of police officers on the fireground and have responded to the Bill because of my concern at the role inflicted on the recruit policeman. He is given the same powers as a firefighter under the new Bill as it was in the old 1947 act. I think my type of input plus now, a question and answer forum on paper is the only input that a policeman will receive in his thirty plus years service on what to do at a fire. To train policemen up to an acceptable standard for fire brigade purposes isn’t possible however well intentioned the suggestions might be.

It would appear that there was a lot of discussion and support including two Brigades suggesting that in rural areas policemen should take on the role of part time firefighters. It was interesting also to hear from the RFU who have a microscopic membership compared to the main representative body but democratically invited to contribute that they too see the need to have policemen as voluntary or part time firefighters.

The suggestion beggars the question that if the police have the time and the funding to engage as full time officers in these various activities in rural areas should it therefore not be the case that the police could operate on Fire Brigade lines i.e. volunteer policeman, part time policeman, full time policeman? I don’t think any Chief Constable would be party to that suggestion. It is not within perceived police thinking that you could have ‘stand alone’ special constables in rural communities responding to police incidents on a part time basis although the practice of having the time to engage in other activities for full time officers possibly suggests otherwise.

If there is funding for full time policemen in areas where they are not fully engaged in police work but can engage in mountain rescue and lifeboat activity surely to assist the retained and volunteer recruiting situation with fire brigades there should be a case and funding for full time firefighters who can engage in firefighting and also become involved in extra curricular activity whether it be mountain rescue or fire safety visiting also for the good of the community.

I perceive a danger that if a policeman in a rural community had to engage in a firefighting role then he becomes a firefighter under the control of the officer in charge. If lightening should strike twice whilst the police officer is attending a fire and his presence is required for a domestic violence how long does the victim have to receive a beating before she gets help from a back up police resource in a rural community? He cannot leave the fire engine en route and his presence is required as a firefighter at the incident from which no firefighter can disengage.
I think you will find a common thread in fire brigade thinking that we welcome police involvement at fire incidents provided they are supportive and not leading. There would be no justification in retaining policemen for firefighting since their involvement would necessitate attendance at the local and national fire service training establishments – a process to which every volunteer, retained and full time firefighter has to conform. They would require to attend drill nights and attend the fire station to receive regular input of new procedures plus continuous attendance at courses. They could not be engaged “I will come if I am not too busy doing something else” basis. They are either ‘employed and trained and subject to the fire brigade’ or not at all and I think the Chief Constables would prefer them not to be employed at all.

I came from a generation of firefighters who had to work under various interferences at fires and incidents from well intentioned sources, although fortunately the strength and authority of the Firemaster precluded any takeover at incidents. I think on one occasion in the 1960’s at a fatal fire at a nurse’s residential accommodation in Scotland someone outwith the fire brigade ordered on an RAF helicopter to assist. This further added to the worry of the Fire Brigade that the down draft of the helicopter and the abseiling by the RAF personnel on to the roof of the property added to the danger which they had to contend with. The services were not asked for but were inflicted on the Fire Brigade by well meaning but inexperienced agencies presuming wrongly on their authority at a fire incident.

Fortunately in my service experience when there was the likelihood of interference it was quickly dealt with.

I wish to draw your attention to the mind set of the firefighter and why and how he views non fire brigade professional involvement with his job.

I don’t think it is well understood that the very nature of firefighting and rescue work produces an individual who is required to work in situations where nobody else can or will work. That no agency can take over and that his/her stand and personal courage will determine the outcome of the incident. I think this encourages his/her unique and the justifiable emotive awareness of his/her personal value to colleagues, the job he/she does and their value to the community.

I think this also reflects in the stand he/she takes industrially when he/she perceives their employers are reining them in on their salaries and working conditions. They resent comparison and are deeply offended that their work and worth is deemed of less value than other agencies.

It befits the lack of understanding of the mind set of the firefighter when it is suggested that someone other than a Chief Officer could take over the role of leading the Fire Brigade.

If it is the intention to go down that road in an operational capacity I can safely say that you are legislating for a situation which would result in regular dispute. Firefighters are very jealous of who they see as a fit person to command their Brigade. Unless the Chief or whatever his designation might be has a solid thorough grounding in firefighting from recruit firefighter onwards firefighters would be very wary of him or her entering the fire service on two tier entry. There would be also the problem of obeying his commands at an incident. It is seen as entry to the fire brigade through the back door. I doubt if the police would operate either with a Chief Constable who came in through the back door.

I would like to finish with that recently members of the public in the north of Scotland received a warning shot across their bows from the Fire Brigade for attempting to rescue members of the public from a fire situation. The fire brigade were on route to the incident very quickly and the actions of the public could have exacerbated the fire situation to the detriment of the people involved. I don’t think that the police should be put in a similar position with the fire brigade and the removal of that section of the act of Constables powers at a fire would preclude the need for the fire brigade to issue a warning to them.

23 September 2004
SUBMISSION FROM STRATHCLYDE FIRE BOARD

Introduction
Strathclyde Fire Board is pleased to offer comment on the proposals contained within the “Fire (Scotland) Bill”. As a Fire Board representing twelve of Scotland’s local authority areas with one of the largest brigades in Europe, we are broadly supportive of the document and see it as an excellent opportunity to ensure the sustainable development of a uniquely Scottish Fire Service, set within and supported by an overall UK framework, delivering a high quality service at local level.

Our comments upon this consultation are by exception i.e. where no comment is made Strathclyde Fire Board generally supports or concurs with the approach outlined within the Bill.

Part 1 – Fire and Rescue Authorities
The Ministers ability to take powers to amalgamate fire and rescue service authorities in Scotland are noted by Strathclyde Fire Board and we would co-operate as appropriate in the event of any review of fire and rescue service structures which assist in determining the optimum structure and number of brigades in Scotland. Strathclyde Fire Brigade continues to perform at the highest level and is an excellent example of the many benefits to be derived from larger, strategic authorities. The Board welcomes any proposals, which are in accordance with Best Value principles and meet the Executive’s expectations of delivering public services at a local level.

The Local Government in Scotland Act 2003 provides fire authorities with a “Power of Well Being” statutory duty. We would have welcomed the incorporation of this element of “well being” into the new fire service legislation as an additional obligation placed on fire authorities to support the wider agenda of public safety, social inclusion and crime reduction.

Part 2 – Fire and Rescue Services

Chapter 1 – Principle Fire and Rescue Functions
The Board welcomes the intention to formalise community fire safety and the wider community safety role and responsibilities of Brigades and look forward to assisting the development of both proposals within a framework that allows the fire service to better influence the community safety agenda in Scotland.

In particular, we would wish to ensure that consideration is given to adequate funding of Fire Service community safety schemes that meet the aims and objectives of wider social reform. The key to the fire service continuing to develop and promote these issues in a sustainable way is by securing more direct access to existing funding streams.

Fire related crime in Scotland places an ever increasing burden on society and a significant drain on Fire Service resources. We therefore welcome the proposals to provide new powers to investigate the cause of fire, which will allow us to address the problem of wilful fire raising more effectively.

We also welcome the inclusion of the power to confer additional function orders. Where these orders outline new roles for the Service, appropriate central support and resources must be provided.

Chapter 2 – Ancillary Functions
The Board support in principle the proposal for Scottish Ministers to take “reserve powers” of direction as a means of securing service delivery in matters relating to national resilience. However, we remain to be persuaded of the need to extend such powers in the broader context of specific national fire priorities within the National Framework.

Chapter 3 – Water Supply
The Board would wish to see responsibility for fire hydrants in its entirety devolved to Scottish Water and contained within the Water (Scotland) Act 1980. This would require Scottish Water to install, own, inspect, maintain, repair and replace fire hydrants.

Chapter 6 – Central Supervision and Support
The Board supports the proposals to develop a new National Framework setting clear and consistent objectives for a locally delivered service throughout Scotland. Within the Framework we would
support the principle of local provision being based upon Integrated Risk Management Plans and look forward to the process being supported with adequate resourcing from central government.

Existing inspection and auditing arrangements have evolved over a considerable period and involve three separate statutory bodies; namely Her Majesty’s Inspectorate, the Accounts Commission and the HSE. Strathclyde Fire Board considers that this opportunity to develop new, transparent inspection processes within a new National Framework should not be missed.

We also note the intention to take powers to impose a requirement on Fire and Rescue Authorities to use and maintain specified equipment and to prescribe what provision for equipment Fire and Rescue Authorities should be required to make. However, the taking of such powers must be supported by the provision of appropriate funding.

**Chapter 7 – Employment**

The Board has concerns over the prohibition on employment of police, as this may impact on our ability to recruit part-time firefighters in the more remote areas of the Brigade, and would therefore seek its removal from the Bill.

**Part 3 – Fire Safety**

The Board welcomes the opportunity to support and contribute to the rationalisation of fire safety legislation. However, in order to ensure a consistent approach across Scotland and indeed the UK, it is important to ensure that adequate guidance is not only given to businesses and commerce, but also to Fire Authorities. Guidance will be required in such areas as the management, administration and enforcement of legislation.

The Board would also support the principle that the proposals should place a duty on the owner of premises having persons considered to be at high risk of serious injury or death from fire, to consider the fitting of a life safety sprinkler / fire suppression system as part of their risk assessment, with appropriate definition of persons who may be considered “high risk”.

**Part 4 – Miscellaneous**

The Board supports the proposal to abolish the Scottish Central Fire Brigades Advisory Council, on the basis that there will be an appropriate replacement body with consultation taking place in that regard.

**Omitted Provisions**

The Board considers the undernoted to be relevant for consideration and inclusion in the Bill, namely:

- Introduction of an offence of falsely holding oneself to be an employee of the relevant authority, covering misuse of uniform, vehicles / equipment, letterheads etc.
- Provision for assisting overseas Fire and Rescue Authorities and charitable bodies who seek second-hand equipment and goods – presently rely on Overseas Assistance Act.
- Changes to legislation that removes the anomaly whereby diesel fuel is subject to duty, bringing fire authorities into line with local authorities that are able to utilise tax-free fuel in certain items of plant and equipment, and we would contend that fire appliances containing pumping equipment and / or hydraulically operated ladders should be classed as plant in this regard.
- Powers for fire authorities to raise charges for attendance to automatic alarm calls, which are made as a consequence of mechanical failure, poor maintenance etc.

**Conclusion**

In conclusion the proposals within the Bill interface appropriately with other, current considerations on the most effective and economic use of fire authority resources. The Board remains ready to work with the Executive in developing these concepts to the level of detail necessary for the successful implementation of new legislation and guidance.

30 August 2004
ADDITIONAL SUBMISSION FROM STRATHCLYDE FIRE BOARD

I refer to your telephone conversation with Lynn Paterson regarding Strathclyde Fire Board’s comments on The Fire (Scotland) Bill and your request for further information in relation to the comments made under “Omitted Provisions”.

Introduction of an offence of falsely holding oneself to be an employee of the relevant authority, covering misuse of uniform, vehicles/equipment, letterheads etc.

Under the Police (Scotland) Act it is an offence to pass yourself off as a Police Officer but there is no such offence in the Fire Services Act 1947. There has in the past been occasion to suspect persons may have been passing themselves off as firefighters. The Deputy Firemaster, Strathclyde Fire Brigade, has recently come across an organisation which portrays that it undertakes fire investigation work, their vehicle sported additional lights similar to Strathclyde Fire Board’s vehicles and had a logo similar to Strathclyde Fire Brigades’ badges. The occupant apparently wears a uniform. Although there is no evidence that the occupant has been passing himself off as a member of a Brigade, the potential for misinterpretation is there.

Given that with the Fire (Scotland) Bill there is a move towards Brigade personnel becoming more actively involved in the community, increasing visits to premises and working with vulnerable members of the community, it is feared that this may result in bogus callers posing as firefighters.

Provision for assisting overseas Fire and Rescue Authorities and charitable bodies who seek second-hand equipment and goods – presently rely on Overseas Assistance Act.

The Overseas Assistance Act provides general powers which liberally interpreted permit disposal of appliances, etc, subject to certain terms and conditions. A more specific power for Fire Authorities would be preferable.

Alan Cuthbertson
Clerk
7 October 2004

SUBMISSION FROM STEPHEN J PENNY, TEAM LEADER & SEARCH MANAGER, TWEED VALLEY MOUNTAIN RESCUE TEAM, SELKIRK

Thank you for the opportunity to comment. The majority of Mountain Rescue teams have little direct interaction with the Fire Service. Mountain Rescue teams operate through the Police. However, many do have a fairly wide remit nowadays and for most this would include participation in certain major incidents which may mean working alongside all the key services although still primarily under the direction of the Police.

The one area that does sometimes have overlap is Line Rescue. Most MRT’s are equipped and trained to perform line rescue work in the natural environment (i.e. not buildings, cranes etc). In this area (Scottish Borders) we are aware that there has occasionally been some debate as to whether a particular rescue should have been performed by Fire Service Line Rescue or Mountain Rescue teams (i.e. steep ground by rivers etc).

I feel that this is more about communication and understanding the various capabilities on offer. There will always be a potential overlap at the boundaries of operating areas. We are doing our best in this local area to ensure that the various services are aware of the resource that is on offer through the voluntary Mountain Rescue (or Search and Rescue) Teams.

30 August 2004
SUBMISSION FROM UNISON SCOTLAND

Introduction
This Bill is the continuation of the Scottish Executive’s plans to ‘modernise’ the Fire Service and sees many of the issues in earlier consultations being put into legislation. Therefore it may be useful to look at UNISON Scotland’s responses to these earlier consultations. These can be found at:
- UNISON Scotland's response to Scottish Executive Consultation on The Scottish Fire Service of the Future :July 2002

Background
Before looking at the main objectives of the Bill it may be worthwhile examining the motive for this legislation.
The Scottish Executive highlights that one of the main motives for this Bill is to update current legislation relating to the Fire Service which dates back to the Fire Services Act of 1947 (the 1947 Act). Although the Fire Service has evolved and developed since then the Scottish Executive believes it is now time to introduce new primary legislation covering the role and functions of the Fire Service. However the Policy Memorandum states that the 1947 Act could be amended by secondary legislation and the use of guidelines yet the Scottish Executive still want to produce a new Bill which basically re-enacts a lot of the powers within the 1947 Act.
The Policy Memorandum also seems to indicate that a driving motive for new legislation comes from a similar move in England and Wales to replace the 1947 Act and a concern that updating the existing legislation would ‘do little to progress the modernisation agenda’. There is a concern here that the Scottish Executive is merely following the decisions taken by the Office of the Deputy Prime Minister (ODPM) and is not reviewing what is necessary for the Fire Service in Scotland.
The Scottish Executive also lists a number of problems which may arise without a reform of existing legislation. Amongst these is the concern that without reform certain operational matters would continue to be referred to Scottish Ministers rather than decisions being taken at a local level with the benefit of local knowledge and expertise. However this contradicts another of the Executive’s consultations on the Fire Service namely their proposals to reduce the number of fire service control rooms and effectively lose the benefit of local knowledge and expertise.

Defining the Role of the modern Fire and Rescue Service
UNISON Scotland has concerns with the section in the Bill which extends the existing powers in the 1947 Act for Fire and Rescue authorities to enter into contracts with others to provide services in the execution of their functions – i.e. contract out some services. Although fire-fighting duties can only be carried out by other fire and rescue authorities (or other private companies who employ fire-fighters), this is not the case with other services. For instance, an example would be an agreement where a relevant authority contracts with a local authority to promote fire safety within its schools.
UNISON Scotland is concerned about the potential for current duties to be outsourced to external agencies and the impact this will have on fire service staff.

National and Local Priorities and Objectives
Although Scottish Ministers need to consult on the drafting on the National Framework, and any subsequent revisions, there is too little detail of what service issues will be included to provide an adequate response at this stage. There is a need for further clarification on the issues and targets that will be included in the national framework document.

UNISON Scotland has concerns over third party access to operational equipment during industrial action. This could result in untrained personnel accessing specialist equipment and could result in damage or extra maintenance requirements before the equipment could be fully utilised.

The Bill does not specifically provide details on local priorities and objectives and is only concerned that fire and rescue authorities ensure that service provision falls within the national framework.
Improving the Protection offered to local communities

The Policy Memorandum of the Bill indicates the abolition of section 19 (of the 1947: the Ministerial role in the decision making process affecting issues such as the closure of fire stations) will improve local decision-making. There is very little in the Bill which specifically addresses improved protection to local communities.

However in devolving such powers to local fire boards (and their respective local authorities) UNISON Scotland is concerned that the local structures that oversee fire station closures will be unaccountable and that communities will not be able to lobby the Scottish Executive. This could lead to similar problems as has been experienced with Health Boards, whose decisions have angered many communities but who have nowhere to turn to regarding issues such as hospital closures. UNISON Scotland would not support any development which lessened public scrutiny and accountability in the provision of public services.

The Bill does not provide much detail on issues relating to the protection of local communities as mentioned in earlier consultations. For instance the plans to replace existing Standards of Fire Cover with Integrated Risk Management Plans are simply not mentioned.

As UNISON Scotland stated in an earlier consultation response, we are concerned about the use of Integrated Risk Management (IRM) and the possibility that this might result in a reduction in fire cover. There is a concern that IRM has not been piloted in any area and as such there is no evidence that it can provide an improvement over current standards. UNISON Scotland is also concerned that a shift to IRM will take place before there are any pilots or evidence to suggest it will provide superior standards of fire cover.

Advice

The Bill abolishes the Scottish Central Fire Brigades Advisory Council and allows Scottish Ministers to consult any such persons as they consider appropriate. UNISON Scotland is concerned that such consultation may be inadequate without a statutory duty to consult professional fire service bodies, including trade unions, in the operation of the Fire and Rescue service in Scotland.

Employment

There are a number of employment related concerns within this Bill. These include the arbitrary power of Scottish Ministers to establish a negotiating machinery and the composition of such a body for the fire and rescue service in Scotland. UNISON Scotland has concerns that statutory body can decide which conditions of service should be negotiated locally rather than nationally.

UNISON Scotland is in favour of equal opportunities and diversity within the workplace but would like to see more detail on how the Executive propose to achieve this. UNISON Scotland would also like to see the Executive address the issue of equal pay within the fire service. In general UNISON Scotland regards such human resource issues as primarily the concern of fire authorities, their employees and the relevant trade unions.

There is also some concern that provisions within the Bill remove the obligation for the certification of premises and staffing resources which would have been required for this would be available for deployment elsewhere. UNISON Scotland would like further clarification on this issue and the involvement of trade unions in any discussion on the re-deployment of any staff.

Financial Issues

The Financial Memorandum of this Bill appears to be contradictory in that it states the Bill largely builds on the existing arrangements under which the fire service is structured and that the arrangements under which the funding is provided will essentially remain unchanged. However the same paragraph then goes on to explain that dependant on whether Scottish Ministers exercise their new powers this may give rise to additional costs. It also highlights that other issues such as the attempt to maximise efficiencies and developing collaboration as well as changes in the fire safety regime, will all have financial implications.

The Financial Memorandum goes on to raise the issue of fire service control rooms, where it states that there are a range of costs and benefits, quantifiable and non-quantifiable, relating to maintaining or reducing the number of control rooms. The report than produces estimates of the possible savings, presumably including the non-quantifiable costs and benefits!

UNISON Scotland would more clarification on the costs of implementing this Bill, especially in relation to the additional statutory duties to be undertaken and on the staffing and resource implications of the Bill.

August 2004
SUPPLEMENTARY SUBMISSIONS TO THE JUSTICE 2 COMMITTEE

ADDITIONAL STATEMENT FROM THOMPSONS SOLCITORS AND SOLICITOR ADVOCATES ON BEHALF OF THE FIRE BRIGADES UNION

We have been sent a copy of a reply from the Scottish Executive (Mr Snedden, Head of Fire Services Division). This is dated 24 September 2004.

The Fire Brigade Union is grateful to your good self and the Committee for the opportunity to put forward its views on the Bill which we trust the Committee found helpful and constructive.

We are instructed by the Fire Brigade Union to write to you given this further written evidence. While the Fire Brigade Union does not want to engage in unnecessarily restating its position it does feel it ought to comment as briefly as possible on this further written evidence. This is particularly so given that some misunderstandings and misconceptions continue. There has at the same time been some helpful clarification. We will take matters in the order of Mr Snedden’s letter of 24 September 2004.

Competence of the Bill

It makes no difference to the lawfulness or otherwise of actions by the Scottish Parliament if the Presiding Officer considers such actions to be lawful. The Scottish Parliament is a statutory creation and cannot act ultra vires whether through the Executive, a Committee or its Presiding Officer. It would be acting ultra vires if it were acting in Contravention of the European Convention on Fundamental Human Rights or Community Law (as well as other circumstances).

Section 15 Charging

It will be important for any order to be promulgated soon so that it can be considered as to whether it is compliant with the Article. As matters stand at present until these orders are assessed there is no compliance.

Section 45 – Statutory Negotiation Arrangements

The Statutory Negotiation Body will deal with matters which fall within the legitimate concern of a Trade Union and its members. To not provide that Union with a right to be heard on that body is in contravention of the Article. To instead point to lobbying and other measures as indirect means to influence that body falls well short of the Article and does not remedy the failure.

Fire Safety Employer/Employee

This paragraph simply restates the definition of employee which we have already pointed to in our submissions. With respect it also seems to misunderstand what is being said. What is being said here is not whether this is in compliance with European Community Law and its implementation in Domestic Law but that the definition of employer/employee fails to reflect many working relationships which are not caught by this definition and thereby diminishing greatly the effectiveness of the intended section.

Duties in Relation to Relevant Premises

We consider that the two paragraphs of the Executive’s letter in relation to this point demonstrate how complicated the fixing of fire safety duty is. It makes reference to persons:- having control of the premises, not in control in connection with the undertaking, not in control by virtue of being owner, landlords, contractors (not to mention the others we have previously referred to). The difficulty is in not only an enforcing authority identifying who may be responsible, but, those who are supposed to be in charge of fire safety, identifying themselves as being responsible and having the necessary power to enforce their responsibilities as against others.
It will be of little value to those affected by any fire safety failure that action is taken against those who have been found to be responsible after the event. The problem is one of prevention and to leave it to a complex series of transient and unstable relationships (and where lawyers can shift the burden through a tenancy/landlord contract) is a recipe more for confusion and inaction than robust policy prevention. There must be some means for an enforcing authority to identify and fix the responsibility in such circumstances and with the person so fixed having the prerequisite powers against others irrespective of what they may decide or fail to decide between themselves.

Scottish Executive, Scottish Parliament Community Law

We are pleased to see that the Scottish Executive have realised that there is no power to disapply the Directive under Community Law as implemented through Health & Safety at Work at 1974.

The Scottish Executive is now saying that regulations will be brought into force to replace the provisions in the Health & Safety Work Act 1974. It now needs to make clear what these regulations are so that the Scottish Parliament and those who are intended to benefit from the Directives are able to scrutinise and ensure compliance with Community Law.

We would be grateful if the Committee could determine from the Executive at what stage any draft regulations are.

We also note that there is reference to the Act coming into force later. It would be equally disadvantageous if the Act was delayed pending regulations and which could and should be examined now.

Criminal Offence and Non Co-Operation, Section 67 and Industrial Action

The Scottish Executive have failed to address the main point in relation to these sections and that is why the intended offence in the Bill differs from the offence provided for in Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992. If no difference is intended then there should be no need for an offence as it is already contained in Section 240 or if it is felt that there should be a specific Scottish offence then the terms of Section 240 should be restated in the Bill.

If there is a difference then in accordance with the normal rules of statutory interpretation it is the meanings of the words used in the Section. Furthermore it is up to the Lord Advocate to determine prosecution and not the Scottish Executive. How the Scottish Executive, through Mr Snedden, regard future interpretation of this Section would be of little relevance notwithstanding the terms of the statute.

We should also point out that this section is of considerable concern not only to the Fire Brigade Union but to many trade unions in Scotland because it could fundamentally affect their role. They would also have to advise their members of the potential repercussions for any fire safety post.

Impersonation of a Fire Fighter

We have no difficulty with what the Executive have said here. We would however draw attention again to a related problem, and that is the public being able to identify the responsible person where it is not a uniformed fire fighter.

Frank Maguire
Solicitor Advocate
20 October 2004

SUBMISSION FROM FIRE OFFICERS’ ASSOCIATION

SUPPLEMENTARY COMMENTS TO THE JUSTICE 2 COMMITTEE ON TECHNICAL ASPECTS AND FIRE SAFETY LEGISLATIVE PROVISIONS

The proposed changes will enable rapid improvement in both service delivery and public safety and should be very much welcomed by both fire professionals and communities across Scotland.
Although fully supporting the overall aims and objectives of the Bill improvement could be made, consideration should therefore be given to the following observations and comment.

General

Scottish Fire Services maintaining primacy for provision of advice and statutory enforcement of fire safety legislation is wholly consistent with public need and expectation. The application of primary fire safety legislation to the majority of premises (other than single private dwellings) will provide for a range of enforcement options not available under any existing regulatory arrangements.

The extension of enforcement powers to premises hitherto operating out with the scope of primary fire legislation will bolster public confidence, improve employee safety, improve fire-fighter safety and longer term reduce fire losses.

The overall effect will be to ensure that few occupied premises can now operate out with the scope of risk appropriate fire regulations that will be applied fairly, consistently and transparently by fire professionals.

However assurances require to be given that Fire Services in Scotland will be provided support and assistance to build “capacity” to effectively discharge the increased enforcement and inspection responsibilities to levels that instil public confidence and meet audit expectations.

Provision within the Bill will not be cost neutral therefore suitable and sufficient “cost recovery” arrangements similar to existing special service arrangements should be included. Particularly in respect of giving technical information advice or assistance that has a commercial value to architects, consultants or developers.

The loss of existing revenue to fire authorities from the issue and amendment of FPA 1971 Fire certificates should be noted.

Similarly it should be noted that fire services may be expected to continue inspection and reporting on premises for which licensing or registering authorities receive a fee to cover costs, consideration should therefore be given to the recovery by fire authorities of costs incurred discharging licensing requirements.

Chapter 3: Supply and use of water

Use of automatic fire suppression systems (sprinklers and or water mist systems) will increasingly feature as a risk appropriate and cost effective means of reducing risk to life, property and environment from fire. Furthermore under IRMP the provision of automatic fire suppression within premises will be a significant factor in the setting of pre-determined operational response to fire.

It would therefore be prudent to include provisions to safeguard water supply and pressure to fire suppression systems and provide a requirement to give notice of works affecting water supplies to fire suppression systems.

Page 3: Part 2 Chapter 1 (Section 7 (2) (b)

This seems to restrict the giving of advice to preventing fires, restricting spread and means of escape.

The provision of advice should extend to all Fire Safety Measures listed in Schedule 2 together with facilities to assist the fire service such as access for emergency vehicles, hydrant provision, fire performance of materials, fire detection and suppression systems and arrangements for ensuring the safety of firefighters such as structural fire protection and fixed installations.

The promotion of Fire Safety should be linked to the emerging importance of Community Planning and Community Wellbeing. Opportunity should be taken to underline the statutory role of Scottish Fire and Rescue Services in Community Planning process and policy making at both local and strategic level.

Amendments may also be required to The Local Government in Scotland 2003 as a consequence of sections of the Fire (Scotland) Bill.
It is considered that absence of any responsibility to promote broader accident and injury prevention or reduction in fire related anti-social behaviour does not acknowledge current national priorities and current contributions being made by fire services.

Page 4 Section 9:

Given the much wider Fire and Rescue role envisaged for the modern service it seems inconsistent to legislate solely for rescue from road traffic accidents, similar legislative requirements are necessary for safe and effective rescue operations involving various modes of transport i.e. road, rail, air and water/sea. This section should be much more general and enabling in nature by providing legislative powers applicable to a much wider range of operational fire and rescue service activities. In addition it would seem reasonable for the fire service to engage in activities providing education or advice aimed at reducing the number of such incidents.

It is also imperative for operational and health and safety reasons that the Senior Fire Service Officer present at any emergency with a fire service attendance or involvement retains sole responsibility and control for the use or tactical deployment of fire service resources or equipment.

Chapter 3: Supply of water

This section requires a substantial re-think, as it appears that opportunity to enact innovative, modern legislation that accurately reflects current circumstances has been missed. There has been a substantial and fundamental change to the national administration and control of water undertakings in recent years and current arrangements are undergoing a process of public consultation.

The usage of hydrants is not under the control of fire authorities yet they are required to pay for damage or defect.

Responsibility for the provision and maintenance of a suitable and sufficient water supply infrastructure that includes adequate arrangements for firefighting must rest with Scottish Water.

In the case of new developments responsibility for ensuring adequate water supplies for firefighting and meeting the cost of such provision should lay with the developer or reasonable charges passed by Scottish Water onto the developer.

The duty and responsibilities of the Water Authority must extend to the provision and maintenance of adequate pressure and flow for firefighting purposes. Increasingly it has become custom and practice for the Water Authority to reduce mains pressures well below the pressure and flow required to mount effective and sustained firefighting action and in some cases to levels that potentially adversely effect the operation of life safety fire suppression systems.

It follows that a Fire and Rescue Authorities cannot reasonably be held liable for the actions or inactions of the Water Authority in respect of obligations to provide and maintain suitable and sufficient water supplies for use in the event of fire.

Page 9 Section 22: Works affecting Water Supply and Hydrants

Given the Executives commitment towards risk appropriate provision of automatic fire suppression systems it is imperative that legislation includes adequate protection of supply and notice of works or actions affecting such automatic firefighting systems.

Page 42 Schedule 2 Fire safety measures should be expanded to include automatic fire suppression systems for property protection and or life safety.

Page 9 Chapter 4 Section 23

Powers should include emergency measures aimed at protecting the environment from serious harm for example in the case of chemical leak or spillage, hazardous substances or harmful combustion products.
This section should be expanded to include an item c “for the purpose of assisting the investigating of the cause of death or injury as a result of fire”. Otherwise there would be no requirement to involve or inform the fire service in cases where fire injury or death has occurred but fire was extinguished or had self extinguished. This confusion over the need to immediately notify the fire service (albeit fire has been extinguished) has resulted in an increasing number of late calls to the service undermining the effectiveness of subsequent fire investigations. It is clearly in the public interest that fire professionals attend and record details of all fire related incidents.

Meeting these proposed security requirements will be extremely problematic operationally and may result in frequent claims or litigation against Fire and Rescue Authorities.

Surely reasonable steps to inform the owner/occupier or notification to the Police that premises are not lock fast or secured, adequately discharges fire service responsibility. In the case of insured premises arrangements and cost of employing a competent person to make premises lock fast and secure would be between insurer and insured. Otherwise who, how and at what cost premises are made secure and lockfast becomes extremely contentious and a potential source of conflict. Moreover attempting to comply with this section would unduly delay fire appliances at incidents once the initial emergency is over, depleting fire cover and so placing the public at potential risk.

Definition of emergency for the purposes of the Bill should be extended to include serious damage to buildings, property and or contents, vehicles, plant or machinery.

Identifying a responsible person and then successfully prosecuting for a contravention of a statutory Fire Safety duty is a proven deterrent to others and is key to achieving sustainable reduction of fire risk and improvement of fire safety standards.

It is common practice for claims to be made that the responsible person, bodies corporate or other person having responsibility reside elsewhere than in the UK. Clarification is required as to how this type of attempt to undermine enforcement is to be countered.

In the case of licensed or registered premises persons responsible should also include the person(s) registered or licensed to undertake or manage any particular activity i.e. the licence holder or registered person.

Similarly account needs to be taken of a wide range of flexible employer – employee relationships and self-employed circumstances.

Any advice or guidance provided must have legitimate legal and enforcement status preferably in the form of an Approved Code of Practice or similar regulatory status publication that can be used as a “benchmark” or “model standard” that reference can be made to in the case of appeal, dispute or enforcement proceedings. There should be a clear legal requirement upon employers to record all aspects of fire risk assessment and make it readily available on the premises for inspection and validation purposes.

NB: Draft technical guidance produced to date by the ODPM as UK guidance underpinning the application of regulations appears to have no legal or regulatory status and the technical content is not harmonised with either the Scottish Legal System or Building Regulatory Framework.
Section 57 powers of Enforcement

The issue of subsequent claims or liability for the action or inaction of an enforcement officer discharging his responsibilities under this section is unclear particularly in the case of alleged damage to items or property and the practicalities of arranging safe storage of items or materials and then recouping associated costs are not addressed.

Regulations should seek to minimise risk to the individual and organisation for example sec 57 (2) (g) should provide powers to cause or instruct the responsible person have the article safely dismantled.

As we now operate in a highly litigious society this risk reduction and claims avoidance principle that fire officers powers should cause the responsible person to take appropriate action should be applied throughout.

Section 59: Enforcement Notices (above comments regarding Section 53 also refer)

To simplify settlement of enforcement appeals or disputes wherever applicable reference should be made within any Formal Warning, Enforcement or Prohibition Notice to non compliance(s) with relevant statutory guidance or an ACOP.

Section 60: Alterations Notices

This section requires re-write as it is extremely difficult to enforce in its present form since the fire service no longer have any fire certificate plan drawings for comparison purposes.

It is a write across from FPA 1971 legislation but since there is now no Fire Certificate and Certificate Plan drawing how are Fire Authorities to know that a notifiable alteration has taken place?

Risk Assessment should therefore be accompanied by a signed and dated accurate plan drawing of premises annotated to show all existing fire safety measures provided in compliance with Part 3 Chapter1 at the time the risk assessment was completed.

This will also allow inspecting officers validate the currency and content of an employers risk assessment.

Section 62: Determination of Disputes

In seeking to determine fairly any dispute regarding the adequacy or otherwise of fire precautions reference should be made to an appropriate ACOP or similar status national guide.

Section 67: Offences

Failure to meet a compliance standard within a relevant ACOP or national guide without approved exemption, agreed compensatory feature or other reasonable cause should be made subject of an offence.

NB: There are no legislative provisions to effectively deal with minor contraventions or minor compliance failures that come to the attention of Fire Authorities – this is considered a lessening of existing powers.

Minor contraventions cannot be ignored due to the potential liability and litigation at a subsequent claims hearing or fatal accident enquiry?

Provision must therefore be made for a basic formal notification or warning system that allows minor non-compliances to be notified to the responsible person and duly recorded by Fire Authorities. This would allow repeated contraventions or safety management failures to be built up over time and establish an offence of repeated contravention or repeated safety management failure.

Section 70: Service of Documents

For reasons of simplicity and speed and to accord with Scottish Executive E Government objectives, options for serving of notices should now include transmission by Facsimile or E-Mail.
Section 72: Meaning of relevant premises

There should be no exclusion for construction sites that are in part occupation (as very many are). This is required to be consistent with existing fire safety legislation applicable to occupied building undergoing part alteration or reconstruction.

Also it must be made clearer that the definition of premises extends throughout the curtilage as well as to any building or materials within the curtilage.

An example would be a scrap metal dealer where the workplace and associated fire risk or potentially hazardous materials are located throughout the yard or boundary enclosure.

Section 79: False Alarms

To partly address the growing national problem of excessive and repeated unwanted automatic fire alarm signals the definition of a false alarm should be extended to knowingly causing a false alarm to be transmitted by means of an automatic fire alarm signal.

This would be an innovative and highly effective practical deterrent for “responsible persons” who knowingly have a sub standard, defective or otherwise unreliable automatic fire warning system or who knowingly operate activities that result in the automatic transmission of an unwanted (false alarm) fire signal.

Notable Omissions:

- The Bill makes no reference to the role or remit of the modern Fire and Rescue Service in dealing with natural disaster, community resilience, civil contingencies or contingency planning particularly public protection, operational response and decontamination in connection with CBRN accident or emergency.
- Similarly the Bill makes no reference to firefighting or rescue at sea or on water.
- Due to the increasing incidence of fire related crime, vandalism and anti-social behaviour in Scotland opportunity should be taken to make new offences or alter the wording of existing fire related offences.
- No reference or linkage has been made to Community Planning or Wellbeing.
- Chapter 2 provides a duty to enforce fire safety legislation but significantly no corresponding duty to inspect. Important lessons learned from enactment of previous fire safety legislation (FP Workplace Regulations) indicate that a robust and risk appropriate regime of pro-active inspection is necessary to underpin the effectiveness of legislation and ensure appropriate levels of both awareness and compliance. Moreover reducing and sustaining the reduction in risk from fire in Scotland underpins the whole concept of IRMP that conditions the level of operational response to fire and emergencies. Inspection and re-inspection will therefore become an essential component of IRMP risk monitoring and risk information gathering systems. In the interests of public safety Fire and Rescue Authorities in Scotland must be given a duty to inspect to provide sufficient public confidence that appropriate standards of fire safety are in place and are being adequately monitored.
- Provision for the fire Services to issue of formal warnings in cases of minor contraventions or minor non-compliance should be re-instated.
- The offence and definition of “false alarm” should encompass knowingly causing a false alarm or unwanted fire signal to be transmitted.
- The issue of structure cannot be divorced from policy or processes therefore the ongoing uncertainty regarding the structure of Scottish Fire and rescue Services should be clarified.

Summary and conclusion

Whilst accepting the benefits of a UK approach to Fire and Rescue Service duties and responsibilities the proposals provide opportunity for a Scottish Dimension that better reflects national priorities and the close working relationship between Scottish Fire Services, Fire Authorities and Scottish Executive.
Where suggested changes cannot be made to the actual Bill it is hoped that they be incorporated into subsequent Regulations, Explanatory Guidance or Approved Codes of Practice.

1st October 2004
Ministerial Foreword

[to follow]

Chapter 1: Introduction

Purpose

1. The purpose of this document, the first Fire and Rescue Framework for Scotland, is to set out policies, objectives and guidance for fire and rescue authorities and joint fire and rescue boards so that the public are properly protected from fire and other emergencies. The Framework will make clear what Ministers, on behalf of the people of Scotland, expect from the Scottish Fire and Rescue Service, and the support which the Scottish Executive will give to ensure that those expectations can be met. The Framework sets standards for the service and, in some specific circumstances, indicates how the service should undertake particular functions.

2. Ministers recognise that fire and rescue authorities primarily provide a local service to their communities. Local democratically elected politicians serving on fire and rescue authorities are, rightly, accountable to those communities for the provision of the service. The Executive has no wish to undermine those arrangements. But at a time when the role of the Fire and Rescue Service is having to change to meet new challenges, not least the increased threat of terrorism, Ministers take the view that greater strategic direction from the centre is required. The aim of the Framework is to provide that strategic direction.

The overall context

3. Since devolution, the Scottish Parliament and the Scottish Ministers have had legislative and policy responsibility for the Scottish Fire and Rescue Service. For the first time, this gives Scotland the opportunity to provide a statutory base and overall direction for the service. That opportunity has been taken, firstly through the publication of our policy paper “The Scottish Fire Service of the Future” in April 2002 and, flowing from that document, the Fire (Scotland) Bill currently before Parliament.

4. But Scotland’s Fire and Rescue Service does not exist in isolation. The service belongs to, and is paid for, by the people of Scotland and is not a fiefdom for particular stakeholders. A Partnership for a Better Scotland makes clear the Executive’s commitment for a safer stronger Scotland, and improvements in public services. The Fire and Rescue Service is a crucial part of that agenda.

"People deserve and expect public services that are of the highest possible quality and offer the greatest possible choice. We will continue to use the record level of investment in our public services to secure new and better facilities, particularly for our schools and hospitals. We will also match this investment with continued reform so that our public services are designed and delivered around the needs of individuals and the communities within which they live."

A Partnership for a Better Scotland: Partnership Agreement

The need for a Framework

5. Our vision for the Fire and Rescue Service is of an organisation that ‘continually improves its performance to secure Best Value’. This is now a statutory duty for fire authorities, since commencement of the Local Government in Scotland Act 2003. Our key aim is to strengthen service delivery. That requires Fire and Rescue Services to be clear about their objectives and priorities at both national and local level.

6. The Independent Review of the Fire Service was critical of the lack of strategic direction offered to the fire service by successive governments. In our policy paper “The Scottish Fire Service of the Future”, we
indicated that there would be ‘an expectation of clear performance improvements aligned to achieving safer communities and efficiencies linked to the Best Value agenda’.

7. The framework within which the Fire and Rescue Service has operated for decades past is inappropriate and restrictive for the needs of modern Scotland. It is underpinned by the current recommended National Standards of Fire Cover, which dictate how resources should be used and deployed locally. This has been further restricted by the Section 19 provisions in the Fire Services Act 1947, which bring Ministers into the decision process about the location of fire stations, vehicles, equipment and personnel. Decisions on these matters should be taken at local level following consultation with those most affected.

8. While our view is that the Fire and Rescue Service should remain as a locally delivered service it must operate within a national framework which sets out clear and consistent objectives for the Service throughout Scotland.

9. The Framework strengthens the responsibility of Fire and Rescue Authorities to deliver the service in a flexible way to their local communities. Fire and Rescue Authorities’ duties in respect of Community Planning provide the necessary platform for consultation and delivery at local level, particularly in the area of fire prevention and fire safety, which clearly involve other key local partners.

10. The focus on national priorities in the Framework is particularly important on matters of national resilience or national service delivery, where it is vital that all Fire and Rescue Authorities achieve what is required. Scottish Ministers are, therefore, seeking to take reserve powers of direction as a means of ensuring that delivery of those priorities in the National Framework is not undermined.

The legislative background

11. Section 36 of the Fire (Scotland) Bill currently before Parliament will require Scottish Ministers to prepare, and consult on the Fire and Rescue Framework for Scotland, to keep the Framework under review and to consult on any proposed significant revisions to it. The Framework (and any significant revisions) will come into effect by order. As well as prior consultation on the draft Framework with stakeholders, the Scottish Parliament will therefore have the opportunity to scrutinise (and to veto) the Framework before it can be finalised.

12. Section 37 of the Bill requires Fire and Rescue authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if authorities fail to act in accordance with the Framework by setting out, by order, an obligation for an authority to act in accordance with the Framework where they consider that the authority is failing to do so. Before making such an order, the Scottish Ministers must consult the authority. Ministers have made clear that those powers of direction are very much a matter of last resort.

13. Section 38 of the Bill requires the Scottish Ministers to report to the Parliament on the extent to which Fire and Rescue authorities are acting in accordance with the Framework and any action they have taken to ensure the authorities do so.

14. Scottish Ministers are committed to full consultation on the draft Framework and any significant revisions to it. It is Ministers’ intention to consult on the draft Framework during the passage of the Fire (Scotland) Bill and, if the Bill is enacted, to bring forward the necessary Scottish Statutory Instrument to give effect to the Framework as soon as possible thereafter.

Advisory structure

15. We made clear in our document “The Scottish Fire and Rescue Service: proposals for legislation” that we proposed to abolish the Scottish Central Fire Brigades Advisory Council and replace it with a more effective advisory structure. We have subsequently made clear that we expect the new structure to be non-statutory. However, we will be consulting further on the new structure, and will set out the new arrangements in the Framework.
**Summary of the Framework**

[to be added on completion of the draft Framework]

**Chapter 2 – fire prevention and risk management**

**Introduction**

1. Deaths from fire in Scotland are well above the UK average. In 2002, there were 77 deaths from fire in Scotland, representing a fatality rate of 15 per million population. This compares with fatality rates of 9 per million in England. Whilst effective response to fires will always be a vital part of the Fire and Rescue Service’s responsibilities, research shows that many fire deaths occur before the alarm has been raised. It follows that fire prevention has a pivotal role in reducing deaths and injuries from fire. If we can reduce the number of fires that start in the first place, we will be able to make a huge contribution to reducing fatalities and injuries. This chapter sets out the priorities for the service in this area.

2. This chapter also deals with the management of the whole range of risks and emergencies for which the Service has responsibility.

**The statutory duty**

3. The Fire (Scotland) Bill will, if enacted, place Fire and Rescue authorities under a new statutory duty to promote fire safety in their areas. This will give statutory backing to the existing fire safety work which all brigades currently undertake, and put even greater emphasis on preventative activity.

**Integrated Risk Management Plans**

4. The increased emphasis on prevention will be reflected in the development by Fire and Rescue Authorities of Integrated Risk Management Plans (IRMPs). The old, national recommended standards of fire cover, which set out the speed and weight of response to fires depending on building density, were insufficiently flexible to allow Fire and Rescue Authorities to respond to the needs of their communities. They focused exclusively on risk to property rather than risk to life, and did not take account of the serious non-fire incidents to which the Service responds. Nor did they take account of fire prevention activity and fire detection and suppression facilities. From April 2005, local Integrated Risk Management Plans will replace national standards. All Fire and Rescue Authorities must produce an IRMP.

5. IRMPs will set out each Fire and Rescue Authority's strategy for:

   - reducing the number and severity of fires, and in collaboration with other agencies, road traffic accidents and other emergency incidents occurring in the area for which it is responsible;
   - reducing the severity of injuries in fires, road traffic accidents and other emergency incidents;
   - sustaining and improving the safety of Fire and Rescue Service staff and the general public
   - reducing the commercial, economic and social impact of fires and other emergency incidents;
   - safeguarding the environment and heritage (both built and natural); and
   - providing value for money.

6. An IRMP must set out an authority's assessment of local risk to life and, in line with this analysis, how it is going to deploy its resources to tackle these risks and improve the safety of all sections of society. The IRMP should identify the ways in which the authority can work in partnership with neighbouring authorities and other agencies to deliver improved public safety. It should develop these relationships and build upon the lessons learned. It must also set out the targets an authority will set itself and the standards it will apply to meet the specific pattern of local risk. This will be done in the context of its statutory duty to secure continuous improvement and achieve best value for its local council taxpayers. The IRMP itself should be a strategic, forward-looking document with the approach and detail of
business and change management plans. Annual action plans, which may be produced separately or integrated with the main plan, will set out what the authority plans to do in the year ahead. Fire and Rescue Authorities should ensure that their IRMPs are both accessible - to the public, business and other stakeholders - and easy to understand.

7. Authorities are in the process of drawing up their first IRMPs, and will be consulting their local communities on them over the first quarter of 2005. After taking account of the responses to consultation, authorities will begin to implement their first year action plans as from 1 April 2005. Authorities should keep their IRMPs under review, and revise them on a regular basis when new evidence or analytical tools become available.

8. In summary, Fire and Rescue Authorities must each have in place and maintain an IRMP which reflects local need and which sets out plans to tackle effectively both existing and potential risks to communities. They should also:

- produce annual action plans on which they have fully consulted their local communities and stakeholders (including Fire and Rescue staff), allowing twelve weeks for the consultation;
- take account of Scottish Executive or HM Fire Services Inspectorate guidance in producing their plans; and
- make efficient and effective use of resources to implement the IRMP and the action plan, including using more efficient and flexible working practices where appropriate.

9. The Executive recognises that authorities need support in developing and maintaining their IRMPs. We provided guidance on preparing and maintaining IRMPs in 2003, including training for Fire and Rescue Service staff and fire authority elected members. Further guidance will be issued as new issues and demands arise. During the past year we have also:

- undertaken a 'one-off' incident data cleansing exercise on behalf of all authorities that wished to avail themselves of the service, to help ensure that local risk can be reliably located and measured; and
- made available free of charge the Fire Service Emergency Cover (FSEC) toolkit which is based on years of research into risk based fire cover.

Community Fire Safety

10. All fire authorities in Scotland are actively pursuing community fire safety initiatives. We want authorities to build on the significant progress already made, working in partnership, and sharing good practice, with other agencies. In particular, fire and rescue authorities should target resources at those groups most at risk from fire.

11. Research shows that those most likely to be at risk from fire are those in the lower socioeconomic groups, the elderly, and families with young children - who are often concentrated in deprived neighbourhoods. For a variety of reasons these groups may be particularly hard to reach with fire safety advice and unable or unwilling to take action in response. In many cases this will require innovative methods and as part of the IRMP process joint working with partners in health, social services, housing, education, the voluntary sector and other emergency services. Working with partners where appropriate, Fire and Rescue Authorities should develop a planned programme of community fire safety work, including evaluation, which responds to the needs and risks identified in their communities by the IRMP, and targets resources on vulnerable communities. This planned programme should include agreement between all authorities on a national strategy for promoting community fire safety, overseen by the Scottish Fire and Rescue Service Community Fire Safety Champion.

12. The Executive will continue to support community fire safety activity in a number of ways:

- National fire safety publicity campaigns under the “Don’t Give Fire a Home” brand, including TV advertising and a dedicated website
Supplying “Don’t Give Fire a Home” publicity material to fire and rescue authorities, including posters, leaflets, promotional items etc. Total spending on the TV, website and publicity materials amounted to around £380,000 in 2003/04, with similar or increased amounts in 2004/05

Funding of a Community Fire Safety Co-ordinator for Scotland, supporting the Scottish Community Fire Safety Champion

Working with young people

13. In our policy paper we recommended that the fire service should have closer involvement with young people, to enable them to realise their potential, with the aim of promoting responsible citizenship. We are aware that many brigades have been involved in local initiatives with young people, and we want the service to develop these further through their Community Fire Safety programmes. The Community Fire Safety Co-ordinator will assist brigades with this both in terms of co-ordinating the overall strategy, working together with community safety partnerships, and identifying possible sources of new funding.

14. Working with young people in the community is the subject of a joint thematic report by HM Fire Service Inspectorate. This report contains information which may assist Fire and Rescue Authorities develop opportunities for their work with young people and gives examples of good practice. The report can be accessed on the Internet at http://www.odpm.gov.uk/stellent/groups/odpm_fire/documents/page/odpm_fire_023667.pdf.

Community planning and partnership working

15. Fire and Rescue Authorities are under a statutory duty to participate in the community planning process introduced by the Local Government in Scotland Act 2003. The legislation provides a framework for better delivery of public services and requires the corporate planning and prioritising of service provision aimed at achieving sustainable social and economic improvement. It is based upon the principles of partnership, collective responsibility, crime reduction, social inclusion and regeneration and by providing a mechanism for community consultation and engagement it shapes services around the needs of individuals and communities. Community Planning Partnerships provide a vehicle for meaningful consultation and dissemination of information on developments within the service that affect local people or local delivery of service. Consultation and engagement on Integrated Risk Management and Community Fire Safety planning are good examples of the contribution Scottish Fire and Rescue Services can make towards meeting the strategic aims and objectives of community planning.

16. Fire and Rescue Authorities should encourage Local Authorities to acknowledge the high social, economic and environmental cost of fire and actively seek opportunities to contribute towards determining local priorities for action, particularly within socially disadvantaged or deprived areas. It is intended to provide service-specific guidance to the Fire and Rescue Services on Community planning and partnership working, as improved engagement, consultation and collaboration will be essential to the strategic development of the service.

Wilful fire raising

17. In our policy paper, we stated that we would consider the recommendations of the Wilful Fire-Raising thematic inspection undertaken jointly by HM Fire Services Inspectorate and HM Inspectorate of Constabulary. The report, entitled Fire: Raising the Standard was issued in May 2002 and contained 13 recommendations. The report recommendations are directed at a number of different parties, and included a recommendation envisaging a national forum to provide leadership and organisation to all parties concerned. Whilst many of the recommendations in the report have been actioned by individual Authorities the Scottish Central Fire Brigades Advisory Council has approved the establishment of a National Body. The body will draw upon a variety of agencies and not just from the Fire and rescue service.
Building Regulations

18. Building Regulations in Scotland apply to new buildings and to alterations, extensions and conversions of existing buildings. They are made principally to ensure the health, safety and welfare of people in and around buildings, but also deal with energy conservation and sustainability.

19. A new Building Standards system will be introduced in Scotland in May 2005. One of the features of the new system is a move to totally functional fire safety standards which allow flexibility in the method of achieving the intent of the standards. These functional standards are principally concerned with life safety and effectively provide the minimum legislative level of safety required in the design and construction of buildings in the event of an outbreak of fire.

20. The move to functional standards increases flexibility and allows the potential for different compliance methods and alternative fire safety strategies. This increased flexibility increases the importance of liaison between Local Authority Building Standards Departments and Fire and Rescue Authorities. Accordingly, the new system introduces a requirement for the Building Standards Verifier (local authority) to consult the Fire and Rescue Authority, as the enforcing authority for fire safety law, for certain categories of building.

Fire and Rescue Authorities are expected to:

- work closely with the Local Authority Building Standards verifier to ensure that any potential conflict between building regulation compliance and fire safety law compliance, in respect of individual buildings, can be identified and resolved at an early stage, and
- use information available on building work and developments within their area to inform their intervention strategies and IRMP where appropriate.

21. A new functional standard (2.15) for Automatic life safety fire suppression systems will be introduced on 1 May 2005. All new high rise domestic buildings, sheltered housing complexes and residential care buildings will require auto-suppression systems such as sprinklers to be installed. The intention is to provide added protection for the more vulnerable groups in society and standard 2.15 is seen as the first step.

Fire Safety in Non-Domestic Premises

22. The Fire (Scotland) Bill will fundamentally reform fire safety law in the workplace and other non-domestic premises. The new framework will complement the wider prevention agenda and the integrated risk management approach to emergency cover. The approach is aimed at saving lives and ensuring that commercial and industrial property will receive appropriate protection. The new regime will incorporate requirements from relevant EC Directives and will ensure that we meet our obligations under EC legislation in respect of fire safety.

23. One of the aims of the proposed reform is to reduce burdens on business that are caused by the existence of multiple, overlapping general fire safety regimes – and consequently overlap of the responsibilities of enforcing authorities. The reform will consolidate and rationalise much existing fire safety law (currently scattered across a large number of statutes and secondary legislation) into one Bill and associated regulations. In doing so it would reduce the number of enforcing authorities dealing with general fire safety matters. The reform will maintain and enhance the protection afforded to users of premises (and others who might be affected by a fire on the premises) by the existing legislation.

Role of the Fire and Rescue Authority

24. The reform should be seen as an important part of our programme to switch the emphasis towards preventing fires from happening in the first place, and putting risk assessment at the heart of our approach to the work of the Fire and Rescue Service.
25. Fire and Rescue Authorities will be given a core duty to be the principal enforcing authority for the new fire safety legislation and the Bill places a duty on enforcing authorities to enforce the fire safety elements of the Bill. In doing so, they must have regard to any guidance Scottish Ministers may issue on the subject.

26. Fire and Rescue Authorities will be expected to:

- Ensure that enforcement of the fire safety legislation and an associated programme of inspection and audit, forms part of their Integrated Risk Management Plans;
- Ensure that their fire safety enforcement programme is targeted to address risk, with the premises which pose the greatest risk to people from fire, receiving the highest priority.
- Fulfil their enforcement role in line with the provisions of the Fire (Scotland) Bill and the Regulations and Guidance issued by Scottish Ministers.
- Engage in partnership working, relevant stakeholders such as other enforcing authorities, licensing authorities and other registration organisations.
- Collaborate with the other Scottish Fire and Rescue Authorities to assist in achieving consistent enforcement within Scotland and as an aid to achieving Best Value.
- Embrace the principles of good enforcement as specified in the Cabinet Office Enforcement Concordat.

Role of the Scottish Executive

27. Through the Fire (Scotland) Bill, the Scottish Executive is simplifying, rationalising and consolidating existing legislation. It is providing for a risk based approach to fire safety allowing more efficient, effective enforcement by the fire and rescue service and other enforcing authorities.

The Scottish Executive will:

- Following consultation with stakeholders, issue and keep up to date, guidance documents for the purpose of providing practical advice to relevant businesses and other duty holders.
- In consultation with stakeholders, keep the regime under review and ensure that, where necessary through Regulation, changes are brought forward to maintain and improve fire safety standards and conform with our EC obligations.
- Ensure that obligations under the Fire (Scotland) Bill e.g. Determination of Disputes, are carried out in line with the provisions of the Bill and associated regulations and guidance.

Crown premises

28. Enforcement Officers within HM Fire Service Inspectorate will enforce fire safety law in Crown premises i.e. premises owned or occupied by the Crown. Although the Crown cannot be held criminally liable, the Fire (Scotland) Bill provides for recourse to the Court of Session to declare unlawful, a contravention by the Crown.

29. Intelligence available from Fire and Rescue Authorities as a consequence of attending emergency incidents will benefit HM Fire Service Inspectorate Enforcement Officers when determining their enforcement priorities for Crown premises. Similarly, Fire and Rescue Authorities can seek information regarding Crown premises from HM Fire Service Inspectorate Enforcement Officers, and this will inform their risk management plans and also inform intervention strategies for firefighters.

30. Fire and Rescue Authorities should therefore work closely with HM Fire Service Inspectorate Enforcement Officers to exchange relevant information.
Chapter 3: Intervention

Introduction

1. The Scottish Fire and Rescue Service has a deserved reputation for providing an effective and professional response to fires and other incidents.

2. Although Fire and Rescue Authorities will now place greater emphasis on preventing fires from happening in the first place, the need for a prompt and effective response to incidents that do occur will remain. Fire and Rescue Authorities will need to develop their capacity to respond to new challenges such as terrorist incidents in accordance with the emerging needs of the national New Dimension programme.

Statutory duties

3. The Fire (Scotland) Bill places two core intervention duties on Fire and Rescue authorities: the extinguishing of fires, with the aim of protecting life and property, and responding to road traffic accidents. In addition, the Bill gives Ministers the power to make an order conferring additional functions on the service so that it is under a duty to respond to other, non-fire emergencies, such as terrorist incidents, flooding, and major transport accidents. Ministers intend to make such an order as soon as possible, subject to the passage of the Bill through Parliament, and will be consulting stakeholders in advance.

Effective response

4. In some areas it may be appropriate to retain current operational procedures and practices; in others, it will be necessary to make changes. Fire and Rescue Authorities should ensure a professional and effective response is available to meet the range of incidents which they may encounter, working together as appropriate. This includes ensuring that:

- staff are trained to professional standards, and are familiar with risks;
- effective command and control systems are in place;
- incident commanders have the appropriate training and experience; and
- the right equipment is available.

Management of Health and Safety

5. Health and safety legislation is largely reserved to the UK Parliament, and applies to Scottish Fire and Rescue Authorities. Fire and Rescue authorities are expected to care for the safety and health of all staff, and of others at risk from operations, particularly when dealing with emergency incidents.

6. It is important that good practice is shared between Fire and Rescue Authorities, managers and front-line staff, across Scotland and with Fire and Rescue authorities observing the same generic requirements in other parts of the UK.

7. HMFSI will work together with the HSE and the Chief Fire Officers’ Association (CFOA) on an ongoing basis to provide a national lead and co-ordination in the generation of health and safety guidance. This is particularly appropriate in the case of generic risks and in the identification of common solutions to emerging challenges. In conjunction with ODPM, we aim to risk assess the Operational Training and Development Manual in Autumn 2004; revise guidance on dynamic and generic risk assessment in Spring 2005; and improve the quality of accident and injury data and its collection arrangements in Autumn 2005.
8. The UK Health and Safety Task Group, chaired by the HMFSI for England and Wales - and on which HMFSI (Scotland) and all major UK stakeholders are represented - meets quarterly and reports against an agreed business plan. The Group aims to develop policies and strategies to support the management of health and safety in the Fire and Rescue Service; and ensure that the risks arising from Fire and Rescue Service activities are properly managed.

9. Fire and Rescue Authorities should have regard to guidance produced by the Health and Safety Task Group, share local good practice and explore opportunities for effective collaboration.

Utilisation of resources

10. The Executive believes that there is scope to improve the efficiency of Fire and Rescue Authorities in responding to incidents while maintaining the highest standards.

11. Traditionally, pumping appliances, with predetermined numbers of firefighters and officers, offered the initial response to emergency incidents. Occasionally specialist vehicles such as aerial appliances supplemented the response.

12. This overly prescriptive, blanket response can over-provide, particularly where hoax calls, signals from automatic fire alarm systems and fires clearly defined as being of limited extent are concerned. It can also mean that fewer resources remain available for incidents where the risk to life and injury is greatest - often in the home – and for other vital duties such as community fire safety.

13. Because of the introduction of IRMPs and the removal of the nationally recommended standards of fire cover and associated guidance, authorities will in future have more flexibility. Modern, intelligent information systems mean that risks can be assessed more effectively allowing a more appropriate and better-targeted response. Fire and Rescue Authorities should:

- have regard to HMFSI (Scotland) Guide to Reducing the Number of False Alarms from Fire Detection and Fire Alarm Systems

- where appropriate, working with other Fire and Rescue Authorities, other emergency services and other relevant agencies, take steps to drive down the number of hoax calls and unwanted signals from automatic fire alarms; and

- log the callers and properties that create the greatest demand, assess the risks associated with them, and decide upon action to achieve improvement, which may include consultation with the person responsible for the property, increased fire prevention work or a changed level of response.

14. The principal aim of an emergency response is to save lives and reduce the number and severity of injuries. If outcomes can be improved by adapting services or working with other service providers this should be pursued. For example, some authorities are already using defibrillation equipment and are engaged in co-responder schemes, which could save the lives of people who have suffered cardiac arrest, including firefighters. Fire and Rescue Authorities should therefore explore the benefits of implementing co-responder schemes in partnership with other agencies.

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1 Further information about the work of the group can be obtained from Diane Bell (020 7944 5449 or diane.bell@odpm.gsi.gov.uk).
Mutual assistance

15. Fire and Rescue Authorities have for many years provided mutual support across borders for fire-related emergencies through the shared availability of fire crews and appliances.

16. It is important that this best practice is universally applied. Local, regional and national boundaries should not stop Fire and Rescue Authorities from delivering the most speedy, effective and efficient response possible.

17. Authorities should, therefore, design their IRMPs to ensure that, so far as practical, there is greater shared use of resources, particularly, for example: the services of senior officers; pumping and non-pumping appliances, such as those used for aerial access; equipment used in traffic accident response and the bulk supply of water; and specialist support services such as rope rescue teams.

Incident Management Protocols

18. Major fire-related incidents, terrorist attacks or large environmental disasters have no respect for authority boundaries. Nor can they be dealt with by one emergency service working in isolation. Increasingly, they demand coordinated planning, operational cooperation and compatibility in response management between Fire and Rescue Authorities and other emergency and non-emergency responders, such as local authorities, environmental agencies or the Maritime and Coastguard Agency.

19. Fire and Rescue Authorities have an increasing role to play in dealing with these incidents. If enacted, the Fire (Scotland) Bill will give statutory effect to the wider role of Fire and Rescue Authorities in responding to emergency incidents other than fire. And the proposed Civil Contingencies Bill (see chapter 6) includes provision to require Fire and Rescue Authorities to work with other emergency services in producing comprehensive plans for major and catastrophic incidents.

20. Common emergency management policies, practices and procedures are essential. To ensure a consistent operational approach the Service should adopt the principles and procedures detailed in the Fire Service Manual Vol. 2: Fire Service Operations - Incident Command. This will ensure the adoption nationwide of common arrangements and the safe and effective management of operations. CFOA and HMFSI will work together to maintain the Manual’s currency in response to new threats and emerging issues. The Manual, together with the publication, Dealing with Disaster Together provides the template for regular inter-service training and exercising and will form an integral part of the training at the Scottish Fire Services College. The UK Fire Service College will also provide a centre of specialist expertise in urban search and rescue and related major emergency incident techniques.

21. In accordance with the Civil Contingencies Bill, Fire and Rescue Authorities, where appropriate, should:

- work with other emergency services, authorities and agencies in the development of major emergency response management and recovery plans, and review all existing operational plans and policies;
- employ national incident command management systems to enable safe and effective emergency operations and joint service training; and
- adopt recognised good practice.

Fire Investigation

22. Fire investigation can provide an invaluable insight into the behaviour of fire, and therefore useful evidence on ways to manage risk.

23. Few Fire and Rescue Authorities are able to deploy adequate resources, at all times, to ensure effective fire investigation. This activity is one of many that should be delivered more effectively by Fire and Rescue Authorities working together through collaborative arrangements.

24. In the case of deliberate fires the lead authority will ultimately be the Police. In other cases the lead authority will depend on the circumstances and the initial fire investigation results. A degree of flexibility is necessary to allow the leadership at various stages of the investigation process to be shared, with the most relevant agency assuming the lead role as required. Formal protocols and Memoranda of Understanding are essential foundations for ensuring that the needs of all partners are considered. Subject to Parliamentary approval, the Fire (Scotland) Bill will provide formal powers for Fire and Rescue Authorities to investigate the causes of fires and the reasons for fire spread.

25. The Scottish Fire Investigation Forum are developing a national agreement on fire investigation between the Police, Fire and Rescue Service and the Forensic Science laboratories. This agreement will provide a framework for the development of local fire investigation protocols. Once this agreement is issued, Fire and Rescue Authorities should ensure that they have in place an appropriate local fire investigation protocol.

Contingency planning for any future industrial action

26. Drawing on the experiences of the recent national industrial action, contingency arrangements for the provision of emergency fire and rescue cover have been reviewed. Fire and Rescue Authorities will, in future, play a more significant part in contingency provision, including the supply of appliances and equipment and the effective deployment of available personnel. The Fire (Scotland) Bill provides the necessary powers for the purposes of public safety.

Control Rooms

27. Following an independent review of the future of fire control rooms in Scotland by the consultants Mott MacDonald, the Scottish Executive embarked on a public consultation on the report’s recommendation of a rationalisation from the present eight control rooms to one, two or three. Any changes in the light of the consultation will be taken forward in discussion with Fire and Rescue Authorities and other stakeholders.

Chapter 4: the workforce

Introduction

1. The Executive recognises that Fire and Rescue Authorities’ most valuable resource in the delivery of the new prevention and intervention agenda is the workforce. Fire and Rescue authorities’ staffing requirements will in future be driven by the need to implement their Integrated Risk Management Plans. Against that background, this chapter sets out the steps the Executive will take, and what we expect of Fire and Rescue authorities, to ensure that: employment opportunities within the Fire and Rescue Service are open to all those who can make an effective contribution; that all those working within the service have opportunities to fulfil their potential; and that all staff are treated fairly.

The Integrated Personal Development System (IPDS)

2. As noted above, IRMPs will determine authorities’ staffing requirements. To ensure that those requirements can be met by new trainees and existing staff with the right skills, the service is moving away from its traditional rank-based structure to a competence-based structure defined by seven “roles”.

3. The Integrated Personal Development System (IPDS) is a major UK initiative to provide a framework that will allow the Service to implement “best practice” human resource development processes. The Scottish Executive recognises the benefits of the IPDS and views its implementation across the Scottish Fire & Rescue Service as a key issue.
4. The IPDS is a framework designed to encompass the development needs of all Fire & Rescue Service staff from the point of attraction and entry to retirement. It embraces the full range of the service's activities and is intended to enable people to attain and maintain the level of competence required for the demands of their role.

5. The Scottish Executive encourages a collaborative approach to the implementation of the system and has provided the Scottish Fire & Rescue Service with central support and advice via an ‘IPDS Team’. The ‘Team’ is based at the Scottish Fire Services College.

6. The ‘Team’ is managed and administered by the Scottish Executive and together with staff seconded from the Service, they work in partnership with nominated staff from each of the eight Scottish F&RSs. The partnership model includes the administration of one Approved Centre for the awarding of Scottish Vocational Qualifications (SVQs) and the development of Programmes to agreed national standards as part of a Scottish Learning and Development Strategy.

7. The Learning and Development Strategy was published by the Director of Fire Service Training* in October 2003. This strategy sets out a series of objectives for the implementation of the IPDS (Annexe x refers).

8. In providing continuing support for the implementation of the IPDS, the Scottish Executive expects Fire & Rescue Authorities to:

   - maintain a collaborative approach to the implementation of the IPDS in order to maximise the benefit from available resources;
   - consider the objectives in the Learning & Development Strategy when preparing their annual plans;
   - ensure that systems are adopted and managers are trained in order that staff can be assessed fairly against national standards;
   - record workplace assessment using the Scottish browser based personal development record system;
   - adopt nationally agreed criteria for the assessment of an individuals potential for entry to the service and for their ability to perform in future roles
   - prepare 3-5 year plans for the recruitment of staff in order to inform the SFSC planning process for the provision of induction training.

Recruitment, appointments and promotion

9. We have previously made clear our intention to open up the service so that it is more representative of the communities it serves. Women and people from ethnic minorities are currently under-represented in the service. Fire and Rescue Authorities should therefore take steps to publicise recruitment opportunities with the aim of attracting more applicants from those sections of society.

10. Appointment to the Service is currently specified in statutory regulations, providing for a single point of entry and inflexible arrangements for the accelerated promotion of talented staff. We are in the process of amending the regulations to address those issues. The revised regulations will:

   - confirm the principles of IPDS, including the replacement of ranks with roles;
   - remove potentially discriminatory requirements e.g. for time-serving in certain ranks;
   - remove the single level entry system for operational staff and facilitate multi-level entry, allowing for suitable staff to be recruited directly into roles other than firefighter;
   - enable in-service staff with potential to progress more quickly; and
   - make possible the introduction of the new standardised national recruitment and selection tests.

11. It is envisaged that the amended regulations will take effect by the end of 2004. Subject to the passage of the Fire (Scotland) Bill, it is our intention to revoke the amended regulations and set out in the final
version of the Framework the general approach we expect authorities to adopt in making appointments and promotions, which will be similar to the regime introduced by the revised regulations.

12. Fire and Rescue authorities:

- must adhere to the requirements for the appointment of operational staff as set out in the Fire Services (Appointment and Promotion) (Scotland) Regulations 2004, until such time as they are repealed; and

- should, subject to the enactment of the Fire (Scotland) Bill, act in accordance with the guidance issued by the Executive and employ best practice in the operation of appointments and promotions for all staff in line with legal requirements and the principles of IPDS.

13. The Scottish Executive aims to ensure consistency in recruitment to Fire & Rescue Authorities and will continue to collaborate with the Office of the Deputy Prime Minister (ODPM) on the development of national (UK) firefighter selection tests. The test criteria should be available to Fire & Rescue Authorities from Spring 2005. Fire and Rescue Authorities should adopt the national criteria for selection tests (when available) with a view to them being used as the foundation to the first Assessment & Development Centre (ADC) process within the IPDS framework. ADCs can be resource intensive and Authorities should therefore seek to collaborate in order to ensure consistency of approach.

Diversity, fairness and equality of opportunity

14. Fire and Rescue authorities must comply with the requirements of anti-discrimination legislation. This includes, from 1 October 2004, the employment provisions of the Disability Discrimination Act 1995 (DDA). The DDA requirements have been reflected in revised medical guidance to FRAs issued by the Executive under cover of Scottish Fire Service Circular [x], and in separate guidance issued by the Chief Fire Officers Association in conjunction with the Disability Rights Commission. HMFSI will supply central support to authorities. The Inspectorate has appointed a Diversity and Cultural Change Advisor to assist the Fire and Rescue Service in making progress on the whole range of diversity issues.

15. Discussions are at an advanced stage between the Inspectorate and COSLA re the possible adoption of the Local Government Association “Equality Standard for Local Government”. This policy has already been embraced by the Fire and Rescue services in England and Wales and it appears to be most suitable for Scottish fire and rescue services. Adoption of this Standard would of course reduce duplication of work but most of all would achieve a single standard for the UK fire and rescue services and would also allow for benchmarking across the service. Stakeholders’ views on the adoption of this Standard and the possible resource implications would be most welcome. The Standard can be viewed at [web address].

The Scottish Fire Services College

16. The College will continue to be funded directly by the Scottish Executive as the centre for national training delivery. The College will however take on a new role, working in conjunction with the IPDS Team to determine alternative methods of delivery for a wider range of personal development opportunities. Three examples which are worthy of note are;

- the lead partner arrangements that the College has established with the Further Education Sector in Scotland
- the development of a Learning Management System (LMS)
- the development of e-learning modules

17. The SFSC will play a key role in the support framework for the IPDS and will work directly with the IPDS Team in providing a focal point in Scotland for;

- the securing of external quality assurance for the IPDS;
• consistency of approach in the delivery, accreditation and verification of development modules;
• the maintenance of agreed development programmes e.g. Trainee and Firefighter Development Programmes;
• the Scottish browser based personal development system;
• the development of Leadership & Management programmes
• training in Urban Search & Rescue and Mass Decontamination techniques
• the provision of Fire Safety development programmes
• the development of E-learning modules
• the creation of an E-college information platform

The SFSC objectives are detailed within the Learning & Development Strategy (Annex x refers) as published by the Director of Training in October 2003.

18. The Scottish Executive expects Fire & Rescue Authorities to;

• take ownership of the IPDS through continued support for, and participation in, the Scottish partnership model for implementation;
• support the implementation of the IPDS as a framework for personal and organisational development;
• value, plan and support staff development as an integral part of their strategic planning process;
• encourage personnel to value and take responsibility for their own learning and development and to recognise their role in the achievement of organisational objectives;
• commit to workplace and external learning opportunities for personnel undergoing development;
• to provide personnel with adequate access to IT in order to undertake elements of development programmes;
• assist the SFSC in its quest to be at the centre of excellence
• afford secondment opportunities to the SFSC to personnel who demonstrate the ability to develop others

Flexible working

19. The June 2003 Pay and Modernisation Agreement provides for flexible working, including the use of pre-arranged voluntary overtime, mixed crewing of appliances, and for wholetime staff to work on the retained duty system in addition to their wholetime duties. Fire and Rescue authorities should consider the use of these arrangements if it is appropriate to fulfil their Integrated Risk Management Plans. As provided for elsewhere in the June 2003 Agreement, working arrangements will have regard to the special circumstances of individual employees and be family friendly.

Discipline

20. The Fire Services (Discipline) (Scotland) Regulations 1985 would be abolished on enactment of the Fire (Scotland) Bill. From that date Fire and Rescue Service staff will no longer have a right of appeal to the Scottish Ministers on awards of dismissal, the requirement to resign or reduction in rank. Staff against whom a charge has been laid prior to enactment of the Bill will, however, retain the right of appeal. Once the regulations have been abolished, fire and rescue services will be expected to implement disciplinary procedures which are based on Advisory, Conciliation and Arbitration Service (ACAS) best practice guidance.

Absence management / Ill Health retirements

21. For several years, Fire and Rescue Authorities have looked to ameliorate absence levels through sickness by improving the occupational health and fitness of staff. This has included the setting of targets by individual brigades. The Executive will consider whether it would be appropriate to set a national target for reducing sickness absence. Fire and Rescue authorities need to take effective steps to improve sickness management and reduce ill health retirements.

22. Fire and Rescue Authorities should:
• ensure that their occupational health arrangements are efficient and effective;
• ensure that full consideration is given to the health and fitness of staff and that they are assigned to appropriate roles; and
• ensure that any targets set by the Executive for absence management are met.

Pay

23. The Scottish Executive has no direct locus in the arrangements for negotiating pay in the Fire and Rescue Service, which is currently a matter for the local authority employers and the representative bodies. However, as the main source of funding for the service, the Executive has a clear interest in ensuring that the negotiating arrangements operate effectively.

24. We have made clear our view that Scotland should remain part of the UK-wide negotiating machinery for fire-fighter pay – the National Joint Council. We hope that voluntary reforms can be made to the NJC, as envisaged in the June 2003 Pay and Modernisation Agreement. But we have concluded that it would be prudent to make provision for a statutory negotiating body in the event that voluntary reforms do not come about. Accordingly, the Fire (Scotland) Bill would confer a power on Scottish Ministers to establish, and issue guidance to, a statutory negotiating body.

Pensions

25. Whilst primary legislation in respect of pensions is a reserved issue, powers to make an order setting out the details of pension arrangements for fire-fighters have been executively devolved to Scottish Ministers. We have made clear our intention to maintain a UK-wide approach to fire-fighters pensions, and are working closely with the Office of Deputy Prime Minister in their review of pension arrangements. Work is under way on the development of new pension arrangements which will reflect: the changes in the nature of fire-fighting duties under modernisation proposals; the changes in the regulatory and tax framework for pensions generally; and equality and diversity issues. Proposals for consultation were issued by ODPM on a UK basis on 13 October 2004 and it is envisaged that any new pension scheme would be operational from April 2006.

26. The order-making powers under which Scottish Ministers can set out pensions arrangements have recently been repealed and re-enacted by the UK Parliament. It is likely to be necessary to make an order under the Scotland Act 1998 to give Scottish Ministers the ability to make new statutory arrangements for fire-fighters pensions. However, Scottish Ministers’ powers to modify the current pension scheme remain unchanged.

Fire-fighters on the retained duty system

27. Scotland has a higher proportion of retained and volunteer fire-fighters compared with other parts of the UK. For example, two brigades (Dumfries & Galloway and Highland & Islands) having only one wholetime station, with the vast majority of staff being either on the retained duty system or classified as auxiliaries/volunteers. The Executive greatly values the contribution that these staff can make to the protection of the communities in which they live. It is right that that contribution has been recognised in the June 2003 Pay Agreement which provides for the pay of staff on the retained duty system to be equalised with that of wholetime staff.

28. In recent years, HMFSI has commissioned a programme of research to investigate ways in which firefighters on the retained duty system can become more integrated within the Scottish Fire Service. The second of two reports on this research was published in 2003, and made a number of detailed recommendations (set out at Annex y). We will work with Fire and Rescue authorities to implement those recommendations. In particular, we will expect staff on the retained duty system to be given the same opportunities as their wholetime counterparts to participate in the Integrated Personal Development System and undertake development programmes, commensurate with the requirements of individual authorities’ IRMPs.
Chapter 5: Finance

Introduction

1. This chapter sets out the core financial support which the Executive will provide to the Fire and Rescue Service over the Spending Review 2004 period, and the arrangements for distribution of those resources. It also describes the Executive’s expectation that authorities generate efficiencies as a result of the modernisation of the service.

Grant Aided Expenditure

2. The overwhelming majority of funding for Fire and Rescue authorities is provided by the Executive through Grant Aided Expenditure (GAE) revenue funding. These resources are intended to cover staff pay costs, running costs and pensions costs. Since devolution, the Executive has provided above-inflation increases in the level of fire GAE.

<table>
<thead>
<tr>
<th></th>
<th>2000/01</th>
<th>2002/03</th>
<th>2003/04</th>
<th>2004/05</th>
<th>2005/06</th>
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<tbody>
<tr>
<td></td>
<td>187m</td>
<td>202m</td>
<td>212m</td>
<td>247m*</td>
<td>262m*</td>
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*excluding transitional funding (see paragraphs 4-6 below)

3. On 29 September 2004, the Executive announced its pending plans for the Spending Review 2004 period – i.e. from 2005/06 to 2007/08. This included increases in the level of fire GAE, as shown in the table below.

<table>
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<tr>
<th></th>
<th>2005/06</th>
<th>2006/07</th>
<th>2007/08</th>
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<tr>
<td></td>
<td>276m</td>
<td>282m</td>
<td>291m</td>
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These figures include allocations of transitional funding (see paragraphs 4-6 below)

On the previously announced 05/06 baseline of £262m, this represents an increase of 11.35% over the Spending Review period. In the 10 years to the end of 2007/08, GAE levels will have increased by £114m.

Transitional funding

4. The Executive has always made clear its position that any above-inflation pay increase in the Fire and Rescue Service must be self-financing over time. However, the Executive has acknowledged that there would be additional up-front pay costs to Authorities as a result of the June 2003 Pay and Modernisation Agreement, and that Authorities would not immediately be able to absorb those additional costs. Accordingly, the Executive made a commitment in 2003 that we would provide authorities with transitional funding to assist with those costs. The release of the funding was subject to two conditions: the satisfactory conclusion of negotiations between the local authority employers and the Fire Brigades Union on a number of detailed issues set out in the June 2003 Agreement, and verification by the Accounts Commission that satisfactory progress was being made with the modernisation of the service.

5. Following ratification of the June 2003 agreement in August 2004, and publication of two Accounts Commission reports in March and October 2004 which indicated that progress was being made with modernisation, the Executive has confirmed that it will release a package of transitional funding to cover additional pay costs incurred in the period 2003/04 – 2007/08. The package includes the release of an initial £16.8m in 2004/05, as follows

- £10m in respect of wholetime and control staff pay costs
- £1.5m in respect of additional pensions costs
- £2.3m in respect of pay parity for part-time fire-fighters, excluding Highland & Islands
- £3m in respect of Highland & Islands development programme, and pay parity for its part-time fire-fighters
6. Over the Spending Review 2004 period, the transitional funding levels above will be maintained for pensions and retained pay parity, in recognition that it will be difficult for Fire and Rescue authorities to make significant savings in those areas. The phased funding for Highland & Islands’ development programme and pay parity will be subject to the requirements of the Authority’s IRMP. The transitional funding in respect of additional wholetime and control staff pay costs will be gradually reduced over the Spending Review period so that by 31 March 2008 authorities will be expected to have absorbed the additional costs by making savings through modernisation as agreed by the parties to the June 2003 Pay Agreement.

Distribution of GAE

7. The current arrangements for the allocation of the overall GAE “pot” to individual Authorities are to a large extent based on the number of uniformed staff specified in the Authority’s establishment scheme. In turn, those staff numbers are derived from the need to comply with the recommended national standards of fire cover (see paragraph 4 of chapter 2). With introduction of IRMPs from 1 April 2005, and the withdrawal of the recommended national standards, there will be a need for a fundamental review of the distribution methodology, so that resources are allocated according to the relative needs identified in IRMPs.

8. An official-level Working Group chaired by the Executive and including representatives from the Convention of Scottish Local Authorities and the Chief Fire Officers Association has been established to review the current arrangements. The Working Group has concluded that, until such time as meaningful IRMP data is available, the present methodology should continue to be applied. However, in reaching this conclusion the Group identified an anomaly in the present methodology whereby authorities are financially penalised for reducing the number of uniformed posts. To address this issue, the Group has prepared an interim solution under which GAE allocations for the SR2006 years will be calculated on the basis of establishment figures used for the SR2004 allocations. Over the period, the Group will consider what further reforms are necessary in the light of the implementation of IRMPs.

9. The pensions element of GAE will continue to be determined by a predictive methodology introduced in 2004/05, which replaced the former “historic cost” methodology.

Capital allocations and prudential borrowing

10. The Executive provides capital allocations to Fire and Rescue Authorities for both general capital expenditure and for specific projects. Until 2004/05, these allocations were in the form of consents to borrow under section 94 of the Local Government (Scotland) Act 1973. From 2004/05, a new system for funding Fire and Rescue Authority capital spending was introduced, as provided for in the Local Government in Scotland Act 2003. The new “prudential” arrangements included the abolition of Section 94 consents, and their replacement with cash grants. In addition, each fire and rescue authority is now able to decide its own level of capital spending within broad limits, having taken its own judgement about the affordability of the repayments.

11. Total capital allocations to fire and rescue authorities since 2000 are shown in the table below.

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<th>2000/01</th>
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<tr>
<td></td>
<td>19.6m</td>
<td>22.6m</td>
<td>23.6m</td>
<td>23.6m</td>
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12. The Executive’s budget announcement on 29 September 2004 included an annual increase in the total capital allocation of £1m to enhance the fire service’s response in Scotland to the increased threat from global terrorism. The table below sets out the revised allocation.

<table>
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<th>2005/06</th>
<th>2006/07</th>
<th>2007/08</th>
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<tbody>
<tr>
<td></td>
<td>23.6m</td>
<td>24.6m</td>
<td>24.61m</td>
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13. The Executive distributes capital resources in three tranches:

- An amount is “top-sliced” from the total allocation, and authorities are invited to bid for resources to fund specific projects. The total amount of funding available for top-slice bids can vary from year to year. In 2004/05, it amounted to £6.5m.
- Fire and Rescue authorities receive a formula-based allocation. The formula is based on a relative assessment of brigades’ capital needs by taking the numbers of fire stations, vehicles and personnel in each brigade as indicators of long-term needs. The total amount available for formula distribution has remained constant over the Spending Review 2002 period at £15.6m.
- Ministers can decide to retain a portion of the total capital allocation in order to fund projects which will benefit all 8 authorities, e.g. the Firelink radio communications project and the New Dimension programme (see chapter 6).

14. This centrally-held budget is used by the Executive to fund the Scottish Fire Services College at Gullane, East Lothian, and for funding attendance by Scottish Fire and Rescue Service staff at courses held elsewhere in the UK, principally at the Fire Service College in Gloucestershire. The budget is also used to fund the Executive’s community fire safety campaign and promotional fire safety material. The allocations available under this budget heading have been maintained over the SR2002 period at around £7m per annum. Similar amounts will be made available over the Spending Review 2004 years.

15. The range of calls to which Fire and Rescue Authorities respond goes beyond dealing simply with fires. Responding to special service calls, ranging from road traffic accidents to stalled lifts and people locked out of their homes, accounts for around 10% of the calls which the Service attends.

16. Authorities have had a power under section 3 of the Fire Services Act 1947 to charge for dealing with these special service calls. As currently proposed, section 15 of the Fire (Scotland) Bill preserves a power to recover the full costs incurred. We are in the process of confirming all the activities for which a charge is currently made by authorities in Scotland and will specify them in the first Order made under the section 15 power.
respond at present, but for which they have no statutory requirement to plan, train or equip. Authorities are likely, therefore, to be required to make provision for:

- removing chemical, biological or radioactive contaminants from people (using the mass decontamination equipment provided under what is known as the New Dimension programme) and capturing any water used to remove such contaminants;

- incidents involving search and rescue. This would include any terrorist or other incident where there is the potential for persons to be trapped, or where it is necessary to use search and rescue equipment to detect individuals;

- major flooding incidents where there is a serious threat to human health or welfare. For example, firefighters would be needed to assist in the rescue of people trapped by large floods and their transfer to safety. This excludes smaller and more localised flooding events, such as a burst water main; and

- serious transport incidents, other than road traffic accidents.

We will consult widely on proposals before making any Order under the Bill.

4. By Order, following consultation, the Bill would also require authorities to use and maintain any equipment as specified by Scottish Ministers. This would include mass decontamination and search and rescue equipment provided under the New Dimension programme, together with the Firelink radio system (see paragraphs 17-18).

Civil Contingencies Bill

5. Part 1 of the Civil Contingencies Bill, currently before the UK Parliament, along with the accompanying regulations and guidance, will provide a statutory basis for development and improvement of the existing framework to reinforce cooperation between the emergency services, local authorities and other front line responders at the local level. The Bill aims to ensure that they can deal with the full range of emergencies from localised major incidents through to catastrophic incidents. Part 1 also creates a statutory duty on the part of local bodies including Fire and Rescue Authorities to work together in preparation for and response to emergencies. Hence, once the Bill is enacted, Fire and Rescue Authorities will be under a duty to work in cooperation with other emergency services, local authorities and other front line responders at the local level to:

- assess the risk of an emergency occurring;
- put in place emergency contingency plans and conduct exercises to ensure that they can both prevent and respond to emergencies;
- establish business continuity management arrangements, so that an authority can function in an emergency;
- share information with other local emergency responders; and
- inform the public about civil protection in order to reduce, control or mitigate the effects of emergencies.

Warn the public about emergencies that may occur or have occurred

6. Part 2 of the Bill, Emergency Powers, would give the Secretary of State powers to make temporary legislation requiring Fire and Rescue Authorities, and other local responders, to act in order to deal with the most serious of emergencies. Part 2 seeks to address a much wider range of circumstances than those addressed by the present legislation, which dates from 1920, reflecting the different risks and new threats we face today. It would broaden the definition of an emergency to include events and situations which threaten serious damage to human welfare, or to the environment or security of the United Kingdom. Part 2 of the Bill also proposes a range of safeguards against the possibility of misuse to
ensure, amongst other things, compliance with Human Rights legislation and effective parliamentary scrutiny.

Resilience

7. At a national level clear coordination arrangements are in place to ensure successful emergency planning. At a UK level the Home Secretary has overall responsibility for safety and security. The Cabinet Office coordinates the development of resilience policy and procedures across Government and seeks to identify and prevent potential disruptive challenges. In Scotland, Scottish Ministers, in most instances, have a responsibility for leading on planning and responding to emergencies.

8. The Scottish Emergencies Co-ordinating Committee (chaired by the Head of the Justice Department) meets as a core group 3 times annually and brings together central government agencies, Military and representatives of local responders, including the emergency services and local authorities. The SECC works to improve planning and response to emergencies in Scotland and improve communications between the centre and the 8 regional Strategic Co-ordinating Groups and local responders. Participation by representatives of Fire and Rescue Authorities in the SECC continues to help put in place effective arrangements for management of large-scale emergencies. Fire and Rescue Authorities are represented at SECC by the current chair of CFOA in Scotland.

9. In the event of a larger scale emergency or to plan for a specific event, such as G8, a sub-committee of SECC may be formed to coordinate the Scottish response to an event which has the potential to stretch local responders or to impact over a wide area. If enacted, the Civil Contingencies Bill, Part 2 Emergency Regulations, will enable Ministers to appoint a Scottish Emergency Coordinator, if required, to help coordinate activities under any regulations made in response to an emergency. These structures will provide the platform for coordinating both preparation and response in relation to civil contingencies in Scotland. They will provide coordination and facilitation functions to a disruptive event, while - under direction - any response will remain, for the most part, with local responders.

New Dimension

10. To build resilience in the aftermath of the attacks of 11 September 2001, the UK Government launched the New Dimension programme. This programme seeks to ensure that Fire and Rescue Authorities are sufficiently trained and equipped to deal safely and effectively with major CBRN and conventional terrorist incidents on a national scale. In Scotland, the Executive have invested an initial £5 million to purchase equipment and specialist vehicles to provide the fire service with an enhanced operational capability and a greater level of resilience to safely:

- Undertake large scale search and rescue of people trapped in collapsed structures or fires.
- Rescue persons exposed to chemical, biological or radiological materials.
- Carry out mass decontamination of persons contaminated by chemical, biological or radiological materials in support of the Scottish Executive Health Department and Scottish Ambulance Service.
- Sustain these operations over extended duration across the full range of climatic conditions likely to be encountered.
- Enhance the fire service’s ability to deliver its services to the community when dealing with a wide variety of major incidents that occur more regularly, such as road traffic accidents involving heavy vehicles, chemical incidents/releases, gas explosions, collapsed structures and serious flooding.

11. The Scottish fire service collaborative project was designed around providing for an increase in each individual brigade’s capacity to make a sustained first response to a variety of incidents either in their own area or in support of another brigade by enhancing the existing provision of:

- Specialist, search and rescue cameras and listening devices.
• Hydraulic cutting, spreading, shoring and heavy lifting equipment.
• Concrete breakers, stone cutters and specialist sawing equipment.
• Decontamination and firefighter, protection and detection.
• Water related safety and rescue equipment.

These resources have also been enhanced by the deployment of new Scottish Major Incident Support Vehicles, based in the Grampian, Lothian and Borders and Strathclyde fire areas, which will provide a flexible response option to a wide variety of incidents by providing more specialist heavy rescue, mass decontamination, protective equipment and specialist shoring, lifting and cutting packs.

12. The Scottish Executive will continue to collaborate and where necessary, support Scottish Fire Authorities in the provision of new vehicles and equipment, on a risk assessment basis strategically around the country to provide an effective, coordinated Scottish and National responses to any large-scale incident.

13. The Executive is keen to ensure a coordinated response from the Fire and Rescue Service in the event of a major emergency and in collaboration with all the Scottish Fire and Rescue Authorities, a Mutual Aid Agreement, which will enable individual authorities to ask for assistance from another authority in the event of a major incident has been developed and Fire and Rescue Authorities will be asked to sign up to this agreement.

14. The Fire and Rescue Services Bill proposes to allow Scottish Ministers to direct a Fire and Rescue Authority to participate in such a scheme, but only where authorities are unable to come to an agreement about forming a scheme and where one of the authorities requests intervention.

Training

15. National New Dimension Urban Search and Rescue training facilities have been built at the Fire Service College, at Moreton-in-Marsh and training courses began in April 2004. These specialist courses enhance the Urban Search and Rescue training which is being provided at the Scottish Fire Service College at Gullane.

16. All New Dimension training for firefighters is based on risk assessment carried out by the New Dimension programme in consultation with local fire and rescue services. Initial and ongoing centrally provided training on both mass decontamination and urban search and rescue has been funded by the Executive as part of its investment in New Dimension in line with existing arrangements.

Firelink

17. The Executive is committed to assisting Fire and Rescue Authorities in the procurement of a new UK national radio system for the Fire and Rescue Service (the Firelink radio project) in order to increase resilience and provide interoperability within the Service and with the other emergency services. It will replace the radio systems currently owned and managed by authorities. Fire and Rescue Authorities will contribute to the revenue costs of the new radio system. We will discuss with Fire and Rescue Authorities the scale of their contribution upon contract award.

18. It is planned that there will be a phased roll-out of the new radio system over a X year period. Firelink, and New Dimension project teams are working cooperatively to improve the capacity of the Fire and Rescue Service to prepare for and respond to catastrophic incidents. A fully complementary approach to the implementation of the projects has been developed, and they are now being managed as a single programme.
Chapter 7: performance

Introduction

1. This chapter sets out in broad terms the levels of performance that the Executive expects of Fire and Rescue Authorities, arrangements for monitoring performance, specific areas for joint working by Authorities, and the assistance the Executive will provide to Authorities in specified areas.

Reducing deaths and injuries from fire

2. As noted earlier in the Framework, Scotland has an unenviable record of fire deaths. Although the underlying trend over the last 15 years indicates that fire fatalities are decreasing significantly, it must remain a priority for the Fire and Rescue Service, working with its partners, to improve on our position. We believe that the modernisation of the service and the greater emphasis on fire prevention will help to do that.

Targets for reductions in deaths and injuries from fire

3. The Executive welcomes the fact that Fire and Rescue Authorities plan to include targets for reductions in deaths and injuries from fire within their Integrated Risk Management Plans. Authorities should ensure that such targets are kept under annual review, and publish actual performance against those targets.

Response times

4. The recommended national standards of fire cover specify the speed and weight of attach which should be achieved in response to incidents, according to the type of property involved. The Executive will withdraw the recommended national standards from 1 April 2005, when IRMPs will be implemented for the first time in Scotland, and authorities will have greater flexibility to determine the deployment of resources. However, the Executive acknowledges that during the transitional period following the introduction of IRMPs, there may be a need to monitor performance to a common standard until meaningful data is available from IRMPs to facilitate alternative methods of performance assessment. HMFSI is therefore discussing with CFOA the possibility of a "benchmark" speed of response under normal circumstances for the first appliance to attend an incident (fire or non-fire). This would be similar to the current recommended standard. We will set out the recommended benchmark, if appropriate, in the final version of the Framework.

Best value

5. Our policy paper recommended that Fire and Rescue Authorities should be covered in the proposed Best Value regime. Accordingly, the Best Value duty which was subsequently set out in Part 1 of the Local Government in Scotland Act 2003 applies to Fire and Rescue Authorities, as well as to other local authorities. It requires them to make arrangements to secure continuous improvement in the performance of their functions and to have regard to economy, efficiency, effectiveness and equality of opportunity in the delivery of services. The Executive has published statutory and non-statutory guidance to local authorities on best value, and Fire and Rescue authorities are expected to take full account of the guidance in carrying out their functions.

6. Our policy paper also identified the need to move from local co-operation to a strategic approach if the communities we serve are to be convinced that their needs are being reflected and that service delivery is fully satisfying Best Value. Fire and Rescue Authorities are therefore expected to seek and take opportunities for collaboration with other authorities, stakeholders and the wider community.

Procurement

7. A considerable amount of research has been undertaken into joint procurement. However, the results of this work so far have almost always pointed to the establishment of some kind of Common Services Agency, and this is what we proposed in our October 2003 consultation document. The response to that
consultation clearly demonstrated that little support exists for such a body. Accordingly, alternative approaches which would still yield considerable efficiencies and savings are being considered. One such alternative is the recent ODPM proposal for a national Procurement Strategy (Fire Service Circular 42/2004) for England and Wales which is currently promulgated for consultation. We would welcome stakeholders’ views on the appropriateness of the Scottish fire and rescue services being part of this arrangement.

E-procurement

8. The Executive has established an e-procurement system (e-procurement Scotl@nd), a hosted, managed eProcurement service which is capable of being used by any public sector organisation in the Scottish public sector. Scottish Ministers believe that the benefits of eProcurement will be maximised by adopting a single system with the potential to be used by any organisation in the Scottish public sector. The service is provided by Cap Gemini Ernst & Young (CGEY) and based on the PECOS system from the technology providers Elcom. A programme team is co-ordinating the delivery of what is the world's first national, public sector electronic procurement service. Fire and Rescue Authorities are encouraged to consider participating in the scheme.

Monitoring performance

9. There are several bodies/agencies which monitor performance in the service. Discussions are taking place to achieve a more joined-up and collaborative approach to this area. HM Fire Service Inspectorate will of course continue to inspect individual F&RSs with the ultimate purpose of advising Ministers on the performance of fire and rescue authorities and their services in terms of meeting their statutory duties. However, the Inspectorate will also be assisting, supporting and, where necessary, encouraging authorities and their services to progress reforms which sustain and where possible improve the safety of the public and F&RS staff, and achieve Best value.

10. Wherever possible, inspections will involve other agencies/bodies. In particular, attempts are being made to combine Best Value Audits by Audit Scotland with the inspection process. Further discussions will take place to seek the views of the Health and Safety Executive on possible combined inspections/audits.

11. The overriding aim of the Inspectorate will not only be to advise Ministers but also to add value to the delivery of safer communities whilst still achieving best Value.

Environment

12. All fire authorities have a responsibility to achieve improved methods of operating which reduce the impact upon the environment. There are already a number of initiatives and policies which are achieving this aim e.g. vehicle types and fuel usage. More specifically, Fire and Rescue Authorities will be aware of the predicted climatic changes and the possibility of increased flooding and wildfire incidents, the impact those sorts of incidents can have upon communities. The economy and the environment are factors that Fire and Rescue Authorities will wish to consider in partnership with other agencies in terms of prevention and appropriate operational response.

Annex X
Scottish Fire & Rescue Service Learning & Development Strategy

1. In the workforce section of the ‘Scottish Fire Service of the Future’, the Scottish Executive (SE) gave details of the post of Director of Fire Service Training, the creation of a Central Training Advisory Committee (CTAC) and the drafting of a Training Strategy.

2. The CTAC first met in October 2001. Chaired by the SE’s Head of Police and Community Safety Group, the Committee membership is as follows;
3. The post of Director of Training was filled in August 2001. One of the Director’s main references was to produce a Training Strategy for the Scottish Fire Service. A document entitled ‘the Scottish Fire Service Learning & Development Strategy (SFSLDS) was presented to Firemasters and their representatives in October 2003.

4. Within the SFSLDS, a series of objectives are set which relate directly to the references of the Director of Training, the Principal of the Scottish Fire Services College and the IPDS Team Manager.

5. In the Section ‘Implementing the Strategy’, Scottish Fire and Rescue Services are asked to consider the content of the SFSLDS when developing their own service plans in relation to organisational development.

6. The CTAC endorsed the SFSLDS at their meeting in October of 2004 and confirmed that it should be highlighted as best practice within the National Framework. This follows on from Audit Scotland’s direct reference to the SFSLDS and the partnership approach being taken for the implementation of the IPDS. An extract from Audit Scotland’s report ‘Scottish Fire Services: Second Verification of the Progress of Modernisation’ (October 2004) reads:

**Exhibit 8**

**Good practice in relation to IPDS**

The national approach to the implementation of IPDS in Scotland illustrates the benefits of collaborative working. The Scottish Fire Service Learning and Development Strategy lays out strategic aims and objectives for the implementation of IPDS in Scotland, and the IPDS team at the Scottish Fire Services College supports work in all the authorities. All eight authorities have signed up to the partnership model, all are members of the IPDS (VQ) Management Board and all are represented on the Assessment Boards. The Partnership Model is underpinned by SQA Approved Centre Quality Assurance policies and procedures. A website dedicated to IPDS in Scotland (www.IPDS.org.uk), gives access to an e-learning module to raise awareness of IPDS.

7. The current version of the Scottish Fire Service Learning and Development Strategy can be viewed and is available for download on:

www.scottish-fireservicescollege.co.uk and www.ipds.org.uk.
CORRESPONDENCE FROM THE SCOTTISH EXECUTIVE TO THE CONVENER OF THE JUSTICE 2 COMMITTEE, 3 NOVEMBER 2004

FIRE (SCOTLAND) BILL – SECTION 11 EMERGENCY DIRECTIONS

I understand that the Committee is currently considering the draft Stage 1 report on the Fire (Scotland) Bill and you have indicated that the Committee would appreciate additional information on why we believe the requirement for the Ministerial emergency power of direction contained at Section 11 is necessary.

As the Deputy Minister for Justice said when he gave evidence on 28 September, this power is the only power in the Bill which potentially would not be subject to consultation and Parliamentary process and that he hoped that the power would never be needed. This recognises that we do not envisage the power being invoked often or lightly, if at all. However, we firmly believe the power is necessary to ensure public safety is maintained in the event of a major terrorist attack or a natural disaster which has not been covered by the normal emergency planning undertaken by fire and rescue authorities or the existing cross border working arrangements. For example it may be necessary to instruct a Fire and Rescue Authority not to respond to an incident in its area if another Authority is better equipped to do so. This is particularly important as not every Fire and Rescue Authority will have immediate access to the mass decontamination or high volume pumping equipment provided under the New Dimension programme.

On a day to day basis and in the overwhelming majority of cases, responsibility for handling emergencies will remain with Fire and Rescue Authorities. However, as the tragic events of 11 September 2001 have shown, the potential is always there for an emergency to occur which nobody has foreseen and for which authorities have been unable to plan. Whilst the Scottish Executive accepts that Fire and Rescue Authorities need the necessary autonomy to carry out duties without interference from the centre – it would nevertheless be negligent to rule out the need for central co-ordination during an emergency, such as a terrorist attack, a widespread natural disaster or other catastrophe. In addition the Executive can press the right buttons in the Government machine to bring a range of additional resources to bear in an extreme situation as well as providing a focus for central coordination. Section 11 provides an important safety net for those rare occasions when a measure of central co-ordination is required, particularly to ensure resilience in the face of a terrorist attack. This also recognises that when a large scale emergency occurs which has been largely unforeseen that there will not be time to make the necessary regulations under section 10 to give authorities the statutory authority to act.

In circumstances where an authority is responding to a section 11 direction, cover for other fires and emergencies in its area will be provided through section 31 and 32 reinforcement schemes. These will make it much easier for authorities to participate in a national mutual aid agreement for non-fire emergencies as well as providing simple cross boundary assistance between authorities in the event of a fire.

Concerns may be expressed that the section 11 power duplicates powers in Civil Contingencies legislation, which provides a framework for planning for and dealing with civil emergencies at the national level, but this is not the case. The focus of the Civil Contingencies Act is on planning and ensuring that responders such as fire and rescue authorities assess the risk of an emergency occurring and maintain plans for the purposes of responding to an emergency. The Fire (Scotland) Bill builds on these planning duties and sets out some of the detail in how a managed and co-ordinated response will be achieved in the event of a major emergency that requires co-operation between different authorities.

I hope this further explanation is helpful to the Committee. I understand that the Committee would also find it helpful to have a note of the consultations the Scottish Executive intend to carry out on matters related to the Bill and a table setting this out is appended for the Committee's information.

I A SNEDDEN

Head of Fire Division
Fire (Scotland) Bill – Related Consultations

<table>
<thead>
<tr>
<th>Consultation</th>
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<tr>
<td>Issue draft National Framework for pre consultation with key stakeholders and make available to the Justice 2 Committee.</td>
<td>To be issued around 5 November for a 4 week consultation period.</td>
</tr>
<tr>
<td>Issue consultation paper on Section 15 – Charging Order.</td>
<td>To be issued on 1 December 2004 as one element of a consultation pack also covering Section 10 Additional Function Orders and the replacement of the Scottish Central Fire Brigades Advisory Council.</td>
</tr>
<tr>
<td>Issue consultation paper on Section 10 – Additional Functions.</td>
<td>To be issued on 1 December 2004 as one element of a consultation pack also covering Section 15 Charging Order and the replacement of the Scottish Central Fire Brigades Advisory Council.</td>
</tr>
<tr>
<td>Issue consultation paper on options for the replacement of the Scottish Central Fire Brigades Advisory Council.</td>
<td>To be issued on 1 December 2004 as one element of a consultation pack also covering Section 10 Additional Function Orders and Section 15 Charging Order.</td>
</tr>
<tr>
<td>Issue first draft Fire Safety Regulations for pre consultation with key stakeholders and make available to the Justice 2 Committee.</td>
<td>To be issued around 7 December for a 4 week consultation period.</td>
</tr>
<tr>
<td>Full consultation on draft National Framework</td>
<td>To be issued around 24 December 2004 for a 3-month period.</td>
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At its meeting of 27 October, the Communities Committee considered two SSIs relating to revised building standards, namely the Building (Scotland) Regulations 2004, (SSI 2004/406) and the Building (Procedure) (Scotland) Regulations 2004, (SSI 2204/428). The Committee took evidence on the regulations from various organisations including the Scottish Association of Building Standards Managers (SABSM) and the Fire Protection Association (FPA).

One of the issues that the Committee considered with SABSM and the FPA was fire prevention within building standards. SABSM suggested that when a fire brigade assesses the adequacy of the building fabric in terms of active fire precautions, e.g., the use of the building, the users of the building and the maintenance of the building, it should also include building standards and control. SABSM emphasized that building standards should include fundamental passive fire precautions in the fabric of the building and that the Fire (Scotland) Bill should address that and take account of the role of building control. These comments were supported by the FPA.

The Communities Committee agreed that it should write to you, as Convener of the Committee with lead responsibility for the Bill, to request that the Justice 2 Committee consider the comments outlined above by SABSM and FPA during its scrutiny of the Fire (Scotland) Bill. I would be grateful if you could consider this request with the Justice 2 Committee members.

Karen Whitefield MSP
Convener, Communities Committee
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

21st Meeting, 2004 (Session 2)

Thursday 9 September, 2004

Present:

Ms Wendy Alexander  Mr Ted Brocklebank
Fergus Ewing (Deputy Convener)  Kate Maclean
Des McNulty (Convener)  Jim Mather
Dr Elaine Murray  Jeremy Purvis
John Swinburne

Fire (Scotland) Bill: The Committee took evidence on the Bill’s Financial Memorandum from—

Councillor Pat Watters, President of COSLA; Councillor Julie Sturrock, Dundee Council; Stephen Hunter, Firemaster, Tayside Fire Brigade; Eileen Baird, Strathclyde Fire Brigade; and Barbara Lindsay, Corporate Manager, COSLA.
Fire (Scotland) Bill:
Financial Memorandum

10:27

The Convener: Agenda item 2 is consideration of the financial memorandum to the Fire (Scotland) Bill, which was introduced on 28 June 2004 by Cathy Jamieson. To help us consider the bill, we will take evidence from witnesses: Councillor Pat Watters, who is president of the Convention of Scottish Local Authorities; Councillor Julie Sturrock, who is from Dundee City Council; Stephen Hunter, who is fire-master for Tayside fire brigade; and Eileen Baird, who is from Strathclyde fire brigade.

We have also received written submissions from COSLA, Central Scotland fire brigade, Dumfries and Galloway fire brigade, Lothian and Borders fire board, the Scottish Ambulance Service, Strathclyde fire board and Tayside fire brigade. I have been asked to point out that the reference to tables in the “Control Room Arrangement” section of Central Scotland fire brigade’s submission is to the tables on pages 62 and 68 of the Mott MacDonald report “The Future of Fire Service Control Rooms in Scotland”. We have also received submissions from the Association of Chief Police Officers in Scotland and from Grampian fire board, which were circulated to members on Tuesday.

We will begin with a brief opening statement from COSLA. After that, members can ask questions.

Councillor Pat Watters (Convention of Scottish Local Authorities): My short opening statement will not go into the detail that is in our written submission. I thank the committee for this positive opportunity to ensure that the financial provision for the bill allows for a fire service that will serve the needs of the people of Scotland effectively.

It is important that the financial memorandum considers the possible impact that the bill will have on the fire service and how that will be dealt with. I must point out that there is no robust evidence for the belief that we can make the necessary changes without any financial consequences for the fire service. We believe that there will be financial consequences for the fire service and that we should build into the bill the ability to take care of them. We acknowledge the statement in the memorandum that the bill will give ministers new powers that they will exercise in particular ways, and the acknowledgement that those measures will give rise to additional costs, but that is not expanded on; it is just left there. I would like to see an acknowledgement that the overall policy
thrust of the bill and the changes to the fire-safety regime will have financial implications. What was meant has not been explained fully or properly in the memorandum.

This is an opportunity for us to get the measures right. I would like to see us proceed in a spirit of partnership so that we can ensure that we get things right. In the recent agreement that we reached with the trade unions in the industry, there was an acknowledgement that the modernisation process is not a cost-neutral exercise. The Executive acknowledged that by providing fire authorities with transitional funding over the period when there will be additional costs from the modernisation process. We have reached an agreement with the Executive about what that funding should be. We have a wee bit of a dispute about when it will be phased out, but I am sure that we will be able to work that out.

10:30

The Convener: What level of consultation took place with local authorities and COSLA about not just the policy issues but the important financial implications? We have experience of consultation having focused purely on the policy issues and of the financial issues not having been consulted on. Do you feel that there has been adequate consultation on the financial memorandum?

Councillor Watters: There are gaps in the memorandum; it does not explain fully the consequences of financial regulations. The bill proposes various changes that would have a financial impact. One that springs to mind is about charging for services and issuing fire certificates. There will be a loss of revenue from that change of about £200,000 throughout Scotland. The memorandum does not acknowledge that there could be increased demand as a result of the changes that are to be made. Although there is no cost for that, the servicing of the change could cost more than we provide for at present, at the same time as reducing income from charges. We have consulted authorities, which have concerns—I put it no stronger than that at present. They would like the Executive to agree that, if the legislative changes require additional finances, those finances should not come from the core service and additional money will come in to fund the changes. If we made progress with that, everyone would be happy.

We are happy with the consultation on the policy. We know why the changes are going to be made—we have to make changes to allow modernisation—but we do not think that enough work has been done to make clear the financial implications for the services that we are trying to provide.

Mr Brocklebank: In your submission, under “Core Duties”, you say:

“It is completely unacceptable that new burdens were not funded, we do not accept that they simply a ‘formalisation of the role which the Service currently undertakes’.

Will you spell out to us a little more clearly where you think the Executive has not taken into account the extra costs, and do you have any idea of a figure for the extra sums for which you are looking?

Councillor Watters: I will bring in my colleague, Stephen Hunter.

Stephen Hunter (Tayside Fire Brigade): The bill sets out the core duties that we have been carrying out for many years, such as duties around road traffic accidents. There is an assumption that we have adequate funding to provide those services. One of the main areas in which there will be an increase in core duties is the statutory duty to deliver community fire safety. At present, brigades are not structured and do not have sufficient resources to be able to deliver that statutory duty. For many years, brigades have been involved with the community in trying to prevent fires and reduce the number of fire deaths and injuries. That has not been a statutory duty and has been funded from existing budgets. As a result of its becoming a statutory duty, brigades will have a much greater responsibility to have sufficient resources to deliver a much more effective community safety campaign.

Mr Brocklebank: Can you quantify that financially? How much more money do you think would be required?

Stephen Hunter: It is difficult to say how much more money would be required throughout Scotland. The modernisation agenda implies that through time—it is acknowledged that this would happen through time—resources will be able to be taken away from the emergency-response side and put into community fire safety, but that cannot happen until it is demonstrated that community fire-safety measures work. An injection of finance might be required to pump-prime the additional community fire-safety responsibilities and duties. Through time, that money might be able to taper off, because of the other results of modernisation of the service. However, at the moment it is difficult to quantify what each brigade in Scotland would require to deliver effectively the new statutory duty around community fire safety.

Councillor Watters: There is a lack of detail in the bill about what will be required in relation to fire safety that would allow us to evaluate properly the impact. We strongly support the drive to deliver fire safety, because we believe that the best way to tackle a fire is to prevent it. If we get the education process and working with the
community right, through time we will see a reduction in the number of fires. That work has to be done continually, because it is vital to maintain awareness in communities. However, there is not enough detail in the bill to allow us to say, “That will cost X.”

Mr Brocklebank: You might be able to help the committee and me with a point in the submission from Dumfries and Galloway fire brigade. On appliance fuel, it says:

“The Service currently pays fuel tax at a standard rate. The opportunity should be taken to exempt the Fire Service from this in respect of special appliances.”

That concession is already given in respect of hydraulic platforms. Will you explain that? At the moment, are you paying tax at standard rate on fuel for fire engines?

Stephen Hunter: Yes, we are paying fuel tax at standard rate.

Mr Brocklebank: So that is the element that you would like to be removed. You are happy to carry on paying the standard rate for fuel for your normal little vehicles that you go about in, but you believe, perhaps understandably, that fuel for the appliances that go and fight fire should not be taxed at that rate.

Stephen Hunter: Yes.

Mr Brocklebank: In financial terms, how much would that save and how much would it help you?

Eileen Baird (Strathclyde Fire Brigade): The reduced rate of tax is 65 per cent lower than the standard rate. At the moment, brigades throughout Scotland spend something like £1.5 million on their fuel budget. We could save up to 65 per cent on a fairly high proportion of that budget. That could be a good few hundred thousand pounds. I do not have the exact figures, so I do not know how much of that £1.5 million is spent on fuel for the emergency-response vehicles, but I imagine that it would be a high proportion, so there could be a significant saving for us.

The Convener: I draw us back to the bill.

Dr Murray: I want to follow up on the fuel issue. It is not within the Parliament’s remit to change the duty on fuel or the exemption. Are you suggesting that the Executive should consider subsidising the cost of fuel, which is all that could be done from here?

Stephen Hunter: Because it is concerned with the financial implications of the bill, our submission asked the Scottish Executive to consider an issue that would reduce the financial burden on fire authorities.

Dr Murray: That is action that would be taken in Westminster and not in the Scottish Parliament. It is not in the power of the Scottish Parliament to affect that, but it is obviously something about which representations could be made.

My main concern is about the control-room arrangements and the costs associated with them. The Executive is suggesting that if the fire service moves to one control room, rather than the existing eight, a saving of £3.3 million could be made. I suppose that, in a sense, I am sidestepping from the financial aspects of the bill to some of the more contentious issues around centralisation. My own fire brigade in Dumfries and Galloway has said in its submission that

“a large number of functions carried out by our Fire Control staff will not be transferred to any of the proposed recommendations if they are implemented. This will therefore require alternative arrangements to be made for the carrying out of such functions and the resultant requirement in maintaining staff costs for this to be carried out.”

Can you put a figure on the additional costs on brigades of transferring some of the functions that will not go to a central control room?

Councillor Watters: It is difficult for us to comment on that. The Executive’s proposals are still out for consultation. We have the issue on the agenda for discussion at our next leaders’ meeting. I will ask Stephen Hunter to comment on the details, but I would certainly say that, although it would be physically possible to run the fire service from one control room, I do not believe that it would be a safe way of operating. We would at least need a back-up system in case of emergencies, such as a terrorist attack on the control room, so I do not believe that it would be right to have only one control room.

However, the proposal is still out for consultation and no decision is being taken at present. If we operate with fewer control rooms than we have at present, there must be a financial impact, but we do not have details about that, because we received the report from the Executive only a short time ago. We have put that report out to authorities for consultation and responses are now coming back in, and brigades have their own views as well. I believe that Stephen Hunter may be able to help you with the details.

Stephen Hunter: The report was a technical review, and although I believe that it is accepted that it is technically possible to reduce the number of controls, there is a whole host of issues on which COSLA, the fire authorities and other organisations are responding in the present consultation.

Although the report identifies savings from a technical perspective, there are other areas that must be taken into account. For instance, there are important people issues in relation to the control centres, and a reduction from eight
controls to any of the numbers proposed by the report—one, two or three—does not automatically mean that there would be a saving. Having three controls would not automatically mean a saving on the five controls that had been done away with, because if there was a reduction, the current controls would not have the capacity to take over the work of the other brigades’ controls, so there would have to be capital investment in infrastructure. People issues such as redundancy payments and redeployment of personnel into other areas were not fully explored in the report, so the financial savings included in the responses that the Executive will receive may not be as large as those quoted in the report.

Dr Murray: The report from the Dumfries and Galloway fire brigade appeared to suggest that there are some things that are currently done in the fire control room in Dumfries and Galloway would remain in Dumfries and Galloway and would not be handled under the new arrangements. Therefore, there would be a cost to the brigade in taking over those functions.

I am a little bit concerned that, because the bill is still out for consultation, it is difficult for us to assess the financial implications. Because we do not know the shape and structure of what is being proposed, we do not know whether the savings that it is claimed could be made will in fact be made, or whether there will be additional costs on brigades that have not yet been quantified.

The Convener: That is a general issue that we might need to raise next week in our consideration of the issues that arose out of our away day.

10:45

Jim Mather: I want to follow up on the answers that Stephen Hunter gave a moment ago and I want to ask about the potential hidden costs of centralisation of control rooms in regard to the loss of local knowledge. There could be situations in which the similarity of place names in some parts of Scotland could lead to slow responses and worse damage. In the long term, that would result in higher insurance costs, to say nothing of the costs of damage to council tax payers and business rate payers. Beyond that, there is the possibility of negligence claims coming home to roost. There is also the possibility that there could be more hoax calls, with a centralised control room less able to differentiate between the real and the hoax. Have the witnesses anything to say about that?

The Convener: I think that we are drifting towards policy rather than concentrating on financial issues.

Jim Mather: I think that those issues could have bigger financial implications than making the change would have.

Stephen Hunter: In answer to Mr Mather’s question, I would say that, as well as the financial costs of the centralisation of fire controls, we must consider the cost to society of any potential changes. There is not just a potential financial saving to the fire service; as Mr Mather outlined, there might be additional burdens on other areas of society as a result of the changes. That is why, at the end of the consultation, we will have to see the outcome of the Executive’s consideration of what those issues might be.

Jim Mather: At the end of the day, what we need is an absolutely clear statement of the financial situation. We might even require some external skills to put the issue properly in context and to assess the net effect on Scotland of such a change.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): My question is still on control rooms, I am afraid, but it comes from a slightly different angle, which was highlighted when I spent quite a few hours at the force communications centre of Lothian and Borders police in Bilston. I know that different forces are involved, but the work that COSLA will be doing with the authorities could include considering not only the efficiency savings and the assumptions about costs, but where the control rooms are located and what co-ordination there could be with the other emergency services, so that there could be sharing of technology platforms. Will you be considering those aspects as part of the consultation process? Rather than just the bare costs of the number of control rooms, perhaps we should consider the type of control rooms and their relationship with other services.

Councillor Watters: You are absolutely right; there is a governance issue there. At present, each individual brigade is responsible for its control room. With a smaller number of control rooms, there will be a governance issue with regard to who is responsible for the control rooms and who they are answerable to, and that has not been considered or worked out either. As you would expect, I am firmly of the belief that fire protection is a vital local service that is provided by local government. As such, the reshaping of any part of the organisation must be firmly within local government, so that we have control over the services that we are providing and for which we are responsible. You would expect me to say that, so I am not disappointing members of the committee by saying it.

Stephen Hunter: The consultants’ report considered a number of options: keeping the status quo, with eight fire controls; having some fire controls merge with other fire controls; and having fire controls merge with other emergency service controls. The outcome of the consultants’
investigation was that the preferred option would be amalgamation of fire controls with other fire controls. The consultants’ report rules out the amalgamation of fire controls with other emergency service controls, and it gives reasons for ruling out that option.

Jeremy Purvis: I was struck by the technology that the police have, with global positioning systems to identify every fire hydrant in the force area—or at least they have that in my constituency. That is not information that Lothian and Borders fire brigade has. On issues such as that, constituents are looking not only for efficiencies but for practicalities, but I appreciate that developing those practicalities is part of an on-going process.

Stephen Hunter: Another project mentioned in the bill is the firelink airwave project, which is a complete change to the radio system used by the fire service, following the changes made to the police service radio systems. Some of the issues concerning the electronic information that is available to fire personnel on the ground and at controls will be addressed as a result of the transition to the new airwave system.

Jeremy Purvis: Can any of our witnesses comment on the written evidence that we received from the Central Scotland fire brigade? Speaking about the proposed common fire services agency, it said:

“No costs are identified for this although, if implemented, this may represent an additional layer of management for the service”.

What might the costs of that extra layer of management be?

Councillor Watters: It is difficult for us to answer that. The brigades submitted their responses directly to the Executive. We have not had sight of their responses to the consultation exercise.

Jeremy Purvis: Convener, could we ask Councillor Sturrock about the proposed common fire services agency on that point?

The Convener: We certainly could.

Councillor Watters: Councillor Sturrock would like to say something about the point that was being made earlier on.

Councillor Julie Sturrock (Dundee Council): The consultants might have said that they would regard more collaboration among police, fire and other agencies on a local basis to be less preferable than collaboration on a national basis among various fire brigades, but that is not necessarily COSLA’s point of view. From our community planning perspective, local collaboration is the most obvious approach, and it is perhaps the most directly accountable process. We are already co-operating locally on purchasing. Many of the suggestions for best-value projects, such as joint procurement for items other than fire equipment, are already taking place—office supplies, paper and so on are already being procured on a co-operative local best-value basis. The fact that the consultants have not voiced that as their preference does not mean that COSLA does not prefer that option. We have yet to reach a decision in that regard.

On the cost-effectiveness of the extra layer of management that you mentioned, COSLA’s point of view has always been that we want to deliver obvious accountability. We want a local service that can be held to account by local agencies. There is another element beyond the financial aspect. I suggest that, if the financial aspect can be seen as being negative, other aspects could also be seen to be negative.

Jeremy Purvis: Beyond the financial aspect, there are a lot of policy issues. Given what I have seen of the force communications centre in my constituency and the need for local knowledge, which Jim Mather touched on, I hope that you are actively considering the issues that have been raised. As Pat Watters said, local accountability is vital.

Earlier, Ted Brocklebank asked Councillor Watters about COSLA’s written evidence, which says:

“It is completely unacceptable that new burdens were not funded.”

One of the examples of that related to fire-safety functions. I know that the officers in the Galashiels office in my constituency view fire-safety functions as being an automatic part of their work in the local community. I would be interested to know whether huge costs will be associated with doing what the bill will require to be done under statute—not any additional work that might not be rewarded but the work that officers currently do as members of the local community in responding to ad hoc requests and providing information, publicity and encouragement in respect of the steps to be taken to prevent death or injury by fire.

Basically, I am challenging whether there will be a significant level of additional cost. The words that I quoted from your submission are fairly strong, but I recall that you gave only the example of fire-safety functions. Are there other new burdens that will not be funded?

Councillor Watters: We are clear that the responsibility for legislation lies with the Scottish Parliament and the Executive. When legislation is introduced, its impact has to be considered. As local politicians, we have priorities that we have been elected to deal with and we do not think that
we should be expected to shelve some of our priorities, which the electorate expects us to deliver, to deliver priorities that have been set elsewhere, even if those priorities are shared ones. Community safety is a shared priority, of course, and I absolutely agree that the natural place for that to be dealt with is in the fire service—those people are the natural people to do the job. However, there is a difference between having community safety as a responsibility that we take on and it being a statutory responsibility that we have to deliver. If it is a statutory responsibility, we must ensure that the resources are there to allow us to carry it out. When something becomes a responsibility under statute, the expectation becomes higher.

Firefighters throughout Scotland are carrying out community fire-safety work at the present time, but it is not their main responsibility. Under statute, the delivery of community fire-safety measures will become one of their main responsibilities.

Stephen Hunter is better versed in these matters, as he deals with them every day.

Stephen Hunter: Legislative fire safety has been a statutory duty for fire authorities for more than 30 years and much progress has been made on safety since the passing of the Fire Precautions Act 1971. Community fire safety is about making people far more safe in their homes. Although, as has been said, all fire brigades in Scotland have been involved in that process, the statutory duty will mean that community fire safety will have to be delivered in a far more structured and auditable manner in order to measure the benefits that are accruing to the community as a result of the work that is taking place.

Jeremy Purvis: As I said, the submission uses strong language when it says:

“It is completely unacceptable that new burdens were not funded.”

However, all that you have mentioned so far is the fire safety element, which takes up officers’ time as they have to attend events—such as the recent “Safe T in the Park” event in Kelso and community council meetings—and have to produce leaflets. That does not warrant the strong language that is used in the submission. We are talking about £150,000 out of a Scottish budget of £23 billion.

The Convener: The view that is expressed in the submission in this instance might well be an illustration of the general view of COSLA across the board. Would it be fair to say that, Councillor Watters?

Councillor Watters: Yes, as a general point. I would say that £150,000 out of the national budget is fine, as long as that money is going to be spent on only one area. However, if £150,000 is to be spent on everything, that will have an impact.

Another point that we make in our submission is that, under the additional investment for the tackling of major disasters, around £8 million was invested in new equipment and a further £3 million is to be invested in the fire service. However, as well as that £11 million investment for new equipment that will allow the fire service to tackle the sort of things that happen these days, there will also need to be investment to cover the on-going revenue costs to support that equipment on a day-to-day basis. Having the capital investment to purchase equipment is one thing; having the staff and resources to ensure that the equipment can be used is an entirely different matter.

I think that “burdens” is not the word that we are supposed to use and that “opportunities” is perhaps better. The opportunity to deliver a better service can be taken advantage of only if the resources to enable people to do so are also present.

11:00

Councillor Sturrock: The point is that under the proposed legislation the minister has sweeping powers to make many financial decisions that will have a knock-on effect on the fire service. For instance, although the bill contains requirements on the purchase of equipment and what have you that will have on-going effects on revenue, it does not contain any obligation to make available appropriate finances to meet those requirements and on-going expenses.

The Convener: I will try and draw this item to a close with questions from Ted Brocklebank and myself.

Mr Brocklebank: I want to clarify the point that Jeremy Purvis was trying to elicit. On fire safety, Dumfries and Galloway fire brigade’s submission says:

“It is anticipated that we will be required to provide funding for local advertising campaigns and PR activities.”

The brigade then makes a certain link when it goes on to say:

“The Bill proposes the removal of the need for fire certification. In consequence, we anticipate a reduction in income as a result of this.”

Will you tell us the amount of money that you receive for fire certification and, therefore, the sums that you will have to raise to pay for the advertising and public relations that you say will be required?

Councillor Watters: I have two points in response to that question. In an exercise that we carried out with one fire brigade, we came up with
a figure on which we based an estimate for the rest of the brigades. We believe that about £200,000 in income would not be available at that particular point.

However, we should remember that, under the proposed arrangements, there will be self-certification on advice and that the advertising that we will put out will generate more input into the fire service than we receive under the current system of certification. After all, we currently do not charge for advice.

Stephen Hunter: At the moment, brigades have a structure for inspecting premises that need a fire certificate. Because that process has been in place for 30 years, each brigade knows the resources that need to be applied to that activity. As Councillor Watters has pointed out, after the need for fire certification is removed, we will lose £200,000. We cannot predict the activity levels for resources that need to be applied to that activity. As Councillor Watters has pointed out, after the need for fire certification is removed, we will lose £200,000. We cannot predict the activity levels for the provision of advice; however, it is likely that after an advertising campaign occupiers and owners of commercial and industrial properties will want to take the fire service’s advice which, up to now, has always been given free of charge.

The Convener: Fergus Ewing will ask a brief question.

Fergus Ewing: I apologise to witnesses for being unavoidably detained elsewhere earlier.

I want to ask about auxiliaries and volunteers who assist full-time and retained firefighters. They play a vital role in the Highlands, and in my constituency of Inverness East, Nairn and Lochaber, with regard to forest fires, muirburn and serious road traffic accidents. Although those people are part of the fabric of the community and have traditionally played an absolutely essential role, their ability to continue to operate is under threat because of the interpretation of the rules on breathing apparatus. Such apparatus has to be made available to volunteers who assist in fighting fires inside a building; however, housing that equipment is an expensive business and it has been suggested that each auxiliary service—of which there are more than 100—will need a major building to do so. That is threatening the viability of more than 30 auxiliary services in the Highlands.

I note that the bill seeks to provide for a process of integrated risk assessment and to impose a duty on employers to provide for the safety of employees. However, as far as I can see, the financial memorandum contains no provision for the implications of the risk assessment process for the future of auxiliaries and volunteers. Do you feel that the memorandum might have any implications that the Executive has not provided for?

Finally, do you agree that it is essential that we continue to have the benefit of those who volunteer and who play such a useful role in their communities in the Highlands of Scotland?

The Convener: I think that the last part of that question was really more about a policy issue than about the financial memorandum. However, I appreciate why Fergus Ewing wants to raise it.

I will add the question that I was going to ask to Fergus Ewing’s question on volunteers. Given that he has just mentioned integrated risk management plans, do you have any general comments on the effect of such plans on the formula that is currently used for funding calculations for the fire services? After all, this is clearly an all-Scotland issue that affects urban and rural areas.

Councillor Watters: One of the main planks of fire service modernisation is the integrated risk management plan, under which one will assess needs on an on-going basis. Even the Executive acknowledges that we will have to see how the plan operates over a period of time before we can appreciate whether it will generate savings or additional costs.

The whole point about modernising the service is not necessarily to have a cheaper service, but to have an improved service that is fit for this century. After all, although the integrated risk management plan will undoubtedly generate savings for the people of Scotland, they might not be financial ones. For example, more lives might be saved. Moreover, the plan might have an effect on property and on the national health service, which might not have to deal with such serious burdens.

As I have said, implementing the plan might have many pluses and benefits but we will have to see it in operation before we can assess its impact or any implications that it might have. Indeed, the Bain report makes it clear that implementing the integrated risk management plan will have not just financial impacts for the whole community.

As for Fergus Ewing's point, I should point out that more than one brigade of volunteers and auxiliaries act as a link in providing the whole service in a community. However, his question is very specific to that particular area of the service and I am not sure whether Stephen Hunter or I can answer it.

The Convener: We will accept written answers to our questions.

Stephen Hunter: Elaborating slightly on the point that Fergus Ewing raised, I should say that Highlands and Islands has far more auxiliaries and volunteers than any other brigade in Scotland. We are greatly concerned about the remoteness of such areas from retained and whole-time fire stations.
The issue of breathing apparatus is linked to other legislative requirements to ensure firefighter safety that are contained in the Health and Safety at Work etc Act 1974 and so on. I know that the issues that the Highlands and Islands fire brigade is wrestling with are dear to Fergus Ewing’s heart and that the fire-master in Moray and Highlands and Islands is actively seeking to resolve them to provide an effective service in remote areas.

**Eileen Baird:** On the future funding of the service, COSLA is represented on a working group that, as Councillor Watters has pointed out, will consider changes in the service following the implementation of the integrated risk management plan. That process will continue, but we have agreed that it will be some years yet—perhaps with the comprehensive spending review in 2008—before any impacts will manifest themselves in service funding.

**The Convener:** On behalf of the committee, I thank the witnesses very much for attending the meeting. I should apologise for not mentioning Barbara Lindsay when I introduced the witnesses at the start.

I suspend the meeting for a couple of minutes to allow the witnesses to be switched around.

11:09

*Meeting suspended.*
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

22nd Meeting, 2004 (Session 2)

Tuesday 14 September, 2004

Present:

Ms Wendy Alexander               Mr Ted Brocklebank
Fergus Ewing (Deputy Convener)   Kate Maclean
Des McNulty (Convener)           Jim Mather
Dr Elaine Murray                 Jeremy Purvis
John Swinburne

Fire (Scotland) Bill: The Committee took evidence on the Bill’s Financial Memorandum from—

Ian Snedden, Head of Fire Services Division; Jill Clark, Fire Bill Team Leader; and John Nicholls, Fire Services Division, Scottish Executive.
Fire (Scotland) Bill: Financial Memorandum

10:11

The Convener: Item 1 on the agenda is further consideration of the Fire (Scotland) Bill. Last Thursday, we took evidence from the Convention of Scottish Local Authorities on the financial memorandum to the bill. Today, we have with us officials from the Scottish Executive: Ian Snedden, head of the fire services division; Jill Clark, Fire (Scotland) Bill team leader; and John Nicholls, from the fire services division. I welcome all of you to today’s meeting. If you wish, you may make a brief statement. If not, we will move straight to questions.

Ian Snedden (Scottish Executive Justice Department): I had not planned to make a statement. I am happy to move straight to questions.

Dr Elaine Murray (Dumfries) (Lab): The financial implications of the bill are greatest for control rooms. I accept that we do not yet know what the shape of the control room structure will be and that the matter is subject to consultation, but some fire brigades, including my local brigade, have expressed concern that some of the functions that are currently carried out by control rooms will not be transferred to the one or three proposed control rooms. They thought that the bill might have financial implications in relation to the transfer of staff and the fact that the brigades might have to undertake some of the functions to which I refer. That information is not included in the financial memorandum. What is your reaction to the concerns that have been expressed?

Ian Snedden: We engaged the consultants Mott MacDonald, who are very experienced in the area of control rooms, to examine the situation in Scotland. In their comprehensive report, they identify the fact that control room operators perform various tasks in addition to answering 999 calls and dispatching resources. They carry out tasks such as data collection, performance management and statistical analysis, as well as some crewing activities. Whether the number of control rooms is reduced, those functions, which are brigade functions, have to be continued. In their report, the consultants indicated that probably about 20 per cent of staff would be required for that purpose. We would expect brigades to be able to deploy staff to carry out the tasks. Because the tasks are being carried out at the moment, the costs would not change.

Dr Murray: Is the maximum saving of £3.3 million an annual saving from having one control room?
Ian Snedden: The consultants worked up a model of costs, based on the study that they carried out. They have also conducted studies of control rooms in other areas, including in England. The model that they used when producing their report is obviously a snapshot in time. The amount of money saved depends on the option for control rooms that is chosen. If the recommendation of one control room were accepted, the maximum amount of savings would be released. The figure of £3.3 million comes from the consultants’ report.

The Convener: Is the basis for calculating that figure made explicit in the consultants’ report?

Ian Snedden: No. There is detail about it, but not precise detail.

The Convener: It might be helpful for us to have some indication of how the figure was arrived at.

According to the financial memorandum, the integrated risk management plans could have an impact on the formula that is currently used to calculate funding for the fire service. To what extent do you think that that is likely? What would be the implication of any change?

10:15

Ian Snedden: I will explain the current system first, which may help members to understand the changes that are likely to happen as a result of the introduction of integrated risk management plans.

At the moment, almost all the funding for the fire service is predicated on the existing standards of fire cover, which determine the number of vehicles and firefighters that brigades send out in response to emergency calls. There are four categories. Category A relates to inner-city areas that include places of entertainment, offices and so on. Category B includes housing. The standards of fire cover for those areas determine how many vehicles are needed. For example, in category A areas three trucks must be sent to each incident, whereas in category B areas two trucks must be sent. Because the vehicles have to be crewed 24 hours a day, 365 days a year, the number of vehicles that need to be sent determines how many firefighters are required. That produces the figure for each brigade, which is based totally on the existing standards of fire cover.

The standards of fire cover date back to just after the war; there has been no change to them since then. An integrated risk management plan will be a much more flexible way of determining brigades’ response, as it will be all about identifying risk. Some areas will still get the maximum response of three vehicles, but responses will be much more closely related to the risk in fire authority areas and will not be predetermined by the standards of fire cover.

The Convener: You are saying that the introduction of integrated risk management plans may bring greater flexibility and less rigidity to the mechanism that is used to calculate funding.

Ian Snedden: Absolutely.

The Convener: I want be clear that you are not necessarily assuming that efficiency savings will be tied in with the introduction of integrated risk management plans in Scotland and that an overall reduction either in manpower or funding will not be associated with that.

Ian Snedden: That is certainly not the intention. The intention is to produce a more flexible system. If that results in a better, more efficient system, savings may flow from that. Fire authorities will be able to use savings to reduce response times under the existing standards of fire cover or may invest them in, for example, greater prevention activity, which we think would be much more beneficial.

The Convener: So no efficiency target is tied in with the measure.

Ian Snedden: No efficiency target has been set, but it was made clear that the most recent pay agreement for the fire service would be self-financing. The fire authorities and the Fire Brigades Union signed up to the deal on that basis. Obviously, fire authorities will have to consider how they finance the pay deal.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I return to the issue of control rooms. Have you considered the experience of Lothian and Borders police, who are reducing the number of control rooms, from seven to one. From what I have read about that experience, it is clear that the force is having some problems. No decisions have been taken about control rooms. As members know, the consultants’ report is out to consultation and we have not yet received all the responses. We are anxious that, if changes are made to the control rooms, they should be introduced on a consensual basis. We must take the fire authorities with us. I accept fully that the funding streams that are mentioned in the consultants’ report relate to a snapshot in time—the point at which the study was carried out. There would have to be a rigorous analysis of the funding requirements of any change. We would, of course, be mindful of the problems that the police have experienced.

Jeremy Purvis: Would it be useful for you to speak to Lothian and Borders police?
**Ian Snedden**: Yes, it would be. If the change goes ahead, we will obviously need to set up a project board and involve all the fire authorities and all the other stakeholders. We will also need to examine the experiences of other agencies that have moved in the same direction.

**Jeremy Purvis**: I have two other questions, convener, but they are not on control rooms.

**The Convener**: Ask them quickly.

**Jeremy Purvis**: The financial memorandum mentions the firelink project, which is United Kingdom-wide. On the costs that are associated with that, you have said that there are two funding options, one of which is “a Scottish contribution of around £26m”.

Is that as a share of the UK purchase of the system? If so, what would be required for maintenance and renewal of the system and how long would it last? What would the mechanism be for the Scottish share?

**Ian Snedden**: The background to that project is that fire services all have their own existing radio systems, some of which are around 20 years old, and fire authorities throughout the UK were moving in different directions on acquiring new systems. The events of September 2001 made interoperability between the fire authorities and the police and other emergency services critical, so it was agreed that we should proceed with a UK project for replacing the radio system.

In going out to tender, we asked bidders to submit costs based on a UK-wide model and based on separate models for England and Scotland. At the moment, the process is still continuing. The bidders are in negotiation with the project team and we expect their best and final offers within the next few months.

**Jeremy Purvis**: What is the system’s expected lifetime?

**Ian Snedden**: At the moment, it is based on 10 to 15 years. The contract would involve maintenance of the system over that period.

**Jeremy Purvis**: That compares with £75 million for the managed service provider contract over the same period.

**Ian Snedden**: Yes. At the moment, we do not know what costs the bidders will come up with; we will clearly need to have discussions with them once we see their best and final offers. There is obviously an affordability issue: we do not want to pay a lot more in Scotland than is paid for the same service south of the border. Those issues will all need to be taken into account as we progress with the process.

**Jeremy Purvis**: When will you know the costs?

**Ian Snedden**: We might have a figure before Christmas, but it might be into the spring of next year before the process is completed and a contract is signed. That is my best estimate of when we will have an outcome.

**The Convener**: I am not sure about how we scrutinise that, but we can deal with that matter later on in the agenda.

**Jeremy Purvis**: On the statutory duty of fire safety, the financial memorandum mentions that between £100,000 and £150,000 will be necessary to promote the new legislation. However, that does not cover the senior staff time or staff time for attending meetings of community councils or community groups or for responding to requests for advice on fire prevention and safety. Responding to such requests will become a statutory duty for fire authorities and that will definitely entail a cost, so why is that cost not listed in the financial memorandum?

**Ian Snedden**: I ask my colleague Jill Clark to respond to that.

**Jill Clark (Scottish Executive Justice Department)**: Are you talking about fire safety in the workplace, rather than community fire safety?

**Jeremy Purvis**: I am talking about section 7, which is headed “Fire Safety” and talks about each authority “promoting fire safety in its area.”

**Jill Clark**: Do you mean section 7 of the financial memorandum?

**Jeremy Purvis**: No, sorry, I mean section 7 of the bill. It is covered in paragraph 122 in the financial memorandum.

**Ian Snedden**: That is about community fire safety.

**Jill Clark**: That duty is not new as such, because most brigades already carry out community fire safety activities to some degree. Section 7 puts the existing duty on a statutory footing and recognises the move towards prevention—rather than intervention—and trying to drive down the risk. No new costs should be attributable to that, because brigades already go out into their communities and speak to people about how they can reduce the occurrence of fires in domestic premises, for example.

**Ian Snedden**: On activity with other groups that are involved in broader community safety, the
Local Government in Scotland Act 2003 provided powers for the fire service to be involved in community planning. A lot of community planning activity is about considering safety across the board in an area and the fire service was keen to be involved in such discussions.

Jeremy Purvis: In the evidence that we received from COSLA last week, a distinction was made between current practice and a statutory responsibility.

Ian Snedden: A lot of the bill is about providing a statutory footing for functions that the fire service has been carrying out for many years, such as promoting community fire safety, attending road traffic accidents, attending chemical spills and helping to rescue people when there is flooding. Therefore, a lot of the bill is about saying to the fire service that we recognise that it is carrying out such activities and that we think that it needs to have the statutory powers to underpin what it does. There are powers in the bill to add duties and, if we were to place new duties on the fire service, we would obviously have to consider the funding implications of doing so.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): When Jeremy Purvis spoke about extra duties, he touched on some of the matters about which I will ask. When we questioned the witnesses from COSLA last week on core duties generally, they expressed concern that their views had not been taken into account. They also felt that the views of member authorities had not been taken into account. In their written submission, they went so far as to say:

“It is completely unacceptable that new burdens were not funded”. They also stated that to say that those new burdens are simply a “formalisation of the role which the Service currently undertakes” is absolutely wrong. Will you give some clarification on that?

Ian Snedden: I am surprised that that is the response that COSLA gave. When we drew up the proposals for the bill, we went out to consultation. However, before we even went out to consultation, we had pre-consultation with COSLA about the powers that we proposed to put in the bill and about the functions that we expected fire authorities to undertake, which, as I have said, they currently undertake. At that stage, we had no suggestion from COSLA that it found all that unacceptable. There were obviously issues about which we disagreed—such as the additional ministerial powers under the bill, which COSLA did not like—but I do not recall having problems with COSLA saying that it needed more money to enable the fire authorities to carry out the statutory duties, because they carry those duties out at the moment.

Mr Brocklebank: That is surely fundamental. You say that COSLA did not make any claims to that effect during the pre-consultation, but COSLA representatives have said to the committee that the introduction of the duties is totally unacceptable. There is clearly a chasm there—there is clearly a misunderstanding on somebody’s part—and who knows whether the extra cost that COSLA says will be incurred is accurate?

Ian Snedden: COSLA has a particular position that it wants to put forward and there is healthy tension between us and COSLA when we talk about money. We talk about money for pensions and we talk about the grant-aided expenditure settlement in spending reviews, for example. There is a healthy tension between us about what COSLA thinks that local authorities need and what we believe that they need. As far as the bill is concerned, all I can say is that we consulted COSLA and I do not recall it asking for lots more money if we were going to give fire authorities further powers.

Mr Brocklebank: Is it a case of COSLA posturing in front of the committee?

Ian Snedden: It is not for me to say that; I can only say that we consulted COSLA. The situation reflects its concerns about the fire service generally and our belief that we are giving fire authorities a statutory underpinning for the work that they carry out.

10:30

The Convener: To be fair, we are talking about a general argument that COSLA put and that was then applied in this instance. It is an argument that we have heard before.

Jim Mather (Highlands and Islands) (SNP): I am keen to go back to the issue of control rooms. What efforts are being made to identify and quantify the likelihood of slower response times in certain rural areas, which might result in increased damage and loss of life, in higher insurance premium costs and perhaps in a reduction in investment in those areas? Is any thinking being done on that?

Ian Snedden: I do not see that that should necessarily be a problem. The consultants’ report makes it perfectly clear that there is the technology and experience that is needed to handle all Scotland’s fire control room calls from one centre. The number of control rooms in Strathclyde came down from five to one in 1985 and that has worked perfectly successfully—there have not been lots of problems in responding to calls. Audit Scotland has given good reports on
the Strathclyde fire control room and Her Majesty's fire service inspectorate has made complimentary remarks about the way in which the control room handles incidents in Strathclyde.

The fire service already has experience of being able to handle lots of incidents from one control room. Strathclyde handles something like 60,000 incidents a year, which is half the total in Scotland—about 122,000 incidents a year have to be handled by control rooms and one control room in Strathclyde already handles half of them.

Jim Mather: You will understand my concern, given the recent experience of Lothian and Borders police, where the plumbing of the operation seems to have created a bottleneck. The thing that is worrying me is that that plumbing bottleneck may be exacerbated by a loss of local knowledge. I find it disconcerting that that has not led you to consider the wider implications of the cost savings. Although a £3 million saving is a significant sum of money in control centre terms, it is not so significant in terms of the overall Scottish economy. What worries me is that you might leave yourselves open to a higher incidence of negligence claims, more hoax calls or more confusion, because people do not know which location is which. Over the piece, you might throw an important baby out with the bath water, because it might be easier to retain staff in a remote area—with lower recruitment and training costs—than to have them in one central area.

Ian Snedden: You make a perfectly fair point about recruitment and training. The consultants certainly expect that, if we reduce the number of control rooms, a number of staff will stay with the service but other staff will need to be recruited and trained, perhaps because of where the control rooms are to be located. That is a perfectly fair point and one that we will clearly have to take into account as we develop the models.

In general, comparing the police and the fire service is not comparing like with like. The Lothian and Borders police control room currently handles around 45,000 calls a month, with 999 calls on top of that. The Lothian and Borders fire control room handles only 22,000 calls a year, so there is an issue of scale. Similarly, Strathclyde police, who handle something like 9 million calls a year, are proposing to reduce their number of control rooms from nine to three. Because of technology and because of the kind of tracking systems that we use, the consultants believe—and the evidence in the report also points in this direction—that the concerns that you have outlined should not be a problem. However, we understand those concerns.

Jim Mather: I accept your point about volume, but, in relation to the Gaidhealtachd, a control room operator will have to deal with Gaelic place names and different accents. Numerous place names are the same, such as Tarbert, and that creates a problem. Do you currently maintain and publish statistics on the incidence of fires and road traffic accidents by area—and the response times—on a comparative basis and will you do so after the bill is implemented so that we can count the score and see what is happening?

Ian Snedden: A lot of information and data are published, including the information in the chief inspector’s annual report, which looks at the number of calls and incidents and subdivides the information by the kind of fires and by the fire brigade areas. Audit Scotland produces an annual report showing the response times and targets for various brigades. We would certainly be looking at that information in relation to the integrated risk management plan. We are already in discussion with Audit Scotland about the kind of targets and performance measures that we will try to put in place when we move away from the current standards of fire cover.

Jim Mather: The £3 million saving is a gross saving within the fire service. It is possible that other costs could be accrued, either to the fire service or to the wider Scottish economy, as a result of that move.

Ian Snedden: I take that point, which is perfectly fair.

John Swinburne (Central Scotland) (SSCUP): How did you calculate the figure of £100,000 to £150,000 for a publicity campaign? In a television campaign, a 20-second film shown four or five times can use up £100,000. Are you just paying lip service, or will there be a serious publicity campaign?

Ian Snedden: We may have misled you slightly in that regard. A new fire safety regime will be introduced under the new legislation. In England, the new fire safety regime will come in under a regulatory reform order. Guidance documents will be issued about the new regime, about the new arrangements and about carrying out risk assessments. The £150,000 relates to the costs that we expect to incur in the preparation of guidance documents. We have not yet put a figure on the publicity campaign, but we will have a campaign. That will be important, particularly for those voluntary organisations that have not had the fire safety certificate regime imposed on them under the current legislation.

John Swinburne: Have you given any thought to a ballpark figure for how much it might cost?

Ian Snedden: I would not want to commit myself to that at this stage. Our colleagues south of the border are talking about something like £3 million for a publicity campaign, so if we take the usual 10 per cent for Scotland we would probably be
looking at a sum in excess of £200,000. We have a national fire safety television campaign in Scotland at the moment called “Don’t give fire a home”. We have been spending about £400,000 to £500,000 on that.

**The Convener:** Some fire brigades suggested that the removal of the requirement for a fire certificate could result in a loss of income rather than a gain through savings. Could you comment on that?

**Ian Snedden:** It is absolutely true that fire brigades will lose some income, but it is de minimis in relation to the total expenditure on the fire service. The estimates that we have received from brigades about loss of income in the current financial year are in the region of £165,000—that is the total amount that fire brigades would expect to take in from fire certificates this year. It is not a huge amount of money. Of course, that income relates only to the administrative work that is carried out for the fire certificate; staff will be freed up from carrying out that work when they do not have those functions to perform, so we think that one will balance out the other.

**The Convener:** On behalf of the committee, I thank the witnesses for coming along this morning. The clerks have taken a note of the issues that members have raised. If members have any other specific points, perhaps now is the time to mention them. I would just like to make a point that has been mentioned before in relation to other bills—the problem of costs being introduced at a later stage through subordinate legislation. I think that we should raise that point in our response to the subject committee.
The Fire (Scotland) Bill – Stage 1: The Deputy Minister for Justice (Hugh Henry) moved S2M-1960—That the Parliament agrees to the general principles of the Fire (Scotland) Bill.

Mr Kenny MacAskill moved amendment S2M-1960.2 to motion S2M-1960—

Insert at end—

“but, in so doing, recognises that the Fire Service has served Scotland and its communities well and has done so with firefighters, management, employers and local authorities working in partnership and therefore expresses concern about the proposed abolition of the Scottish Central Fire Brigade Advisory Council and its replacement with a non-statutory body, in conjunction with increased ministerial powers allowing for Scottish Executive action without a forum for proper debate and discussion, at a time when there is concern over the retention of control rooms and other aspects of the service.”

After debate, the amendment was disagreed to ((DT) by division: For 40, Against 64, Abstentions 12).

Miss Annabel Goldie moved amendment S2M-1960.1 to motion S2M-1960—

Insert at end—

“but, in so doing, seeks assurances from the Scottish Executive that the ministerial powers in part 1 of the Bill will not be used to amalgamate existing fire boards in Scotland.”

After debate, the amendment was disagreed to ((DT) by division: For 41, Against 76, Abstentions 0).

The motion was then agreed to ((DT) by division: For 77, Against 14, Abstentions 26).

Fire (Scotland) Bill – Financial Resolution: Ms Margaret Curran moved S2M-1623—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Fire (Scotland) Bill, agrees to any expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.

The motion was agreed to.
Scottish Parliament
Thursday 18 November 2004

[THE PRESIDING OFFICER opened the meeting at 09:30]

Fire (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): Good morning. The first item of business is a debate on motion S2M-1960, in the name of Cathy Jamieson, that the general principles of the Fire (Scotland) Bill be agreed to, and two amendments to the motion.

09:30

The Deputy Minister for Justice (Hugh Henry): I am delighted to open the debate on the general principles of the Fire (Scotland) Bill on behalf of the Executive. Our partnership agreement gave a commitment to introduce new fire legislation. The bill forms an important part of the Executive's strategy to modernise the fire and rescue service to meet local needs, to increase local decision making and to develop the work force, all with the aim of contributing to a safer Scotland.

Our main priority is to save more lives and to reduce injuries from fire. The bill will help us to achieve that by placing a greater emphasis on fire safety. The number of domestic fire deaths in Scotland, which in 2002 had reduced to 62, is one of the lowest on record but, frankly, it is still too high—proportionately, the figure for Scotland is higher than that for any other part of the United Kingdom. We can and must do better.

The single largest cause of domestic fire deaths is smoking in the home—perhaps in bed or in association with the consumption of alcohol—so the key to making further progress lies in increased and improved fire prevention measures. That is why the bill makes community fire safety a statutory function of fire and rescue authorities. As well as recognising the fire and rescue service's traditional role of firefighting, the bill acknowledges the service's extended role in dealing with road traffic accidents, for example, and in responding to the greater threats that environmental disasters such as flooding and the increased threat of terrorism pose.

The bill underpins our wider strategy for fire and rescue services in Scotland. Our aim is to provide improved fire safety for communities throughout Scotland through the introduction of integrated risk management plans that tailor each service's action to the risks and needs of its area. The publication of a national framework will set out the Executive's priorities for the fire and rescue service and how we will work with the service to ensure that the modernisation agenda is delivered effectively.

The work force will receive a range of improvements. As well as significant increases in pay, considerable resources have been committed to a new integrated personal development system, which will meet the development needs of all fire and rescue service staff from point of entry to retirement. There will also be a new approach to recruitment, appointments and promotion. We believe that all those improvements and initiatives will mean that fire and rescue services in Scotland are even better placed to make our communities safer.

The bill is the culmination of more than two years of formal consultation, which began in April 2002 with the publication of our first consultation paper, "The Scottish Fire Service of the Future". The paper sought views on a wide range of proposals that were aimed at improving the service and at making the best use of its resources. Its many recommendations received considerable support. The process continued with the publication just over a year ago, on 1 October 2003, of "The Scottish Fire and Rescue Service: Proposals for Legislation". Those proposals were subsequently debated in the Parliament on 8 October 2003.

I am grateful to the Justice 2 Committee and its staff for their careful consideration of the bill and for producing a comprehensive and clear report. I am pleased that the committee has endorsed the principles of the bill and that, in general, the bill and its policy intentions were welcomed by the people who gave evidence. It is particularly encouraging that both the committee and its witnesses were content with the Executive's approach on the provision of a statutory underpinning for the principal functions of the fire and rescue service. The bill provides a flexible means of adding to those functions to reflect change over time. It is good to have some consensus about the way forward in a key public emergency service.

I welcome the constructive recommendations that the committee made. I will of course write to the committee shortly, to respond to its report and to indicate what amendments the Executive intends to lodge at stage 2. There is no doubt that stage 2 will provide an opportunity to examine the issues in more detail and we will continue to listen carefully to members of the committee and to stakeholders.

I turn to some of the main observations that were made in the committee's report. First, I will deal with the comments on the role of chief fire officers. When I gave evidence to the committee, I
made it clear that the fire and rescue service is a local authority service that will continue to be managed locally. I believe that the bill strikes the right balance between local and ministerial powers. However, I am happy to reflect further on what the committee and others have said about the need to clarify in the bill the chief fire officers' responsibilities and their relationship with, and accountability to, the fire and rescue authority or the joint fire and rescue board. The committee also asked whether the bill needs to clarify the role of the senior fire officer in relation to the control of incidents involving fires. We will consider that, too.

I note that some committee members had concerns about the power to amalgamate fire and rescue authorities being used to reduce the number of such authorities in Scotland. However, I remind members that the power in question is not new, as it has been carried forward, in a slightly modified form, from the Fire Services Act 1947.

Mr John Swinney (North Tayside) (SNP): Some of members' unease might be to do with the possibility of that power being used to reduce the number of fire control rooms around Scotland, a proposal to which a number of chief fire officers have expressed their opposition. I represent a predominantly rural area, the vast geography of which is under the control of Tayside fire brigade. Can the minister tell me how the interests and concerns of people who live in rural and disparate communities will be addressed by the Executive's apparent appetite for reducing the number of fire control rooms in Scotland?

Hugh Henry: I will deal with the issue of fire control rooms in a minute; if I may, I will stick to amalgamation.

The power to amalgamate fire authorities has existed since the passing of the 1947 act and it will continue in a modified form. All that we are doing in the bill is confirming that ministers will take any decision to amalgamate rather than authorise or approve it. We think that we should take such significant decisions, although fire authorities will still have the opportunity to put forward proposals for amalgamation if they feel that that is appropriate.

Mr Stewart Maxwell (West of Scotland) (SNP): Does the minister understand that the unease that is shared by members of different parties and by many people outside the Parliament concerns the fact that it appears on the surface that ministers are taking on a power that will allow them to initiate such changes rather than to respond to demands for change from within the service? The concern is that a situation will arise in which, rather than responding to a consensus for change that will improve the service, ministers will be able to rule by diktat on amalgamation.

Hugh Henry: There is no intention to rule by diktat. Any action that the Executive took on any such issues would follow thorough consultation and full discussion. We have no proposals to change the number of fire and rescue authorities. I would expect full consultation to take place on such matters, including any proposals that local boards made. Full consultation would be necessary not only in the area concerned, but nationally, because any such change would have wider ramifications.

I am encouraged that the Justice 2 Committee considers that the proposed powers are appropriate. I reassure the committee that, if any amalgamations are proposed in the future, there will be clear and comprehensive consultation with all the interested parties. Furthermore, we will lodge an amendment that will change the parliamentary procedure for the necessary order so that it will be subject to the affirmative procedure rather than the negative procedure. That will mean that the Parliament will have the opportunity to comment on relevant matters. I hope that that provides the reassurance that members seek, addresses the point that the committee's convener and others have raised and demonstrates our commitment to the Parliament's scrutiny role.

John Swinney mentioned control rooms. That issue has raised a great deal of interest and concern. We note the comments in the committee's report and its invitation to consider carefully the concerns that have been expressed and to address them specifically in a further round of consultation. That is exactly what we intend to do.

I also note the points that John Swinney made about the worries in rural areas and the concerns that others expressed about the financial calculations that were used and the basis of those calculations, as well as concerns about response times and other matters. When I gave evidence to the committee, the consultation period on the consultant's report had only just ended. We received 20 formal responses to the consultation on the report, primarily from the fire authorities, other areas of local government, the trade unions and staff associations. Although two thirds of the responses expressed a desire for no change, a third—including three fire authorities, which represent 23 of the 32 local authorities—were in favour of rationalisation to three control rooms.

However, we take on board the criticisms that have been made and the concerns that have been expressed and we will consider the matter further. Our intention is to do further work to address the issues that have been raised in the responses and the criticisms of the financial aspects of the consultant's report. As the committee
recommended, we will have further discussions with the stakeholders in the coming period.

**Bill Butler (Glasgow Anniesland) (Lab):** There has been a great deal of interest in, and some controversy about, the discussion on the future number of control rooms. I accept some of the assurances that the minister has given, but would he be willing to consider coming back to the Parliament at an appropriate time to discuss the matter separately and more fully?

**Hugh Henry:** I would be happy to do that. It is my intention that, after we have reflected on the comments that have been made and done further work on the calculations, we will come back to the Parliament through the appropriate mechanism to notify members of the conclusions that we have drawn from that work.

**Shona Robison (Dundee East) (SNP):** The minister mentioned that 23 of the 32 local authorities came down on the side of having three control rooms. The question that Mott MacDonald asked was whether there should be three control rooms or one but, if the question had been whether there should be eight, three or one, there might have been a different response. Does the minister acknowledge that the responses were determined by the question that was asked in the first place?

**Hugh Henry:** No, I do not, because a number of the responses argued for the status quo. The issue now is whether we are prepared to do further work and give the matter further consideration. We are doing that and we will come back to the Parliament on the question. The issue is important and we need to balance local concerns against the case for improved delivery, improved resilience and the significant investment that is required on the new United Kingdom-wide radio communications system for the fire service.

I note what the committee said about the merits of making the water supplier responsible for maintaining water hydrants. We recently consulted on the principles that should underpin water charges and the investment levels that will be required in the water industry for the next eight years. We want to find a solution, but we must ensure that it is consistent with the principles that have been set out. I will therefore discuss the matter with the Minister for Environment and Rural Development and his deputy, who have responsibility for water, and I will let the committee know the outcome as soon as possible.

The fire safety duties that relate to places where people work are also important. The removal of multiple and overlapping fire safety provisions and their replacement with a single fire safety regime based on risk reduction will reduce the burden on businesses and allow more efficient and effective enforcement. As the committee acknowledges, there are a number of complex technical legal issues in part 3 of the bill. Since I gave evidence to the committee, my officials have met the Fire Brigades Union Scotland to discuss those matters and to offer explanations and clarification where they were required. I hope that that dialogue will continue once the draft regulations are available.

I am concerned that we have perhaps not sufficiently clearly explained to the committee our policy that the fire and rescue authority should be the main enforcing authority for fire safety issues and how that affects properties that are subject to houses in multiple occupation licensing or to registration by the Scottish Commission for the Regulation of Care. I assure the committee that the multi-agency approach will stay intact. For example, HMO properties currently receive a visit from a fire officer; that will continue. The fire officer feeds the outcome of the visit into the HMO licensing process as a whole; that, too, will continue. The process and the interaction will look and feel the same. The only difference will be that, on fire safety—and on fire safety only—the fire and rescue authority will be the enforcing authority. It will have the final say on what is acceptable to secure people's safety in the event of a fire. It is right and proper that the professionals should have that duty and power and I am confident that the public at large and those responsible for the licensing schemes will welcome that approach.

We need to ensure that information and education on the new fire safety regime are available in appropriate forms and at the appropriate time for those who need it. We are considering options for publicity and information. For reasons of time, I will skip over that, but I assure members that we believe that the money will be available and we will continue to consider the matter.

I will touch on a couple of other issues that the committee raised. The first is firefighting at sea. I confirm that we will amend the bill to provide for the necessary duties and powers to enable participation in the sea of change project. Secondly, on assaults on firefighters, I am aware that stage 2 consideration of the Emergency Workers (Scotland) Bill begins next week and that provisions in that bill will protect those acting in that capacity. We will lodge the necessary amendments to meet our commitment to protect all fire and rescue service personnel while they are on duty.

I indicated earlier that the consultation process associated with the bill is still on-going. We recently shared our first draft of the national framework with the committee and key stakeholders as part of a pre-consultation
exercise. Once we have considered their responses, we will issue a full consultation draft to all stakeholders.

At the beginning of next month we will issue three consultation papers. The first will cover charging. I confirm that it will make it clear that fire and rescue authorities will continue to be able to recover full costs for services that they provide for other organisations, such as training. Secondly, we will consult on our additional functions order under section 10 of the bill. Thirdly, we will consult on a replacement body for the Scottish Central Fire Brigades Advisory Council, which the bill will abolish—a move that, I note, the committee supports. The consultation period will last for three months in line with good-practice guidance and we hope that that—together with a first draft of the fire safety regulations, which should be available for stage 2—will contribute to the scrutiny process and provide further clarity and reassurance.

I hope that what I have said will give reassurance on some of the issues that I have addressed and that we have gone some way towards addressing the concerns of the Opposition parties that have lodged amendments to the Executive motion. We will return to many of the issues at stage 2, but it is important that the Parliament should endorse the need for the bill. The bill replaces legislation that is, in some cases, more than 50 years old and it represents a clear challenge of the 21 century. For that reason, I commend the bill to the Parliament.

I move,

That the Parliament agrees to the general principles of the Fire (Scotland) Bill.

09:47

Mr Kenny MacAskill (Lothians) (SNP): I thank the minister for his clarification of many points and for the tenor and tone of his speech. The fire service has served Scotland and her communities well over years past and present. I refer not only to the front-line firefighters, but to the backroom staff, because the success of the service is the sum of its parts. Disputes with management, Executive and Government have not deflected them from providing an excellent emergency service to one and all. They have changed with the times and adapted to new requirements. From an increased work load in vehicular accidents to a more varied work load involving chemicals, the nature and extent of the calls on their service have changed and increased, but, without fail, the fire service has addressed the safety of individuals and the security of communities.

The main purpose of the bill, as detailed in the policy memorandum, is ostensibly “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’.”

It is clear that times have changed and that the society in which we live has evolved, but, to its credit, so has the fire service that has served us well throughout the years. There is an adage that the minister and the Executive might care to bear in mind: if it ain’t broke, don’t fix it.

Reference is made to the need for national resilience. That can be viewed as weasel words. We need to adapt to changing times, but, although it is essential that we address the problems of global terrorism, that requirement must not be used to deliver Executive-desired change under the guise of the defence of freedom when, oftentimes, that is not the case. Our emergency services have coped admirably with incidents as major and varied as those at Lockerbie and Piper Alpha. Of course they need to prepare for other atrocities and tragedies, but that must not be an excuse to railroad through unwanted changes without proper discussion and debate.

The first policy objective of the bill is “to define the role of the modern Fire and Rescue Service”, but that is an evolving concept. If the role has changed and adapted since the 1940s and 1950s, will it not, as the minister said, do likewise in the 21st century? If the service coped back then, why should it not cope with future developments?

The second objective is to ensure that the fire and rescue service has clearer national and local priorities and objectives. Who could disagree with that sentiment? However, if that is the case, why are we seeking to undermine the statutory basis that enables priorities and objectives to be discussed and debated rather than simply to be set according to the whim and fancy of a minister—I do not mean to imply anything about the current minister; I am thinking of some future minister—and to be the subject of diktat?

The third objective is to improve the protection offered to communities. We agree with that aim. However, in what way is it an improvement to reduce the input of communities and potentially to centralise the service? That proposal causes concern to members from all parties, not just the Opposition parties.

The fourth objective is to revise fire safety legislation. Clearly, there is unanimity on that and we support the Executive in that regard. Preventing fires from starting in the first place is as important a role and remit as putting them out. Ensuring that actions and steps are taken by responsible parties is part of that work.

We accept that, in a democracy, it is the right of the Executive to legislate. However, it remains the
duty of the Opposition to challenge the intentions and the fine print of legislation. We are only at stage 1—and, of course, we have the benefit of being able to see a published bill—but I appreciate the fact that the minister has today further clarified matters, particularly with regard to the use of the affirmative, rather than the negative, procedure for statutory instruments. However, even with the affirmative procedure, the difficulty is that we are left in a take-it-or-leave-it situation. We will find that, although the instrument contains points that are valid and welcome, the Parliament will be able only to say no to the entire instrument; we will not be able to delete particular parts. That is the difficulty that we have with the minister’s concession, welcome though it is.

We cannot prevent the Executive from using its majority to force through its will. However, we can ensure that errors are pointed out and mistakes and pitfalls are avoided. Clearly, many provisions in the bill are perfectly acceptable, not only to the committee but to the Fire Brigades Union. Whether the implementation of such beneficial proposals required a bill to be drafted is open to debate, but the Executive has chosen to deal with the issues in that fashion. However, we are opposed to particular provisions, which we are flagging up at this juncture. We hope that the Executive will reflect on our concerns and ensure that the gains provided are not offset by losses.

We have three main areas of concern. The first is the proposed abolition of the Scottish Central Fire Brigades Advisory Council, which is a statutory body that has worked well—it has adapted to changed times and has delivered to meet them. Replacing the council with a non-statutory body undermines the ethos of the organisation. The body might need to be improved and adapted and we can change its name and even some of its structures—the need for such changes is open to debate, as even the FBU accepts. What is not acceptable and what we will challenge is the decision to move the body to a non-statutory basis, which undermines not just its integrity, but its authority.

Secondly, we are concerned about the fact that, in conjunction with making the SCFBAC a non-statutory body, the bill will enhance ministerial powers. Ministers are entitled to govern; we accept that that is part of living in a democracy. However, in areas such as the one that we are discussing, in which we have operated as a community and with co-operation between all partners, action must not be taken by ministerial fiat or Executive whim. Certainly, no minister should be able to bind his successors. That is our fundamental difficulty with the direction in which the Executive is moving.

Hugh Henry: I hope that Mr MacAskill recognises that, as I explained to the committee, only one of the powers that he refers to—that of emergency direction—is exercisable by ministerial direction. The remainder are all exercisable by order and, as such, would be subject to full consultation and, more important, full parliamentary scrutiny.

Mr MacAskill: I accept that and welcome the tenor of the minister’s words. However, the devil is in the detail and we must ask further questions about the use of ministerial direction. The Executive argues that it is unlikely that such powers would be used. If so, why is it legislating for them? If the Executive does not intend to use them, why have them? Of course, if we remove the democratic forums that previously provided a chamber for debate, we increase the likelihood that we will act by direction rather than after discussion.

If the powers are unlikely to be used, perhaps the minister could tell us the circumstances in which the Executive envisages that they might be used. Moreover, if they are to be exceptional, that should be made clear and the times at and issues on which the Executive would intervene should be specified. If there is no hidden agenda, the Executive should make that clear, detail the situations in which ministerial edict might have reign and let the Parliament decide whether that edict should run.

Our third concern relates to the number of fire control rooms. That issue has been a matter of great concern, as we have heard, and others in my party will comment on it at length. However, it is important that we remember that we are talking about not only a national fire brigade but a local fire service. Part of the strength of that service is that it is for the community and, fundamentally, from the community.

Hugh Henry: Kenny MacAskill has indicated that others in his party will comment on the issue of fire control rooms at some length, but I must point out that the bill is not about fire control rooms—there is much more to it. Indeed, I remind him that, if local authorities want to change the number of fire control rooms, they can do so even before the bill is passed.

Mr MacAskill: The minister’s words are factually correct, but many members of the public and many members in this chamber—not just those in my party—are concerned about the direction in which we are heading with regard to fire control rooms. The bill concerns fire control rooms. The question whether the actions that we are discussing could be taken at the moment or after the bill is passed must be addressed.

A central strength of the fire service is local knowledge. Centralisation—reducing the number of fire control centres—will reduce local knowledge
and undermine the local service. It is ironic that one of the drivers for the bill is the troubled times in which we live, which are exemplified by the tragedy of 9/11. However, the lesson that New York city learned led it to increase, not decrease, the number of fire control centres. It is clear to me that, if that is good enough for New York, it is good enough for New Lanark.

There are also concerns, not least to the FBU, about the consequences of the changes in respect of industrial action. The Executive sought at the Justice 2 Committee to address the union's fears. However, it would be useful if the minister could confirm the position for the record. If those fears are allayed, our doubts on that issue will be assuaged to some extent.

Clearly, changes can be made to improve the fire service, but that has always been the case. Is legislation necessary and, if so, does it require to be of the magnitude of this bill? Those are matters that the Executive must consider anew. If it is committed to pressing on, it must at least address the three key points that I have outlined: we require a statutory body in the service; we must not act on ministerial whim or fancy; and there must be no reduction in the number of fire control rooms without proper local debate, discussion and agreement.

I move amendment S2M-1960.2, to insert at end,

"but, in so doing, recognises that the Fire Service has served Scotland and its communities well and has done so with firefighters, management, employers and local authorities working in partnership and therefore expresses concern about the proposed abolition of the Scottish Central Fire Brigade Advisory Council and its replacement with a non-statutory body, in conjunction with increased ministerial powers allowing for Scottish Executive action without a forum for proper debate and discussion, at a time when there is concern over the retention of control rooms and other aspects of the service."

09:58

Miss Annabel Goldie (West of Scotland) (Con): I take this opportunity to thank my fellow committee members, the clerks to the Justice 2 Committee and the witnesses who gave evidence during the stage 1 process. The committee has played a useful scrutiny role and, from the minister's comments, I think that he has understood that there is no acrimony around the bill and that there has been a genuine attempt to be constructive. However, as Mr MacAskill said, we have an obligation to test and probe when there is legitimate doubt about the Executive's ultimate intentions.

The Fire (Scotland) Bill is an important piece of legislation. Our fire service is professional and dedicated and I know that I am not alone in the chamber in being in a position to say that I have had occasion to rely on that professionalism and dedication. I pay tribute to the men and women throughout Scotland who demonstrate those qualities day in and day out.

In 2004, it is fitting that we should review the legislative framework as, in effect, that was last done in 1947. Since then, times have changed. We are in a different environment and there are new duties, challenges and threats, not the least of which is the unwelcome emergence of global terrorism. The Parliament owes it to the men and women of the Scottish fire service to scrutinise the bill carefully. We also owe it to the Scottish people to ensure that the legislation is clear and sufficient to meet the complexities of today's world.

Much of the new strategy and framework will be set out in the national framework document. Although my committee has seen a draft of that paper, it is private and consultation is to follow. It might have been more satisfactory if the production of the document had been accelerated so that the committee could have fully considered the framework at stage 1. Similarly, the bill depends heavily on secondary legislation and further consultations in relation to control rooms, the firelink project, integrated risk management plans, fire safety regulations, charging and the new advisory structure. Therefore, it is difficult to get a comprehensive or complete view of what the legislation will be like in practice. I simply ask whether that is fair to everyone who will be affected by it. Perhaps it is not. The lesson is that if what has been proposed is worth doing—and it is—more detail at the drafting stage and less haste might be beneficial.

Before I deal with my amendment, I will acknowledge what is positive in the bill. Part 1 contains a clear restatement of the structure of the fire and rescue service, which is clarifying and helpful, and part 2 gives a helpful redefinition of the principal functions of the service. The Executive's intention to lodge an amendment at stage 2 to include offshore firefighting is sensible and welcome. Nowadays, the provisions for emergency direction are—unhappily—necessary and the minister has sought to reassure the committee that they are last-resort powers. We accept that reassurance. The consolidation of fire safety legislation in part 3 is certainly complex and technical, but it is also welcome, as it represents a helpful attempt to codify the law and to achieve a degree of consistency throughout the United Kingdom. I would certainly underline the committee's caveats on aspects of all those provisions, but I welcome the minister's comments on chief fire officers and senior fire officers, for example.

As for my amendment, I supported the general principles of the bill in committee for the reasons
I, too, repeated them this morning—but I believe that doubt the sincerity of his remarks—indeed, he be highly unusual. I do not impugn his integrity or committee that the exercise of those powers would evidence, the minister sought to reassure the creation of a range of ministerial powers. In his measure. That is particularly demonstrated by the clarity. The bill will be a powerful and influential to which I have referred, but I revert to the issue of not simply approving but taking the decision. If we explicitly says that the reality is that ministers are for approval, we are, in effect, taking the decision. If we are making a decision, we should be seen to take that responsibility. The bill simply clarifies something that has, in a sense, always been the case.

Hugh Henry: I am baffled and would welcome further discussion with Annabel Goldie about exactly how the situation would change. The power has existed since 1947. All we are doing is recognising that, when matters come to ministers for approval, we are, in effect, taking the decision. What we are proposing and the draftsmen have suggested is simply a tidying-up measure that explicitly says that the reality is that ministers are not simply approving but taking the decision. If we are making a decision, we should be seen to take that responsibility. The bill simply clarifies something that has, in a sense, always been the case.

Miss Goldie: That is the nub of the disagreement between us. My reading of the bill is that it will provide for a ministerial power that could be instigated by the ministerial presence, as distinct from voluntary proposals coming from the authorities with the decision being whether to give those proposals ministerial countenance. That is the nub of the difficulty.

If the Executive's intention is to reduce the number of brigades, that is a new and separate debate and the Executive cannot by stealth deliver that outcome—if that is what the Executive intends, it must be stated in the bill. If the Executive ever intends to bring forward such proposals, it must do so through primary legislation. I know that the minister made a minor concession this morning by allowing that subordinate legislation proposing any change would be subject to the affirmative, rather than the negative, procedure. That is an advance, but it is not enough.

That is why I have lodged my amendment. We need clarity. If the Executive will not support my amendment, the only conclusion that can be drawn is that there is an intention to reduce the current number of boards. As I said, that is not acceptable unless there is a bill before the Parliament for that purpose. If the Executive does not support my amendment, my party will find it difficult—indeed, I think that it will find it impossible—to support the bill at this stage.

I move amendment S2M-1960.1, to insert at end:

“but, in so doing, seeks assurances from the Scottish Executive that the ministerial powers in part 1 of the Bill will not be used to amalgamate existing fire boards in Scotland.”

10:05

Mike Pringle (Edinburgh South) (LD): I, too, welcome the opportunity to take part in this debate on the stage 1 report on the Fire (Scotland) Bill.

A considerable amount of evidence was given to the committee and I thank all the main players in the fire service for giving up their time to come to the committee. They certainly all agreed that the existing legislation—the 1947 act—needed to be brought up to date. In its policy memorandum, the Executive states that the 1947 legislation is still mostly perfectly adequate, but that it "would do little to progress the modernisation agenda."

I believe that the new bill will achieve what the Executive wants, which is to bring the fire and rescue service up to date and to allow it to modernise. No organisation can stand still, and the public expect a modern and efficient fire and rescue service to deliver in a modern society.

Of course, much of the detail of the new framework will be set out in secondary legislation, which has already been referred to, and in a new national framework. There is still considerable consultation to be had, as there has been during the passage of the bill so far. Like Annabel Goldie, I think that it might have been better if that consultation had been at a more complete stage by now. It would then have been easier for the committee to reach more robust conclusions on various parts of the bill—for example, on the national framework, charging and the new advisory structure.

The Chief Fire Officers Association and the Fire Brigades Union expressed concern about control and lines of responsibility. The minister has said something about that already, but I hope that he will do a little more to clarify the exact position.

In considering the overall provisions of the bill, there was real disagreement in the committee only on the future structure of the fire service. I stress that the bill will make no changes to the current structure of the fire services. Some written and oral evidence gave rise to the concern that part 1
of the bill puts the power to amalgamate fire boards into the hands of the minister. Members have already discussed that matter. In evidence, Ian Snedden said:

"the bill's provisions would allow amalgamation orders to provide for a smaller number of larger joint boards. However, in essence, that part of the bill restates the current arrangements. The current boards are set up through such amalgamation orders."—[Official Report, Justice 2 Committee, 9 September 2004; c 918.]

Therefore, any proposals for amalgamation currently have to be approved by ministers.

Miss Goldie: If that is the member's understanding of the situation, will he confirm that that is what section 2(1) says?

Mike Pringle: That is my interpretation of it. There was considerable discussion of the matter in the committee, and we must take a view. That is my view of the bill as it stands.

Section 1 has a robust statement on whom the minister must consult before amalgamation. Apart from Annabel Goldie and Stewart Maxwell, the committee was content with the power but sought assurance that

"the consultation will be comprehensive and transparent and will include all interested parties."

The concern about the section revolves around the number of fire control rooms and whether a reduction would lead to fewer brigades. That is by no means certain. I know that any reduction in local accountability would be contested by all parties in the fire service and would be hotly contested by MSPs.

The Mott MacDonald review concluded that a reduction in control rooms would be advantageous. However, the question is, from eight to what? Members of the committee noted that having one control room was feasible—we had evidence of that—but we all thought that that was not desirable.

I turn to two other areas of the bill: charging and the water supply. I have always believed that fire brigades should charge, when appropriate, and the minister has made reference to that today. It is important that brigades can charge and recover costs for such things as the training and services that they provide to businesses and others. The Finance Committee was concerned about the loss of income from fire certificates and in our report we have asked for any loss of income to be compensated for.

It seems that all bills have to have at least one area that causes some amusement during the taking of evidence. In this case, it was all about water hydrants. The Chief Fire Officers Association enlightened us all by telling us that fire hydrants are used on only a few occasions, and the evidence to the committee was that the responsibility for the seldom-used hydrants should be passed to the water authority. I am sure that the water authority will not like that, but there is merit in that suggestion. I note what the minister has said on the subject already and I invite him to reflect on the evidence that we have been given.

I want briefly to refer to HMOs. As a councillor, I worked on the regulatory committee of the City of Edinburgh Council for several years, and I always felt that it was right to approach HMOs in a multi-agency way, whereby everybody was able to have an input and reports were received from everybody who was involved. It was often the fire officer who led that discussion. I still think that that is the way forward.

I conclude with a question on which there was some discussion in the committee. When is a police officer not a police officer, and if someone is disguised as a firefighter, should he not be charged for impersonation, as he would be if he were impersonating a police officer? I look forward to the minister clarifying that small but important issue.

I am confident in and content with the Fire (Scotland) Bill at stage 1 and I recommend that the Parliament agree to its general principles.

10:12

Maureen Macmillan (Highlands and Islands) (Lab): The fire and rescue services—especially the local brigades—are held in high regard by the people of Scotland. The area that I represent has only one full-time fire brigade but dozens of local retained or voluntary groups. I thank the minister for the transitional funding that is being made available to address the modernisation of the fire service in the Highlands and Islands.

Nobody will disagree that we also need to modernise the legislation governing the fire service, which dates back to 1947. The bill is a mechanism for making the fire and rescue service responsive to modern needs and for delivering, through a national framework, our national and local priorities. The bill therefore needs to be read in conjunction with the national framework, which is being consulted on contemporaneously with the bill. It was helpful for the Justice 2 Committee to have sight of the framework during the stage 1 consultation although, as Annabel Goldie said, we would have liked to see it a wee bit sooner.

Although the policy intentions of the bill were generally welcomed, the Chief Fire Officers Association, the Fire Brigades Union and the Convention of Scottish Local Authorities felt that there was a lack of clarity—which the minister has recognised—about when the Executive would exercise powers of direction, what the
responsibilities of chief officers would be and how local democratic control would be exercised. Lines of responsibility need to be made clearer, especially regarding who would be in overall operational control in a major fire situation as envisaged in section 11. Although, as the minister has said, section 11 orders would be used rarely, there must be certainty about roles and responsibilities. I am glad to have the assurances that the minister gave in his opening speech.

We recognise that nothing in the bill changes the structures of the fire service. However, the bill lays down how amalgamations of brigades would be decided. Because of the current consultation on the Mott MacDonald report “The Future of Fire Service Control Rooms in Scotland”, there has been a perception that the number of brigades will be cut, especially if the number of control rooms is cut. That is not in the bill, but I would be glad to hear the minister give assurances on the matter. I would also like him to give an assurance that if, in the future, there are proposals to amalgamate brigades, there will be wide-ranging consultation, such as he has mentioned, of all parties who might be affected. At the moment, the list of parties to be consulted does not include the recognised trade unions, and I wonder whether the minister has a comment to make on that.

Hugh Henry: Maureen Macmillan’s point relates to an issue that was also raised by Kenny MacAskill. Section 45 clearly states that any negotiating body should include representatives of employees. I have no doubt whatever that that would include trade unions. The difficulty with amending the bill to include a reference to recognised trade unions is what the definition of “recognised trade unions” would be. Defining that would cause other complexities. I am happy to give the assurance that, as far as I am concerned, representatives of employees should and would include trade unions.

Maureen Macmillan: I am glad of that assurance, as I hope others will be.

The Mott MacDonald report has, as the minister knows, caused anxiety in most brigade areas. I ask the minister to consider not just the cost savings but the impact of any changes on communities and the complex nature of the work that is carried out in the control rooms. I am glad of his assurance that there will be further consultation. I recently visited the fire service control room in Inverness and was impressed by the sophistication of the logistics that are involved in deploying rescue vehicles, not to mention the way in which continuous communication is maintained with the firefighters and members of the public who are involved or even trapped in a fire situation. We must recognise that control rooms are not just call centres but carry out a great deal of sophisticated work.

In its evidence to the Justice 2 Committee, the FBU raised concerns about the interpretation of definitions of employer-employed relationships and the complexity of the drafting that would be needed to ensure that the bill married with UK legislation on fire safety. The FBU and the Scottish Trades Union Congress also expressed concern about a possible interpretation of section 67, which they felt could mean curtailing workers’ rights. The Executive has written to the committee, addressing those concerns and affirming that section 67 does not bear the interpretation that is feared by the trade union movement. However, it is obviously an instance of lawyers eyeballing one another. I urge the Executive to meet the trade unions to discuss the matter further and, if any way can be found to clarify the language that is used in the bill to their mutual satisfaction, to lodge amendments at stage 2.

Two seemingly minor points caused a great deal of discussion, one of which has been raised already. First, could off-duty policemen act as volunteer firefighters? There is a ban on that at the moment and the bill continues that ban. It is an anomaly that an off-duty policeman can be a volunteer in a mountain rescue team or on a lifeboat but cannot turn out for a small, rural fire brigade. It is doubtful that allowing that would make much difference to recruitment figures—we received conflicting evidence on that—but some of the small brigades are having difficulty attracting personnel. Will the minister examine the matter and consider whether the decision to allow an off-duty policeman to volunteer for the local fire brigade could be decided on a case-by-case basis, with the application being made to the appropriate police authority, rather than it being written into law that that can never happen.

Secondly, there is a point of irritation over who should pay for the upkeep of fire hydrants. At present, that is the fire service’s responsibility, but it wishes that it was not. It wants the responsibility to be transferred to Scottish Water, although that could have financial implications for water customers. In evidence taking on the Water Services etc (Scotland) Bill, I was told that the vandalism of fire hydrants costs the fire service £1 million a year. It is no wonder that neither the fire service nor Scottish Water wants to foot that bill. Does the Executive take that £1 million cost into account in funding the fire and rescue service? The issue seems to be one of antisocial behaviour and I urge the Executive to consider how it might be dealt with through the Antisocial Behaviour etc (Scotland) Act 2004.

Although this is a time of uncertainty for the fire and rescue service, with some rural brigades in the north awaiting their fate under the integrated risk management plans, I am confident that the bill
will give us the modern fire service that we need for the 21st century.

10:20

Ms Sandra White (Glasgow) (SNP): I know that my colleagues will elaborate on this point, but listening to what the minister had to say about the reduction in the number of control rooms, I should draw his attention to paragraph 31 of the Justice 2 Committee’s report on the bill. The report quotes his comment that “fire boards representing 23 of the 32 local authorities in Scotland have suggested that we should consider having three control rooms”.

As Shona Robison has pointed out, that statement is misleading; the detail is all in the question, not in the answer. Only three fire authorities have indicated that, in the event of any reduction, they would prefer the number of control rooms to be reduced to three. COSLA—

Hugh Henry: Will the member tell us how many local authorities are represented by those three brigades?

Ms White: I was just about to say that the three fire brigades or authorities that indicated that three control rooms would be their preferred option represent 23 local authorities. If the minister will let me finish this time, I will also point out that COSLA, which represents all local authorities, has stated that the majority of council leaders are opposed to any reduction, including the leaders of the authorities served by the three brigades that the minister mentioned.

Paragraph 23 of the report states:

“the Minister advised that the immediate driver behind the proposal to reduce the number of control rooms”

was funding. So it is all about money. The Scottish National Party acknowledges that funding is important but believes that it should not compromise people’s safety and ultimately their lives. I ask the minister to consider that point as well.

Before I move on, I want to make it clear that my rural colleagues will consider the important issue of the geography of those areas, so I will not dwell on that in my speech. However, although I accept what the minister said on that matter, I should point out that people in those areas are very concerned about the reorganisation of the fire boards. If that reorganisation goes ahead, it might lead to an increase in injuries and deaths. In response to Bill Butler, the minister said that the matter will come before Parliament, and I look forward to hearing what the minister has to say on that.

On the issue of employment, Maureen Macmillan mentioned that one area of concern was section 45, which basically refers to the rights of trade unions. Maureen said that she accepted the minister’s explanation, but I cannot take any comfort from his comments. For example, he said that, although the phrase “recognised trade unions” did not present any difficulties for him, he could not include it in the bill. I would have thought that, given his previous life, the minister, of all people, would recognise trade unions and I ask him to explain why he cannot use that term.

Section 45 gives ministers the power to establish a “statutory negotiating body” that will be made up of representatives of employers and employees. Why can it not mention trade unions? I ask the minister to reconsider the matter; after all, we know that it is usually trade unions that represent employees—it is similar to Mike Pringle’s point in his speech that a policeman is a policeman. I cannot see where the difficulty lies. In any case, the rights of trade unions are enshrined in the European convention on human rights and I believe that they must be given legitimacy in the bill. If that does not happen, the unions and I will regard such an approach as an absolute farce.

Maureen Macmillan also raised concerns about the bill’s approach to fire safety duties and industrial action. Although the report makes it clear that the minister has given assurances on this matter, I seek clarification on section 67. A civil offence is already set out in section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992, which stipulates the requirements on those who take part in lawful industrial action. However, section 67(2) of the bill would make it a criminal offence for individuals to take part in lawful industrial action. I emphasise the word “individuals”, because it does not matter whether we are talking about firefighters, fire control operators or any other individual who is deemed to have a responsibility for fire safety in their workplace. Again, I know that the report says that the minister has already given assurances on this issue, but I seek his assurances about the intention behind section 67(2) and ask him to clarify categorically either through an intervention or in his summing-up that he does not intend to make it a criminal offence for a person to strike.

I thank the members of my party for giving me this opportunity to speak this morning. I am not a member of the Justice 2 Committee, but I have certainly read the report and the other evidence. Strathclyde fire brigade is one of the biggest brigades in the country—indeed, it is one of the three fire authorities that the minister said are in favour of reducing the number of control rooms to three. However, that brigade and the members of the FBU are very concerned about all their colleagues throughout Scotland and would urge the minister and the Parliament to examine
carefully the bill’s contentious bits and pieces such as the reduction in the number of control rooms and aspects that relate to trade unions and industrial action. I cannot support the whole bill without examining those issues.

I could highlight the many and varied incidents in which the men and women in the fire brigades have given their all—members have already mentioned Lockerbie and the Maryhill tragedy—but I will not dwell on individual actions. All I will say is that those people would not be telling us that there is something wrong with the bill and that we should look at it properly if there were no reason to do so. I am asking the Parliament not to simply take on board the minister’s assurances. That said, if he can give us some assurances on the questions that I have raised, that might go some way towards allowing the SNP to support the bill.

10:26

Colin Fox (Lothians) (SSP): Two years ago today, the first national fire strike in 25 years began. I was on the picket line at Liberton fire station in Edinburgh. Little did I realise that I would mark the second anniversary of that dispute standing here in the Scottish Parliament, debating plans for a radical reorganisation of the fire service. I want first to pay tribute to the firefighters whom I met. Those men and women, who provide an outstanding service to the people of this country and across Britain, stood up for their rights to have a decent wage and dignity in employment. I would like to think that it was the support that the Scottish Socialist Party showed them in their hour of need that persuaded so many of them, their families and their friends to put their faith in this party at the 2003 elections.

I believe that the national fire strike is a driver for the bill, because it represents a complete sea-change in the Executive’s attitude to the fire service. It places us in an entirely different direction from the pathfinder report and the Executive’s own document, “The Scottish Fire Service of The Future”, which was published in 2002. Instead, the bill is an amalgam of the much-criticised Bain report and the report that was issued by the Office of the Deputy Prime Minister immediately after the strike.

What happened to the proposed investments in decentralisation that were set out in the highly respected pathfinder report? What happened to the plans that were laid out in the previous Executive document? The delayed and long-awaited draft of the national framework, which runs in tandem with the bill, makes interesting reading. For a start, it proposes cuts and a further centralisation of powers. It says that “fire and rescue authorities primarily provide local service” and local democracy and are “accountable to ... communities”, but—and here is the rub—change has to be made. The implication is that there will be a lessening in primary provision, local democracy and community control. Furthermore, it counterposes improved services to communities with “efficiencies linked to the best value agenda”.

Local authority and public sector workers across the country know that that is new Labour-speak for cuts.

Perhaps when he sums up, the minister might also tell us whom he means when he says in the pre-consultation draft of the national framework that the service is not to be “a fiefdom for particular stakeholders”.

Who are these chiefs? Whose fiefdom is he talking about?

The Scottish Socialist Party will support the general principle of modernising the fire service, provided that it improves the service to the public. Although we will support the bill today, we believe that it is in need of radical amendment at a later stage. We look forward with keen interest to the outcome of the consultation.

The minister touched on the issue of the control rooms in his opening speech. Many other members who have spoken have highlighted that that plan is one of the serious concerns that I and the other members of the Justice 2 Committee have about the bill. It is the most obviously contentious issue in the bill. The key question is whether the plan represents a better service to the public. To my mind the overwhelming body of evidence that was presented to the committee favoured eight control rooms, one in each fire area. There was unanimity among the employers in the shape of COSLA, the employees in the shape of the FBU and the managers’ organisations that the plan represents a diminution of the service to the public, because it means that there will be fewer staff and a poorer service. Fewer people handling the calls means a poorer service, a slower call-handling rate, a longer response time and, consequently, an increased risk to the public of injury and death.

The minister accepted at the committee that amalgamation would mean fewer control room staff. Much was made by Her Majesty’s chief inspector of fire services for Scotland—who seems to be the sole supporter of option 1—of the Strathclyde experience, where five control rooms had previously been merged into one. He failed to mention that, unfortunately, Strathclyde is consistently bottom of the table in Scotland on response times and is the slowest of all the
Scottish fire brigades. The chief inspector also talked about the need for the fire service's response time to be brought into line with that of the other emergency services. The fire brigade is rightly proud of the fact that it has the fastest response time of any of our emergency services. The changes will impinge on that proud record.

It was suggested to the committee that the plan is needed because for reasons of national resilience—the fear that there might be a need to respond to terrorist attacks and so on—it is preferable to have fewer, but bigger, control rooms. Yet 9/11 was surely the ultimate test of anyone's national resilience and the New York fire department's response was to move in precisely the opposite direction from that which the minister suggests today—it moved from one fire control room to five. Brigades can work together without amalgamation. The Lockerbie disaster was the biggest test of national resilience that the fire service has dealt with in Scotland. That disaster was faced by the smallest brigade in Britain, which was given great credit and awards for the way in which it responded. As Kenny MacAskill said, if it ain't broke, don't fix it. As far as I am concerned, the evidence is that the amalgamations will lead to a poorer service and will compromise community safety.

I found the evidence offered to us on the Scottish Central Fire Brigades Advisory Council curious and somehow suspicious. The body has been in existence for 55 years, yet neither the minister nor the chief inspector of fire services could provide evidence that it had produced a single piece of work of any value in all those years of meetings. It is suggested that the council will be replaced with something dynamic. We do not know what that will be, but it will not be statutory and the minister need not attend. Again, that is a step back from the current situation.

That brings me to the meetings that the minister will attend. There is a clear centralising emphasis in the bill. The bill includes extra powers for the minister, but those are for unspecified purposes. Will he agree to list in the bill the specific categories under which those powers can be used appropriately? Can he assure the Parliament that those powers will not be used to outlaw a future national fire strike, as was much talked about during the 2002 dispute?

At this stage the bill does not get the balance right between the powers of the minister to direct and the powers of the local professionals to manage the service. This is a centralising bill. Local democracy and decision making are further compromised.

I reiterate that the Scottish Socialist Party will support the general principles of the bill in its attempt to modernise the service and update the legislation, but we intend to lodge amendments later in its progress through Parliament.

10:34

Bill Butler (Glasgow Anniesland) (Lab): As a new member of the Justice 2 Committee, I did not have the opportunity to take part in any of the evidence sessions, but I nevertheless welcome the opportunity to make a number of general observations about the stage 1 report on the bill.

The committee found that a general welcome had been extended to the principal objective of the bill: the delivery of modernised fire and rescue services that respond to the particular demands of 21st century Scotland. There was general agreement that the current legislation required to be updated to mirror the breadth of the role of the modern fire service, which now has multifarious functions, and to deliver a clear framework of responsibility for fire safety. The Executive should be given credit for recognising that the current legislation that governs the fire service, which dates back to 1947, does not and cannot possibly take proper account of the evolution of the fire service over more than half a century.

Of course, the primary purpose of the fire service is still to tackle fires, but the bill seeks to reflect properly the variety of roles that the fire service now carries out, in particular fire prevention, attending road traffic accidents and undertaking other rescue work.

The FBU's submission to the Justice 2 Committee welcomes

"The inclusion in Sections 7 & 9 of Fire Safety Duties and Road Traffic Accidents as a Statutory Obligation".

The FBU is correct in its assertion that

"These functions have been carried out for many years by Firefighters and it is right & proper that they are finally acknowledged and enshrined in statute."

The inclusion of road traffic accidents as a statutory obligation is a welcome recognition that the number of calls to assist with the rescue of people from wreckage and to protect people from harm from the spillage of hazardous substances has increased dramatically. It is right and fitting that a relevant authority will now be statutorily obliged to make provision for rescuing persons from road traffic accidents and for dealing with the aftermath of such accidents.

Despite the general welcome afforded to the policy intentions of the bill, especially the commonsense reforms to which I have referred, specific concerns have been expressed. Some witnesses also expressed broad concerns about the overall approach taken in the bill. I will touch on a few of those concerns.
First, the balance between central, strategic direction and local accountability, the extent of ministerial powers and the clarity of the provisions on fire service governance were questioned. Among other things, the CFOA wants to see in statute a direct line of reporting responsibility from the firemaster to the fire authority, as pertains in the Fire Services Act 1947. The FBU, along with COSLA, has expressed concern that the proposed legislation does not set out explicitly enough the local democratic and operational control that is seen, rightly, as being central to an effective fire service.

Those are crucial concerns, and I was glad to see that the minister, when attempting to reassure the committee, stressed that “the fire and rescue service will remain a local government service and that its day-to-day operation and management will take place at local level.”—[Official Report, Justice 2 Committee, 28 September 2004; c 1057.]

I also note that he was confident that the firemaster’s role could be made clear through either contractual arrangements or a fire board’s standing orders, given that the board is the accountable body for the fire service. I was pleased that the minister offered further clarification this morning and reiterated his assurances on those matters, in particular on the CFOA’s position. That is to be welcomed.

Many members have spoken about the number of control rooms, which is perhaps one of the more contentious issues and has generated a great deal of interest, not to say controversy. Although the proposal does not require legislation, it appears to be seen by some as an important part of the modernisation programme. Many witnesses, though not all, did not accept that a case for change had been made. A concern expressed by the CFOA, for example, was that the consultant’s report is flawed in that it overstates the scope for savings. Other concerns centred on resilience and the potential loss of local knowledge.

I know that the Executive has not yet reached a conclusion, and I note that the minister has reiterated that there will be further consultation with all interested parties before a final decision is made. That is very welcome. I hope that the minister will take careful note of the committee’s view that a single control room would be absolutely “undesirable”, to quote the report.

Bruce Crawford (Mid Scotland and Fife) (SNP): I heard what the member said about having a single control room, but what is his view on the prospect of having three control rooms?

Bill Butler: As I remember from the report, which I am sure Bruce Crawford has read, we were not definitive about that; we wanted to hear what the minister said. I note that the minister will, as the committee suggested,

“consider carefully the concerns raised”

and

“address them specifically in the further round of consultation.”

Again, that is vital and necessary.

I welcome, as I hope everyone here does, the minister’s assurance, given in response to an earlier question of mine, that he will consider coming back to Parliament to discuss the number of control rooms at an appropriate time. I think that his words were “through the appropriate mechanism”. I view that as the kind of positive assurance that the committee wanted to hear, as I hope all members do.

Notwithstanding some of the concerns to which I have alluded, to which other members have referred and which were expressed in the stage 1 report, the overall policy intention of the bill is both timely and appropriate. I hope that, as the bill progresses, concerns will be met and doubts answered. On that basis, I commend the general principles of the Fire (Scotland) Bill to the chamber.

10:42

John Scott (Ayr) (Con): One thing is clear from the debate today and that is that the bill is generally welcomed. Although I am not a member of the Justice 2 Committee, I welcome the opportunity to speak about the Fire (Scotland) Bill.

It is clear that many people want to talk about the proposed reduction in the number of control rooms from eight to three or one, yet that is not part of the bill. Nonetheless, I, too, feel that it is important to reinforce the committee’s misgivings on that matter and to draw to the attention of the committee and the minister petition PE765 by Jim Malone, which urged the Scottish Executive “to ensure the retention of the current 8 control rooms in Scotland.”

In evidence to the Public Petitions Committee, the firefighters were certainly not happy about the content and tone of and the level of understanding in the Mott MacDonald report and they commented, in particular, on the importance of local knowledge in the control rooms.

Significantly, the petitioners highlighted how crucial quick response times are and how, when individuals are under stress, local dialects emerge that staff in a single control room might not quickly or readily understand. For example, I doubt whether many people in the west of Scotland readily understand the Doric or Gaelic, and vital seconds could be lost in establishing local names and routes to villages in the north-east or north-west if one control centre existed, say, in the west of Scotland.
In addition, the Fire Brigades Union submission pointed out that the largest control room in Scotland currently has the slowest response time, the clear inference being that as control rooms get larger, response times get longer.

As has been mentioned, the FBU’s advice that, following the 9/11 tragedy in New York, that city’s fire department increased its number of control rooms from one to five, is significant. In all that, the clear message is, as Kenny MacAskill and Colin Fox said, if it ain’t broke, don’t fix it.

From the firemen’s perspective, their response times are faster than those of the police or the ambulance service. I sympathise with their desire to stop ministerial cost cutting, which, in their view and mine, can lead only to a reduction in response times and fire service delivery.

Hugh Henry: John Scott talks about cost cutting. Will he tell me when, since the creation of the Scottish Parliament, we have cut the budget to the fire services? Has the budget increased? In which instances and where, specifically, has the budget been cut?

John Scott: It is my belief that the driver behind the reduction in the number of control rooms is a cost-cutting exercise that I do not welcome.

On the proposed abolition of the present fire certification regime, as members are aware, fire authorities currently carry out inspections and issue prescriptive requirements to ensure the delivery of adequate standards before granting a fire certificate. Presently, the fire certification process applies only to designated premises, for example factories, offices, shops, railway premises, hotels and boarding houses, and only when more than a certain number of people are employed there.

As I understand it, the new proposals will greatly extend the types and number of premises that are subject to fire certification, with only single private dwellings being exempt. That is perfectly laudable, but as the size of the certification task grows, the move towards self-certification gives me ground for concern. A self-compliance regime similar to that employed for health and safety legislation, wherein a “responsible person” would be obliged to ensure that fire certification standards are met, is fraught with pitfalls. Indeed, it might be a road to disaster. If the Executive intends to go down the self-compliance route, it must be aware of its dangers. Industry, businesses and society at large will need to be made much more aware of their responsibilities, and I have the greatest reservations about anyone other than trained fire officers being able to deliver that service.

It is worth noting that when the Fire Precautions (Workplace) Regulations 1997—which were based on self-compliance—were introduced, there was a dangerous lack of awareness among those who suddenly had responsibility for compliance. If ministers are determined to go down the self-compliance route, they will need to mount a significant campaign to make responsible people aware of their duties and obligations under the new legislation. In fairness to the minister, he undertook to do that this morning.

It is unclear how enforcement will be carried out under a self-compliance regime. That area needs significant further clarification.

A further and final point is the power to charge for attending incidents following the inappropriate activation of a fire alarm system. In South Ayrshire, crews responded to 520 automatic fire alarms in 2003-04. In this financial year, those crews have already responded to 305 such inappropriate activation calls. Those incidents account for more than 20 per cent of call-outs in the Strathclyde area and have apparently replaced malicious calls as the most common type of false alarm.

It is obvious that attending such calls is a significant drain on brigade resources and that it reduces available fire cover elsewhere. It appears that many of those incidents are avoidable, and we have only to consider the example of this Parliament building to understand and be aware of the cost of unnecessary call-outs. A financial penalty or charge for repeat offenders would at least allow brigades to recover some of their costs.

I do not suggest that where genuine concerns and alarms have resulted in calling out the fire brigade to what subsequently proves to be a false alarm, fire brigades should charge. However, where inappropriate calls are repeatedly made that could and should have been avoided, I agree with the principle of charging.

Although I have not spoken to the amendment in Annabel Goldie’s name, I nonetheless urge members to consider it carefully and to give it their full support.

Bruce Crawford (Mid Scotland and Fife) (SNP): We all know that we live in a fast-changing world, and even organisations such as the FBU are realistic enough to realise that change in the fire service is inevitable.

In its briefing of MSPs, the FBU said that it welcomes the renewal of the legislation that governs fire services in Scotland. I welcome it, too, given that it is more than half a century since we had legislation that focused on this area.

I will concentrate most of what I say on control rooms. The FBU argues strongly and coherently that reducing the present number of fire control
rooms from eight to one, two or three would be a huge mistake. I am glad that the minister said that he would bring the matter back to Parliament. He has sought to give us assurances, but given that the matter was given such prominence in the Executive's policy memorandum, he cannot be surprised by the alarm, which, it strikes me, signals a degree of nervousness about the issue.

I am not surprised that that is the case. Genuine concerns about a hidden agenda will remain until the minister states unequivocally that he does not accept the central thrust of the Mott MacDonald report. I hope that the commitment to give the matter further consideration is not simply a mechanism for parking the issue until after the general election. That would be disgraceful.

The proposal to reduce drastically the number of fire control rooms alarms me not only as an MSP but as an ordinary member of the public who one day—God forbid—might have to rely on firefighters to rescue me, my family or my home. The Executive-commissioned Mott MacDonald report, which has been widely mentioned, concludes that Scotland would be well served by a reduction in the number of fire control rooms. However, the report has fatal flaws and does not represent the robust examination of the situation on the ground that is a prerequisite if safe conclusions and recommendations are to be made. The evidence that I have gathered from my visits to the Fife fire and rescue service control centre and from written material leads me to believe passionately that the Executive must listen much more to the experiences of operators on the ground and much less to its consultants.

The Mott MacDonald proposals do not take proper account of the local knowledge of fire operators, which includes knowledge of dialects and of local and informal place names. Local knowledge can mean the difference between a fire crew getting to a road traffic accident or a fire in time to save lives and people's lives being lost. I visited the fire control room in Thornton in Fife and spoke to Margaret, one of the control room operators, who told me that an appliance had gone to investigate an incident in Whimbrel Place in Dunfermline. I am pretty familiar with Dunfermline, but I did not know where Whimbrel Place was. Margaret did not have to look at her computer screen to be able to tell me that the street is close to a cinema and alongside the motorway. There are thousands of little pieces of vital information in every operator's head, which save seconds and, ultimately, lives. Technology can never fill the gap that is left when someone like Margaret is lost.

There is a vital issue of public confidence. A person who reports an incident needs to know that the operator understands the area about which the caller is talking. If an operator gives the impression of having no idea where an incident is located, the caller will inevitably become frustrated or angry, particularly if they are at the scene of a road accident or major fire. If we go down the road of having one, two or three control rooms for Scotland, local knowledge and public confidence will be lost and there will inevitably be a much greater risk of lives being lost. We should also remember that there are many regional accents in Scotland and consider what misunderstandings might mean in lives lost.

However, regional accents are not the nub of the Mott MacDonald report; the report is about identifying savings. A significant health warning should be attached to such savings. The report fundamentally fails to grasp what really goes on in fire control rooms outside what are regarded as core duties. Page 21 of the report lists only six non-core activities that are carried out by control room staff, and those will not disappear if the control room vanishes. That demonstrates the level of ignorance about what goes on in control rooms. I know that the minister has seen the Fife control room's evidence—it is on the Executive's website. That submission lists 21 non-core duties that fire control room staff perform. Many of those duties must be carried out 24/7, so the proposed savings are, at best, illusory.

If local fire control rooms close, who will carry out the administration, monitoring, staffing, training, maintenance, health and safety and statistical recording tasks that control room staff currently undertake? The Fife fire control room's submission says:

"Whilst it might appear that Best Value could be achieved by merging Fire Controls ... this would totally ignore many of the core functions of a Fire Control ... and misunderstand the back up and support roles which are vital to the operation of an effective and efficient Fire and Rescue Service."

Change can be essential and can lead to improvement, but change for change's sake is never good.

Will the minister give an assurance on the specific nature of the further consideration that he will give to the issue and on what the consultation process will involve? What will the timescale be? Will the consultation take place before the general election? Will the outcome of the consultation be the subject of a full debate in Parliament, so that all members can take part in the decision? I want to understand much better what the minister meant when he said that he would come back to the Parliament "through the appropriate mechanism."

I ask the minister not to go down the road that I have described. That would be a bad, bad idea.
10:55

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Like other members, I welcome the intent of the Fire (Scotland) Bill. It makes sense to revisit legislation that was passed 50 years ago to ensure that it meets modern demands.

Other members have mentioned fears about the future of fire control rooms. I am particularly concerned about the future of the fire control centre in Inverness. As members know, the Highlands and Islands fire brigade already covers a vast geographical area, which is managed by a joint board, the members of which are drawn from the northern isles of Shetland and the Orkneys, the western isles, the small isles of the inner Hebrides and the entire Highland region. That area is larger than Wales, so the service has a huge responsibility. Control centre staff have good local knowledge, which is vital if they are to establish the location of fires and other emergencies. Local knowledge and the comprehension of local dialects are necessary for the safe operation of a fire control centre—that is as true for the Highlands as it is for every other part of Scotland. Therefore, I caution the Executive about trying to cut back control centres too much. A reduction in the number of centres might save money in rates and repairs and maintenance, but a single mistake caused by a breakdown in communication could well cost lives.

Hugh Henry: I take the point that John Farquhar Munro makes very seriously and I give him an assurance that anything that we do in relation to any aspect of the service will be about improving efficiency and saving lives. Nothing will be done that would jeopardise lives.

It is unfortunate that control rooms are dominating the debate, because there are many aspects of the bill that should properly be considered.

There seems to be a contradiction in what John Farquhar Munro and Bruce Crawford have said, which I would be interested in teasing out. I recognise the valuable contribution that the Inverness control room makes and I have received representations from John Farquhar Munro and other members who represent the area. John Farquhar Munro says that the control room covers an area the size of Wales and should be retained because of the local knowledge of staff. However, Bruce Crawford suggests that local knowledge would be lost if a centre were to be moved 10 or 50 miles down the road. He would not countenance a control room of the nature that John Farquhar Munro defends. The members seem to have completely different views about what area is consistent with local knowledge. When we consult on the matter, I would value further clarification on that.

The Deputy Presiding Officer (Murray Tosh): As that intervention took up one minute and 23 seconds, I will give Mr Munro more time.

John Farquhar Munro: I thank the minister for his qualification. Many views are represented in the Parliament and we must accommodate them all.

At the very least, the number of control rooms should be the same as is the case for the Scottish Ambulance Service, which has three control centres, one of which is located in Inverness.

Our good friend Annabel Goldie raised another concern at the committee. The committee’s report claims that a reduction in the number of call centres could lead to a similar reduction in the number of brigades. I very much hope that the Executive is not considering that, because the public reaction would be similar to the recent reaction to proposals to amalgamate our Scottish regiments.

The modernisation of the fire services is to be welcomed, but I am concerned that changes in the overall structure of the services will be used as an excuse to make root-and-branch changes at local level—in particular, to make fundamental changes to the structure of the volunteer fire services in the Highlands. Those small units have been under threat for some years—especially since 2002, when they faced closure because of health and safety concerns resulting from their lack of breathing apparatus and other equipment. Units have already been prevented from attending road accidents because they are not classified as mobile units. Given the national pressure to centralise public services, I fear that the bill might be used by the Highlands and Islands fire brigade and others to close such units.

In my constituency, there is pressure to close some auxiliary fire units—in particular, the unit at Strathpeffer. That is causing a lot of concern. If it happened, the closure would be a waste of a valuable community resource. The loss would never be replaced by the fire services integrated risk management proposals. In simple terms, those proposals mean getting rid of the auxiliary fire units and then asking people not to start fires or create emergencies in their communities—a different concept altogether.

Although I welcome the Fire (Scotland) Bill in general, a few issues of contention need to be resolved before the bill is passed. If we are to retain the fire services that we currently enjoy and appreciate—it has been classed as the A team of the emergency services—we will have to pay particular attention to the decision on call centres.
Jackie Baillie (Dumbarton) (Lab): It is clear that the overriding priority of the bill is to improve fire safety and to improve prevention of fires. That is welcome when we remember that Scotland has the highest number of fatal and non-fatal casualties per head of population in the United Kingdom.

As has been mentioned, the existing legislation dates back to 1947, but the fire service has not stood still—it has evolved and kept pace with change. It is clear that the duties that the service carries out now go well beyond simply putting out fires. It is therefore appropriate that, more than 50 years on, that fact be given statutory underpinning and recognition.

In the time that is available to me, I want to pick out a few points. I welcome the minister’s comments about fire control rooms. Although the matter is not contained in the bill, the committee and Parliament today have noted concerns from brigades, local authorities and trade unions that a reduction in the number of control rooms would not only be undesirable but might have an impact on safety. The test is to decide what is appropriate and what, ultimately, will improve or contribute to improving fire safety. Further discussions with stakeholders will be essential if we are to come to the right solutions. I am therefore pleased that the minister is committed to doing more work on that.

I welcome sections 7 to 10 of the bill, which set out the principal functions of the fire service, including not only firefighting but promotion of fire safety. The flexibility to add to those functions as and when required will be helpful because I do not think that any of us want to wait another 50 years to recognise what the service is doing today. We all know that resources and priorities are largely determined by legislative requirements.

We heard evidence that urban search and rescue and offshore firefighting should have been included in the bill. I confess to a particular interest as I represent a constituency on the west coast of Scotland that has substantial coastal areas. The offshore firefighting situation has long been problematic. The 1947 act does not allow fire authorities to act outside their immediate coastal areas and because local authorities have not been empowered to act at sea, it has been difficult to obtain a clear definition of where each authority’s area ends. The UK sea of change project seeks to address that situation. We hope that all offshore firefighting capabilities within the Scottish fire and rescue service can be defined by April of next year. It would be helpful if that could be done in the bill and I welcome the minister’s commitment to lodge an amendment at stage 2.

However, I ask the minister to reflect further on urban search and rescue. The Chief Fire Officers Association and others have emphasised the need for urban search and rescue to be specified in the bill because of the increasing significance of new dimensions work, such as dealing with terrorist attacks. Provision must be made so that existing fire services can make the changes to equipment and training that will be needed to meet the new requirements in urban search and rescue.

I want to talk about the Scottish Central Fire Brigades Advisory Council. At the committee, there was broad consensus that the advisory council should be replaced. Wherever people stood on the matter—whether they thought that the advisory council was a very good thing or a very bad thing—they offered the committee suggestions on alternative structures and models. That suggested to me that there exists an acceptance that the advisory council is perhaps past its sell-by date.

Although I agree that structures should not be defined in the bill—we need flexibility to respond to evolving situations—it would be helpful for ministers to enshrine in principle some kind of advisory body without specifying its form. I ask ministers to reflect further on that. The Justice 2 Committee believed it to be essential that the Executive at the very least consult on the nature of the replacement before the bill completes its passage.

Mr Maxwell: I agree absolutely with Jackie Baillie, but will she go one step further and agree with me that the new advisory council—in whatever form it takes—must have a statutory underpinning, which is what will give it the authority to do the job that it will need to do?

Jackie Baillie: I listened carefully to what Stewart Maxwell just said, and to Kenny MacAskill’s opening comments. The position that they have taken is not the one that Mr Maxwell adopted in committee. I am therefore interested to hear that Mr Maxwell takes that position now. If he considers point 90 in the committee’s report, which contains our recommendation on the issue, he will see that the Scottish National Party offered no dissent.

The FBU and the STUC expressed substantial concerns about part 3 of the bill; specifically, section 65, which deals with the Health and Safety at Work etc Act 1974, and section 67, which deals with offences and penalties. Their concerns are based on the fact that the sections might be used against a firefighter who was taking legitimate industrial action. Other committee members touched on those concerns. I and—I suspect—most committee members would have real problems if the genuine concerns that have been expressed to us were not fully addressed. The minister has already provided detailed assurance, but Maureen Macmillan was absolutely right to say...
that the issue is about lawyers eyeballing each other over accurate interpretation of particular phrases in legislation. Dialogue must continue until we have a shared understanding. Otherwise, the alternative and less helpful route will involve amendments at stage 2.

I want to make passing reference to Colin Fox. His leadership speech was a tour de force; no one here could doubt his commitment to the fire service. However, it is a shame that he failed to attend many of the committee meetings at which the detailed work was done to represent the interests of the people who work in the fire service. I look forward to his “radical” amendments and hope that he realises the need to come to committee to speak to them.

Colin Fox: Can Jackie Baillie tell the chamber precisely how many meetings I missed during stage 1 of the bill? Is it not the case that, although I was unable to attend the meetings at which the draft report was discussed, I participated fully in scrutiny of the bill and in evidence taking? I am sure that the rest of the committee will agree that is the case. Does Jackie Baillie agree?

Jackie Baillie: The member protests too much. Again, I say to him that I look forward to his “radical” amendments. I trust that he will appear in Parliament to speak to them.

I join colleagues in paying tribute to the men and women in our fire service who often risk their lives to save ours. The bill recognises what they do each and every day on our behalf in our communities. I commend to Parliament the general principles of the Fire (Scotland) Bill.

11:11

John Swinburne (Central Scotland) (SSCUP): Although I am not a member of the committee that considered the bill, I want to address certain issues that I think are worthy of consideration.

Fire prevention is of paramount importance. Many senior citizens have taken advantage of the fire service and rest more safely in their homes having received reassurances and advice on fire safety. I, too, am suspicious that the bill may be motivated somewhat by retribution after our firemen were forced to take industrial action to try to establish a fairer living wage. A hidden agenda is not acceptable.

Hugh Henry: The comment that John Swinburne has just made is absurd. He talks about the bill’s introduction being in retribution for action that was taken. The bill was consulted on and, indeed, the process started before any industrial action took place. Leaving aside that issue, the bill has been welcomed this morning by every party of every colour, including the Scottish Socialist Party. Everyone recognises the need to advance the bill. Although we might differ on some of the fine detail; it is absurd to try to categorise the bill as John Swinburne has done.

John Swinburne: I hear what the minister is saying. No doubt the outcome of the bill will underline what he has said. I welcome that. As I said, such a hidden agenda is not acceptable at all.

As many speakers said, we have a fire service of which we can all be justifiably proud. Countless lives are saved from fires and motor accidents. Our firemen can and do lay their lives on the line without question and that aspect of their service must never be understated.

As someone whose life has been plagued, and sometimes blighted, by the efficiency experts, time-study professionals and number-crunchers whose combined efforts failed to halt the decimation of industrial Scotland, I feel nothing but suspicion whenever I am faced with allegations that increased efficiencies can be made in one area or another. Many of the aforementioned experts and number-crunchers moved quickly from the private to the public sector, after which industrial Scotland virtually ground to a halt. They descended en masse on our health service and our other public services. The adoption of many of their recommendations has led to countless cost-saving exercises, which have been carried out at the behest of the aforementioned experts. Despite all that, our health service struggles to keep its head above water and, at the same time, the aforementioned experts and number-crunchers’ empire continues to grow.

The fire service is now under siege from those experts. I am proud of the record of our fire service, which has moved with the times and has delivered a degree of protection to the public that is praiseworthy and admirable. If the object of the bill is to cut costs by increasing efficiencies, I suggest humbly that the greatest saving could be made by removing the efficiency experts, time-study professionals and number-crunchers. That would allow the fire service experts to modernise and continue to deliver an excellent service.

In the interests of efficiency, I will avoid going over ground that has been discussed and debated this morning. I will settle for having made this brief offering.

11:15

Stewart Stevenson (Banff and Buchan) (SNP): As a loyal member of Amicus, I find myself in the same trade union as four of the members who are sitting on the Labour benches. As a loyal trade unionist, I thought that I should start with a quotation from the Fire Brigades Union’s response
to the consultation. It is a quotation with which I suspect there will be universal agreement. The FBU said that it is clearly

"on record and ... is clear that the only societal tolerable rate for all fire deaths that is acceptable to the inhabitants of Scotland is zero".

Whatever else we might disagree about in the debate today, or in the subsequent debates at stages 2 and 3, I am confident that we all want an effective fire service in Scotland that protects public safety and takes responsibility for communities.

My contribution to the debate will be made in a slightly different vein to that which speakers before me have taken. The bill that is before us today has some worrying aspects; they run across measures that the Executive has previously sought to implement and for which it has gained support from the Scottish National Party benches. I speak specifically about the power of well-being. The phrase is, of course, shorthand for saying that we expect more of our councils: we expect them to take more responsibility for what they do for their communities. The expectation that they will do so is reinforced by the steps that are being taken to provide councillors with better support and to give them the opportunity to professionalise. There is a real danger that, if many of the proposals in the bill are brought into force, they will diminish the role of local government in its ability to provide the kind of services that we all wish to see delivered effectively throughout Scotland.

The minister's role in this—as per the roles of ministers who are responsible for other areas that the Executive seeks to promote and has promoted in the past—is to consider whether we are using the opportunity that the bill gives us to re-empower and reinvigorate local government, or using it to say, "We do not trust you. We need to take charge." I will illustrate my concern with one tiny example that came before the Communities Committee, and which was related to a piece of secondary legislation to fix new rates for planning. Why not let councils do that? In the case of the planning instrument, the Executive is placing duties and responsibilities on councils in a uniform way. That is neither consistent with good local democracy nor with the need to trust that the electorate will take account of the successes and failures of its local councils.

I turn to specific responses that the Executive received to its consultation. The Highlands and Islands fire board commented on control rooms—a subject that many members have referred to this morning. The board

"considers the retention of Control in Highland and Islands to be essential ... The Board would urge that the additional specialisms of our control room staff, and the special needs of our diverse communities, are all taken into account."

Another comment that Highlands and Islands fire board made touched on the centralising tendencies of the bill and in particular on the common fire services agency. It expressed considerable scepticism about the benefit of central procurement in respect of intermediate technology, procurement, finance and human resources. All of those are matters that the white paper identified as topics for the common fire services agency; the Highlands and Islands fire board thinks otherwise.

Grampian fire board, which is responsible for the area that I have the privilege to represent, said:

"The Board is not persuaded of the need to take general reserve powers of direction with respect to national service delivery and national resilience ... The Board has, it believes a strong record of supporting the Executive in developing on its national fire priorities. It sees no justification in developing statutory powers to formalise this situation."

Quite properly, Grampian fire board welcomed some aspects of the proposals, but it touched on an important issue when it discussed the role of commercial call centres, which load on to the fire service in Grampian a large number of calls that result from alarms, 95 per cent of which turn out to be spurious. There is a message in that about the disconnection among the people who deal with calls in the commercial sector and effects on the delivery of a public service. That disconnection illustrates the more general point about the difficulties that would exist if we were to disconnected control rooms from communities.

I want to give the minister a test on locality and localisation, which I think might appeal to John Farquhar Munro, who raised the subject. If all the members of a particular control room have read The Press and Journal in the morning, they will know what is going on in their communities, because that is the national paper that delivers local news par excellence. If a call comes in from Turriff about an incident in the swimming pool there, how much more effectively will the control room operators respond if they are aware that they must take into account the 30,000 people who are in the park immediately next door for a pipe band contest? Local knowledge is a moving phenomenon; it is not static and cannot be captured forever in a database.

The FBU raised other points. It appears that, yet again, the Executive has decided to take powers to the centre while claiming to improve local accountability and democracy. Section 14 is on training. One point on which national intervention might be really useful is in setting training standards and qualifications which, with local diversity of implementation, would allow fire and rescue workers to work consistently throughout Scotland.
I am happy to support my colleague Kenny MacAskill’s amendment.

11:22

Margaret Smith (Edinburgh West) (LD): I welcome the opportunity to speak in what is obviously an evolving debate on the future of the fire and rescue services in Scotland. I echo colleagues’ tributes to the men and women who work in the services. As I am not a member of the Justice 2 Committee, I hope that members will understand if I make any mistakes in recalling the views of that committee.

The Liberal Democrats welcome the attempt to modernise the legislation that governs fire and rescue services, which is—as we have heard—grounded in the 1940s. Life for the services has moved on a great deal since then. We have had a long period of consultation, but as Annabel Goldie and Mike Pringle said, much consultation continues, which makes it difficult for the committee to scrutinise the bill properly. The committee does not know exactly what the national framework, the charging regime or the fire safety regulations will be. I tend to welcome consultation, but it is difficult when we have a moving target in front of us.

The bill will rightly expand the statutory duties of fire and rescue services to take into account their wider role, which includes dealing with road traffic accidents and flooding. We are all aware that our fire services, alongside their partners in the police forces and others, are in the front line of any response that we might make to terrorism. Kenny MacAskill made the good point that we should not use that as an excuse to railroad through changes. I agree totally, but we can say clearly that the changes will not have been railroaded through and that a great deal of discussion has taken place. In fact, as I said, it is partly because of the on-going discussion that we lack some clarity on the proposals, as yet.

Maureen Macmillan and others echoed the Justice 2 Committee’s concern about the lack of clarity on the key powers of direction and lines of responsibility. The bill will give the minister a greater number of powers—about 27—including the ability to take decisions when major incidents occur. We need clarity about who would be in overall charge in such situations and we must bear it in mind that the Chief Fire Officers Association, the Convention of Scottish Local Authorities and the FBU expressed concern that there should be three clear levels of responsibility: strategic direction from the minister; governance through the fire and rescue authorities; and management through the firemasters. I welcome the minister’s intention to keep fire and rescue services as local authority services and his intention to reflect further on the issues.

Two key issues are, first, the minister’s power to amalgamate brigades and, secondly—although it is not in the bill—the number of control rooms. Members from all parties are concerned about the impact that a reduction from eight control rooms would have on response times and quality of service.

On the first issue, the minister tells us that the power to amalgamate brigades is not a new one, but the key point is whether ministers currently have the power to initiate such action, rather than simply to respond to a request from local boards. I welcome the minister’s statements that there are no plans to reduce the number of brigades, that he has no intention to rule by diktat and that any proposal for amalgamation would be open to full consultation. However, the debate has shown that members of all parties are concerned about the issue, so I hope that the minister will clarify the matter by answering my question. I welcome the minister’s commitment to amend the bill so that orders to introduce amalgamations must be considered under the affirmative procedure, which would give Parliament a further chance to scrutinise such matters.

The second issue—the potential reduction in the number of control rooms—has led to the greatest number of comments and concerns and I welcome the minister’s decision to consult further on it. As he said, the key point for us all must be public safety, not funding. However, it is notable that the Finance Committee—that august body that was recently recognised at an awards ceremony—highlighted concerns about the financial aspects of the Mott MacDonald report.

Bruce Crawford made an interesting and salient point about the importance of the 21 non-core duties that were not covered properly in the report. John Farquhar Munro suggested having three control rooms that are linked to ambulance control rooms. Work must be done on how we can maximise the potential for efficiencies, not just in funding, but in services, by considering police, ambulance and fire services in a more joined-up way.

Stewart Stevenson, in his own inimitable way, mentioned the importance of local knowledge by talking about swimming pools and pipe bands. I agree that local knowledge cannot always be replaced by technology, whether we are talking about the Lothians, Fife or the Highlands.

SNP members and others mentioned the proposed abolition of the Scottish Central Fire Brigades Advisory Council, which is a snappy title. If the Executive is going to abolish it, I hope that it comes up with a better name for the replacement. The Scottish Executive says that it wants a dynamic replacement, but that it will not be statutory and that it will be enhanced by the
The debate has been good and wide ranging and there is consensus on the general principles of the bill. The Scottish Conservatives welcome the bill and support the aim of updating legislation to allow for the delivery of modernised fire and rescue services. I say at the outset that the fire and rescue services do superb work that is often highly dangerous. Bill Butler made the point extremely well that it is important that the role and wide-ranging functions that the services carry out are recognised and fully supported through the bill.

We welcome the way in which local decision making will be promoted within the context of a national strategy. The Conservatives also support the new power that will enable ministers to give direction to authorities in emergencies. That will ensure that any potential emergency will be covered, given how diverse such situations can be. However, we are—with Maureen Macmillan and other members—looking for further consideration by the Executive of the question of the divide between local and ministerial responsibilities; for example, consideration of who would be in overall command and control in a situation involving a major fire. The minister's commitment in section 11 to consider that again is welcome. We look forward to the outcome of further Executive consultation, which will facilitate clearer assessment of the details generally, including the full cost implications, which are currently very sketchy.

I turn to control rooms, which were mentioned by Sandra White, John Farquhar Munro, Colin Fox, Kenny MacAskill and my colleague John Scott. We support the request by the Justice 2 Committee for the minister—notwithstanding the savings that could result from the economies of scale that would be achieved by merging, for example, eight control rooms into a single unit—to consider the concerns that have been expressed about control rooms and to return to the subject in the next round of consultation.

The Executive has acknowledged that a public awareness campaign will be necessary to raise awareness of the legislation and to increase compliance. I urge the minister to include in that campaign more work to raise awareness of fire prevention. With incidents of fire raising showing a marked increase—72 per cent since 1999—and with Scotland having the highest number of fatal and non-fatal casualties per million population, there is still clearly much more work to be done in that area. Furthermore, the Executive's plan to ban smoking in enclosed public places could have the effect that more people will drink and smoke at home, resulting in a possible increase in the number of potential accidents in the home involving fires. Figures from the 2002-03 report by Her Majesty's chief inspector of fire services for Scotland indicate that the greatest cause of house fires is misuse and careless disposal of smoking materials.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Does the member have any evidence from California, New York and Dublin that suggests that bans on smoking in public places result in more smoking in the home?

Margaret Mitchell: It is self-evident that that will be the result because people will no longer be able to smoke in pubs and clubs. Given that, I ask the minister to consider the possible implications of the smoking ban, and to take account of those implications in any proposed public awareness campaign, such as any campaigns that advocate the installation of fire alarms and, crucially, the requirement to check alarms regularly.

Finally, as has already been said, we have one major concern; namely, the bill's provision of ministerial powers that would allow ministers to reduce the number of fire brigades in Scotland without primary legislation. Although I welcome the minister's shift to a commitment that that will be done by instruments that would be subject the affirmative procedure as opposed to the negative procedure, it still does not go far enough, hence the Conservatives' reasoned amendment, which we urge the minister to support in order to reassure Parliament that the powers that are set out in part 1 of the bill will not be used to amalgamate the existing fire brigades.

It was interesting to note that there was a kind of divide within the Executive parties, with Bill Butler, John Farquhar Munro and Jackie Baillie all expressing concern about control rooms but, apparently, expressing no concern about the section 2 powers. We hope that the Executive will take cognisance of our concern and ensure that
Mr Stewart Maxwell (West of Scotland) (SNP): Like many others, I welcome the minister’s comment that he will reflect on the issues raised by committee members, other members and people outwith the chamber, on the various problems in the detail of the bill and on the fact that many of the consultations that would have helped the Justice 2 Committee to finalise its report in more detail have either not yet been completed or have not yet been carried out. The earlier comments referring to that are welcome.

The SNP has no argument with the Executive about the importance given to fire safety in the bill; we certainly support that. It is long past the time when the legislation should have been updated; it is welcome that the Parliament is coming to the point at which that will be done. It is welcome that we are giving fire safety the importance that it deserves, but it is extremely important that we now bring road traffic accidents and other duties of the fire service within the scope of legislation. That has been an anomaly since 1947.

I turn to Jackie Baillie’s comments on what I said at the Justice 2 Committee in relation to the replacement for the Scottish Central Fire Brigades Advisory Council. Paragraph 90 of the committee’s stage 1 report says:

“The committee supports the abolition of the Council but expresses concern that no replacement has yet been proposed by the Minister.”

I agree. The report goes on to say:

“The Committee welcomes the Executive’s intention to consult shortly on the replacement structure and encourages the Executive to ensure that the results of this consultation are known before the Bill’s passage is complete.”

I have no problem with that. Why would I dissent from that particular paragraph? It is entirely misleading to suggest that I did not comment on that in the committee. I made it clear that I thought that any replacement body should be statutory. I am sure that members who were present will remember that that is what I said.

Jackie Baillie: Is it also not indeed the case that the member could have reflected that very point in paragraph 90? The fact that he did not dissent from it is not really a defence.

Mr Maxwell: I do not have to defend my position. The committee’s position was that, apart from favouring the abolition of the current council, it took no view on a replacement for the council; therefore, it is clear in the report that that is acceptable. I accepted that at the time, in the spirit of working together with colleagues on the committee. Jackie Baillie’s attempt to say that I said something else in committee is nothing more than a cheap shot.

On Margaret Mitchell’s point about the smoking ban, and to answer Mike Rumbles’s point, Margaret will find, if she considers the evidence, that there has been no increase in fires in the home where smoking bans have been introduced; in fact, the level of smoking in the home goes down where there is a smoking ban. The evidence from Australia is clear on that point.

The issue of control rooms is central. The minister said earlier that control rooms are not specifically mentioned in the bill. There is no paragraph in the bill that says that there will be a cut in the number of control rooms or that anything else will happen to control rooms, but it seems clear from the debate today that members understand that the process that is going on will probably result in a cut in the number of control rooms. The choice of Mott MacDonald as consultant loaded the dice from the start. Given that it recommended a reduction in the number of control rooms in England, there was virtually no chance that it would come up with the opposite conclusion for Scotland—it would have looked ridiculous had it done so. The outcome of its report was inevitable.

As other members have said, Mott MacDonald’s report is flawed. The Finance Committee has pointed out that it was not convinced by the claimed potential savings, and neither am I. The committee discovered that the figures are based on a reduction in the number of control rooms in Scotland from eight to one. I understand that that idea is supported by virtually nobody. It is very unlikely—in fact impossible—that those savings could be achieved. The report is based on the number of incidents that are reported to control rooms, but that is misleading, as it should have been based on the number of calls. I am sure that nobody is trying to suggest that some calls should not be answered. Operators must answer all calls; they can ignore none. If an incident occurs and it has one call, one call is answered. If an incident has 100 calls, 100 calls are answered. The report is flawed in that area. It has been evidenced, today and in previous Executive statements, that the drive to reduce the number of control rooms in Scotland is for financial reasons, and not for the purpose of service efficiency or to improve the service to the general public. Cutting the number of control rooms will not make a single person in Scotland safer, but it may make some people a lot less safe.

The minister stated in his evidence to the committee that there is little support for the
retention of eight control rooms in Scotland and that 23 of the 32 local authorities support the number of control rooms being reduced to three. I am sorry to say that such twisting of statistics gets politics and politicians a bad name. The fact is that only three fire authorities support a reduction to three control rooms, while five authorities oppose the idea. It is interesting to note that the three authorities that support the idea are those that are earmarked to keep their control rooms. As Sandra White and many others said, it is dishonest to count all 12 local authorities that lie within the Strathclyde fire brigade area as in favour of a cut just because the fire authority is in favour of it. COSLA states clearly that the majority of council leaders, including council leaders in the Strathclyde area, oppose any reduction. Agreement between the FBU, the Chief Fire Officers Association and COSLA is a pretty rare event, yet on this issue they speak with a single, clear voice and ministers, the Executive and the Parliament should listen to them.

It is clear that if we reduce the number of control rooms, we reduce the robustness and resilience of fire cover—other members have already covered that. A single control room is extremely vulnerable. It is better to have three than one, but that is not as good as eight. We have all witnessed on the evening news—virtually every night, unfortunately—co-ordinated, multiple and simultaneous attacks by terrorists. Why would we make it easier for them by reducing the number of control rooms from the current eight? New York realised its vulnerability after September 11 and I understand that it has decided to increase the number of control rooms in order to create a more robust system. New York is moving in the opposite direction to us and is increasing its ability to survive an attack by having multiple control rooms. Based on its experience, it is increasing the number of control rooms from one to five to build greater robustness into its ability to protect citizens in the event of another attack. We need to pay attention to the lessons that New York has learned.

One of the many problems that Mott MacDonald has ignored is the fact that there will be a loss of local knowledge if we centralise control rooms—many members covered that point. There will be increased problems with local names, slang terms, pronounced local accents and even Gaelic place names. Those problems will slow down response times and will not provide greater security to the public. To give a personal example, about two years ago I was in a remote part of Scotland for the first time in my life. My car broke down and I phoned a national breakdown service whose call centre is located in the south of England. Its staff had no idea where I was and I could not tell them. I knew the rough geographical area but I did not know the name of the road or any local landmarks. I had no way to tell them exactly how to pinpoint my location so that a breakdown vehicle could attend. In the end I was passed through to a local office in the area, which asked me questions such as, “Did you pass Jimmy’s caravan park? Are you anywhere near the river? Can you see a hill from where you are?” The staff pinpointed exactly where I was using not maps, but local knowledge. A breakdown vehicle was dispatched and it was there within the hour. That is the kind of local knowledge that individuals in control rooms hold in their heads, as Bruce Crawford ably pointed out.

Paragraph 32 of the committee’s report was the subject of much comment in the press at the weekend. It is clear that the Executive has been attempting to spin the idea that the committee supports a cut in the number of control rooms. That is nothing more than an attempt at news manipulation and it bears no relation to the truth. Paragraph 32 is neutral on the appropriate number of control rooms in Scotland as the committee thought that it did not have enough evidence to take a view on the issue. The only exception to that is that the committee completely rejected the lone opinion of Her Majesty’s chief inspector of fire services for Scotland that Scotland could have a single control room. The report is silent on whether there should be eight control rooms or fewer.

The logic that is used to reject a single control room applies equally to any cuts to the current eight control rooms: the same problems would occur to a greater or lesser extent. Although the committee was unable to take a view on the issue based on the evidence that it received, I have 10 years’ experience of working in the fire service and more than 2 years’ experience of working in the largest control room in Scotland, in Johnstone. From that experience, I can tell the Parliament that one size does not fit all. It is necessary to keep the eight control rooms that we have in Scotland, because of geography, efficiency of service, robustness of service and the ability to provide cover and back-up in the event of a major disaster or terrorist attack, and in the interest of serving and safeguarding public safety. No case has been made for a reduction in that number.

I turn to part 1 of the bill, which includes the power for ministers to restructure the fire service as they see fit. I and Annabel Goldie dissented from part of the report because we were concerned about the scope of that power. It seems clear to me that the only reason for a minister to have it is so that they can cut the number of brigades in Scotland; it is unlikely that the minister will use it to increase the number of brigades. The reason why that argument holds good is that there is an unbroken connection between the debate about the number of control rooms in Scotland and the debate about the number of brigades. If the
Executive cuts the number of control rooms, it will come along afterwards and say that it is inconsistent and inefficient to have three control rooms and eight brigades and that it is forced to bring them into line for reasons of service efficiency and clarity in the chain of command. The decision to amalgamate brigades will be made on the back of a cut in the number of control rooms and will not be based on the merits of a proposal for fewer brigades. It is a back-door way to cut the number of brigades in Scotland. The power that the bill gives ministers is part of that process, and that is why I dissented from paragraph 21 of the committee’s report. That paragraph was supported only by the Labour and Liberal Democrat members of the committee; the other three parties did not support the power.

The minister said earlier that there is no difference from what we have at the moment, but there is a big difference. The power gives the ability to initiate changes. More important, the loss of the advisory council—a statutory body that acts as a buffer and advises ministers—will mean an enormous change. The SNP amendment expresses concern about the proposal to remove the statutory standing of any body that replaces the SCFBAC. I appreciate the Executive’s argument that the council is too big and unwieldy and I do not have any great concern about restructuring it, changing the number of members, changing its name and making it more efficient, but the Executive has failed to make a convincing argument for changing its statutory standing. If the replacement body is to have any authority, it should be statutory and I urge the minister to reconsider the matter.

A number of members mentioned the transfer of responsibility for the maintenance of hydrants from fire brigades to Scottish Water. It is a nonsense that Scottish Water is responsible for everything up to the bottom of the hydrant pit and that brigades are responsible thereafter. If the minister wants to do away with unwieldy and bureaucratic systems, here is a chance to do just that. More often than not hydrant faults are identified by Scottish Water employees, who report them to the brigades, who go out and inspect the hydrant, then write a report about the problem and do the necessary internal paperwork for it to be repaired. That paperwork goes to various people for approval until it eventually goes to a purchasing officer who issues an order for Scottish Water to repair the hydrant. That is a circular process, not a dynamic system. It is an unnecessary and wasteful paper exercise. By transferring responsibility to Scottish Water we would achieve efficiency savings and hydrants would be repaired more speedily.

We should have a modern and efficient fire service in Scotland, but the Executive cannot use that as an excuse to try to save money by providing the people of Scotland with a poorer service. Our aim must be to improve the service and not to cut it. We have a number of reservations about the detail of the bill and I hope that the Executive will take our concerns on board. In conclusion, I urge members to support our amendment, which expresses that concern.

Hugh Henry: This has been a good debate. It was dominated by one or two issues, but members touched on a vast range of issues that need due consideration. I assure members that although I might not touch on all those points in my reply, I will look carefully at the individual points that were made.

I say at the outset that I thought that John Scott had a cheek. He has now beetle off, with his brass neck, but for him to tell us that the bill is a cost-cutting exercise—that comes from a Tory who supported cuts in public services for years—is the height of hypocrisy. He accuses us of trying to make cuts in the fire service. We have put more money into pay, pensions, modernisation, improvements in emergency equipment and into the Highlands and Islands, but John Scott sees that as cost cutting. If the Tories ever get back into power—God help us—we will know all about cost cutting and cuts in public services.

Miss Goldie: In defence of the hapless Mr Scott, I will say that he tried to make it clear that he was suspicious of the bill’s implications in terms of actions that are driven by cost cuts. He did not refer to past events.

Hugh Henry: I ask members to forgive me if I am suspicious of the implications for public services of the return of a Tory Government.

I will touch on control rooms, but I will not go into much detail, because I covered them in my first speech and in some interventions. I listened carefully to the points that were made and I have given the assurance that we will carefully consider the provisions. Several valid points have been made. We need to consider whether the cost calculations are robust and to examine the locality issues that have been raised. We must consider whether problems occurred when we reduced the number of fire control rooms from 13 to eight.

We need to examine the issues that Bruce Crawford raised, counterposed with the points that John Farquhar Munro made about the need for local knowledge. We need to reflect on what Stewart Maxwell said about being lost in the wilds of Scotland. Incidentally, if he tells us which rescue service was responsible for bringing him back to us, we can avoid joining it.
Several valid points have been made and we will take them into account. I assure members that nothing that would impact on public safety will be done.

Bruce Crawford: Will the minister give way?

Hugh Henry: No. I will move on, because I am pressed for time.

Various speakers touched on the number of brigades and said that the agenda was to move on quickly from control rooms to brigades. That is far from the truth. We have no plans to change the number of brigades. Annabel Goldie talked about the Tories’ suspicions of our intention in taking the power. Even if the entire bill were rejected—never mind just parts of it—if the position remains as it is, the Executive has the power to change the number of brigades if it so desires. Rejecting the bill would make not one iota of difference to whether we could act as Annabel Goldie suggests. She implies the existence of another agenda when it does not exist. Current powers allow change at the behest of fire authorities, but also allow ministers to act. All that we will do is refine the wording in the legislation.

Maureen Macmillan, Colin Fox and several other speakers talked about industrial action being made unlawful. I am happy to put it on the record that the Executive has no intention of making industrial action unlawful by introducing the bill. That interpretation of section 67 is incorrect. Nothing that we are doing will provide any opportunity for powers to be used in the suggested way. That is not our intention and would not have our support. What has been suggested is not what the section says. I hope that that assurance removes some doubts. The bill will not make industrial action unlawful.

I hope that I have dealt with trade union recognition. If we need to examine more matters, I am willing to assure speakers that I will reconsider whether there is anything that we can do to make the position absolutely clear. Our intention is that trade unions will represent employees and we are not undermining trade unions’ right to do that.

Kenny MacAskill and others talked about emergency powers. In the circumstances, the best that I can do is to repeat the assurances that I gave the Justice 2 Committee. I was asked in what circumstances emergency powers would be used and I said:

“It would be hard to specify all the situations where the powers under

section 11

could readily be invoked. If we were able to foresee precisely everything that might happen, we could easily just spell it out in an exhaustive list. Part of the problem in dealing with emergencies is that it is often the unforeseeable and unexpected that causes the problem. In those situations of unexpected emergency, we need to be able to respond. There could be natural catastrophes that no one could ever have imagined, or there could be terrorist incidents … I would therefore hesitate before giving a precise definition of those circumstances, other than to say that the situation would be one to which the response would be beyond the normal activities of any of our brigades or … agencies.”—[Official Report, Justice 2 Committee, 28 September 2004; c 1062.]

That sums up where we still stand.

Several comments were made about whether the replacement advisory council should be statutory or non-statutory. In general, everyone agrees that the Scottish Central Fire Brigades Advisory Council does not work, is inappropriate and must change. I am not persuaded that determining in the bill what the advisory committee should be, what it should do, how it should operate and whom it should involve is appropriate. Questions also arise. If the advisory committee advises the minister, should that minister chair it? We want to engage with the widest range of stakeholders and we intend to exclude no one. We want an effective and efficient body that has a purpose and will make a difference. I take into account all the points that have been made, but I remain unconvinced that provisions should be in the bill. However, I will give that further thought.

Stewart Stevenson talked about local procurement and questioned why we have chosen the route that we have. One problem that we sometimes face is that local procurement results in different equipment levels, different standards and different specifications. Increasingly, we must rely on co-operation—the Stockline Plastics disaster in Glasgow showed that. When we must bring people from different areas together, the job is made easier if equipment and specifications are consistent. Those are the reasons for our position, which also enables us to consider developing specialist teams more effectively for disasters such as that which I mentioned.

Colin Fox suggested that we had abandoned much of the pathfinder work, but we have not discarded it. We have encompassed many elements of it in the integrated risk management plans. His suggestion was wrong.

I acknowledge and will reflect on what many speakers said about charging for services, particularly when repeat, malicious or inappropriate calls are made. Complex issues are involved, but the points were well made.

On hydrants, I have undertaken to discuss with my ministerial colleagues who are responsible for water services whether more appropriate action can be taken, but we must recognise that however we proceed there will be a cost to the public sector, whether that relates to those who are responsible for water services or those who are...
responsible for fire services. We need to work out where appropriate responsibility lies.

John Scott: Will the minister take an intervention?

Hugh Henry: Is it about hydrants?

John Scott: No.

Hugh Henry: In that case I will not take the intervention. Unfortunately, the member spoke and left the chamber. I will not indulge him by picking up a spurious point when he has returned late.

I will examine what Jackie Baillie said about non-fire emergencies and what Mike Pringle said about the loss of income from certification. A small loss might occur, but brigades will be freed up to do other work more effectively and efficiently. That will counterbalance any small loss.

The debate has been good and many points were well made. There is a spirit of consensus. We all want to make progress and to ensure that whatever legislation is passed is fit for purpose and serves best the people whom we represent. Scotland will be a safer place for having proper legislation.

We also seek to ensure that the fire services that we deliver are equipped for the 21st century. We recognise the valuable work that is done by the men and women who work in all aspects of the fire service and do a fantastic job. We need to bring the legislation up to speed to ensure that that continues.
Decision Time

17:01

The Deputy Presiding Officer (Murray Tosh): There are five questions to be put. The first question is, that amendment S2M-1960.2, in the name of Kenny MacAskill, which seeks to amend motion S2M-1960, in the name of Cathy Jamieson, on the general principles of the Fire (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Graham, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Martin, Campbell (South of Scotland) (Ind)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Macintyre, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

Against
Abstentions
ABSTENTIONS
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Margo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilh, Mr Brian (Mid Scotland and Fife) (Con)

Sturgeon, Nicola (Glasgow) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Mr Donald (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

FOR
Murphy, Allan (Cunninghame North) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peatle, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Pervis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan ( Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, lain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

Debate Now
The Deputy Presiding Officer: The result of the division is: For 40, Against 64, Abstentions 12.

Amendment disagreed to.

The Deputy Presiding Officer: The second question is, that amendment S2M-1960.1, in the name of Annabel Goldie, which seeks to amend motion S2M-1960, in the name of Cathy Jamieson, on the general principles of the Fire (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glascow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gorde, Miss Annabel (West of Scotland) (SNP)
Graham, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Edinburgh Pentlands) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alan (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scott, John (Ayr) (Con)
Stevenston, Stewart (Baron and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swimburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Martyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kane, Rosie (Glasgow) (SSP)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Leckie, Carolyn (Central Scotland) (SSP)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (Ind)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McManus, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Pettrie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 41, Against 76, Abstentions 0.
Amendment disagreed to.

The Deputy Presiding Officer: The third question is, that motion S2M-1960, in the name of Cathy Jamieson, on the general principles of the Fire (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Hugh (Paisley South) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eddie, Helen (Dunfermline East) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fox, Colin (Lothians) (SSP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorr, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Henry, Mr (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Mr Kenneth (Eastwood) (Lab)
MacAulay, Mr John (Mid Scotland and Fife) (Ind)
McIvor, Ms Margaret (Glasgow) (SSP)
McKendrick, Ms Eilidh (South of Scotland) (SNP)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Russell (Dundee East) (SNP)
McVeigh, Ms Elisha (Glasgow) (SNP)
Morrison, Mr Alasdair (West of Scotland) (SNP)
Mulligan, Mrs Mary (Linlithgow) (Lab)

AGAINST
Alton, Nick (Edinburgh Central) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Browne, Mr John (East Lothian) (Con)
Chambers, Mr Peter (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Dunning, Tavish (Caithness, Sutherland and Easter Ross) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lachlan, Mr Jamie (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Ms Mhairi (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neill, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 77, Against 14, Abstentions 26.

Motion agreed to.

That the Parliament agrees to the general principles of the Fire (Scotland) Bill.
I am grateful to the Justice 2 Committee for their consideration of the Fire (Scotland) Bill and for the production of such a comprehensive report on the general principles of the Bill. You may recall that during my opening comments in the Stage 1 debate on 18 November, I indicated that I would respond to the Committee’s report and the attached Memorandum addresses each issue raised in the report.

I am sure that you will agree with me that the debate was constructive. I found it particularly helpful and interesting to hear the views of members who are not on the Committee on the issues in the report.

During the debate I indicated that the Executive would give careful consideration to members comments and in that regard the Executive will be bringing forward a number of amendments at Stage 2. These will cover issues such as Firefighting at Sea; changing from negative to affirmative the procedure for making Amalgamation Orders; making the Chief Officer responsible to his Fire and Rescue Authority for the discharge of his functions. We will also be bringing forward a number of technical and ‘tidying up’ amendments in relation to Part 3. Finally, there will be a range of consequential amendments to other legislation which we will also be bringing forward. I look forward to discussing these and other issues with the Committee as we continue the consideration of the Bill.

I hope this is helpful.

Hugh Henry MSP
Deputy Minister for Justice
6 January 2005
MEMORANDUM: RESPONSE TO JUSTICE 2 COMMITTEE’S REPORT ON GENERAL PRINCIPLES

The Scottish Executive is pleased that the Justice 2 Committee has endorsed the general principles of the Fire (Scotland) Bill and welcomes the constructive recommendations made in the Committee’s report. During debate in the Parliament on 18 November, the Deputy Minister for Justice addressed the majority of issues raised in the report but he indicated that a number would require further consideration. This Memorandum sets out the Executive’s response to the Committee’s report, including an update on progress where further consideration was indicated.

General

In light of the concerns expressed, the Committee asks the Minister to clarify the line of reporting responsibility from the Firemaster to the Fire Authority.

In his opening remarks to the Parliament on 18 November, the Minister repeated the statement he had made to the Committee during oral evidence, that the Fire and Rescue Service is a local authority service and it will continue to be managed locally. He also indicated that the Executive would reflect further on whether there was a need to clarify the role of the chief officer and accountability to the fire and rescue authority or joint fire and rescue board. Having considered the matter further, the Executive intends to lodge an amendment to clarify the role of the Chief Officer and accountability arrangements.

Part 1: Fire and Rescue Authorities

Amalgamation Schemes

The Committee seeks assurances that the consultation required under Section 2 will be comprehensive and transparent and will include all interested parties.

During the debate on 18 November, the Minister reminded members that the power to amalgamate fire authorities has existed since the passing of the 1947 Act and this power will continue in a modified form. Fire and rescue authorities will still have the opportunity to put forward proposals for amalgamation for consideration by Ministers but the Bill confirms that it will be for Ministers to decide whether amalgamation would achieve greater economy, efficiency and effectiveness.

With regard to the requirement for consultation, the Executive is happy to provide assurances that the consultation will be comprehensive and transparent, including all interested parties. In addition, as the Minister indicated during the debate, the Executive will lodge an amendment to change the Parliamentary procedure for the order so that it will be subject to the affirmative procedure rather than the negative procedure.

Control Rooms

The Committee invites the Minister to consider carefully the concerns raised and to address them specifically in the further round of consultation.
The Executive has noted the concerns raised in relation to control room arrangements and as the Minister emphasised during the debate, further work is being carried out and the Parliament will be notified of the subsequent conclusions.

**Firelink Project**

The Committee requests that the Minister provides further details of the issues under consideration.

National procurement of a new radio system (Firelink) for the Fire and Rescue Service will provide a modern radio communications system; more importantly it will provide for interoperability within the Fire Service across the UK and with the other emergency services. It will provide a robust and resilient radio communications systems for the Fire and Rescue Service. A UK Project Board led by the Office of the Deputy Prime Minister (ODPM) on which the Scottish Executive and COSLA are represented, has been set up and negotiations with the bidders are at an advanced stage but it will be some months yet before a contract is concluded.

**Part 2 – Fire and Rescue Services**

**Firefighting at Sea**

The Committee welcomes the Executive’s intention to bring forward amendments at Stage 2 to include the issue of offshore firefighting.

Noted.

**Section 11 - Emergency Directions**

The Committee seeks clarification about who would be in overall command and control in a major fire situation.

Emergency Directions under section 11 would only be issued by Ministers to ensure a level of central operational control and make certain that all relevant expertise is utilised for an effective and co-ordinated response. However, it will be for the emergency services who have been mobilised to attend the incident to make decisions about the management and control of the situation “on the ground”.

**Section 15 – Charging**

The Committee seeks assurances that fire authorities’ budgets will not be compromised by any changes resulting from this Bill and that any loss of ability to generate income will be compensated for.

At present, fire authorities have discretionary powers to charge for exercising certain functions on a cost recovery basis. Currently preparation of fire certificates is one of the activities for which all authorities charge. In 2003-04, there were 24,704 fire certificates in force in Scotland of which 472 had been issued that year. However, it is worth noting that the revenue fire authorities get from charging for fire certificates relates only to administrative work carried out in preparing the certificate and does not include costs of inspection. It is estimated that in 2002-03, income of £165,000 was earned from issuing and amending fire certificates. This income, however, represents only a fraction of the Fire and Rescue Service’s revenue budget and any loss from the non-issue of certificates will be
compensated by not having to undertake the administrative work associated with the issuing of certificates. There will be no change to the ability of fire and rescue authorities to charge for other aspects of their activities. However, they will not be allowed to charge for activity in extinguishing fires, protecting property in the event of fires or protecting life.

Under the new fire safety regime, fire certificates will no longer be issued and there will therefore be no costs to recover in relation to work required on certification. We expect that enforcement officers will have more time to inspect rather than being desk-bound preparing detailed certificates.

The Committee is content with the extent of detail in the provisions.

Noted.

Fire hydrants

The Committee agrees that there is merit in the water supplier having the responsibility for maintaining water hydrants but wishes clarification of the financial implications for the fire service were this transfer of responsibility to be recommended. The Committee draws the Minister’s attention to the evidence taken and invites him to consider the issue further.

As the Minister indicated in his opening speech on 18 November, he is in discussion with the Minister for Environment and Rural Development and will update the Committee in due course.

Common Fire and Rescue Services Agency

The Committee welcomes the Minister’s decision not to establish an Agency at this stage but to encourage co-operation through informal arrangements if these could be shown to be effective.

Noted.

Restriction on the employment of police officers

The Committee recognises that there are valid arguments on both sides and await the results of the Minister’s further discussions.

Following further consideration, the Minister has concluded that the restriction on the employment of police officers should continue. The committee will be aware that in addition to the Association of Chief Police Officers (Scotland) and the FBU supporting the status quo, the Scottish Police Federation also opposes any change.

National Framework

The Committee welcomes the fact that the Executive is now consulting on the National Framework.

The pre-consultation period ended on 2 December and the Executive is currently considering the responses received from CFOA, COSLA and the FBU. A full consultation is scheduled to commence in the New Year and will run for a period of 3 months.
Part 3 – Fire Safety Duties

Advertising campaign for new fire safety regime

The Committee agrees with the Finance Committee and requests an estimate of costs for the campaign in advance of Stage 2 consideration.

The Executive is committed to a publicity campaign for the new fire safety regime but it is difficult to estimate the costs of the campaign at this early stage. Discussions are continuing with stakeholders to help clarify the various groups which will be affected which, in turn, will help identify the most appropriate medium for targeting these groups.

However, as the Head of the Justice Department’s Fire Services Division indicated in oral evidence to the Finance Committee on 14 September, it is anticipated that in excess of £200,000 will be required to fund this campaign.

Fire safety and enforcement

The Committee invites the Minister to continue discussions with the FBU and others to try and allay their concerns. In relation to the evidence on HMOs and care homes, the Committee invites the Executive to reflect further on whether the single enforcing authority approach is the most effective.

Justice Department Bill Team officials met with representatives from the FBU in October to discuss their concerns and it is anticipated that this dialogue will continue as the Bill progresses through the Parliament.

During the debate on 18 November, the Minister assured the Parliament that the current multi-agency approach to HMO and care home visits will be retained so future visits will look and feel the same. The only difference will be that the fire and rescue authority will be the enforcing authority in respect of fire safety and will have the final say on what is acceptable to secure people’s safety in the event of a fire. The Executive considers that this will be the most effective and most appropriate allocation of responsibility.

During the Committee’s evidence session on 28 September, the Minister was asked if the fire safety regulations would be available for examination prior to Stage 3 and he indicated that it was anticipated that drafting would have been completed by the end of the year. It is the Executive’s aim to make the draft regulations available to the Committee prior to Stage 2.

Offence provisions

The Committee is of the view that a maximum penalty should be stipulated in respect of regulations made about fire safety under section 54.

We are currently considering this.

Section 71 - Relevant premises

The Committee welcomes the proposed Stage 2 amendment in respect of regulations to modify the meaning of “relevant premises” being subject to affirmative rather than negative parliamentary procedure.
Noted.

Advisory structure

The Committee welcomes the Executive's intention to consult shortly on the replacement structure and encourages the Executive to ensure that the results of this consultation are known before the Bill's passage is complete.

During the debate on 18 November, the Minister explained that three consultation papers would be issued in December, one of which would relate to the advisory structure, and the consultation would be for a period of three months. This will mean that it will conclude after the Bill is expected to have completed its passage through the Parliament.

A shorter timescale was considered but as the 3 months includes Christmas and New Year and the Scottish Executive's good practice guidance on consultations stipulates 12 weeks, the Minister concluded that the full 12 weeks should be allowed. The consultation papers were published on 14 December and distributed to almost 150 key stakeholders. Copies of the papers were also forwarded to the Committee and SPICe. All three papers and an online questionnaire are available on the Scottish Executive's website.

Issues not included in the Bill

Masquerading as a Firefighter

The Committee is interested in why the Executive feels that there is a distinction to be drawn between impersonating a police officer, a specific statutory offence, and impersonation of a firefighter where no specific statutory offence exists or is proposed.

While the Executive understands the Committee's concerns about the misuse of Fire and Rescue Service uniforms, equipment and letterheads, it is of the view that the common law offence of fraud would be sufficient to cover circumstances in which practical gain was the objective of impersonation e.g. a bogus caller attempting to gain entry to premises and thereby access to assets on the basis of a community safety visit or fire safety enforcement inspection. Therefore we do not think that a specific statutory offence should be introduced for impersonation of a firefighter.
The Bill will be considered in the following order—

Sections 1 to 4  Schedule 1
Sections 5 to 49  Schedule 2
Sections 50 to 82  Schedules 2 and 4
Sections 83 and 84  Long title

Amendments marked * are new (including manuscript amendments) or have been altered.

**Section 1**

_Cathy Jamieson_

1 In section 1, page 1, line 12, leave out ‹(within the meaning of that Act)›

_Cathy Jamieson_

2 In section 1, page 1, line 13, at end insert—

   ‹(2) In subsection (1), “local government area” has, subject to subsection (3), the same meaning as in that Act.

   (3) If a local government area extends into the sea, its seaward boundary shall, for the purpose of subsection (1), be the low water mark.›

**Schedule 1**

_Cathy Jamieson_

3 In schedule 1, page 42, line 13, at end insert—

   ‹( ) The power to acquire land in sub-paragraph (1)(a) includes power to purchase land compulsorily, and section 71 of the Local Government (Scotland) Act 1973 (c. 65) (acquisition of land compulsorily) shall apply to a joint fire and rescue board as it applies to a local authority.›

_Pensions_

For the purposes of the Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850), the appropriate superannuation fund shall be—
(a) in relation to the pensionable employees of a joint fire board constituted by an administration scheme under section 36 of the Fire Services Act 1947 (c.41) or section 147 of the Local Government (Scotland) Act 1973 (c.65), the superannuation fund of such one of the councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) whose area is comprised in the area of the joint fire board as may be determined by or under the administration scheme; and

(b) in relation to the pensionable employees of a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1), the superannuation fund of such one of the councils constituted as mentioned in paragraph (a) whose area is comprised in the area of the joint fire and rescue board as may be determined by or under the amalgamation scheme.

Section 5

Cathy Jamieson

4 In section 5, page 3, line 9, at end insert—

<(3) The Scottish Ministers may by order make provision for and in relation to the transfer to a joint fire and rescue board constituted by a scheme made under section 2(1) of—

(a) any property, rights or liabilities of a joint fire board (“an existing board”) constituted by a scheme such as is mentioned in subsection (1); and

(b) any staff of an existing board.>

Before section 7

Maureen Macmillan

5 Before section 7, insert—

<CHAPTER
APPOINTMENT OF CHIEF OFFICER

Appointment of Chief Officer

(1) Each relevant authority shall appoint a person to be known as a Chief Officer.

(2) A Chief Officer shall be responsible to the relevant authority for the discharge of the functions conferred on the authority by virtue of this Act by any person employed by the authority for the purpose of discharging those functions.>

After section 9

Colin Fox

23 After section 9, insert—

<Specified emergencies

(1) Each relevant authority shall make provision for the purpose of—

(a) rescuing persons in the event of—
(i) chemical, biological or nuclear incidents;
(ii) search and rescue incidents;
(iii) major flooding incidents;
(iv) major transport incidents other than road traffic accidents,
in its area; and

(b) to the extent that it considers it reasonable to do so, protecting persons from serious harm in the event of such incidents in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular—

(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;
(b) secure the provision of training for personnel;
(c) make arrangements for—
   (i) dealing with calls for help; and
   (ii) summoning personnel,
in the event of the incidents mentioned in subsection (1)(a);
(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;
(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

Section 10

Colin Fox

*24 In section 10, page 5, line 1, at end insert <; or

   ( ) any incident mentioned in section (Specified emergencies)(1)(a)>

Section 15

Cathy Jamieson

6 In section 15, page 6, line 19, leave out <not>

Cathy Jamieson

7 In section 15, page 6, line 22, at end insert—

   <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)>
Section 20

Mike Pringle

25 In section 20, page 8, line 23, at end insert <but as if the reference in section 21 to the fire authority was to Scottish Water>

Mike Pringle

26 In section 20, page 8, line 30, leave out subsection (4)

Section 23

Cathy Jamieson

8 In section 23, page 10, line 24, leave out subsections (3) and (4)

Section 27

Cathy Jamieson

9 In section 27, page 13, line 32, at end insert—

<( ) This section shall apply in relation to vehicles as it applies in relation to premises; but subject to the following modifications—

(a) the power conferred by subsection (1) includes power to enter premises in which a vehicle in which there has been a fire is being kept;

(b) the power conferred by paragraph (a) of subsection (2) includes power to take persons and equipment to the place where a vehicle is; and

(c) references to premises in subsections (2)(g) and (3) to (5) include references to premises in which vehicles are kept.

( ) In this section “premises” includes land.>

Section 28

Cathy Jamieson

10 In section 28, page 13, line 38, at beginning insert <and who is authorised to do so by virtue of those sections>

Section 29

Cathy Jamieson

11 In section 29, page 14, leave out line 3
Section 33

Cathy Jamieson

12 In section 33, page 15, line 37, leave out <8 to 10> and insert <7 to 10, 12 and 56>

Maureen Macmillan

13 In section 33, page 16, line 4, at end insert <; or
(ii) is approved for that purpose by the Chief Officer of a relevant authority>

After section 35

Cathy Jamieson

14 After section 35, insert—

<CHAPTER
ASSAULTING OR IMPEDING EMPLOYEES AND OTHERS

Amendment of Emergency Workers (Scotland) Act 2005
(1) The Emergency Workers (Scotland) Act 2005 (asp 00) shall be amended as follows.
(2) For paragraph (b) of section 1(3) substitute—
“(ba) that of a person employed by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) while discharging any of the authority’s functions under sections 8 to 12 (fire-fighting, road traffic accidents, other emergencies, emergency directions and other eventualities), 23, 25 or 27 (powers of authorised employees in relation to emergencies, obtaining information and investigating fires) of that Act;
(b) that of a person providing assistance under arrangements made by virtue of section 33 (assistance other than from relevant authorities) or 34 (arrangements for carrying out of functions by others) of the Fire (Scotland) Act 2005 other than assistance given to a relevant authority (as defined in section 6 of that Act) for the purpose of carrying out any of the authority’s functions conferred on the authority by section 7 or 56 of that Act;”.

Cathy Jamieson

15 After section 35, insert—

<Assaulting or impeding employees discharging certain functions
(1) A person who assaults, obstructs or hinders another person who is—
(a) an employee of—
(i) a relevant authority; or
(ii) an enforcing authority as defined in section 56; and
(b) discharging any of the functions conferred on the relevant authority or, as the case may be, the enforcing authority under section 7, 16 or 56, commits an offence.

(2) A person who assaults, obstructs or hinders another person who is providing assistance to a relevant authority or, as the case may be, an enforcing authority under arrangements made by virtue of section 33 or 34 for the purpose of the carrying out by that authority of any of the functions conferred on it by virtue of section 7 or 56 commits an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 4 on the standard scale.

Section 44

Cathy Jamieson
16  In section 44, page 21, line 4, leave out from <; and> to end of line 5

Cathy Jamieson
17  In section 44, page 21, line 18, at end insert—

<(  ) The Scottish Ministers may make arrangements with a relevant authority for a centre established under section 14 to be used for one or more of the purposes mentioned in subsection (2).>

Section 45

Colin Fox
27  In section 45, page 21, line 29, after <persons> insert <appointed by any recognised trade union of employees of the relevant authorities;

(  ) other persons>

Colin Fox
28  In section 45, page 21, line 33, at end insert—

<(  ) a member or official of any recognised trade union of employees of the relevant authorities;>

Colin Fox
29  In section 45, page 21, line 34, leave out second <a> and insert <any other>

Colin Fox
30  In section 45, page 22, line 13, after <includes> insert <persons appointed by, or officials of, any recognised trade union of employees of that description, or any other>
In section 45, page 22, line 15, after <includes> insert <persons appointed by, or officials of, any recognised trade union of employees of a particular description or any other>

In section 45, page 22, line 16, leave out <a particular> and insert <that>

In section 46, page 22, line 31, after <persons> insert <(whether appointed by any recognised trade union of employees of the relevant authorities or otherwise)>

In section 47, page 23, line 3, leave out from beginning to <authority> and insert <A relevant authority may not employ a constable>

In section 48, page 23, line 15, at end insert—

<“extinguishing”, in relation to a fire, includes containing and controlling;>

In section 49, page 23, line 24, leave out <reasonably>

In section 67, page 34, line 5, leave out subsection (2)

In section 67, page 34, line 40, leave out subsection (6)

In section 67, page 35, line 14, leave out <reasonably>
After section 79

Cathy Jamieson

19  After section 79, insert—

<Disposal of land

Disposal of land

A relevant authority may sell or dispose of any land vested in it which is no longer required by it.>

Section 81

Cathy Jamieson

20  In section 81, page 41, line 13, at end insert—

<( ) an order under section 2(1) or section 5(3);>

Schedule 3

Cathy Jamieson

21  In schedule 3, page 43, line 25, at end insert—

<The Emergency Workers (Scotland) Act 2005 (asp 00)

In section 7 of the Emergency Workers (Scotland) Act 2005 (savings for certain offences), the words from “or section 30” to the end are repealed.>
Fire (Scotland) Bill

Groupings of Amendments for Stage 2 (Day 1)

Fire and rescue authorities and joint fire and rescue boards
1, 2, 3, 4, 19, 20

Appointment of Chief Officer
5, 13

Principal fire and rescue functions
23, 24, 18

Charging by relevant authorities
6, 7

Fire hydrants
25, 26

Obstruction, etc of employees
8, 11, 14, 15, 21

Section 27: application and interpretation
9

Exercise of powers under sections 25 and 27: securing of premises
10

Assistance other than from relevant authorities
12

Education and training
16, 17,

Negotiation of conditions of service: Trade union involvement
27, 28, 29, 30, 31, 32, 33,

Prohibition on employment of police by authority
22

Fire safety: duties of employers to employees
34

Fire safety: offences
35, 36, 37
Present:
Jackie Baillie  Bill Butler (Deputy Convener)
Colin Fox      Miss Annabel Goldie (Convener)
Maureen Macmillan Stewart Maxwell
Mike Pringle

Fire (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 5, 8, 9, 10, 11, 14, 15, 16, 17, 22 and 18.

The following amendments were agreed to (by division)—
4 (For 5, Against 2, Abstentions 0)
6 (For 5, Against 2, Abstentions 0)
7 (For 5, Against 2, Abstentions 0)
12 (For 5, Against 2, Abstentions 0)
13 (For 5, Against 2, Abstentions 0)

The following amendments were disagreed to (by division)—
23 (For 1, Against 5, Abstention 1)
27 (For 2, Against 5, Abstention 0)

Amendments 24, 25, 26, 28, 29, 30, 31, 32 and 33 were not moved.

Sections 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45 and 46 were agreed to without amendment.

Section 1, schedule 1, sections 5, 15, 23, 27, 28, 29, 33, 44, 47 and 48 were agreed to as amended.
Fire (Scotland) Bill: Stage 2

14:37

The Convener: Item 4 on the agenda is stage 2 of the Fire (Scotland) Bill. We have decided to divide the committee’s consideration of stage 2 into two days, of which today is the first, on which we will deal with sections up to section 48.

Members should have a copy of the bill and of the marshalled list of amendments. I should mention that the clerks have produced a sort of feedback form. It would be helpful to them if members could give them their views on that form.

In an almost Gilbertian manner, the minister has transformed from the expert on the transfer of reserved issues into the expert on matters relating to the Fire (Scotland) Bill. Our welcome to the minister and his advisers continues, even in their altered capacity.

The amendments have been grouped to facilitate debate. I will call them in turn and we will deal with them in that order. There will be one debate on each group of amendments. Members may speak to their amendment if it is in that group, but there will be only one debate on each group.

Section 1—Fire and rescue authorities

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 4, 19 and 20.

Hugh Henry: Amendments 1 and 2 will amend section 1 to clarify fire and rescue authorities’ duties in respect of the sea. Under section 1, a fire authority’s area is defined by reference to the area of the local authority, under section 2 of the Local Government etc (Scotland) Act 1994. However, a territorial limit is not set out, so there is no statutory definition of how far out into the sea a local authority area extends. Given the importance of clearly defining the extent of a fire and rescue authority’s area, amendments 1 and 2 will clarify the matter by limiting the fire and rescue authority’s area to the low water mark. Such an approach is consistent with the approach taken in England and Wales and will not place any significant burden on fire and rescue authorities. Thus, where a fire and rescue authority’s area adjoins the sea, the authority will be under a duty to make provision for the exercise of its core functions in that area up to the low water mark. It will also have powers to act outwith that area where specified.

I stress that amendments 1 and 2 will not place an obligation on fire and rescue authorities to tackle incidents on stricken vessels at sea. The intention behind the amendments is to restrict duties to the low water mark, but authorities will still be allowed to exercise some powers outwith their area, including at sea. Fire and rescue authorities that want to respond to eventualities under section 12 will be able to do so, but authorities will not be under a duty to put out fires at sea.

Amendment 3 will ensure that joint fire and rescue boards may, like existing joint boards and unitary authorities, compulsorily purchase land.

The second part of amendment 3 will ensure that existing administration schemes—and future administration schemes under section 2—may determine the appropriate pension fund for employees of the fire and rescue joint boards who are not members of the firemen’s pension scheme. Essentially, the current regime will continue to operate as it does at present under the Local Government Superannuation (Scotland) Regulations 1987. As firefighters’ pensions as such are a reserved matter, future pension provision for Scottish firefighters was made under the Fire and Rescue Services Act 2004, which came into force on 1 October. However, the Fire Services Act 1947 provided that administrative arrangements for non-firefighters could be determined in administration schemes. Therefore, we need to retain an equivalent to section 36(13) of the 1947 act to cover those types of employees.

Amendment 4 will give ministers the necessary powers to transfer the property, rights, liabilities and staff from joint boards under existing administration schemes to joint fire and rescue boards under any future schemes that may be made under section 2(1).

Amendment 19 will ensure that relevant authorities can continue to acquire and dispose of land as they are currently empowered to do under the 1947 act. Essentially, the amendment will address an oversight in the bill as introduced.

Amendment 20 will provide that any amalgamation scheme order that is made under section 2 and any order for the transfer of assets that is made under section 5 will be subject to the affirmative rather than the negative parliamentary procedure.

Section 2 re-enacts the provisions that are contained in the Fire Services Act 1947, so that Scottish ministers can continue to be able to initiate amalgamation schemes to combine two or more fire authorities where that appears to them to be in the interests of greater economy, efficiency and effectiveness. Proposed new section 5(3), which amendment 4 will insert, will allow ministers to transfer the property, rights, liabilities and staff from existing joint boards to new joint boards that are constituted by an amalgamation scheme that is made under section 2. Therefore, fire and
Having listened to suggestions, I move amendment 1.

Colin Fox (Lothians) (SSP): The minister has stated both to the committee and to the Parliament in the stage 1 debate that the bill must achieve a balance between providing centralised powers to ministers and devolving decisions to local expertise and control. However, amendment 4 appears to provide ministers with yet another centralising power, this time to amalgamate fire authorities regardless of whether that has been agreed. Is that the intention behind amendment 4?

Hugh Henry: With the convener's permission, I will clarify that question with Colin Fox so that I can give a full answer. He asked me whether the power gives something to ministers. Is he suggesting that we are taking this power for the first time?

Colin Fox: No. I wondered whether the minister is suggesting to us that the amendment will give him the opportunity to step in and amalgamate fire authorities at a later stage.

Hugh Henry: Amendment 4 is a tidying-up amendment, which continues the arrangements that have been in place since 1947. I see no reason in essence for anything to change in future from what has happened in the past.

Colin Fox: Can you elaborate on what you mean by tidying up? Where does the tidying up come from? Has the provision been omitted from legislation between 1947 and today?

Hugh Henry: Amendment 4 provides for the traditional power of ministers by order to transfer the property, rights, liabilities or staff of existing joint fire boards. The amendment tidies up the drafting of the legislation to ensure that we have continuity with the arrangements that pertained in the past.

Jackie Baillie: I have a simple question to ensure that I am clear on the issue. My understanding of what you are saying is that local fire brigades will still be able to submit proposals to ministers if they choose to do so. I am keen that there is such local decision making. You are saying that those provisions are in the 1947 act and that the provisions in the bill are more transparent in the sense that Parliament will need to vote on any subsequent proposals, which has not previously been the case. As a back-bench MSP, that gives me a degree of satisfaction.

Hugh Henry: Jackie Baillie is right. In the past ministers could, by order, have made such changes and implemented them. The amendment means that the bill will require us to come back to Parliament to seek approval before any such change can be made. In one sense Jackie Baillie is right to point out that I was incorrect in saying that the provision is merely a continuation of the current arrangements; in fact, I suppose that it is more significant, in that it gives an opportunity for parliamentary scrutiny in a way that did not previously exist.

Bill Butler (Glasgow Anniesland) (Lab): To be absolutely clear, are you saying that the amendment proposes more of a decentralised process than the existing one?

Hugh Henry: No. It is more an issue of openness, better transparency and better accountability. The amendment recognises the legitimate role of the Parliament in a way that was not previously the case. Whether any impetus in the future is central or local is a separate issue.

Bill Butler: So there will be a greater ability to exercise democratic scrutiny.

Hugh Henry: I agree.

Mr Maxwell: I have another point of clarification. For absolute clarity, are you saying that there is in effect no change between the provisions in the 1947 act and the provisions in the amendment other than the fact that there will be greater parliamentary scrutiny? Do Scottish ministers have the same ability to exercise power on this matter as did Scottish Office ministers?

Hugh Henry: Essentially, that is the case, other than that we have introduced an element of greater parliamentary scrutiny and more openness.

Mr Maxwell: Is that the only difference? Are there no other differences?

Hugh Henry: Having listened to suggestions, we have been moved to make such an order under the affirmative procedure rather than the negative procedure, but I cannot think of any other change. If Stewart Maxwell has, in his close scrutiny of the bill, identified something that I have missed, I am more than willing to look at it.

Mr Maxwell: No. I was just asking for exact clarification of the position from your point of view, because there has been a lot of debate around that point. Clearly, there is a great deal of concern among members of the fire service that the power will be used to reduce, in the first instance, the number of fire control rooms and, subsequently, the number of fire brigades in Scotland. The logical argument that would be used is that if we have fewer control rooms, we will have to return to a position of having coterminous boundaries, so
the power would be used to reduce the number of brigades to match the number of control rooms, against the desire of the fire brigades. Is that your intention? Do you see that as a possibility at all?

Hugh Henry: I made the position clear in the stage 1 debate, and I am sure that I also referred to it when I gave evidence to the committee. The two issues are entirely separate. I emphasise again that we are not proposing any new hidden powers and we are not proposing to do anything that—

The Convener: As convener, I would be content, minister, if you would address your remarks to amendment 4, in the name of Cathy Jamieson, in responding to Mr Maxwell's concerns.

Mr Maxwell, we are not here to rehearse the stage 1 debate. The minister is here to move and debate amendment 4.

Hugh Henry: I shall be guided by you, convener.

The Convener: In responding to Mr Maxwell, please deal with the point in relation to amendment 4.

Hugh Henry: The point that I was going to make about amendment 4 is that we are not introducing any further powers that were not there before, nor are we proposing to do something that would then give us the opportunity to step beyond that into something else. The number of boards and the number of control rooms are entirely separate matters. I believe that what we are doing gives greater transparency and greater accountability. I think that it is a democratic step forward, and I am puzzled at those who are concerned that the introduction of greater openness and transparency is something to be regretted.

The Convener: I propose to close the debate on this group of amendments. Are there any concluding remarks that the minister wants to make?

Hugh Henry: No thank you, convener.

Amendment 1 agreed to.

Amendment 2 moved—[Hugh Henry]—and agreed to.

Section 1, as amended, agreed to.

Sections 2 to 4 agreed to.

Schedule 1

JOINT FIRE AND RESCUE BOARDS: SUPPLEMENTARY PROVISION

Amendment 3 moved—[Hugh Henry]—and agreed to.

Schedule 1, as amended, agreed to.

Section 5—Existing joint fire boards

Amendment 4 moved—[Hugh Henry].

The Convener: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

Against

Maxwell, Mr Stewart (West of Scotland) (SNP)
Fox, Colin (Lothians) (SSP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 4 agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

Before section 7

The Convener: Amendment 5, in the name of Maureen Macmillan, is grouped with amendment 13.

Maureen Macmillan: Amendments 5 and 13 seek to address a source of concern in the bill, which is that it does not spell out the role of the chief fire officer and his or her relationship with the fire board. As the convener noted, that means that accountability and lines of authority will be blurred. The committee's former deputy convener, Karen Whitefield, first raised the issue with the Executive. The Fire Brigades Union and the Fire Officers Association wished it to be made clear in the bill that the firemaster must be accountable to, and held responsible by, the fire authority on the delivery of operational services. Bill Butler raised that issue in the stage 1 debate. The Convention of Scottish Local Authorities, too, felt that local accountability could be threatened because of ambiguity or lack of detail regarding the role of the chief officer.

The Executive argued that it was not necessary to make explicit in the bill the relationship between the chief officer and the authority, as that would be a matter for individual employment contracts. However, in the stage 1 debate and in correspondence with the committee, the Deputy Minister for Justice has indicated that he is willing to reconsider that. I hope that he will accept that the bill as it stands has raised genuine concerns and that he will not oppose my amendments.

Amendment 5 seeks to clarify that a chief officer will always be appointed by an authority and that
the chief officer will be responsible to the authority. That will mean that we are in no doubt about democratic accountability.

Amendment 13 seeks to amend section 33, which will enable a relevant authority to seek assistance from another organisation—a “relevant person”—that employs its own firefighters. Amendment 13 would enlarge the scope of that provision, by giving the chief fire officer responsibility for identifying or approving a “relevant person”.

I move amendment 5.

Colin Fox: I have a concern about amendment 13, which would allow fire authorities to enter into agreements with outside bodies to deliver certain functions on their behalf. I am worried that that would allow non-firefighters who were not fully trained or prepared to tackle fires to perform key functions that at the moment are carried out by our fire crews. What does the member have to say about that concern about amendment 13?

The Convener: Maureen Macmillan can comment on that when she winds up.

Mr Maxwell: I do not have an issue with amendment 5, but amendment 13 is problematic, especially when we consider it alongside amendment 12, which we will deal with later. Colin Fox has alluded to the fact that, if amendment 13 were agreed to, we would have a situation in which a chief officer could contract out services that are currently provided by the fire service or by members and employees of that service.

Section 33 refers to functions conferred “by virtue of any of sections 8 to 10.”

If amendment 12 were agreed to, that provision would be widened to include most of the activities of a fire authority that are mentioned in the bill. If he wished, a chief fire officer would be allowed to contract out—in other words, to privatise—fire safety functions, the drawing up of certificates and the production of computer-aided design drawings, for example. A range of services could be privatised because a chief officer would have the power to enter into relationships with outside bodies. Frankly, the member has not addressed that point. I hope that she will clarify in her winding-up speech from the minister, but would Maureen Macmillan like to add anything?

Maureen Macmillan: The minister has stolen my thunder. It is important that the chief officer should be able to call on help from members of the
public when fires break out in remote areas, particularly heath fires, forest fires or grass fires. Unfortunately, we have such fires from time to time; sometimes they affect two or three places at once and the fire brigade in the Highlands is severely stretched. It is therefore important that people who are not full-time members of the fire brigade can be called on to help, including military personnel, civilian helicopter pilots or just local people in a village who act as fire beaters. I am grateful for the minister's support for amendment 13.

Amendment 5 agreed to.
Sections 7 to 9 agreed to.

After section 9

The Convener: Amendment 23, in the name of Colin Fox, is grouped with amendments 24 and 18.

Colin Fox: Amendments 23 and 24 seek to put the other emergencies that our fire crews attend on the same statutory footing as road traffic accidents, which the bill already covers. All the categories that are covered in amendment 23—biological or nuclear incidents, search and rescue, flooding, rail crashes and airport incidents—have the potential to become major incidents.

Unfortunately, such occurrences are no longer uncommon. We have many chemical facilities and chemicals are always being transported. We have biological and nuclear installations. As the weather has shown recently, we also have to respond to flooding fairly regularly. Amendment 23 seeks to demonstrate that the Parliament takes those emergencies equally seriously. They are as potentially life threatening as are road traffic accidents and incidents. The amendment seeks to show a willingness to allocate the necessary resources, personnel and training to cope with such emergencies and eventualities.

I move amendment 23.

The Convener: Technically, the minister should speak to amendment 18.

Hugh Henry: Do you want me to address Colin Fox's amendments?

The Convener: Yes, you can do that as well. It is just a technicality. We have a note here about amendment 18 and the fact that you should speak to it at this stage.

Hugh Henry: I am perfectly happy to do so.

I do not have any difficulty with either the principles or sentiments expressed by Colin Fox. My disagreement is more about the tactics of how best to achieve what he is seeking to do with his amendments. We could have made a decision to include those or similar functions in the bill, but we have taken a fundamentally different approach.

Over the years since the 1947 act, fire and rescue services have acquired a range of additional responsibilities, none of which is provided for in statute. We have opted for an arrangement that we believe provides maximum flexibility, setting out the current functions of the fire authorities, and places the service in the best position to respond to possible future additional responsibilities that have not yet been identified.

If we had tried to make a definitive list of all emergencies to which relevant authorities had a duty to respond, we would have run the risk of not covering all possible threats. By taking a power to create new duties by order, we retain the ability to respond to changing events and to amend the detail of the order by a subsequent order.

That approach was perfectly acceptable to the fire authorities and, I might add, to the trade unions in England and Wales. I cannot understand why such an approach would not be acceptable in Scotland. The purpose of the power in section 10 is to allow the flexibility to respond to a changing environment. The matter is best suited to subordinate legislation because that would allow an appropriate degree of flexibility to respond to changed circumstances and to deal with the types of emergency that we could not anticipate.

I stress that we are working on the matter through consultation and partnership. We are already out to consultation, which will allow interested parties to contribute and express a view on the scope and content of the proposed order. My concern is that Colin Fox's amendments would cut across the consultation on the section 10 additional function order. In the consultation paper, we propose what the initial order would cover specifically. We then want to consider the other functions, which are virtually identical to those in amendment 23. It would be wrong to pre-empt that consultation process. It would also be wrong to restrict the flexible approach provided for in the order-making power. We are working with stakeholders to ensure that they have the opportunity to inform the process. That work is due to complete on 8 March, which will leave ample time to make an additional function order before the commencement date of the bill, if that is required.

Amendment 18 clarifies that the action of extinguishing a fire includes the control or containment of a fire. Operationally, often the best way of tackling a fire involves allowing it to burn itself out or letting it spread in a way that makes it safer or easier to control. That is what happens at present. However, to ensure that those tackling fires continue to be able to take the most appropriate action in the circumstances, we think...
that it would be helpful to make it quite clear that
the term “extinguishing” in respect of fires includes
controlling or containing.

I move amendment 18 and ask Colin Fox, in the
light of the assurances that I have given, to
withdraw amendment 23 and not to move
amendment 24.

The Convener: I am sorry to be boringly
pedantic but, having spoken to amendment 18,
you do not need to move it at this stage. You can
do so later.

Hugh Henry: I am sorry.

The Convener: Do not worry. We are not alone
in finding stage 2 procedure slightly arcane at
times.

Bill Butler: I do not have a problem with Colin
Fox’s amendments 23 and 24, as the intent behind
them is good. However, having heard the minister,
I am convinced that we should be appreciative of
the flexibility in the route that he is suggesting. No
one would want to cut across the consultation that
is on-going. I hope that, having heard the
minister’s arguments, Colin Fox will decide to do
as the minister has requested. Amendment 18
does not take away anything that he intended in
amendments 23 and 24.

The Convener: Mr Fox, do you wish to press
amendment 23?

Colin Fox: I would like to press the amendment.
I will respond to a couple of the points that the
minister and Bill Butler have made. I welcome the
sympathy that has been shown to my
amendments and recognise the genuineness of
the suggestions that the minister has made.
Amendment 23 is not an attempt to provide a
definitive list, as the minister suggests. It simply
highlights the fact that there are three or four other
categories that are important in respect of the
duties of firefighters. I welcome and have some
sympathy with the minister’s view that the matter
may be dealt with by subordinate legislation, in
another place or in the consultation exercise.
However, I would like nonetheless to press the
amendment. In that way, I get the best of both
worlds. Even if I lose, I win in the end.

The Convener: The question is, that
amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Fox, Colin (Lothians) (SSP)

Against
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)

Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

ABSTENTIONS
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For
1, Against 5, Abstentions 1.

Amendment 23 disagreed to.

Section 10—Conferral of functions in relation
to other emergencies

Amendment 24 not moved.

Section 10 agreed to.

Sections 11 to 14 agreed to.

Section 15—Charging

The Convener: Amendment 6, in the name of
the minister, is grouped with amendment 7.

Hugh Henry: Amendments 1 and 2, which we
have already debated, define the “area” of a fire
and rescue authority and clarify the duties of fire
and rescue authorities in respect of activities at
sea. Amendments 6 and 7, despite some of the
comments that have been made, amend section
15 to provide that a charging order under that
section may authorise charging for firefighting or
protecting life or property in the event of a fire only
where it occurs at sea or at sea outwith the
authority’s area. The amendments will put
Scotland on an equal footing with England and
Wales and will ensure that we are not left in the
position of being unable to charge in relation to an
incident at sea while fire and rescue authorities
south of the border are able to charge. A charging
order may not authorise charging to extinguish
fires, protect life or protect property in the event of
fire in the area of the fire and rescue authority.

I move amendment 6.

Mr Maxwell: I refer the minister to a letter, dated
January 2005, that he sent to the convener. In
paragraph 9, on charging, he says:

“There will be no change to the ability of fire and rescue
authorities to charge for other aspects of their activities”.

That refers to fire safety measures. He goes on to
say:

“However, they will not be allowed to charge for activity in
extinguishing fires, protecting property in the event of fires
or protecting life.”

It seems as though the minister has just
changed his position. Perhaps it would have been
appropriate for him to have begun his remarks on
the amendments by paraphrasing a short speech
made by a previous Prime Minister 26 years ago. I
fully expected him to say, “Where there is
harmony, we shall bring discord, and where there is clarity, let us bring confusion.”

Despite what the minister has said and despite Executive spin on the issue, it is clear that the door is being opened to allow charging for the core functions of the fire service. The bill, as introduced, has all-round support in relation to authorities not being allowed to charge for such activities. At no stage has there been any demand for the amendments that the Executive has lodged. In other words, there was harmony, but now the Executive has created discord; there was clarity, but now the Executive has created confusion.

It was crystal clear what “they will not be allowed to charge” meant, but now there are numerous questions and inconsistencies. Is the minister now saying that someone who lives on a houseboat that is moored in an inland loch cannot be charged if their home is on fire, but someone who lives on a houseboat moored in a sea loch or a tidal river, such as the Clyde, could be charged for receiving the core services of the fire brigade? If amendments 6 and 7 are agreed to, people living on a houseboat next to houses on land could be charged when the fire brigade extinguishes a fire in their home, whereas people living right next to them, on the land, could not be charged. What about people living in canal boats? Would they be charged?

The Convener: Can you keep this fairly brief, Mr Maxwell?

Mr Maxwell: I want to cover questions that the amendments raise.

The Convener: I am conscious of time. I am trying to be generous and encourage debate.

Mr Maxwell: I am trying to get through my points. Are canals included or does that depend on whether they are connected to the sea or are inland canals? Will there be exemptions for people who live on houseboats? What about merchant navy sailors who live on their ships for prolonged periods? What about a fishing boat from Peterhead that goes on fire? Will the crew be charged for being rescued and for having their property saved? What about people living on yachts for short or long periods? It seems as though those people will be charged, given the amendments. Is everything at sea or are only some things at sea?

Even from that brief list of questions, it is clear that amendments 6 and 7 are a recipe for confusion. The minister says that the Executive has no intention of charging for core services, but of course that is not true. The amendments will create a situation in which fire brigades can, in certain circumstances, charge for the core services of extinguishing fires, protecting life and protecting property. If the amendments are agreed to, we will lose the absolute clarity that exists in the bill at present. Despite the Executive’s previous claims, there will be charging for core services in certain circumstances and at certain times, as the minister has just confirmed. Where is the comfort for communities who live on our coasts?

The Convener: Mr Maxwell, your point is clear. Please draw your remarks to a close.

Mr Maxwell: Why is a free-at-the-point-of-use core fire service being withdrawn from certain groups? The principle of providing a free core service for protecting life and property is sacrosanct. There is no excuse for charging people for those services under any circumstances.

Colin Fox: I am surprised that the minister did not say that, given its size, amendment 6, which will take out the word “not”, is just a tidying-up measure. However, he seems to be proposing the introduction of the power to charge for what are core firefighting functions. As he knows, the service is paid for out of our taxes; it should surely remain free at the point of delivery.

As I am sure the minister would like to highlight, there is a difference between the core functions and the special services that we currently charge for—services such as pumping water, attending road traffic accidents, answering automatic fire alarm call-outs, entering lockfast premises and dealing with lift malfunctions. Those charges exist at the moment, but charges do not exist for what he would, I am sure, describe as the core functions of protecting life, fighting fires and rescuing people. I agree with Stewart Maxwell that amendment 6 seems to be a profound rather than simply a tidying-up measure.

I turn briefly to amendment 7. As the minister knows, there is a difference of opinion to be resolved regarding firefighting at sea. The difference has to do with the low water mark and action taken at sea. Despite what the minister has said and despite previous claims, there will be charging for core services at sea. An important, unresolved and thorny issue remains in relation to no-fault insurance liability covering firefighters who would attend such incidents at sea. When vessels are registered and owned overseas, there are real problems for firefighters seeking damages for injury. As the minister knows, a warning has been issued by Professor Black—

The Convener: Mr Fox, may I ask how this point is relevant to amendments 6 and 7?

Colin Fox: I am trying to draw attention to the distinction in amendment 7 between action taken at the low water mark and action taken at sea. Until the issue of the extension of insurance cover is clarified, the amendment is premature.
Jackie Baillie: I, too, would like us to avoid confusion, of which more has been created than clarified so far. My interpretation of the amendments is that we still reject the notion of introducing charges for core services. I would not want anyone in our communities to be fearful. Will the minister confirm that all he is introducing is the notion that charging can take place only in respect of action taken at sea by a fire authority? If I understood him correctly, I think that that will bring us into line with what happens in England and Wales.

Bill Butler: I would like clarification because I would hate to be confused. To give us absolute clarity, will the minister say whether charges are being introduced for core services? Is there any intention in the future—near or far—of introducing charges for core services? Could we have answers to those questions, for clarity’s sake? I would also like clarification on the reasonable point that Colin Fox raised about no-fault insurance liability cover for firefighters.

The Convener: Minister, may I suggest a limit of three minutes for winding up?

Hugh Henry: Convener, you are trying to spoil my pleasure.

The Convener: Not intentionally.

Hugh Henry: In this discussion, a number of things have confused me. Stewart Maxwell gave examples in which things might or might not happen. He spoke about canals—for clarity, perhaps he could give me an example of canals that are not inland. I am trying to think where the canals at sea might be.

Mr Maxwell: I was talking about canals that connect to the sea.

Hugh Henry: Stewart Maxwell spoke about a number of things that were at sea; I suggest that, from his contribution, the only thing that is at sea in this debate is him. The scaremongering and hysteria are bizarre. The accusations are based on no facts whatsoever.

Bill Butler asked whether charges are being introduced for core services. Absolutely not. On Jackie Baillie’s point, I put on record again what I said in my opening speech. A charging order may not authorise charging to extinguish fires, protect life or protect property in the event of fire in the area of the fire and rescue authority. The difference is that there is no duty to fight fires at sea outwith a fire authority’s area.

I will give further clarification on the question of insurance liability. Following the logic of Colin Fox’s argument, a fire authority would be persuaded not to provide any services at all to those at sea. An authority would let them burn because they were not in its core area and it did not have the liability. That would be outrageous, if there was an incident that a fire authority could adequately respond to. To be fair to Colin Fox, I do not think that that is what he intended to suggest.

The amendments are not about the privatisation of fire services. Stewart Maxwell is making a feeble attempt to cover up his embarrassment at some of the comments that he made yesterday. It is not for me to comment on what the Daily Star says about the SNP dimwit. However, things were said yesterday and today that can be based only on ignorance, stupidity, incompetence or, worse, political opportunism. The accusations that have been made are outrageous. There is no attempt to privatisse. We are still providing the core duties in an authority’s area without any charge. However, outwith that area, from the low water mark to the territorial limit, there is the potential to charge when that would be appropriate.

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST
Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 6 agreed to.

Amendment 7 moved—[Hugh Henry].

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST
Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 7 agreed to.
The question is, that section 15, as amended, be agreed to. Are we agreed?

Mr Maxwell: No.

The Convener: I am advised that members can vote against a section only if an amendment has been lodged to delete that section. To a boring lawyer, it would be interesting to know why, therefore, the question has to be put that a section be agreed to. However, that is the procedure. I am advised that I can accept a motion without notice that a section be disagreed to. If Mr Maxwell wishes to lodge such a motion, I am prepared to hear it.

Mr Maxwell: No, I will not at this point. I will leave things as they are. The argument has been made.

The Convener: I am grateful to you.

Section 15, as amended, agreed to.

Sections 16 to 19 agreed to.

Section 20—Fire hydrants: provision etc

The Convener: Amendment 25, in the name of Mike Pringle, is grouped with amendment 26.

Mike Pringle: I have had on-going discussions with the minister, which have not reached a conclusion. I will, therefore, not move the amendments.

Amendments 25 and 26 not moved.

Section 20 agreed to.

Sections 21 and 22 agreed to.

15:30

Section 23—Powers of authorised employees in relation to emergencies

The Convener: Amendment 8, in the name of Cathy Jamieson, is grouped with amendment 26.

Hugh Henry: Amendments 8 and 11 will remove what amount to duplicate provisions and offences in the bill to reflect the provisions of the Emergency Workers (Scotland) Act. Amendment 14 seeks to amend that act to reflect the effect of the bill and the placing on a statutory footing of emergency functions beyond firefighting.

Amendment 15 will make it an offence to assault, obstruct or hinder an employee of a fire and rescue service who is undertaking the non-emergency functions of fire safety and fire safety enforcement. The Emergency Workers (Scotland) Act was amended at stage 2 to make it an offence to assault, obstruct or hinder police, firefighters or ambulance workers whenever they are on duty rather than when they are responding to emergency circumstances. Those changes were made in recognition of the fact that, for those workers, the real possibility of their being required to respond to an emergency is ever present. The Emergency Workers (Scotland) Act refers to a member of a fire brigade under the Fire Services Act 1947—the current legislation. That reference requires to be updated to reflect the approach that we have taken in the bill. The effect of the amendment will be to extend protection to employees of a fire and rescue authority when they are undertaking firefighting, attending road traffic accidents or other emergencies, or carrying out other eventualities functions. Additionally, they will be covered during attendance at an incident, in obtaining information and in investigating a fire.

It has always been our intention to improve protection of fire and rescue service employees whenever they are undertaking fire and rescue service functions. For that reason, amendment 15 seeks to protect those employees when they are carrying out non-emergency functions, such as fire safety and fire safety enforcement. Although it would not be appropriate for those functions to be in the Emergency Workers (Scotland) Act, they are, nevertheless, important functions that involve interaction with local communities and businesses.

Amendment 21 is consequential on agreement to amendment 14.

I move amendment 8.

Amendment 8 agreed to.

Section 23, as amended, agreed to.

Sections 24 to 26 agreed to.

Section 27—Powers of authorised employees in relation to investigating fires

The Convener: Amendment 9 is in the name of Cathy Jamieson.

Hugh Henry: Amendment 9 will extend to outdoor places and to vehicles the power in section 27 to investigate the circumstances of a fire where a fire has taken place. The fire service has undertaken investigation of fires for many years and the information that is gathered feeds into programmes on community fire safety, improvement of fire precautions, tackling of wilful fire raising and identification of dangerous products. Those matters are all in the interests of public protection. Amendment 9 will ensure that employees of a fire and rescue authority can carry out such investigations wherever a fire occurs, whether in a vehicle, a house, a shop or any outdoor place.

I move amendment 9.

Amendment 9 agreed to.

Section 27, as amended, agreed to.
Section 28—Exercise of powers under sections 25 and 27: securing of premises

The Convener: Amendment 10 is in the name of Cathy Jamieson.

Hugh Henry: Amendment 10 will bring the terminology used in section 28 into line with that in sections 25 and 27 by clarifying that the term “employee” is an “authorised employee”. Sections 25 and 27 will provide fire and rescue authorities with powers to enter premises, to remove articles and so on in pursuit of either obtaining information or investigating fires. An “employee” in those sections is referred to as an “authorised employee”; that is, someone who is an employee of the relevant authority and who is authorised in writing for those purposes.

Section 28 provides that an employee who enters a place under the powers in sections 25 and 27 must leave the premises as secure against unauthorised entry as he or she found them. Amendment 10 will clarify that the employee doing that should be the “authorised employee” who is authorised to be there in the context of sections 25 and 27, and not another person taken into the premises in terms of section 27(2)(a)(i), for example.

I move amendment 10.

Amendment 10 agreed to.

Section 28, as amended, agreed to.

Section 29—Sections 25 and 27: offences

Amendment 11 moved—[Hugh Henry]—and agreed to.

Section 29, as amended, agreed to.

Sections 30 to 32 agreed to.

Section 33—Assistance other than from relevant authorities

The Convener: Amendment 12, in the name of Cathy Jamieson, is in a group on its own.

Hugh Henry: Amendment 12 addresses an anomaly that exists between section 33 and section 34. Section 34 makes provision that a fire and rescue authority can enter into arrangements with others to provide services in the execution of its functions. Those functions are fire safety, firefighting, road traffic accidents, other emergencies and eventualities and fire safety enforcement. Delegation is limited to the extent that, in recognition of the particular expertise that is involved in firefighting, a fire and rescue authority may, under section 34, delegate the discharge of its firefighting function only to persons who employ firefighters. Section 33 makes provision for a fire and rescue authority to enter into an arrangement to obtain assistance with some of its functions. The functions for which such an arrangement can be made are presently restricted to firefighting, road traffic accidents and other emergencies.

Amendment 12 will address the anomaly by adding fire safety, other eventualities and enforcement of fire safety to the functions for which assistance arrangements may be made. That will bring section 33 into line with the functions that can be discharged by others.

I move amendment 12.

Mr Maxwell: Briefly, the arguments on this issue have been rehearsed. I mentioned amendment 12 when we were discussing amendment 13. Given that amendment 13 has been agreed to, amendment 12 would widen the scope and allow a chief officer to contract out services within the service. Therefore, I think that amendment 12 should not be agreed to.

The Convener: Do you wish to make a concluding comment, minister?

Hugh Henry: No, except to say that I am completely perplexed. I just do not see how Mr Maxwell can place that construction on amendment 12. He can come back to me on that before stage 3, but I am genuinely bewildered.

The Convener: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

AGAINST
Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 12 agreed to.

Amendment 13 moved—[Maureen Macmillan].

The Convener: The question is, that amendment 13 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)
AGAINST
Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Amendment 13 agreed to.
Section 33, as amended, agreed to.
Sections 34 and 35 agreed to.

After section 35
Amendments 14 and 15 moved—[Hugh Henry]—and agreed to.
Sections 36 to 43 agreed to.

Section 44—Central institution and other centres for education and training

The Convener: Amendment 16, in the name of Cathy Jamieson, is grouped with amendment 17.

Hugh Henry: Amendment 16 will remove the power for Scottish ministers to establish and maintain local training centres. That provision was carried over from the Fire Services Act 1947, but it is now regarded as unnecessary. Training arrangements operate very satisfactorily, with the Scottish Executive funding and maintaining the Scottish Fire Services College, which undertakes recruit training and other specialist courses. Moreover, individual fire and rescue authorities carry out their own local and refresher training at their own local training centres.

In removing this ministerial power, however, we do not want to lose the flexibility whereby, for reasons of convenience or logistics, authorities and Scottish ministers can agree that a centrally provided training course would be better delivered at a local training centre. The new subsection that amendment 17 will insert will enable that sort of arrangement to be made.

I move amendment 16.

Amendment 16 agreed to.
Amendment 17 moved—[Hugh Henry]—and agreed to.
Section 44, as amended, agreed to.

Section 45—Statutory negotiation arrangements

The Convener: Amendment 27, in the name of Colin Fox, is grouped with amendments 28 to 33. I ask Mr Fox to move amendment 27 and to speak to the other amendments in the group. I allow you four minutes.

Colin Fox: I hope not to take that long.

The amendments in the group are intended to place a clear and unambiguous commitment in the bill to have recognised trade union representation on the statutory negotiating body. In the course of our previous evidence and the stage 1 debate, it was suggested that there was a policy omission around the need to recognise more than one trade union to represent employees.

Amendment 27 seeks to ensure that the right of recognised trade unions to represent their members is clear and unambiguous in the bill and that all recognised trade unions have their full right to participate in negotiations recognised. The suggestion in the earlier evidence sessions that trade unions can simply lobby the negotiating body is completely unacceptable; indeed, that suggestion is an insult to the trade unions and diminishes the important role that they have in safeguarding the service. The trade unions need, and are entitled to have, a seat at the top table, rather than be reduced to giving out leaflets outside.

I hope that the minister recognises that he and I have debated this issue twice now. I also hope that he recognises that amendments 27 to 33 are an attempt to make it absolutely clear that there is an unambiguous commitment to ensuring that trade unions are key players in the fire service.

I move amendment 27.

The Convener: Thank you, Mr Fox. I appreciate your brevity.

15:45

Maureen Macmillan: This issue has been raised time and again. When I raised it during the stage 1 debate and noted that the problem seemed to be with the definition of “recognised trade unions”, the minister said that “section 45 clearly states that any negotiating body should include representatives of employees.”—[Official Report, 18 November 2004; c 12001.]

What exactly is the problem with the phrase “recognised trade unions”? I note that, in your summing up in that debate, you said that you needed to examine the matter further to determine whether you could do anything to make the position absolutely clear. Could you say something about that today?

The Convener: Before the minister replies, I ask whether any other members want to ask a question.

Bill Butler: I would be grateful if the minister could say a little about what Maureen Macmillan was asking about. It is important that there be no ambiguity. There is a clear intention in section 45 that recognised trade unions would be involved in such a statutory negotiating body and I wonder...
whether there is a problem with including the phrase, "recognised trade unions". I am not quite sure—my memory does not go that far back—but I think that the Educational Institute of Scotland is a recognised trade union that is involved in the statutory negotiating body with which it is concerned. Could the minister give us some comfort and clarification?

Hugh Henry: I am not entirely familiar with the legislation or negotiating circumstances pertaining to teachers so I cannot give Bill Butler any clarity or assurance on that point.

I understand what members are saying and I have sought to address some of their concerns. I am happy to put the Executive's commitment on record. However, there are certain difficulties in trying to prescribe things in the way that members suggest. I believe that the amendments are unnecessary. Section 45 already places a clear requirement on ministers to include persons representing the interests of some or all employees of relevant authorities as members of any such statutory negotiating body. The provision is drafted to ensure that no legitimate interests are excluded from the arrangement; there is no doubt that a recognised trade union would be included in the arrangements as a matter of course. That is our intention.

It is worth highlighting that, although recognised unions have certain rights, such as a right to appoint safety representatives and the right to receive information for collective bargaining purposes, union recognition—in a strictly factual sense—is a matter for employers at local or industrial level. There are a number of routes, which I will not rehearse now, by which unions can be recognised or be subject to de-recognition. To be overly prescriptive in the bill could result in an overly rigid provision. For the reasons that I have outlined, the approach that we have adopted is more inclusive and more flexible. Just as we want to include trade unions, we also want to avoid excluding trade unions that might not have, for certain purposes, negotiating rights on a particular negotiating body but who need recognition for other purposes.

What we are doing will give trade unions the right to be represented on a negotiating body. I put that on the record. However, I believe that being overly prescriptive in the bill is not the way to address the concerns that have been expressed.

Colin Fox: I thank the minister for the assurance that there might be consideration of a more robust way of doing things than we currently have. I take his point that he feels that the amendments might be overly prescriptive, and I sense that he has some sympathy with the feeling that is shared by me and my colleagues that there is a little too much ambiguity as things currently stand. I hope that that may be a signal that—dare I say it—a middle way could be found at stage 3 between prescriptiveness and ambiguity.

I would, however, like to press amendment 27.

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)

AGAINST
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 27 disagreed to.

Amendments 28 to 32 not moved.

Section 45 agreed to.

The Convener: Amendment 22, in the name of Cathy Jamieson, is in a group on its own.

Hugh Henry: The prohibition in section 47 is aimed only at police constables and special constables, and it re-enacts section 32 of the Fire Services Act 1947. It exists to ensure that there is no conflict of interests in, for example, the fire and rescue service attending an incident at which a suspected arsonist was detained or where a disturbance was caused by bystanders. Since 1947, the use of the phrase "member of a police force" has perhaps suggested a wider group. We want to ensure that it is clear that it is only police constables and special constables, under the Police (Scotland) Act 1967 and not, for example, employees of a police authority, who are prohibited under that section from becoming retained firefighters. Amendment 22 seeks to clarify that.

I move amendment 22.

The Convener: For clarification, does "constable" have a statutory definition?
Hugh Henry: It does not in this bill, but I believe that it has a definition in the Police (Scotland) Act 1967.

The Convener: I asked the question for the avoidance of confusion. If there is a reference to rank, the amendment would suggest that other ranks can run off and help at fires.

Hugh Henry: I am advised that, when read with the rest of the 1967 act, any rank of officer will be included within the definition.

The Convener: I am grateful for that clarification.

Amendment 22 agreed to.

Section 47, as amended, agreed to.

Section 48—Interpretation of Part 2

Amendment 18 moved—[Hugh Henry]—and agreed to.

Section 48, as amended, agreed to.

The Convener: I thank committee members for their assistance in getting us to our declared objective this afternoon. I also thank the Deputy Minister for Justice, Hugh Henry, and his colleagues from the Justice Department for their assistance. We look forward to continuing this interesting process next week.

15:55

Meeting continued in private until 16:33.
Fire (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 49
Sections 50 to 82
Sections 83 and 84
Schedule 2
Schedules 3 and 4
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 49

Colin Fox
34 In section 49, page 23, line 24, leave out <reasonably>

Cathy Jamieson
38 In section 49, page 23, line 25, leave out <the event of> and insert <respect of harm caused by>

Cathy Jamieson
39 In section 49, page 23, line 28, leave out <the event of> and insert <respect of harm caused by>

Section 50

Cathy Jamieson
40 In section 50, page 24, line 7, leave out <the event of> and insert <respect of harm caused by>

Cathy Jamieson
41 In section 50, page 24, line 11, leave out <the event of> and insert <respect of harm caused by>

Cathy Jamieson
42 In section 50, page 24, line 21, leave out <or on>

Cathy Jamieson
43 In section 50, page 24, line 22, leave out <the event of> and insert <respect of harm caused by>

Cathy Jamieson
44 In section 50, page 24, line 28, leave out <the event of> and insert <respect of harm caused by>
Section 52

Cathy Jamieson

45 In section 52, page 25, line 10, at end insert <while at work>

Cathy Jamieson

46 In section 52, page 25, line 11, leave out <in the workplace>

Section 53

Cathy Jamieson

47 In section 53, page 25, line 32, leave out from <; and> to end of line 33

Section 54

Cathy Jamieson

48 In section 54, page 26, line 24, leave out from <; and> to end of line 26

After section 54

Cathy Jamieson

49 After section 54, insert—

<Power to make further provision for protection of fire-fighters

(1) This section applies where regulations under section 54(1) make provision for or in connection with the maintenance of premises, facilities or equipment with a view to securing the safety of fire-fighters (whether employees of relevant authorities or otherwise) in the event of a fire in relevant premises (“safeguarding provision”).

(2) The Scottish Ministers may by regulations apply, subject to any modifications (specified in the regulations) that they consider necessary, the safeguarding provision to common areas of private dwellings.

(3) In subsection (2), “common area” includes, where a stair, passage, garden, yard, garage, outhouse or other appurtenance of a private dwelling is used in common by the occupants of more than one private dwelling, that stair, passage, garden, yard, garage, outhouse or other appurtenance.>

Section 55

Cathy Jamieson

50 In section 55, page 26, line 30, after <person’s> insert <operational>

Cathy Jamieson

51 In section 55, page 26, line 38, leave out <any other member of a police force> and insert—
 of such other description as the Scottish Ministers may by regulations prescribe.>

**Cathy Jamieson**

52 In section 55, page 27, line 4, leave out <the event of> and insert <respect of harm caused by>

**Cathy Jamieson**

53 In section 55, page 27, line 4, at end insert—

<( ) For the purposes of this section, “operational duties”, in relation to a person falling within subsection (2), means anything done—

(a) while the person is at work in the capacity in which the person falls within that subsection; and

(b) which the person is required to do by virtue of being at work in that capacity.>

**Section 56**

**Cathy Jamieson**

54 In section 56, page 27, line 12, at end insert—

<(3A) If the enforcing authority is the person appointed under section 39(1)(a), the authority may, subject to subsection (3B), appoint under subsection (3) a person who has been appointed under subsection (3) as an enforcement officer by a relevant authority.

(3B) A person may be appointed by virtue of subsection (3A) only if—

(a) the appointment is made with the consent of the relevant authority concerned; and

(b) the appointment is made in writing.>

**Cathy Jamieson**

55 In section 56, page 27, line 34, at end insert—

<() The Scottish Ministers may by regulations modify subsection (6).>

**Section 57**

**Cathy Jamieson**

56 In section 57, page 28, line 17, at end insert—

<that the officer considers necessary>

**Cathy Jamieson**

57 In section 57, page 28, line 19, leave out <their> and insert <its>

**Cathy Jamieson**

58 In section 57, page 28, line 21, leave out <the event of> and insert <respect of harm caused by>
In section 57, page 29, line 9, after <cause> insert—

(a) anything which the officer proposes to do on the relevant premises under the power mentioned in paragraph (d) or (e) of subsection (2); or

(b)>

In section 57, page 29, line 10, leave out <subsection (2)(g)> and insert <paragraph (g) of that subsection.>

In section 57, page 29, line 10, at end insert—

( ) If an enforcement officer exercises the power in subsection (2)(h), the officer shall leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that the officer has taken possession of it.>

In section 58, page 29, line 21, leave out from <there> to end of line 26 and insert <use of relevant premises involves or will involve a risk to relevant persons so serious that use of the relevant premises ought to be prohibited or restricted>

In section 58, page 30, line 7, leave out from <by> to <premises> in line 8 and insert <relevant premises fall within paragraph (a) of subsection (3B) of section 72>

Where an enforcing authority serves a prohibition notice on the occupier of relevant premises, the authority may, by notice in writing to the occupier, withdraw the prohibition notice.>

In section 59, page 30, line 21, leave out <the reason> and insert <why>

In section 59, page 30, leave out lines 39 and 40 and insert—
subject to subsection (5A), the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier in relation to those premises.

Cathy Jamieson

67 In section 59, page 31, line 9, at end insert—

(5A) If the local authority in whose area the relevant premises are situated is also in relation to those premises—

(a) the enforcing authority; and

(b) the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier,

the enforcing authority need not consult the local authority.

Cathy Jamieson

68 In section 59, page 31, line 12, after <notice> insert <on a person>

Cathy Jamieson

69 In section 59, page 31, line 13, leave out <withdraw the> and insert <by notice in writing to the person withdraw the enforcement>

Cathy Jamieson

70 In section 59, page 31, line 15, after second <the> insert <enforcement>

Section 60

Cathy Jamieson

71 In section 60, page 31, line 23, leave out <the event of> and insert <respect of harm caused by>

Cathy Jamieson

72 In section 60, page 31, line 29, at end insert <where>

Cathy Jamieson

73 In section 60, page 31, line 30, leave out <where> and insert <it is proposed that>

Cathy Jamieson

74 In section 60, page 31, line 30, leave out <is> and insert <be>

Cathy Jamieson

75 In section 60, page 31, line 31, leave out <the change could significantly increase the> and insert <if made, the change would constitute a serious>
Cathy Jamieson

76 In section 60, page 31, line 31, leave out <the event of> and insert <respect of harm caused by>

Cathy Jamieson

77 In section 60, page 31, line 33, at end insert <before it is made>

Cathy Jamieson

78 In section 60, page 32, line 3 leave out subsection (6) and insert—

<(  ) Where an enforcing authority serves an alterations notice on an appropriate person, the authority may, by notice in writing to the appropriate person, withdraw the alterations notice.>

Section 61

Cathy Jamieson

79 In section 61, page 32, line 8, after <served> insert <or, if the relevant notice is a prohibition notice, a person who in relation to the relevant premises to which the notice relates is subject to the duties imposed by section 49 or 50>

Cathy Jamieson

80 In section 61, page 32, line 21, at end insert—

<(  ) If not recalled by the sheriff, a suspension order shall cease to have effect on—

(a) the making of an order under subsection (1); or

(b) the abandonment of the application under this section.>

Section 62

Cathy Jamieson

81 In section 62, page 33, line 6, at end insert—

<(4) Subject to subsection (5), where a determination is made by virtue of subsection (1) or (2), the enforcing authority may not—

(a) serve an enforcement notice; or

(b) include in such a notice directions,

if the notice or, as the case may be, the directions would conflict with the determination.

(5) Subsection (4) shall 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 they are put.>
Section 65

Cathy Jamieson

82 Leave out section 65 and insert—

<Consequential restriction of application of Part I of Health and Safety at Work etc. Act 1974

(1) Except as respects its application in relation to the aspects of fire safety set out in paragraph (b) of the sentence on interpretation in Section H2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46) (reserved matters), Part I of the Health and Safety at Work etc. Act 1974 (c.37) (“the 1974 Act”) and any regulations made under it shall not apply in relation to fire safety.

(2) Nothing in subsection (1) affects the operation of Part I of the 1974 Act or any such regulations where an enforcing authority is also, for the purposes of that Part or, as the case may be, those regulations, an enforcing authority (as defined in section 18(7)(a) of the 1974 Act).>

After section 65

Cathy Jamieson

109 After section 65, insert—

<Suspension of terms and conditions of licences dealing with same matters as this Part

(1) This section applies where—

(a) an enactment provides for the licensing of—

(i) premises; or

(ii) a person in respect of premises;

(b) the authority responsible for issuing licences under such an enactment (the “licensing authority”) is required or authorised to impose terms, conditions or restrictions in connection with the issue of such licences; and

(c) such a licence is required in respect of relevant premises.

(2) A term, condition or restriction imposed in connection with the issue under such an enactment of the licence shall be of no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of this Part.

(3) References in this section to the issue of licences include references to their renewal, transfer or variation.

(4) References in this section to licensing include references to certifying and registering; and “licence” shall be construed accordingly.

(5) This section does not apply where the licensing authority is also (other than by virtue of paragraph (c) of subsection (6) of section 56) the enforcing authority.>
Section 66

Cathy Jamieson
83 Leave out section 66

Section 67

Colin Fox
35 In section 67, page 34, line 4, leave out subsection (2)

Cathy Jamieson
84 In section 67, page 34, line 23, leave out <requirement> and insert <restriction>

Colin Fox
36 In section 67, page 34, line 40, leave out subsection (6)

Cathy Jamieson
85 In section 67, page 35, line 7, at beginning insert <Subject to subsection (9A).>

Cathy Jamieson
86 In section 67, page 35, line 11, at end insert—
<(9A) The Scottish Ministers may make regulations specifying cases in relation to which subsection (9) shall not apply.>

Colin Fox
37 In section 67, page 35, line 14, leave out <reasonably>

Cathy Jamieson
87 In section 67, page 35, line 14, at end insert—
<( ) The Scottish Ministers may make regulations applying subsection (10) in relation to proceedings for offences specified in the regulations.>

Cathy Jamieson
88 In section 67, page 35, line 14, at end insert—
<( ) The Scottish Ministers may by regulations provide that in proceedings for such offences under this Part as may be specified in the regulations the onus of showing that it was not practicable to do more than was done shall be on the accused.>
After section 68

Cathy Jamieson

89 After section 68, insert—

<Offence due to fault of other person

(1) Where the commission by any person (“A”) of an offence under this Part is due to the act or default of some other person (“B”), B shall be guilty of the offence.

(2) B may be charged with and convicted of an offence by virtue of subsection (1) whether or not proceedings are taken against A.>

Section 69

Cathy Jamieson

90 In section 69, page 35, line 33, at end insert <or

( ) a person of a description specified in regulations made by the Scottish Ministers on whom duties are imposed by virtue of section 54(1)>.

Section 72

Cathy Jamieson

91 In section 72, page 37, line 11, leave out from <(as> to end of line 12

Cathy Jamieson

92 In section 72, page 37, line 26, at end insert <which is situated away from the undertaking’s buildings>

Cathy Jamieson

93 In section 72, page 37, line 31, at end insert—

<(3A) In paragraph (a) of subsection (2), “domestic premises” means premises occupied as a private dwelling (including a stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is used in common by the occupants of more than one such dwelling); but does not include premises such as are mentioned in subsection (3B).

(3B) Those premises are—

(a) a house as respects which the giving of permission to occupy it is an activity for which a licence under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (S.S.I. 2000/177) is required;

(b) premises used for the provision of a care home service (as defined in subsection (3) of section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8));

(c) premises used for the provision of a school care accommodation service (as defined in subsection (4) of that section);

(d) premises used for the provision of an independent health care service (as defined in subsection (5) of that section);>
(e) premises used for the provision of a secure accommodation service (as defined in subsection (9) of that section);

(f) premises which would fall within paragraph (a) but for there being in force in respect of them a control order under section 178 of the Housing (Scotland) Act 1987 (c.26); and

(g) premises which would fall within paragraph (a) but for there being in force in respect of them a management control order granted by virtue of section 74 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).>

Cathy Jamieson

94 In section 72, page 38, line 1, at end insert—

<Where the Scottish Ministers exercise the power in subsection (6), they may by regulations make any modifications of this Part in its application, in consequence of the exercise of that power, to relevant premises specified in the regulations under that subsection that they consider necessary or expedient.>

Section 73

Bill Butler

110 In section 73, page 38, line 14, at end insert—

<“operational task” means—

(a) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 8;

(b) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 9; or

(c) a function such as is mentioned in an order under section 10(1);>

Bill Butler

111 In section 73, page 38, line 22, leave out <carrying out functions of the authority> and insert <who is engaged in the performance of an operational task>

Cathy Jamieson

95 In section 73, page 38, line 24, at end insert—

<“work” and “at work” shall be construed in accordance with section 52 of the Health and Safety at Work etc. Act 1974 (c.37)>
The Scottish Ministers, following consultation, shall by regulations provide for the setting up of a replacement body to directly advise the Scottish Ministers.

After section 79

Cathy Jamieson

19 After section 79, insert—

<Disposal of land

Disposal of land
A relevant authority may sell or dispose of any land vested in it which is no longer required by it.>

Section 81

Cathy Jamieson

20 In section 81, page 41, line 13, at end insert—

<( ) an order under section 2(1) or section 5(3);>

Cathy Jamieson

97 In section 81, page 41, line 15, after <section> insert <56(7), 72(6) or>

Schedule 3

Cathy Jamieson

98 In schedule 3, page 43, line 3, at end insert—

<The Civil Defence Act 1948 (c.5)

(1) The Civil Defence Act 1948 shall be amended as follows.

(2) In subsection (1)(b) of section 1 (civil defence functions of Ministers), for “fire brigades” substitute “employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

(3) In section 5 (civil defence obligations)—

(a) for “and fire brigades” substitute “, employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”;

(b) the words “and brigades” are repealed; and

(c) for “respectively” substitute “and by employees of relevant authorities (as so defined)”.

(4) In section 9(1) (interpretation) the definition of “fire brigade” is repealed.

The Pipe-lines Act 1962 (c.58)

In section 37 of the Pipe-lines Act 1962 (persons to be notified of certain pipe-line accidents)—
(a) in each of subsections (1)(a) and (2)(a), after “fire” insert “and rescue authority”; and
(b) in subsection (4), for paragraph (a) substitute—

“(a) “fire and rescue authority”, in relation to any area, means a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) for the area;”.

The Gas Act 1965 (c.36)
(1) The Gas Act 1965 shall be amended as follows.
(2) In section 17 (provisions in relation to gas-related accidents), in subsection (5)(a) for “fire authority” substitute “fire and rescue authority”.
(3) In section 28(1) (interpretation), for the definition of “fire authority” substitute—

““fire and rescue authority” means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00);”.

The Transport Act 1968 (c.73)
In section 102(4) of the Transport Act 1968 (application to the Crown and exemptions)—

(a) the words “or fire brigade” are repealed; and
(b) after “purposes” insert “or for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

Cathy Jamieson
In schedule 3, page 43, line 6, at end insert—

The Control of Pollution Act 1974 (c.40)
In subsection (2)(a) of section 62 of the Control of Pollution Act 1974 (restrictions on use of loudspeakers in streets)—

(a) the words “, fire brigade” are repealed; and
(b) after “purposes,” insert “for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Local Government (Scotland) Act 1975 (c.30)
(1) The Local Government (Scotland) Act 1975 shall be amended as follows.
(2) For paragraph (a) of section 23(2) (authorities subject to investigation) substitute—

“(a) any joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 00));”.
(3) In subsection (3)(b) of section 29A (consideration of adverse reports), for “fire” substitute “joint fire and rescue boards”.

12
The Licensing (Scotland) Act 1976 (c.66)

(1) The Licensing (Scotland) Act 1976 shall be amended as follows.

(2) In each of—

(a) subsection (1)(e) of section 16 (objections in relation to licence applications);

(b) subsections (5) and (6) of section 23 (special provisions relating to applications for a new licence);

(c) subsection (1) of section 24 (special provisions relating to applications for renewal of a licence);

(d) subsection (3) of section 35 (consent of licensing board required for works to certain licensed premises); and

(e) subsection (2)(c) of section 105 (procedure on application for grant or renewal of registration),

after “fire” insert “and rescue”.

(3) In subsection (1) of section 139 (interpretation), for the definition of “fire authority” substitute—

““fire and rescue authority” means a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

Cathy Jamieson

100 In schedule 3, page 43, line 15, at end insert—

The Local Government, Planning and Land Act 1980 (c.65)

In subsection (1) of section 2 of the Local Government, Planning and Land Act 1980 (local authorities to whom a duty to publish information applies), for paragraph (h) substitute—

“(h) a joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 00);”.

The Road Traffic Regulation Act 1984 (c.27)

In section 87 of the Road Traffic Regulation Act 1984 (exemptions from speed limits)—

(a) the words “fire brigade,” shall be repealed; and

(b) after “purposes” insert “or for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Housing (Scotland) Act 1988 (c.43)

In the Housing (Scotland) Act 1988—

(a) for sub-paragraph (vii) of subsection (3)(a) of section 43 (conditions necessary to make a tenancy a housing association tenancy or secure tenancy) substitute—

“(vii) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));” and;
(b) for paragraph (g) of subsection (4) of section 45 (certain tenancies not to be capable of being protected or secure tenancies) substitute—

“(g) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Tay Road Bridge Order Confirmation Act 1991 (c.iv)

In the Schedule (Provisional Order confirmed by Act) to the Tay Road Bridge Order Confirmation Act 1991, in paragraph (b) of subsection (2) of section 54, for the words from “a” where it first occurs to the end of that paragraph substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Strathclyde Regional Council Order Confirmation Act 1991 (c.xx)

In the Schedule to the Strathclyde Regional Council Order Confirmation Act 1991, in paragraph (a) of subsection (8) of section 3—

(a) the word “, fire” shall be repealed; and

(b) after “services” insert “, or by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government etc. (Scotland) Act 1994 (c.39)

In subsection (4) of section 43 (guidance as to exercise of traffic powers) of the Local Government etc. (Scotland) Act 1994, for paragraph (b) substitute—

“(b) the relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Merchant Shipping Act 1995 (c.21)

In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night), for “fire brigade” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) or any other employer of fire-fighters”.

The Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (c xii)

In the Schedule to the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996, in subsection (9) of section 6 for “the fire service” substitute “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Housing (Scotland) Act 2001 (asp 10)

In paragraph 2 of schedule 1 to the Housing (Scotland) Act 2001 (tenancies which are not Scottish secure tenancies)—

(a) in sub-paragraph (b), for the words from “a” where it first occurs to “(c.41)” substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”; and

(b) in sub-paragraph (c), for “fire brigade” substitute “authority”.
In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities), for paragraph 9, substitute “Her Majesty’s Chief Inspector of Fire and Rescue Authorities”.

Cathy Jamieson

101 In schedule 3, page 43, line 21, at end insert—

<(  ) The Local Government in Scotland Act 2003 shall be amended as follows.
   (  ) In subsection (1)(d) of section 16 (community planning: further provision), for the words from “board” to the end of that paragraph substitute “fire board”.
   (  ) In subsection (9) of section 22 (limits on power to advance well-being), at the beginning insert “Subject to section 15(3) of the Fire (Scotland) Act 2005 (asp 00),”.
   (  ) In section 25 (scrutiny of local authorities’ police and fire functions)—
      (a) in subsection (2)—
         (i) for “Services for Scotland” substitute “and Rescue Authorities”;
         (ii) for “24 of the Fire Services Act 1947 (c.41)” substitute “39 of the Fire (Scotland) Act 2005 (asp 00)”;
         (iii) in paragraph (a), after “fire” insert “and rescue”; and
      (b) in subsection (3)(a), after “fire” insert “and rescue”.

Cathy Jamieson

102 In schedule 3, page 43, line 22, leave out <of the Local Government in Scotland Act 2003 (asp 1)>

Cathy Jamieson

21 In schedule 3, page 43, line 25, at end insert—

<The Emergency Workers (Scotland) Act 2005 (asp 00)

In section 7 of the Emergency Workers (Scotland) Act 2005 (savings for certain offences), the words from “or section 30” to the end are repealed.>

Schedule 4

Cathy Jamieson

103 In schedule 4, page 44, line 5, at end insert—

<The Fire Services Act 1959 (c.44) The whole Act except sections 8 to 10.

The Town and Country Planning (Scotland) Act 1959 (c.70) In paragraph 2 of the Fourth Schedule, the words “the Fire Services Act, 1947;”>
Cathy Jamieson

104 In schedule 4, page 44, line 6, at beginning insert—

<Section 56(9)(a)
Section 64(5)(a).>

Cathy Jamieson

105 In schedule 4, page 44, line 7, at end insert—

<The Roads (Scotland) Act 1984 (c.54) Paragraph 34 of Schedule 9.

Cathy Jamieson

106 In schedule 4, page 44, line 8, at end insert—

<Section 55(8).
In section 55(12), the words from “, any” where it secondly occurs to “1947”.
Paragraph 27 of Schedule 13.>

Cathy Jamieson

107 In schedule 4, page 44, line 9, at end insert—

<The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) The entries relating to the Fire Services Act 1947 (c.41) in the table in each of Parts II and III of Schedule 2.
The Merchant Shipping and Maritime Security Act 1997 (c.28) Section 4.>

Long Title

Cathy Jamieson

108 In the long title, page 1, line 6, leave out <non-domestic>
## Fire (Scotland) Bill

### Groupings of Amendments for Stage 2 (Day 2)

1. **Fire safety: nature of duty in sections 49 and 50 and offences**
   34, 48, 35, 36, 85, 86, 37, 87, 88, 89, 90

2. **Fire safety: criterion for assessing risk, etc**
   38, 39, 40, 41, 42, 43, 44, 52, 58, 71, 76

3. **“Work” and “workplace”**
   45, 46, 95, 96

4. **Risk assessments: power to make regulations**
   47

5. **Power to make further provision for protection of fire-fighters**
   49

6. **Temporary suspension of fire and rescue duties**
   50, 51, 53

7. **Enforcing authorities and enforcement officers**
   54, 56, 57, 59, 60, 61

8. **Meaning of “enforcing authority” and “relevant premises”**
   55, 63, 91, 92, 93, 94, 97, 108

9. **Prohibition, enforcement, and alterations notices**
   62, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 77, 78, 79, 80, 81, 84

10. **Consequential effect on other enactments**
    82, 83

11. **Suspension of licences**
    109

12. **Fire and rescue functions: meaning of “operational task”**
    110, 111

13. **Abolition of Scottish Central Fire Brigades Council**
    112

14. **Minor and consequential amendments and repeals**
    98, 99, 100, 101, 102, 103, 104, 105, 106, 107

**NOTE – THE FOLLOWING AMENDMENTS HAVE ALREADY BEEN DEBATED—**

- **With 1 on day 1** — 19, 20
- **With 8 on day 1** — 21
Present:
Jackie Baillie
Colin Fox
Maureen Macmillan
Mike Pringle

Bill Butler (Deputy Convener)
Miss Annabel Goldie (Convener)
Stewart Maxwell

Fire (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).

The following amendments were agreed to (without division) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 109, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 110, 111, 95, 96, 19, 20, 97, 98, 99, 100, 101, 102, 21, 103, 104, 105, 106, 107 and 108.

The following amendments were disagreed to (by division)—
34 (For 1, Against 6, Abstention 0)
112 (For 2, Against 5, Abstention 0).

Amendments 35, 36 and 37 were not moved.

Schedule 2, sections 51, 63, 64, 68, 70, 71, 74, 75, 76, 77, 78, 79, 80, 82, 83 and 84 were agreed to without amendment.

Section 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 65, 67, 69, 72, 73, 81 and schedules 3 and 4 were agreed to as amended.
Fire (Scotland) Bill: Stage 2

14:17

The Convener: Item 3 on the agenda is our continued stage 2 consideration of the Fire (Scotland) Bill. We will not allow the minister to feel bereft and assailed by a panic attack. We will wait to ask questions until he is supported by his advisers.

Hugh Henry: No, it is okay. I am quite happy to fly solo, convener.

The Convener: I welcome the minister’s advisers on the Fire (Scotland) Bill. They are Rosemary Whaley, Alison Coull—there does not seem to be a name-plate for her, but I see that someone is nodding in appreciation—Jill Clark, Brian McKenzie and Johann MacDougall.

Once again, members should have the marshalled list of amendments and the groupings. We have quite a number of amendments to consider. Although some are essentially technical and drafting amendments, I am nonetheless conscious that we have a big agenda before us this afternoon; item 4 is also quite substantive. Therefore, I suggest that we have only brief debates on amendments that are moved by members and that members take no more than three minutes when they speak to amendments before moving them. I will then allow members who are so minded to speak briefly to amendments before I allow the minister to comment briefly, again for no more than three minutes. In that way, I hope that we can make solid progress through the amendments.

Section 49—Duties of employers to employees

The Convener: Amendment 34 is grouped with amendments 48, 35, 36, 85, 86, 37 and 87 to 90.

Colin Fox (Lothians) (SSP): I notice that members’ amendments are very rare in the marshalled list, so I will take delight in moving one of the three amendments to which I will speak today.

On first sight, it might seem remarkable that amendment 34 seeks to delete the word “reasonably” from section 49, when the law places so much emphasis on reasonableness. However, I understand that recent health and safety legislation from the European Parliament prefers to apply a much stiffer test on such matters than the “reasonably practicable” test that would apply under the bill.

The approach of European regulations and directives requires a risk assessment and calculation of perceived danger in that risk. In other words, although employers might say that
such and such an approach to health and safety precautions would be too costly when measured against the low risk involved, European directives in effect overrule that approach in favour of a much higher standard of safety. Under the European approach, any practice that is unsafe or that involves personnel or property being unable to be protected against danger ought not to continue, irrespective of the cost. The emphasis should be not on an economic test but on putting people’s safety first.

In my view, the term “reasonably practicable”—which is notably not used often in the bill—does not reflect the change in opinion that has occurred in our approach to health and safety matters, and is insufficient to meet current European legislation. By deleting the word “reasonably” while leaving “practicable”, amendment 34 would let the much higher standard of safety cover of the European directives apply.

I have delight in moving amendment 34.

Bill Butler: Colin Fox has made it clear that the intention behind amendment 34 is to ensure that there is no doubt about the matter, but I am not sure that the phrase is not perhaps tautological. Does “practicable” not imply “reasonable”? I know where Colin Fox is coming from—we all want to ensure that the i’s are dotted and the t’s crossed, but I am not certain that the phrase is anything more than tautological.

Hugh Henry: Earlier, for one exhilarating moment, I thought that I had slipped my minders for the afternoon, but they have encased me again.

To some extent, Bill Butler is right to say that a degree of tautology is involved. However, the words that we are discussing also have significant legal implications. The use of the phrase “reasonably practicable” was raised in evidence by the Fire Brigades Union; it was suggested that the Executive and Parliament were acting ultra vires. Following that union’s oral evidence on 14 September, my officials wrote to the committee to advise that the Executive is content that the amendment is necessary.

Do you wish me to discuss the other amendments in the group?

The Convener: I would be happy if you would speak to amendment 48 and the other amendments in the group. You have another three minutes to do so.

Hugh Henry: Do you want me to speak to amendments 35 and 36?

The Convener: Yes—if you have something to say about them.

Hugh Henry: Amendments 35 and 36 appear to have been lodged in an attempt to address concerns that were expressed during stage 1 that the bill would make industrial action by firefighters unlawful. I addressed that issue when I gave evidence to the committee—

Colin Fox: I am sorry to interrupt the minister, but I want to raise an issue of procedure. Amendments 35 and 36 are separate
amendments. Amendment 35 is in my name. I wish to be courteous to the minister, but surely I am entitled to speak to the amendment before the minister replies. I seek guidance on this point from the convener.

The Convener: Amendment 34 is in your name, Mr Fox, and you have been asked to move it and to speak to the other amendments in the group. I assume that you have done so.

Colin Fox: I spoke to amendments 34 and 37 because they are on the same issue. I did not take the opportunity to speak to amendments 35 and 36 because they are on separate issues.

The Convener: I am advised by the clerk that the amendments are in the same group and have to be dealt with at the same time. We will let the minister deal with the amendments and return to you to wind up. At that point you can cover the points.

Colin Fox: I apologise for the interruption.

Hugh Henry: I suggest that, for the flow of argument, I do not refer to amendments 35 and 36. I can address the others and come back to them. I am entirely in your hands, convener.

The Convener: There might be logic in that, if you are happy to do that, minister.

14:30

Hugh Henry: Okay—I shall do that.

Amendment 48 will remove an unnecessary enabling power. It was the intention to include—under the fire safety regulations in section 54—provisions on electrical luminous tube signs. In order to replicate the existing provisions in the Electrical Luminous Tube Signs (Scotland) Regulations 1990, an offence provision was necessary. It has been agreed that building regulations are a more appropriate vehicle for those provisions so the offence provision, which was included only for that particular purpose, is no longer required.

Amendments 85 and 86 will extend disapplication of the due diligence defence that is set out in section 67(9) to any other duties that are specified in the fire safety regulations. For example, the power might be used in relation to the duty to eliminate or reduce risk from dangerous substances. Failure to fulfil that duty could have serious consequences.

Amendments 87 and 88 will enable Scottish ministers to apply the reverse burden of proof, that is set out in section 67(10), to proceedings for offences that are set out in regulations. As with amendments 85 and 86, that power may be used in relation to the duty to eliminate or to reduce risk from dangerous substances. In the event of non-compliance, we might want to apply the reverse burden of proof in relation to the offence.

Amendment 89 aims to address the situation in which a person with duties under part 3 has committed an offence, but where its commission by that person was due to action or inaction by a third party. The amendment provides for prosecution of that third party, regardless of whether the person with the duties under part 3 is prosecuted or not. The provision is equivalent to section 24 of the Fire Precautions Act 1971.

Amendment 90 will extend the provision at section 69 to other persons who will be specified in regulations. Section 69 will ensure that the fact that an offence was caused by the acts or omissions of employees will not afford an employer a defence in proceedings for an offence. Amendment 90 will also apply the provision to those persons who are specified in regulations. For example, if an employer assigns fire safety assistance duties to a competent person under draft regulation 18 of the fire safety regulations, the regulations will specify that the employer cannot rely on a breach of the fire safety duties by that person as a defence.

The Convener: Thank you minister. Colin Fox may now speak to the other amendments in the group and wind up on amendment 34. I ask him thereafter to confirm whether he wants to press or withdraw the amendment.

Colin Fox: I am grateful, convener. To maintain the logic of the argument, perhaps I should reply to the section that we have discussed rather than open up another front with the minister.

The minister and Bill Butler made the point that there are significant legal implications in the matter of health and safety. Deletion of the word “reasonably” will make clear the practicable standard. We are talking about a higher practicable standard, in my view.

The minister suggests that if amendment 34 were agreed to, it would take us out of line with UK legislation. I contend that to leave the word in will take us out of line with best practice in Europe. If the minister is saying that we have some of the best health and safety standards in Europe, we should welcome and protect that, not reduce it by accepting a lower standard than the health and safety directives that are coming out of Europe suggest. I will therefore press amendment 34. Do you want me to speak to amendment 35?

The Convener: Yes.

Colin Fox: Amendment 35 is a response to questions that I put to the deputy minister in committee and in the stage 1 debate. Although I welcome the assurances that the minister gave on both occasions, the Executive has failed, in my
view, to provide a cast-iron assurance that it has no intention of outlawing strike action in pursuit of a legal industrial dispute.

I had hoped that the minister would have lodged his own amendment to stipulate that the provisions of section 67 would not apply, and would not be seen to apply under any circumstances, to individuals who are involved in lawful industrial action. The minister may say that the Executive has no intention of outlawing strike action but, as the bill stands, the question is left open to legal challenge and the decision will ultimately not be for ministers, but the courts. My amendments seek to close the door firmly on any prohibition or outlawing of strike action and to ensure that the right to lawful industrial action is protected.

The Convener: The question is, that amendment 34 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

FOR
Fox, Colin (Lothians) (SSP)

AGAINST
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Pringle, Mike (Edinburgh South) (LD)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.
Amendment 34 disagreed to.

The Convener: Amendment 38 is in the name of the Minister for Justice and is grouped with amendments 39 to 44, 52, 58, 71 and 76.

Hugh Henry: Ten of the amendments in the group will insert an improved form of words in a number of places and will clarify what “safety” means—namely, “safety in respect of harm caused by fire”—so that there is no doubt that that incorporates fire precautions and fire prevention.

Amendment 42 is simply a tidying-up amendment that will remove unnecessary wording and bring the reference at section 50(4) into line with similar references elsewhere in the bill.

I move amendment 38.

Amendment 38 agreed to.

Amendment 39 moved—[Hugh Henry]—and agreed to.

Section 49, as amended, agreed to.

Schedule 2 agreed to.

Section 50—Duties in relation to relevant premises

Amendments 40 to 44 moved—[Hugh Henry]—and agreed to.

Section 50, as amended, agreed to.

Section 51 agreed to.

Section 52—Duties of employees

The Convener: Amendment 45, in the name of the minister, is grouped with amendments 46, 95 and 96.

Hugh Henry: I would like to link amendments 45 and 46 to Colin Fox’s comments on amendments 35 and 36, to which I could not respond. Can I do that?

The Convener: That is acceptable.

Hugh Henry: Thank you. Amendments 35 and 36 relate to the allegation that what we are doing would make industrial action by firefighters unlawful. When I gave evidence to the committee, I categorically denied that. I refuted the allegation again during the stage 1 debate and I am happy to repeat today that what is suggested is not the case.

I am disappointed that some people have made public comment not only to Fire Brigades Union members, but to the public, to raise fear, concern and alarm that we were trying to make strikes illegal. That is categorically untrue. The people who say that have misunderstood the situation or are trying for their own malign reasons to portray such a situation.

We have never intended to make strikes illegal. We have said specifically and categorically that that is not our intention. I have said that more than once. Nothing in the bill can be construed in that manner. However, as I promised the committee—I do not remember whether Maureen Macmillan or someone else raised the issue before—we have reflected on whether we could do more to enhance that assurance. That is why we have lodged amendments 45 and 46. The amendments clarify the extent of employees’ duties to take reasonable care for their own and other people’s safety in the event of a fire. The duty will apply when employees are at work, wherever they are at work.

We hope that the amendments will also clarify that the offence provisions in section 67(2) are linked to the employee’s duties when at work. As someone who is engaged in lawful industrial action is not at work, there is no way that section 67 offences would unintentionally catch someone who was on strike. As I said categorically in winding up the stage 1 debate,

"the Executive has no intention of making industrial action unlawful".
It is incorrect to interpret sections 67 and 52 in that way. I also said:

“Nothing that we are doing will provide any opportunity for powers to be used in the suggested way. That is not our intention and would not have our support.”—[Official Report, 18 November 2004; c 12033.]

As I said, I am disappointed that some have, for their own reasons, sought to interpret the bill in a completely different way. Some comments that have been made in the local and national press are completely untrue. I have written to the convener—I do not know whether the letter has been issued—to clarify the situation. If the letter has not been issued, I will ensure that that happens immediately after the committee meeting. I will also take the step of trying to assure board employees that the allegations are completely untrue. In the light of the further amendments, I hope that Colin Fox will accept the assurances that I have given.

Amendments 95 and 96 will tidy the definitions in section 73. Amendment 45 will introduce the term “at work” and a definition will be added to cover that. The definition of a workplace will be adjusted to make it clear that it also applies to the employer’s employees.

I move amendment 45.

Colin Fox: I take the opportunity to welcome the minister’s public statement here today. I know that he is not talking about me, with regard to any public statements that have been made outside the committee on the matter.

Hugh Henry: I am happy to confirm that.

Colin Fox: I welcome the minister’s remarks, as it seems to me that he is saying categorically that the Executive has no intention whatsoever to make strikes illegal. I welcome amendments 45 and 46. I said earlier that I hoped that the Executive would come forward and clarify the situation and I believe that the amendments do that. I will be happy not to press my amendments 35 and 36.

14:45

Maureen Macmillan (Highlands and Islands) (Lab): I thank the minister for lodging amendments 45 and 46; they clarify the situation and I am grateful for that. Although I do not believe that the Executive ever had any intention of making strikes illegal, I welcome amendments 45 and 46. I said earlier that I hoped that the Executive would come forward and clarify the situation and I believe that the amendments do that. I will be happy not to press my amendments 35 and 36.

Section 53—Risk assessments: power to make regulations

The Convener: Amendment 47, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 47 is merely a tidying amendment that removes an unnecessary enabling power. The general enabling power at section 53(1) is sufficient for the purposes and it will be relied upon instead, if required.

I move amendment 47.

Amendment 47 agreed to.

Section 53, as amended, agreed to.

Section 54—Scottish Ministers’ power to make regulations about fire safety

Amendment 48 moved—[Hugh Henry]—and agreed to.

Section 54, as amended, agreed to.

After section 54

The Convener: Amendment 49, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 49 will enable Scottish ministers to apply a provision for the safeguarding of firefighters to areas that are used in common by the occupants of private dwellings. The amendment will ensure that measures that are provided to protect firefighters are properly maintained; it addresses the safety and protection of firefighters when they attend fires and other operational incidents.

Examples of the equipment or facilities that may be covered by the power are rising mains, smoke outlets, ventilators and firefighting lifts. In recognition of the fact that many blocks of flats, for example, have such equipment in their common areas, subsection (2) of the new section allows the maintenance provision in regulations to be applied to such common areas.

I move amendment 49.

Amendment 49 agreed to.

Section 55—Special case: temporary suspension of Chapter 1 duties

The Convener: Amendment 50, in the name of the minister, is grouped with amendments 51 and 53.

Hugh Henry: Amendments 50 and 53 are intended to clarify that the circumstances in which fire safety duties are to be temporarily suspended are when the persons who are mentioned in the section, such as constables, are at work in that capacity and are actively undertaking duties that are connected with their work.
Amendment 51 is intended to clarify that a temporary suspension of duties will operate only when a constable, rather than a "member of a police force", is undertaking their duties. The amendment also confers a power to apply the section to other persons, which will enable the effect of the section to be extended to situations where other services are operating.

I move amendment 50.

Amendment 50 agreed to.

Amendments 51 to 53 moved—[Hugh Henry]—and agreed to.

Section 55, as amended, agreed to.

Section 56—Enforcing authorities

The Convener: Amendment 54 is grouped with amendments 56, 57 and 59 to 61.

Hugh Henry: Currently, Her Majesty's chief inspector of fire services, who has responsibility for inspections on Crown premises, may enter into an agreement with a fire and rescue authority that will enable the authority to carry out inspections on that person's behalf. Amendment 54 simply ensures that the chief inspector has continuing power to enter into those arrangements.

Amendments 56 and 57 are minor tidying amendments, the first of which ensures clarity, as well as consistency in language, and the second of which clarifies and improves understanding of the section. Amendments 59 and 60 will place an obligation on enforcement officers who exercise their powers to carry out inspections and to measure and test premises or articles to do so in the presence of the person who has the chapter 1 duties, if that person so requests. The amendments bring the section in line with powers to dismantle an article and ensure a consistent approach across the powers in the bill.

Amendment 61 addresses an anomaly in the bill whereby an enforcement officer exercising powers to take samples of an article for testing is obliged to leave a notice, whereas an enforcement officer exercising powers to remove an article in its entirety is not obliged to leave a notice.

I move amendment 54.

Amendment 54 agreed to.

The Convener: Amendment 55 is grouped with amendments 63, 91 to 94, 97 and 108.

Hugh Henry: Amendment 55 will allow for the making of regulations to modify the identities of enforcing authorities. Amendment 97 makes that new regulation-making power, and the regulation-making power at section 72(6), subject to the affirmative procedure.

Amendment 63 is a minor tidying amendment, which links the reference to licensed houses in multiple occupation to the definition of relevant premises, rather than duplicating the definition in the body of the section.

Amendments 91 to 94 and 108 set out more clearly the "relevant premises" that are caught by part 3 of the bill. By using the definition of "domestic premises" used in the Health and Safety at Work etc Act 1974, we effectively made shared or common areas of private dwellings subject to the fire safety regime. That would have meant, for example, that if two homes shared a common driveway, that driveway would have been caught by the part 3 provisions. That was clearly not our intention and would, in any case, be unenforceable. We have therefore recast the definition of "relevant premises" to exclude private dwellings and their shared areas and to make clear the premises that are to be covered by the part 3 provisions.

I move amendment 55.

Amendment 55 agreed to.

Section 56, as amended, agreed to.

Section 57—Powers of enforcement officers

Amendments 56 to 61 moved—[Hugh Henry]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Prohibition notices

The Convener: Amendment 62 is grouped with amendments 64 to 70, 72 to 75, 77 to 81 and 84.

Hugh Henry: Amendment 62 clarifies the point at which an enforcing authority's power to issue a prohibition notice will be triggered. The intention is that a notice will be issued only if, in the opinion of the enforcing authority, the use of those premises involves a risk of death or injury so serious that the use needs to be prohibited or restricted. The bill as it stands does not specify how prohibition, enforcement or alterations notices may be withdrawn and may therefore be subject to confusion and misinterpretation. Amendments 64, 68 to 70 and 78 clarify that such notices may be withdrawn in writing, which reflects current practice.

Amendment 65 is intended to tidy up the language in relation to the contents of an enforcement notice and to improve readability. Amendments 66 and 67 have been lodged to reflect in the consultation duty the terminology that is used in the Building (Scotland) Act 2003, the provisions of which will come into force in advance of those of part 3 of the bill.
Amendments 72 to 75 and 77 are intended to clarify the alterations notice procedure, which, as the bill stands, may be difficult to follow. The amendments clarify that the trigger of the duty to notify under an alterations notice is where the change is one that is listed in section 60(5) and that, if made, would constitute a serious risk to relevant persons. Because the alterations notice process is about notifying an enforcing authority in advance of a proposed change, the amendments make it clearer that the notification should be sent to the enforcing authority before the change is made.

Amendments 79 and 80 are tidying amendments that address anomalies in the appeals process. Amendment 79 will enable anyone who has a legitimate interest in the premises through having either section 49 or 50 duties—for example, the owner of the premises—to appeal against the service of a prohibition notice. Amendment 80 clarifies the circumstances in which a suspension order will cease to have effect if it has not been recalled by the sheriff.

Amendment 81 sets out how the determination process will interact with potential enforcement action, which will make both the benefits and impact of a determination clear. Amendment 84 provides consistency between the language that is used about prohibition notices in section 58 and that used in the linked offence provision in section 67(4)(d).

I move amendment 62.

The Convener: Amendment 64 reads:
“In section 58, page 30, page 13”.

For the record, I clarify that it should state “line 13” instead of “page 13”.

Hugh Henry: That is correct.
Amendment 62 agreed to.
Amendments 63 and 64 moved—[Hugh Henry]—and agreed to.
Section 58, as amended, agreed to.

Section 59—Enforcement notices
Amendments 65 to 70 moved—[Hugh Henry]—and agreed to.
Section 59, as amended, agreed to.

Section 60—Alterations notices
Amendments 71 to 78 moved—[Hugh Henry]—and agreed to.
Section 60, as amended, agreed to.

Section 61—Appeals
Amendments 79 and 80 moved—[Hugh Henry]—and agreed to.
Section 61, as amended, agreed to.

Section 62—Determination of disputes
Amendment 81 moved—[Hugh Henry]—and agreed to.
Section 62, as amended, agreed to.
Sections 63 and 64 agreed to.

Section 65—Consequential restriction of application of Part I of Health and Safety at Work etc Act 1974

15:00
The Convener: Amendment 82, in the name of the minister, is grouped with amendment 83.

Hugh Henry: Amendments 82 and 83 are technical and are related to the interaction between the reserved and devolved elements of fire safety legislation. As the committee is aware, that issue is complex and has been the subject of on-going consideration and discussion.

At present, section 65 of the bill provides that part I of the Health and Safety at Work etc Act 1974 has effect in relation to fire safety only in so far as it applies to reserved matters. That was intended to clarify that part 3 of the bill and related subordinate legislation would, once in force, provide for all aspects of general fire safety as devolved to the Scottish Parliament. I hope that those few remarks satisfy the committee.

I move amendment 82.
Amendment 82 agreed to.
Section 65, as amended, agreed to.

After section 65
The Convener: Amendment 109, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 109 ensures that fire safety matters are dealt with under part 3 of the bill and related regulations, not in licensing, certification or registration provisions.

I move amendment 109.
Amendment 109 agreed to.

Section 66—Consequential restriction of application of certain other enactments
Amendment 83 moved—[Hugh Henry]—and agreed to.
Section 67—Offences
Amendment 35 not moved.
Amendment 84 moved—[Hugh Henry]—and agreed to.
Amendment 36 not moved.
Amendments 85 and 86 moved—[Hugh Henry]—and agreed to.
Amendment 37 not moved.
Amendments 87 and 88 moved—[Hugh Henry]—and agreed to.
Section 67, as amended, agreed to.
Section 68 agreed to.

After section 68
Amendment 89 moved—[Hugh Henry]—and agreed to.
Section 69—Employee’s act or omission not to afford employer defence
Amendment 90 moved—[Hugh Henry]—and agreed to.
Section 69, as amended, agreed to.
Sections 70 and 71 agreed to.

Section 72—Meaning of “relevant premises”
Amendments 91 to 94 moved—[Hugh Henry]—and agreed to.
Section 72, as amended, agreed to.

Section 73—Interpretation of Part 3
The Convener: Amendment 110, in the name of Bill Butler, is grouped with amendment 111.
Bill Butler: I am delighted to speak to both amendments in the group.

The purpose of amendment 110 is to insert a definition of “operational task” into the interpretation section for part 3 of the bill. It aims to define an “operational task” for an employee of a relevant authority in relation to carrying out designated functions as set out in section 8, which is on firefighting, in section 9, which is on road traffic accidents, and in an order under section 10, which is on additional functions. The associated amendment 111 aims to limit the exclusion of employees of relevant authorities from the definition of relevant persons. If we agree to the amendment, the exclusion would be restricted to those undertaking operational tasks as defined in amendment 110. The effect would be to ensure that the fire safety duties that are owed to relevant persons will also be owed to employees of relevant authorities who are not undertaking operational tasks as defined.

The amendments were lodged to ensure that firefighters who are legitimately on premises in pursuit of fire authority duties that are not connected with firefighting—such as operational intelligence collecting, giving advice and conducting fire safety inspections—will not be excluded from protection. The effect of the two amendments would be to restrict the categories of persons who are excluded from the definition of a “relevant person” to those actively undertaking operational tasks. I wanted to clear up the point that was made by the FBU down south and by the Chief Fire Officers Association.

I move amendment 110.
Hugh Henry: Bill Butler is right to say that the issue was first raised by the Fire Brigades Union and by the Chief Fire Officers Association. Amendments 110 and 111 are sensible and they extend necessary protection to employees of relevant authorities who had been unintentionally—I stress, unintentionally—excluded from the definition of a “relevant person”.

The Convener: So they were missed out and they are now being included.
Bill Butler: The sense of the amendments is compelling and I hope that members agree. I press my amendment.
Amendment 110 agreed to.
Amendment 111 moved—[Bill Butler]—and agreed to.
Amendments 95 and 96 moved—[Hugh Henry]—and agreed to.
Section 73, as amended, agreed to.
Sections 74 to 77 agreed to.

Section 78—Abolition of Scottish Central Fire Brigades Advisory Council
The Convener: Amendment 112, in the name of Colin Fox, is in a group on its own.
Colin Fox: I notice that the minister has finally accepted amendments from a member of a committee so I hope that we are on a roll.

Amendment 112 seeks to ensure that the replacement for the current Scottish Central Fire Brigades Advisory Council, which the minister has assured the committee and the Parliament will be a more dynamic body, has teeth by having statutory weight and recognition and by retaining the direct involvement of the minister.

This area of the committee’s scrutiny has been a curious one. We heard evidence that the SCFBAC was set up 50 years ago and that all the players in the fire service are represented. We found that few people were able to point to one piece of good
work that the SCFBAC has produced. I am sure that the committee recognises that the public probably takes a dim view of the picture painted, of a body that involves many professionals in a one-day meeting, three times a year and which has a relatively poor output.

Nonetheless, as things stand, the minister is under a statutory obligation to consult the relevant fire authorities and fire employees and, in turn, to advise Parliament. The bill proposes many additional powers for the minister in areas such as fire safety, yet it reduces the obligation on the minister to ensure that the necessary expertise is available to advise him on operational requirements. In the light of the promise of a more dynamic replacement for the current advisory council, which, it seems, will have less involvement from the minister, who will have fewer powers, amendment 112 seeks to ensure that the replacement body has greater teeth, can fully advise the minister and involves him in its functions. The promise of a more dynamic replacement suggests more teeth; let us hope that it is not a hollow promise.

I move amendment 112.

Mr Maxwell: I accept what the minister has said, in particular in the stage 1 debate, but the bill as it stands leaves what appears to be a bit of a vacuum. It proposes the abolition of the advisory council but gives no real idea of what, if anything, will replace it.

Amendment 112 is not unreasonable in that it would provide for the setting up of a replacement body by regulations. I expressed my views on the matter in the stage 1 debate. I will shed no tears at the loss of the SCFBAC, but if we are to have a more modern, dynamic, flexible body along the lines that the minister described, it would be reasonable for that body to be placed on a statutory footing. Amendment 112 would allow that to happen. If the minister intends to oppose the amendment, I will be interested to hear his reasons.

15:15

Hugh Henry: When Colin Fox described the advisory council, I thought that he was making the case for complete abolition rather than for the retention in statute of such a council. As Stewart Maxwell indicated, I have made it clear that we acknowledge the continuing need for an advisory council. However, we want a council that is appropriate to modern circumstances. We are consulting on the most appropriate structure for the future and the consultation period will not conclude until early March. We are talking to the relevant stakeholders and to anyone who has an interest in the fire service, to ascertain their views on how an advisory body should operate. As I have explained, I am not convinced that the establishment in statute of such a body is the right way forward. That approach would be too restrictive and would not allow for change to happen quickly or easily, if change were to be required as circumstances alter. Stewart Maxwell said that he would shed no tears at the disappearance of the SCFBAC, but he hankers for a body to be set up in statute. That is a bit of a contradiction.

Setting up an advisory body to consider improvements to a service and advise the minister should not include making in statute provisions in relation to the minister or to the minister chairing the body. The advisory body should draw on the range of experience, expertise and interest that is available throughout the country, so that it can come to informed, educated opinions and put those opinions to the minister for careful consideration. It would not be right or necessary for the legislation to specify the membership, the remit or the frequency of meetings of the body. A more flexible way of operating would enable the widest range of opinion to be involved. The advisory body should not be used as a substitute for other negotiating mechanisms, as can happen. There are appropriate ways of negotiating.

It is appropriate that there should be a body that can reflect on the changes that are being made and on future needs. The best approach would be to set up a body that can adapt and evolve, and I worry that to place such a body on a statutory footing would introduce rigidity to the system that would be unhelpful in future. I have heard nothing that changes my opinion on the matter. I disagree with Colin Fox. I look forward to hearing the conclusions of the current consultation and I am sure that we will be able to move forward with a proposal that is more reasonable and more relevant to the period that we are entering.

Colin Fox: The minister accepted that we are committed to setting up a dynamic replacement for the SCFBAC. The abolition of the SCFBAC is given; we must consider its replacement. The minister referred to the consultation that is going on, but the consultation might conclude that the most appropriate and modern approach would be to ensure that professional expertise can be brought to and can demand the minister's attention and can make suggestions. I am sure that the minister does not want to pre-empt the consultation's conclusions, but if that suggestion comes out of the consultation, some of his points might be negated.

The minister will notice that the amendment contains nothing about the membership, the frequency of meetings, agendas and so on. It pertains to the principles and the purpose of the
body. I will press the amendment, the remarks of the minister notwithstanding.

The Convener: The question is, that amendment 112 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR
Fox, Colin (Lothians) (SSP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
AGAINST
Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 112 disagreed to.

Sections 78 and 79 agreed to.

After section 79
Amendment 19 moved—[Hugh Henry]—and agreed to.

Section 80 agreed to.

Section 81—Orders and regulations
Amendments 20 and 97 moved—[Hugh Henry]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Schedule 3
MINOR AND CONSEQUENTIAL AMENDMENTS

The Convener: Amendment 98, in the name of the minister, is grouped with amendments 99 to 107.

Hugh Henry: These amendments add entries to schedule 3 to the bill, which makes minor and consequential amendments to legislation. The amendments will replace references in statutes to “fire authorities”, “fire brigades” and to joint fire boards and other terms that are used in the Fire Services Act 1947. It will no longer be appropriate to use those references once the Fire Services Act 1947 is repealed and the bill comes into force. Therefore, it is necessary to replace those terms with reference to the updated terminology that is used in the bill.

Amendment 101 will make an amendment to section 22(9) of the Local Government in Scotland Act 2003, to make that provision subject to section 15(3) of the bill. Section 22(9) of the 2003 act provides that a local authority cannot impose reasonable charges for fighting fire as part of its remit to advance well-being—I stress that point. The amendment is necessary to ensure that the limitation on a local authority will be subject to the power of a relevant authority to charge for extinguishing fire and protecting life and property when action is taken at sea, which we discussed last week.

Amendment 102 makes a technical adjustment to the text of paragraph 4 of schedule 3 to the bill, which amends section 61 of the Local Government in Scotland Act 2003. The amendment is consequential to amendment 101, which will make further provisions in respect of the Local Government in Scotland Act 2003.

Schedule 4 to the bill will repeal the Fire Services Act 1947. Amendments 103 to 107 make consequential amendments to legislation to tidy up the statute book by removing references to or amendments that have been made to the Fire Services Act 1947.

I move amendment 98.

Amendment 98 agreed to.

Amendments 99 to 102 and 21 moved—[Hugh Henry]—and agreed to.

Schedule 3, as amended, agreed to.

Schedule 4
REPEALS
Amendments 103 to 107 moved—[Hugh Henry]—and agreed to.

Schedule 4, as amended, agreed to.

Sections 83 and 84 agreed to.

Long title
Amendment 108 moved—[Hugh Henry]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends a long session. It also ends stage 2 consideration of the bill. I thank members, the minister and the minister’s team for their co-operation in the process.

I propose that we have a comfort break of five minutes.

15:26

Meeting suspended.
I am grateful to the Committee for its careful scrutiny of the amendments lodged on Parts 1 and 2 of the Fire (Scotland) Bill and for the opportunity to move the Order under Section 30 of the Scotland Act 1998 and the Executive amendments. I very much welcome the Committee’s endorsement of the amendments lodged by the Executive.

However, I do recognise that concerns were raised albeit by a minority of Committee members on some of the amendments we brought forward. Some of the issues raised appear to have been based on a misunderstanding of the effect the amendments would have on the drafting of the Bill. For the avoidance of any doubt, I thought it might be helpful therefore to clarify the purpose and effect of those amendments for Members.

First of all, however, I would like to apologise to the Committee that having made clear in my opening remarks that the proposed Order under Section 30 of the Scotland Act 1998, was transferring construction sites and special premises to the competence of the Scottish Parliament I then unintentionally during the debate mentioned special premises as premises which would remain reserved. This, of course, is not the case and I would like to clarify for the record that the agreement we have reached with the Health and Safety Executive (HSE), Office of the Deputy Prime Minister (ODPM) and Whitehall colleagues is that legislative competence on currently reserved areas of fire safety on construction sites and on ‘special premises’ (as listed in the Fire Certificates (Special Premises) Regulations 1976 on 1 July 1999) should be devolved to Scottish Ministers. This is consistent with the split in responsibility in England and Wales between HSE and ODPM in respect of general fire safety and specialised fire safety.

During the Committee’s consideration of Executive amendments 6 and 7, ‘Charging by relevant authorities’, concern was raised that we were making provision for the charging for core functions. This is not the case, these amendments do not in any way enable fire and rescue authorities to charge for extinguishing fires, protecting life, or protecting property in the event of a fire, within the authority’s area. The amendments would merely place Scottish Fire and Rescue Authorities on an equal footing with England and Wales (section 19(2) of the Fire and Rescue Services Act 2004 refers) in that they would be able to charge for functions of extinguishing fires, protecting life or protecting property in the event of fires.
but only where those functions were performed at sea beyond the low water mark, i.e. outwith the Authority’s area and therefore not a core duty.

A few members also raised a concern that the Executive amendments to Part 1 of the Bill would provide Scottish Ministers with powers to reduce the number of brigades. I feel it is important to clarify, for the record, that Scottish Ministers are not being afforded any new powers in Part 1 of the Bill that they didn’t already have under the 1947 Act. Indeed, the purpose of Executive amendment 20, which I spoke to at the meeting on 18 January and will formally move on 25 January, is to ensure that any amalgamation scheme orders made under section 2 are subject to the affirmative rather than negative subordinate legislation procedure. This would ensure that any proposals would have to be approved by the Scottish Parliament.

We are examining further the issue raised by members on personal insurance liability for firefighters and I hope to write to the Committee next week with some clarification.

I hope this is helpful.

Hugh Henry MSP
I am grateful to the Committee for its careful scrutiny of the Stage 2 amendments lodged in respect of the Fire (Scotland) Bill.

In writing to you last week to clarify for Members some issues raised when considering Parts 1 & 2 of the Bill, I promised to write again with some clarification on the issue of insurance for firefighters attending incidents at sea.

I can confirm that, in the event of death or injury to a firefighter attending an incident at sea, the compensation provisions set out in the Firefighters Pension Scheme would apply in the same way as in respect of attendance at other incidents within the fire and rescue authority’s area.

The Firefighters' Pension Scheme, which is one of the most generous in the public sector, currently provides the following:

**On death:**

Death benefit of \(2 \times \text{pensionable pay} + 13 \text{ weeks pensionable pay} + 25\% \times \text{pensionable pay} + 1 \times \text{pensionable pay}\) (all payable to spouse);

Widow(er) pension: 45% of pensionable pay.

**On serious injury:**

Enhanced ill-health pension and injury award: up to 85% of pensionable pay but, in practice, as there is no cap it is possible for a person with 25 years service or more to receive payments of over 100% of pensionable pay.

I hope this is helpful in explaining the benefits cover which is available.

Hugh Henry MSP
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Fire (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives 89/391/EEC, 89/654/EEC, 91/383/EEC, 94/33/EC, 98/24/EC and 99/92/EC; to make other provision in relation to fire safety in certain premises; and for connected purposes.

PART 1
FIRE AND RESCUE AUTHORITIES

Fire and rescue authorities

1 Fire and rescue authorities
(1) The council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) for a local government area shall be the fire and rescue authority for that area.

(2) In subsection (1), “local government area” has, subject to subsection (3), the same meaning as in that Act.

(3) If a local government area extends into the sea, its seaward boundary shall, for the purpose of subsection (1), be the low water mark.

Joint fire and rescue boards

2 Schemes to constitute joint fire and rescue boards
(1) Where it appears to the Scottish Ministers that, for the purposes of this Act, it would be in the interests of greater economy, efficiency and effectiveness that the areas of two or more fire and rescue authorities be combined, they may by order make an amalgamation scheme for that combined area.

(2) An amalgamation scheme is a scheme constituting, for the combined area of the fire and rescue authorities specified in it (the “constituent authorities”), a joint fire and rescue board consisting of such number of members, being members of the constituent authorities, as are specified in the scheme.
(3) An amalgamation scheme may include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate.

(4) Provision that may be made under subsection (3) may include in particular provision with respect to—

(a) the proceedings of the board;
(b) its funding and financial arrangements; including in particular—
   (i) provision for the payment of its expenses out of a combined fire and rescue service fund maintained by the constituent authorities;
   (ii) provision about the carrying-forward from one financial year to the next of any money received by the board in respect of the first year from the constituent authorities under provision made under paragraph (b)(i) and remaining unspent at the end of the first year;
(c) the transfer to the board of any property, rights and liabilities of the constituent authorities;
(d) the transfer to the board of any staff of the constituent authorities;
(e) officers of the board;
(f) the supply of services or facilities by the constituent authorities to the board;
(g) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the board.

(5) Before making an amalgamation scheme, the Scottish Ministers shall consult—

(a) the fire and rescue authorities in respect of which the scheme is proposed;
(b) such other fire and rescue authorities as appear to them likely to be affected; and
(c) such other persons as they consider appropriate.

3 Schemes under section 2: amendment and revocation

(1) An order amending or revoking an amalgamation scheme made under section 2(1) may include provision for the transfer of staff, property, rights and liabilities from the joint fire and rescue board constituted by the scheme to—

(a) any fire and rescue authority; or
(b) any other such board.

(2) Before making an order such as is mentioned in subsection (1), the Scottish Ministers shall consult—

(a) the joint board constituted by the scheme;
(b) the fire and rescue authorities specified in the scheme; and
(c) such other—
   (i) fire and rescue authorities; and
   (ii) joint fire and rescue boards,
   as appear to them likely to be affected.
Part 2—Fire and rescue services

Chapter A1—Appointment of chief officer

4 Joint fire and rescue boards: supplementary provision

Schedule 1, which makes provision about joint fire and rescue boards constituted by schemes made under section 2(1), shall have effect.

5 Existing joint fire boards

(1) An administration scheme under section 36 of the Fire Services Act 1947 (c.41) or section 147 of the Local Government (Scotland) Act 1973 (c.65) which is in force immediately before the repeal of those sections by this Act shall continue to have effect notwithstanding that repeal.

(2) A scheme such as is mentioned in subsection (1) shall be taken to be a scheme made under section 2(1); and a joint fire board constituted by such a scheme in respect of an area shall be taken to be a joint fire and rescue board constituted by the scheme for that area.

(3) The Scottish Ministers may by order make provision for and in relation to the transfer to a joint fire and rescue board constituted by a scheme made under section 2(1) of—

(a) any property, rights or liabilities of a joint fire board (“an existing board”) constituted by a scheme such as is mentioned in subsection (1); and

(b) any staff of an existing board.

Meaning of “relevant authority”

6 Meaning of “relevant authority”

In this Act “relevant authority” means—

(a) a fire and rescue authority which is not specified in a scheme made under section 2(1); or

(b) a joint fire and rescue board constituted by such a scheme.

Part 2

Fire and rescue services

Chapter A1

Appointment of Chief Officer

6A Appointment of Chief Officer

(1) Each relevant authority shall appoint a person to be known as a Chief Officer.

(2) A Chief Officer shall be responsible to the relevant authority for the discharge of the functions conferred on the authority by virtue of this Act by any person employed by the authority for the purpose of discharging those functions.
CHAPTER 1

PRINCIPAL FIRE AND RESCUE FUNCTIONS

7 Fire safety

(1) Each relevant authority shall make provision for the purpose of promoting fire safety in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular, to the extent that the authority considers it reasonable to do so, make arrangements for—

(a) the provision of information, publicity and encouragement in respect of the steps to be taken to prevent—

(i) fires; and

(ii) death or injury by fire;

(b) the giving of advice, on request, about—

(i) how to prevent fires and restrict their spread in buildings and other property; and

(ii) the means of escape from buildings and other property in the event of fire.

8 Fire-fighting

(1) Each relevant authority shall make provision for the purpose of—

(a) extinguishing fires in its area; and

(b) protecting life and property in the event of fires in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular—

(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;

(b) secure the provision of training for personnel;

(c) make arrangements for—

(i) dealing with calls for help; and

(ii) summoning personnel,

in the event of fire;

(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;

(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

9 Road traffic accidents

(1) Each relevant authority shall make provision for the purpose of—

(a) rescuing persons in the event of road traffic accidents in its area; and
Fire (Scotland) Bill
Part 2—Fire and rescue services
Chapter 1—Principal fire and rescue functions

(b) to the extent that it considers it reasonable to do so, protecting persons from serious harm in the event of road traffic accidents in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular—
(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;
(b) secure the provision of training for personnel;
(c) make arrangements for—
   (i) dealing with calls for help; and
   (ii) summoning personnel,
in the event of road traffic accidents;
(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;
(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

10 Conferral of functions in relation to other emergencies

(1) The Scottish Ministers may by order (an “additional function order”) confer on a relevant authority (the “specified authority”) a function relating to an emergency of a kind specified in the order (the “additional function”).

(2) An additional function order may not specify as a kind of emergency—
(a) a fire; or
(b) a road traffic accident,
in the area of the specified authority.

(3) An additional function order may make provision for or in connection with—
(a) requiring the additional function to be carried out by the specified authority outwith its area;
(b) specifying what the specified authority shall or may do for the purpose of the additional function;
(c) requiring or authorising the specified authority—
   (i) to secure the provision of personnel, services and equipment;
   (ii) to secure the provision of training for personnel;
   (iii) to make arrangements for dealing with calls for help and summoning personnel;
   (iv) to make arrangements for obtaining information required or likely to be required for the purpose of carrying out the function;
   (v) to make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from carrying out the function.
CHAPTER 2
ANCILLARY FUNCTIONS

11 Emergency directions
(1) The Scottish Ministers may issue a direction (an “emergency direction”) requiring a relevant authority to—
   (a) take such action; or
   (b) refrain from taking such action,
in relation to a fire, or emergency of another kind, specified in the direction.
(2) An emergency direction may require an authority to act outwith its area.
(3) An emergency direction may be varied or revoked by a further such direction.

12 Power to respond to other eventualities
(1) A relevant authority may take any action it considers appropriate—
   (a) in response to an event or situation that causes or is likely to cause—
      (i) a person to die, be injured or become ill; or
      (ii) harm to the environment (including the life and health of plants and animals and the fabric of buildings); or
   (b) for the purpose of enabling it to take action in response to such an event or situation.
(2) The power conferred by subsection (1)—
   (a) includes power to secure the provision of equipment; and
   (b) may be exercised by an authority within or outwith its area.

13 Provision of other services
(1) A relevant authority may provide—
   (a) the services of any persons employed by it; or
   (b) any equipment maintained by it,
to any person for any purpose that appears to the authority to be appropriate.
(2) An authority may provide services or equipment under this section within or outwith its area.

14 Provision of centres for education and training
A relevant authority may establish and maintain one or more centres for providing education and training in matters in relation to which relevant authorities have functions.
Charging

(1) The Scottish Ministers may by order (a “charging order”) authorise a relevant authority to charge a person of a description specified in the order for any action so specified taken by the authority.

(2) A charging order may authorise a charge to be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority.

(3) A charging order may authorise charging for—
   (a) extinguishing fires;
   (b) protecting life; or
   (c) protecting property in the event of fires,
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).

(4) Where a relevant authority authorised by a charging order to charge for taking action of a particular description decides to do so—
   (a) the amount of the charge shall be set by the authority;
   (b) different amounts may be charged in different circumstances (and the authority may charge nothing).

(5) In setting the amount of a charge, a relevant authority shall secure that, taking one financial year with another, the authority’s income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed.

(6) In subsection (5) “financial year” means the period of 12 months ending on 31 March.

CHAPTER 3
WATER SUPPLY
Supply and use of water

Duty to secure water supply

(1) A relevant authority shall take all reasonable measures for securing that an adequate supply of water will be available for the authority’s use for the purposes mentioned in subsection (2).

(2) Those purposes are—
   (a) extinguishing fires in the area of the authority;
   (b) protecting life and property in the event of fires in its area;
   (c) rescuing people in the event of road traffic accidents in its area;
   (d) protecting people from serious harm in the event of road traffic accidents in its area;
   (e) carrying out any function conferred on the authority by an order under section 10; and
   (f) fulfilling any requirement made of the authority by a direction given to it under section 11.
17 Use of water

(1) Subject to—
   (a) an agreement under section 18(1); and
   (b) section 9A of the Water (Scotland) Act 1980 (c.45) (charging for emergency use of water),

a relevant authority may use any suitable supply of water for the purposes mentioned in section 16(2).

(2) A relevant authority shall pay reasonable compensation for water used by virtue of subsection (1).

18 Agreements in relation to water supply

(1) For the purposes of section 16, a relevant authority may—
   (a) enter into an agreement with Scottish Water; or
   (b) enter into an agreement to—

   (i) secure the use of water under the control of a person other than Scottish Water;

   (ii) improve access to any such water;

   (iii) lay and maintain pipes and carry out other works in connection with the use of such water.

(2) Subject to section 9A of the Water (Scotland) Act 1980 (c.45) (charging for emergency use of water), an agreement mentioned in subsection (1)(a) may include terms as to payment to be made to Scottish Water.

(3) Scottish Water shall not unreasonably refuse to enter an agreement mentioned in subsection (1)(a) which is proposed by a relevant authority.

(4) Any question whether Scottish Water has unreasonably refused to enter into an agreement mentioned in subsection (1)(a) shall be determined by the Scottish Ministers.

19 Emergency supply by Scottish Water

(1) If a relevant authority requests Scottish Water to provide a supply or pressure of water for a purpose mentioned in section 16(2) that is greater than it would otherwise provide, it shall take all necessary steps in order to do so.

(2) For the purposes of complying with its obligation under subsection (1) Scottish Water may shut off the water from the mains and pipes in any area.

(3) Scottish Water (and any other person) shall not be liable to any penalty or claim arising because of anything done by Scottish Water in complying with its obligation under subsection (1).

(4) If, without reasonable excuse, Scottish Water fails to take any step which it is obliged to take under subsection (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
Fire hydrants

20  Fire hydrants: provision etc.

(1) Sections 19 to 22 of Schedule 4 to the Water (Scotland) Act 1980 (c.45) (requirement to provide fire hydrants etc.) shall apply to Scottish Water.

(2) Scottish Water shall cause the location of every fire hydrant provided by it to be clearly indicated by a—
   (a) notice; or
   (b) distinguishing mark.

(3) Scottish Water may place such a notice or mark on a wall or fence adjoining a road or public place.

(4) The expenses incurred by Scottish Water under subsection (2) in relation to a hydrant shall be borne by the relevant authority in whose area the hydrant is located.

(5) The Scottish Ministers may make regulations providing for uniformity in—
   (a) fire hydrants provided by Scottish Water; and
   (b) notices or marks indicating locations of such hydrants.

(6) Where a fire hydrant provided by Scottish Water is damaged as the result of any use made of it with the authority of Scottish Water (other than use for the purposes of fire-fighting or any other purposes of a relevant authority) the relevant authority in whose area the hydrant is located shall not be liable for the cost of repairing or replacing it.

21  Fire hydrants: offences

(1) A person who—
   (a) uses a fire hydrant provided by Scottish Water otherwise than for a purpose mentioned in subsection (2); or
   (b) damages or obstructs such a fire hydrant otherwise than in consequence of use for such a purpose,

shall be guilty of an offence.

(2) Those purposes are—
   (a) fire-fighting;
   (b) any other purpose of a relevant authority;
   (c) any purpose authorised by Scottish Water.

(3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Works affecting supply and hydrants

22  Notice of works affecting water supply and fire hydrants

(1) A person who proposes to carry out works for the purpose of supplying water to any part of the area of a relevant authority shall give the relevant period’s notice in writing to the authority.
(2) In subsection (1) the “relevant period” is—
   (a) in the case where the works are proposed to be carried out to comply with a
       requirement imposed under any enactment other than the Water (Scotland) Act
       1980 (c.15), 14 days;
   (b) in any other case, 6 weeks.

(3) A person who proposes to carry out works affecting a fire hydrant shall give at least 7
    days’ notice in writing to the relevant authority in whose area the hydrant is situated.

(4) If it is not practicable for a person to give notice as required by subsection (1) or (3), the
    person shall be regarded as having given such notice if it is given as soon as practicable.

(5) A person who, without reasonable excuse, fails to give notice as required by subsection
    (1) or (3) shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) shall be liable on summary
    conviction to a fine not exceeding level 5 on the standard scale.

CHAPTER 4

POWERS OF EMPLOYEES AND CONSTABLES

Powers in emergencies

23 Powers of authorised employees in relation to emergencies

(1) An employee of a relevant authority who is authorised in writing by the authority for the
    purposes of this section (an “authorised employee”) and on duty may—
    (a) if the employee reasonably believes that a fire has broken out, do anything the
        employee reasonably believes to be necessary for the purpose of—
        (i) extinguishing the fire; or
        (ii) protecting life or property;
    (b) if the employee reasonably believes that a road traffic accident has occurred, do
        anything the employee reasonably believes to be necessary for the purpose of—
        (i) rescuing people; or
        (ii) protecting them from serious harm;
    (c) if the employee reasonably believes that an emergency other than a fire or road
        traffic accident has occurred, do anything the employee reasonably believes to be
        necessary for the purpose of carrying out any function conferred on the authority
        in relation to the emergency; and
    (d) do anything the employee reasonably believes to be necessary for the purpose of
        preventing or limiting damage to property resulting from action taken as
        mentioned in paragraph (a), (b) or (c).

(2) An authorised employee may in particular under subsection (1)—
    (a) enter premises or a place (by force if necessary) without the consent of the owner
        or occupier of the premises or place;
    (b) move a vehicle without the consent of its owner;
    (c) force open and enter a lockfast vehicle without the consent of its owner;
(d) close a road;
(e) stop and regulate traffic;
(f) restrict the access of persons to premises or a place.

24 Powers of constables in relation to fires

(1) A constable may—

(a) if the constable reasonably believes that a fire has broken out, do anything the constable reasonably believes to be necessary for the purpose of—

(i) extinguishing the fire; or
(ii) protecting life or property; and

(b) do anything the constable reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from anything done as mentioned in paragraph (a).

(2) A constable may in particular under subsection (1)—

(a) enter (by force if necessary) premises or a place;
(b) move a vehicle without the consent of its owner;
(c) force open and enter a lockfast vehicle without the consent of its owner;
(d) restrict the access of persons to premises or a place.

Obtaining information

25 Powers of authorised employees in relation to obtaining information

(1) Subject to subsection (2) an employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) may at any reasonable time enter premises for the purpose of obtaining information needed for the carrying out of the authority’s functions under section 8, 9 or 10.

(2) An authorised employee may not under subsection (1)—

(a) enter premises by force; or
(b) demand admission to premises occupied as a private dwelling unless 24 hours’ notice in writing has first been given to the occupier of the dwelling.

(3) If, on the application of an authorised employee, a sheriff or justice of the peace is satisfied—

(a) that—

(i) it is necessary for the employee to enter premises for the purposes of subsection (1); and
(ii) the employee is unable to do so, or is likely to be unable to do so, otherwise than by force,

the sheriff or justice may issue a warrant authorising the employee to enter the premises by force at any reasonable time; or
(b) that it is necessary for the employee to enter premises for the purposes of subsection (1) without giving notice as required by subsection (2)(b), the sheriff or justice may issue a warrant authorising the employee to enter the premises at any time (by force if necessary).

(4) If an authorised employee exercises a power of entry by virtue of this section, the employee may—

(a) take onto the premises—

(i) such other persons; and

(ii) such equipment,

as the employee considers necessary; and

(b) require any person present on the premises to provide the employee with any—

(i) facilities, information, documents or records; or

(ii) other assistance,

that the employee may reasonably request.

(5) An authorised employee exercising a power of entry by virtue of this section shall, if so required, produce the items mentioned in subsection (6)—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(6) Those items are—

(a) evidence of the employee’s authorisation for the purpose of this section; and

(b) any warrant under subsection (3)(a) or (b).

26 Giving of notices required by section 25

(1) The notice required by section 25(2)(b) may be given—

(a) by delivering it to the occupier of the dwelling;

(b) by leaving it for that person at the dwelling; or

(c) by sending it by post to that person at the dwelling.

(2) If the name or address of the person to whom notice under section 25(2)(b) is required to be given cannot be ascertained after reasonable inquiry, the notice may be given—

(a) by leaving it in the hands of a person who is, or appears to be, resident in the dwelling; or

(b) by leaving it fixed to a conspicuous part of the dwelling.

27 Powers of authorised employees in relation to investigating fires

(1) An employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) 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 employee exercises the power mentioned in subsection (1) the employee may—

(a) take onto the premises—

(i) such other persons; and

(ii) such equipment,
as the employee 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—

(i) the premises; or

(ii) an article or substance found on the premises,

that the employee 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 employee has power to do under paragraph (c) or (e);

(ii) ensuring that it is not tampered with before the employee’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;

(g) require a person present on the premises to provide the employee with any—

(i) facilities, information, documents or records; or

(ii) other assistance,

that the employee may reasonably request.

(3) An authorised employee exercising the power mentioned in subsection (1) shall, if so required, produce evidence of the employee’s authorisation for the purpose of this section—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(4) If an authorised employee exercises the power in subsection (2)(d) the employee shall—

(a) leave a notice at the premises with a responsible person (or, if that is impracticable, fixed in a prominent position) giving particulars of the article or substance and stating that the employee has taken a sample of it; and
(b) if it is practicable to do so, give such a person at the premises a portion of the sample marked in a manner sufficient to identify it.

(5) If an authorised employee exercises the power in subsection (2)(f) the employee shall leave a notice at the premises (either with a responsible person or if that is impracticable fixed in a prominent position) giving particulars of the article or substance and stating that the employee has taken possession of it.

(6) This section shall apply in relation to vehicles as it applies in relation to premises; but subject to the following modifications—

(a) the power conferred by subsection (1) includes power to enter premises in which a vehicle in which there has been a fire is being kept;

(b) the power conferred by paragraph (a) of subsection (2) includes power to take persons and equipment to the place where a vehicle is; and

(c) references to premises in subsections (2)(g) and (3) to (5) include references to premises in which vehicles are kept.

(7) In this section “premises” includes land.

28 Exercise of powers under sections 25 and 27: securing of premises

An employee of a relevant authority who, by virtue of section 25 or 27, enters premises—

(a) which are unoccupied; or

(b) from which the occupier is temporarily absent,

and who is authorised to do so by virtue of those sections shall on departure leave the premises as effectively secured against unauthorised entry as the employee found them.

29 Sections 25 and 27: offences

(1) If, without reasonable excuse, a person fails to comply with any requirement under section 25(4)(b) or 27(2)(g), the person shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Use of information

30 Use of commercially sensitive information

(1) If, without reasonable excuse, a person—

(a) makes use of; or

(b) discloses,

any commercially sensitive information obtained by the person while on premises entered in exercise of a power conferred by virtue of section 23, 24, 25 or 27, the person shall be guilty of an offence.

(2) In subsection (1) “commercially sensitive information” means information with regard to any—

(a) manufacturing process; or
(b) trade secret.

(3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months.

CHAPTER 5

MUTUAL ASSISTANCE ETC.

Assistance in discharge of functions

31 Reinforcement schemes

(1) Each relevant authority shall, so far as practicable, enter into a reinforcement scheme with other relevant authorities.

(2) A reinforcement scheme is a scheme for securing mutual assistance as between the relevant authorities participating in it for the purpose of carrying out the functions conferred by virtue of sections 8 to 10 on any of them.

(3) A reinforcement scheme may make provision for apportioning between the participating authorities any expenses incurred in taking measures to secure the efficient operation of the scheme.

(4) The participating authorities shall notify the Scottish Ministers of—

(a) the making of the scheme;

(b) any variation of the scheme; and

(c) the revocation of the scheme.

(5) The participating authorities shall give effect to the scheme.

32 Directions about reinforcement schemes

(1) Where subsection (2) applies, the Scottish Ministers may direct two or more relevant authorities to make a reinforcement scheme in the terms specified in the direction.

(2) This subsection applies where—

(a) one of the authorities has asked the other (or others) to agree to the making of the scheme;

(b) the authorities are unable to agree as to—

(i) that matter; or

(ii) the terms proposed for the scheme; and

(c) one of them asks the Scottish Ministers to make such a direction.

(3) Where subsection (4) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to vary the scheme in the terms specified in the direction.

(4) This subsection applies where—

(a) one of the authorities has asked the other (or others) to agree to the variation of the scheme;
(b) the authorities are unable to agree as to that matter; and
(c) one of them asks the Scottish Ministers to make such a direction.

(5) Where subsection (6) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to revoke the scheme.

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(6) This subsection applies where—

(a) one of the authorities has asked the other (or others) to agree to the revocation of the scheme;

(b) the authorities are unable to agree as to that matter; and

(c) one of them asks the Scottish Ministers to make such a direction.

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(7) Before giving a direction under this section, the Scottish Ministers—

(a) shall give the authorities concerned an opportunity to make representations; and

(b) may cause an inquiry to be held.

(8) A direction given under this section may be varied or revoked by a further such direction.

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(9) In this section “reinforcement scheme” has the meaning given by section 31(2).

33 Assistance other than from relevant authorities

(1) A relevant authority may enter into arrangements with a relevant person for securing the provision by that person of assistance for the purpose of the carrying out by the authority of a function conferred on it by virtue of any of sections 7 to 10, 12 and 56.

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(2) In subsection (1) “relevant person” means a person who—

(a) is not a relevant authority; and

(b) in the case of arrangements for the securing of assistance for the purpose of extinguishing fires—

(i) employs fire-fighters; or

(ii) is approved for that purpose by the Chief Officer of a relevant authority.

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(3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which assistance is to be provided.

Performance of functions by others

34 Arrangements for carrying out of functions by others

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(1) A relevant authority may enter into arrangements with a relevant person for the carrying out by that person of a function conferred on the authority by virtue of any of sections 7 to 10, 12 and 56.

(2) In subsection (1) “relevant person” means—

(a) in the case of arrangements in relation to the authority’s function of extinguishing fires—

(i) another relevant authority; or

(ii) any other person who employs fire-fighters;
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(b) in any other case—
   (i) another relevant authority; or
   (ii) any other person.

(3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which any function is to be carried out.

35 Section 34: directions

(1) The Scottish Ministers may—
   (a) direct two relevant authorities to enter into arrangements under section 34; or
   (b) direct two relevant authorities who have entered into such arrangements—
      (i) to vary the arrangements in the terms specified in the direction; or
      (ii) to terminate the arrangements.

(2) Before giving a direction under this section, the Scottish Ministers—
   (a) shall give the authorities concerned an opportunity to make representations; and
   (b) may cause an inquiry to be held.

(3) The Scottish Ministers may give a direction under this section only where, after considering—
   (a) any representations made under subsection (2)(a); and
   (b) the report of any person by whom any inquiry under subsection (2)(b) is held,

      they consider it expedient to do so with a view to securing greater economy, efficiency and effectiveness.

(4) A direction given under this section may be varied or revoked by a further such direction.

CHAPTER 5A

ASSAULTING OR IMPEDING EMPLOYEES AND OTHERS

35A Amendment of Emergency Workers (Scotland) Act 2005

(1) The Emergency Workers (Scotland) Act 2005 (asp 00) shall be amended as follows.

(2) For paragraph (b) of section 1(3) substitute—

   “(ba) that of a person employed by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) while discharging any of the authority’s functions under sections 8 to 12 (fire-fighting, road traffic accidents, other emergencies, emergency directions and other eventualities), 23, 25 or 27 (powers of authorised employees in relation to emergencies, obtaining information and investigating fires) of that Act;
(b) that of a person providing assistance under arrangements made by virtue of section 33 (assistance other than from relevant authorities) or 34 (arrangements for carrying out of functions by others) of the Fire (Scotland) Act 2005 other than assistance given to a relevant authority (as defined in section 6 of that Act) for the purpose of carrying out any of the authority’s functions conferred on the authority by section 7 or 56 of that Act;”.

35B Assauling or impeding employees discharging certain functions

(1) A person who assaults, obstructs or hinders another person who is—
(a) an employee of—
(i) a relevant authority; or
(ii) an enforcing authority as defined in section 56; and
(b) discharging any of the functions conferred on the relevant authority or, as the case may be, the enforcing authority under section 7, 16 or 56, commits an offence.

(2) A person who assaults, obstructs or hinders another person who is providing assistance to a relevant authority or, as the case may be, an enforcing authority under arrangements made by virtue of section 33 or 34 for the purpose of the carrying out by that authority of any of the functions conferred on it by virtue of section 7 or 56 commits an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 4 on the standard scale.

CHAPTER 6
CENTRAL SUPERVISION AND SUPPORT

36 Framework document

(1) The Scottish Ministers shall prepare a document—
(a) setting out priorities and objectives for relevant authorities in connection with the carrying out of their functions; and
(b) containing—
(i) such guidance in connection with the carrying out of any of those functions; and
(ii) such other matters relating to those authorities or those functions, as the Scottish Ministers consider appropriate.

(2) The Scottish Ministers—
(a) shall keep the document prepared under subsection (1) under review; and
(b) may from time to time revise it.
(3) The Scottish Ministers shall carry out the functions conferred on them by subsection (1) and (2) in the manner and to the extent that appears to them to be best calculated to promote—
   (a) public safety;
   (b) the efficiency and effectiveness of fire and rescue authorities; and
   (c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

(4) The document prepared under subsection (1), and any revision of it which appears to the Scottish Ministers to be significant, shall have effect only when brought into effect by the Scottish Ministers by order.

(5) In preparing—
   (a) the document mentioned in subsection (1); and
   (b) any revision of it which appears to them to be significant,
the Scottish Ministers shall consult the persons mentioned in subsection (6).

(6) Those persons are—
   (a) each relevant authority or such persons as the Scottish Ministers consider represent those authorities; and
   (b) such persons as the Scottish Ministers consider represent employees of those authorities.

37 Adherence

(1) In carrying out their functions, relevant authorities shall have regard to the document prepared under section 36(1).

(2) Subsections (3) and (4) apply where the Scottish Ministers consider that a relevant authority is failing, or is likely to fail, to act in accordance with the document prepared under section 36(1).

(3) The Scottish Ministers may cause an inquiry to be held into the matter.

(4) Subject to subsection (5), the Scottish Ministers may, for the purpose of securing that the authority acts in accordance with the document, by order require the authority—
   (a) to take; or
   (b) to refrain from taking,
such action as is specified in the order.

(5) The Scottish Ministers may make an order under subsection (4) only where they consider that it would promote—
   (a) public safety;
   (b) the efficiency and effectiveness of the authority; or
   (c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

(6) Before making an order under subsection (4), the Scottish Ministers shall consult the authority in respect of which it is proposed to be made.
(7) Where the document prepared under subsection (1) of section 36 has been revised under subsection (2)(b) of that section, the references in this section and section 38 to that document shall be taken to refer to that document as revised.

38 Reporting

(1) The Scottish Ministers shall report to the Scottish Parliament on—
   (a) the extent to which relevant authorities are acting in accordance with the document prepared under section 36(1); and
   (b) any steps taken by them for the purpose of securing that relevant authorities so act.

(2) The first report under subsection (1) shall be made before the expiry of the period of two years starting on the date when the document prepared under section 36(1) is brought into effect.

(3) Every subsequent such report shall be made before the expiry of the period of two years starting on the date on which the last such report was made.

39 Inspectors of Fire and Rescue Authorities

(1) Her Majesty may by Order in Council appoint—
   (a) a Chief Inspector of Fire and Rescue Authorities; and
   (b) such number of Inspectors of Fire and Rescue Authorities as the Scottish Ministers may determine.

(2) The Scottish Ministers may appoint Assistant Inspectors of Fire and Rescue Authorities.

(3) The Scottish Ministers shall pay to the persons appointed under this section such remuneration as the Scottish Ministers may determine.

(4) A person who, immediately before the coming into force of this section, is by virtue of appointment under section 24 of the Fire Services Act 1947 (c.41)—
   (a) the Chief Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(a);
   (b) an Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(b);
   (c) an Assistant Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (2).

40 Functions of Inspectors of Fire and Rescue Authorities

(1) The Scottish Ministers may direct a person appointed under section 39 to—
   (a) inquire into a matter mentioned in subsection (2); and
   (b) to submit to them a written report on that matter by a date specified by them.

(2) Those matters are—
   (a) the state and efficiency of relevant authorities generally;
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(b) the manner in which—
   (i) a relevant authority is carrying out any of its functions under this Act; or
   (ii) relevant authorities are carrying out such functions generally;

(c) technical matters relating to a function of a relevant authority under this Act.

(3) The Scottish Ministers shall lay a copy of each report submitted to them under subsection (1)(b) on the matter mentioned in subsection (2)(a) before the Scottish Parliament.

Equipment, facilities and services

41 Directions for public safety purposes

(1) Where the Scottish Ministers consider it necessary to do so for public safety purposes, they may make an order (a “property and facilities order”) giving general or specific directions to a relevant authority (or two or more such authorities) about the use or disposal of property or facilities.

(2) A direction under subsection (1) given to an authority may in particular include provision—
   (a) about the use or disposal by the authority of property or facilities belonging to it or under its control;
   (b) about the use by the authority of property or facilities belonging to or under the control of—
      (i) another relevant authority; or
      (ii) a person who has made, or is willing to make, the property or facilities available;
   (c) requiring payments to be made by the authority to—
      (i) another relevant authority; or
      (ii) any other person,
   in respect of the use of property or facilities.

(3) In subsection (2)(b) a reference to property or facilities belonging to a person includes a reference to land occupied by the person.

42 Requirements concerning equipment and services

The Scottish Ministers may make an order requiring a relevant authority (or two or more such authorities)—
   (a) to use and maintain equipment—
      (i) specified in the order; or
      (ii) of a description so specified; or
   (b) to use services—
      (i) so specified; or
      (ii) of a description so specified.
43 **Provision of equipment etc.**

(1) The Scottish Ministers may—

(a) provide and maintain any equipment, facilities and services;

(b) contribute to the provision and maintenance of any equipment, facilities and services;

(c) establish and maintain any organisations; or

(d) contribute to the establishment and maintenance of any organisations, they consider appropriate for promoting the economy, efficiency and effectiveness of relevant authorities.

(2) Subject to subsection (3), charges may be imposed for the use of equipment, facilities and services—

(a) provided by the Scottish Ministers under subsection (1)(a); or

(b) provided by an organisation established or maintained by the Scottish Ministers under subsection (1)(c).

(3) Any such charge shall not exceed the costs reasonably incurred in providing the equipment, facility or service to which it relates.

**Training**

44 **Central institution and other centres for education and training**

(1) The Scottish Ministers may establish and maintain a central training institution for one or more of the purposes mentioned in subsection (2).

(2) Those purposes are—

(a) the provision of education and training to employees of relevant authorities;

(b) the provision of advice and assistance to relevant authorities in connection with the provision of such education and training;

(c) the supervision and regulation of the provision of such education and training;

(d) the provision of education and training to persons who provide (or are to provide) such education and training;

(e) the provision of education or training to persons who are not employees of relevant authorities in matters in relation to which relevant authorities have functions;

(f) the provision of advice and assistance in connection with the provision of such education and training.

(3) The Scottish Ministers may make arrangements with a relevant authority for a centre established under section 14 to be used for one or more of the purposes mentioned in subsection (2).
 CHAPTER 7

EMPLOYMENT

Negotiation of conditions of service

45 Statutory negotiation arrangements

(1) The Scottish Ministers may by order make provision for the establishment of a body of persons (a “statutory negotiation body”), or two or more such bodies, for the purpose of negotiating the conditions of service of employees of relevant authorities.

(2) An order under subsection (1) shall provide for the statutory negotiation body established by it to be composed of—

(a) persons representing the interests of some or all relevant authorities;

(b) persons representing the interests of some or all employees of relevant authorities; and

(c) a person who does not fall within subsection (3), who shall chair the body.

(3) A person falls within this subsection if the person is—

(a) a member or employee of a relevant authority;

(b) a member or employee of a body representing the interests of some or all employees of relevant authorities; or

(c) an office-holder in, or a member of the staff of, the Scottish Administration.

(4) A statutory negotiation body may make arrangements for the purpose of enabling conditions of service of employees of relevant authorities to be negotiated at local level (“local negotiation arrangements”).

(5) Local negotiation arrangements may in particular include provision as to—

(a) the—

(i) persons; or

(ii) descriptions of person,

by whom, or by means of whom, negotiations are authorised to be carried out at local level;

(b) the conditions of service and descriptions of conditions of service authorised to be negotiated at local level.

(6) Local negotiation arrangements may be made by a statutory negotiation body in respect of employees of a particular description only if the statutory negotiation body includes persons representing the interests of employees of that description.

(7) Where there is a statutory negotiation body which includes persons representing the interests of employees of a particular description, an agreement as to the conditions of service of employees of that description which is made by or on behalf of a relevant authority and by or on behalf of employees of the description concerned is a legally enforceable contract only where the terms of the agreement were negotiated—

(a) by means of the statutory negotiation body; or

(b) in accordance with local negotiation arrangements made by the statutory negotiation body in respect of employees of that description.
Guidance

(1) A relevant negotiation body shall, in negotiating the conditions of service of employees of relevant authorities, have regard to any guidance given by the Scottish Ministers in connection with that matter.

(2) In subsection (1) “relevant negotiation body” means—

(a) a body established by virtue of section 45(1); or

(b) any other body of persons which—

(i) includes both persons representing the interests of some or all relevant authorities and persons representing the interests of some or all employees of relevant authorities; and

(ii) is constituted in accordance with what appear to the Scottish Ministers to be appropriate arrangements for the negotiation of the conditions of service of employees of relevant authorities.

Supplementary

Prohibition on employment of police

A relevant authority may not employ a constable for the purpose of carrying out any of the functions conferred on the authority by virtue of this Act.

CHAPTER 8

INTERPRETATION

Interpretation of Part 2

In this Part, unless the context otherwise requires—

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

(a) a person to die;

(b) a person to suffer serious—

(i) injury; or

(ii) illness; or

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

“extinguishing”, in relation to a fire, includes containing and controlling;

“road” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (c.22).
Duties of employers to employees

(1) Each employer shall ensure, so far as is reasonably practicable, the safety of the employer’s employees in respect of harm caused by fire in the workplace.

(2) Each employer shall—

(a) carry out an assessment of the workplace for the purpose of identifying any risks to the safety of the employer’s employees in respect of harm caused by fire in the workplace;

(b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).

(3) Where under subsection (2)(a) an employer carries out an assessment, the employer shall—

(a) in accordance with regulations under section 53, review the assessment; and

(b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).

(4) Schedule 2 makes provision as to the fire safety measures.

Duties in relation to relevant premises

(1) Where a person has control to any extent of relevant premises the person shall, to that extent, comply with subsection (2).

(2) The person shall—

(a) carry out an assessment of the relevant premises for the purpose of identifying any risks to the safety of relevant persons in respect of harm caused by fire in the relevant premises; and

(b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in respect of harm caused by fire in the relevant premises.

(3) If a person falls within subsection (1) other than by virtue of—

(a) having control to any extent of relevant premises in connection with the carrying on by the person (whether for profit or not) of an undertaking; or

(b) owning relevant premises,

the person who owns the relevant premises shall also comply with subsection (2).

(4) A person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to—
(a) the maintenance or repair of—
   (i) relevant premises; or
   (ii) anything in relevant premises; or

(b) safety in respect of harm caused by fire in relevant premises,
shall also comply, to the extent of the obligation, with subsection (2).

(5) Where under subsection (2)(a) a person carries out an assessment, the person shall—
   (a) in accordance with regulations under section 53, review the assessment; and
   (b) take in relation to the relevant premises such of the fire safety measures as in all
the circumstances it is reasonable for a person in his position to take to ensure the
safety of relevant persons in respect of harm caused by fire in the relevant
premises.

51 Taking of measures under section 49 or 50: considerations

(1) Subsection (2) applies where under section 49(2)(b) or (3)(b) or 50(2)(b) or (5)(b) a
person is required to take any fire safety measures.

(2) The person shall implement the fire safety measures on the basis of the considerations
mentioned in subsection (3).

(3) Those considerations are—
   (a) avoiding risks;
   (b) evaluating risks which cannot be avoided;
   (c) combating risks at source;
   (d) adapting to technical progress;
   (e) replacing the dangerous with the non-dangerous or the less dangerous;
   (f) developing a coherent overall fire prevention policy which covers technology,
organisation of work and the influence of factors relating to the working
environment;
   (g) giving collective fire safety protective measures priority over individual measures;
and
   (h) giving appropriate instructions to employees.

52 Duties of employees

Each employee shall while at work—
   (a) take reasonable care for the safety in the event of fire of—
      (i) the employee; and
      (ii) any other relevant person who may be affected by acts or omissions of the
employee; and
   (b) in relation to any requirement imposed by virtue of this Part on the employee’s
employer, co-operate with the employer in so far as is necessary for the purpose of
enabling the employer to comply with the requirement.
Regulations

53  **Risk assessments: power to make regulations**

(1) The Scottish Ministers may make regulations about the carrying out of assessments and reviews under sections 49 and 50.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying matters which persons must 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.

54  **Scottish Ministers’ power to make regulations about fire safety**

(1) The Scottish Ministers may by regulations make provision about fire safety in relevant premises.

(2) Regulations under subsection (1) 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 fighting 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) securing that employees receive appropriate instruction or training in what to do in the event of fire;

(i) securing that, in circumstances so specified, numbers of attendants so specified are stationed in parts of the relevant premises so specified;

(j) the keeping of records of instruction or training given, or other things done, in pursuance of the regulations; and
(k) 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.

54A Power to make further provision for protection of fire-fighters

(1) This section applies where regulations under section 54(1) make provision for or in connection with the maintenance of premises, facilities or equipment with a view to securing the safety of fire-fighters (whether employees of relevant authorities or otherwise) in the event of a fire in relevant premises (“safeguarding provision”).

(2) The Scottish Ministers may by regulations apply, subject to any modifications (specified in the regulations) that they consider necessary, the safeguarding provision to common areas of private dwellings.

(3) In subsection (2), “common area” includes, where a stair, passage, garden, yard, garage, outhouse or other appurtenance of a private dwelling is used in common by the occupants of more than one private dwelling, that stair, passage, garden, yard, garage, outhouse or other appurtenance.

Special case

55 Special case: temporary suspension of Chapter 1 duties

(1) If in relation to any relevant premises the application of any of the Chapter 1 duties would prevent a person who falls within subsection (2) from carrying out the person’s operational duties, the Chapter 1 duty (or, as the case may be duties) in question shall be deemed not to apply in relation to those relevant premises during the period when the person is carrying out those duties.

(2) A person falls within this subsection if the person is—

(a) a member of—

(i) the armed forces of the Crown; or

(ii) a visiting force;

(b) a constable; or

(c) of such other description as the Scottish Ministers may by regulations prescribe.

(3) A person subject to the Chapter 1 duty (or duties) which, by virtue of subsection (1) is (or are) deemed not to apply in relation to relevant premises shall, during the period mentioned in that subsection, ensure so far as is possible the safety of relevant persons in respect of harm caused by fire in those premises.

(4) For the purposes of this section, “operational duties”, in relation to a person falling within subsection (2), means anything done—

(a) while the person is at work in the capacity in which the person falls within that subsection; and

(b) which the person is required to do by virtue of being at work in that capacity.
56 Enforcing authorities

(1) Each enforcing authority shall enforce the Chapter 1 duties.

(2) In carrying out the duty imposed by subsection (1), an enforcing authority shall have regard to any guidance given by the Scottish Ministers.

(3) For the purpose of carrying out the duty imposed by subsection (1), an enforcing authority may appoint enforcement officers.

(3A) If the enforcing authority is the person appointed under section 39(1)(a), the authority may, subject to subsection (3B), appoint under subsection (3) a person who has been appointed under subsection (3) as an enforcement officer by a relevant authority.

(3B) A person may be appointed by virtue of subsection (3A) only if—
   (a) the appointment is made with the consent of the relevant authority concerned; and
   (b) the appointment is made in writing.

(4) Subsection (1) does not authorise an enforcing authority to institute proceedings for an offence.

(5) A relevant authority may make arrangements with the Health and Safety Commission for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the Health and Safety Executive in relation to a workplace so specified.

(6) In this section, “enforcing authority” means—
   (a) in relation to relevant premises which are—
      (i) a sports ground designated in an order under section 1 of the Safety of Sports Grounds Act 1975 (c.52) (safety certificates for large sports stadia);
      (ii) a sports ground to which Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27) applies; or
      (iii) a regulated stand within the meaning of section 26(5) of that Act of 1987 (safety certificates for stands at certain sports grounds),
      the local authority in whose area the relevant premises are situated;
   (b) in relation to relevant premises in respect of which—
      (i) the Crown; or
      (ii) the United Kingdom Atomic Energy Authority,
      is subject to any of the Chapter 1 duties, the person appointed under section 39(1)(a);
   (c) in relation to any other relevant premises, the relevant authority in whose area the relevant premises are, or are to be, situated.

(7) The Scottish Ministers may by regulations modify subsection (6).
57 Powers of enforcement officers

(1) An enforcement officer may do anything necessary for the purpose mentioned in section 56(3).

(2) An enforcement officer may in particular under subsection (1)—

(a) at any reasonable time (or, in a situation which in the opinion of the officer is or may be dangerous, at any time), enter relevant premises and inspect the whole or part of the relevant premises and anything in them;

(b) take onto the relevant premises—

(i) such other persons; and

(ii) such equipment,

as the officer considers necessary;

(c) require a person on the relevant premises who is subject to any of the Chapter 1 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 relevant premises;

(e) carry out any inspections, measurements and tests in relation to—

(i) the relevant premises; or

(ii) 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 respect of harm caused by 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 paragraph (e) or (g);

(ii) ensuring that it is not tampered with before the officer’s examination of it is completed;

(iii) ensuring that it is available for use as evidence in proceedings for an offence relevant to the inspection.

(3) An enforcement officer exercising the power mentioned in subsection (2)(a) shall, if so required, produce evidence of the officer’s authority to do so—

(a) before entering the premises; or

(b) at any time before leaving the premises.
(4) If an enforcement officer exercises the power in subsection (2)(f), the officer shall—

(a) leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant 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 mentioned in subsection (2)(g), an enforcement officer shall 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 any of the Chapter 1 duties in relation to the relevant premises, an enforcement officer shall—

(a) anything which the officer proposes to do on the relevant premises under the power mentioned in paragraph (d) or (e) of subsection (2); or

(b) anything which the officer proposes to do under the power mentioned in paragraph (g) of that subsection,

to be done in the presence of that person.

(6A) If an enforcement officer exercises the power in subsection (2)(h), the officer shall leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that the officer has taken possession of it.

(7) An enforcement officer who, by virtue of this section, enters relevant premises—

(a) which are unoccupied; or

(b) from which the occupier is temporarily absent,

shall on departure leave the relevant premises as effectively secured against unauthorised entry as the officer found them.

58 Prohibition notices

(1) Where subsection (2) applies in relation to relevant premises, an enforcing authority may serve a prohibition notice on the occupier of the relevant premises.

(2) This subsection applies where having regard in particular to the matter mentioned in subsection (3), the enforcing authority considers that use of relevant premises involves or will involve a risk to relevant persons so serious that use of the relevant premises ought to be prohibited or restricted.

(3) The matter is anything affecting relevant persons’ escape from the relevant premises in the event of fire.

(4) A prohibition notice is a notice—

(a) stating that the enforcing authority considers that subsection (2) applies;
(b) specifying the matters which the enforcing authority considers give rise or, as the case may be, will give rise to the risk;

(c) directing that until those matters have been remedied the use to which the prohibition notice relates is—

(i) prohibited; or

(ii) restricted to such extent as may be specified in the notice; and

(d) subject to subsection (5), specifying when the notice shall take effect.

(5) An enforcing authority may specify that a notice shall take effect on service of the notice only if the authority considers that, in consequence of the matters specified under subsection (4)(b), there is or, as the case may be, will be an imminent risk of serious personal injury to relevant persons.

(6) A prohibition notice may specify steps which may be taken to remedy the matters specified in the notice.

(7) If relevant premises fall within paragraph (a) of subsection (3B) of section 72, the enforcing authority shall, before serving the prohibition notice and if it is practicable to do so, notify the local authority in whose area the relevant premises are situated of—

(a) the enforcing authority’s intention to serve a prohibition notice; and

(b) the use which it is intended to prohibit or, as the case may be, restrict.

(8) Where an enforcing authority serves a prohibition notice on the occupier of relevant premises, the authority may, by notice in writing to the occupier, withdraw the prohibition notice.

59 Enforcement notices

(1) Where an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, the authority may serve an enforcement notice on the person.

(2) An enforcement notice is a notice—

(a) stating that the enforcing authority considers that the person on whom the notice is served has failed to comply with the Chapter 1 duty specified in the notice;

(b) specifying why the authority considers that the person has failed to comply with the duty in question; and

(c) requiring 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) Where—

(a) an enforcing authority (the “first enforcing authority”) proposes to serve an enforcement notice on a person; and

(b) the first enforcing authority considers that the person has failed to comply with any of the Chapter 1 duties in relation to—

(i) a workplace in relation to which some other authority is the enforcing authority; or

(ii) employees who work in such a workplace,
any enforcement notice served by the first enforcing authority may include requirements relating to that workplace or those employees.

(4) Before serving an enforcement notice including a requirement such as is mentioned in subsection (3) the first enforcing authority shall consult the other enforcing authority.

(5) Before serving an enforcement notice including a requirement to make an alteration to relevant premises, the enforcing authority shall consult—

(a) subject to subsection (5A), the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier in relation to those premises;

(b) if the notice relates to a workplace in relation to which the authority responsible to any extent for enforcing Part I of the Health and Safety at Work etc. Act 1974 (c.37) and the existing statutory provisions is—

(i) the Health and Safety Executive; or

(ii) by virtue of Part I of that Act or the existing statutory provisions, any other authority,

the Executive or, as the case may be, that other authority; and

(c) any other person whose consent to the alteration would be required by virtue of any enactment.

(5A) If the local authority in whose area the relevant premises are situated is also in relation to those premises—

(a) the enforcing authority; and

(b) the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier,

the enforcing authority need not consult the local authority.

(6) Failure to comply with subsection (4) or (5) shall not affect the validity of an enforcement notice.

(7) Where an enforcing authority serves an enforcement notice on a person, the authority may—

(a) before the expiry of the period specified in the notice, by notice in writing to the person withdraw the enforcement notice;

(b) except where an application under section 61 has been made and not determined, extend, or further extend, the period specified in the enforcement notice.

(8) In subsection (5)(b), “existing statutory provisions” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37).

(9) For the purposes of this section, “Chapter 1 duties” does not include the duty imposed by section 52.

60 Alterations notices

(1) Where subsection (2) or (3) applies in relation to relevant premises, the enforcing authority may serve an alterations notice on the appropriate person.

(2) This subsection applies where there would be a serious risk to relevant persons in respect of harm caused by fire in the relevant premises.
(3) This subsection applies where—
   (a) subsection (2) does not apply; but
   (b) if any of the changes mentioned in subsection (5) were made, it is likely that subsection (2) would apply.

(4) An alterations notice is a notice requiring the appropriate person where—
   (a) it is proposed that a change mentioned in subsection (5) be made to the relevant premises; and
   (b) if made, the change would constitute a serious risk to relevant persons in respect of harm caused by fire in the relevant premises,

to notify the enforcing authority of the change before it is made.

(5) Those changes 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; and
   (d) a change in the use to which the relevant premises are put (or, where they are put to more than one use, a use to which they are put).

(6) Where an enforcing authority serves an alterations notice on an appropriate person, the authority may, by notice in writing to the appropriate person, withdraw the alterations notice.

(7) In this section, “appropriate person”, in relation to relevant premises, means a person subject to a requirement under section 49 or 50 in relation to the relevant premises.

### Appeals

(1) On the application of the person on whom a relevant notice is served or, if the relevant notice is a prohibition notice, a person who in relation to the relevant premises to which the notice relates is subject to the duties imposed by section 49 or 50, the sheriff may make an order—
   (a) revoking the notice;
   (b) varying it in such manner as may be specified in the order; or
   (c) confirming the notice.

(2) Any application under this section shall be made before the expiry of the period of 21 days beginning with the service of the relevant notice to which the application relates.

(3) If the application relates to—
   (a) an enforcement notice; or
   (b) an alterations notice,

the notice shall be suspended during the relevant period.

(4) If, pending the making of an order under subsection (1), the sheriff makes an order suspending a prohibition notice (a “suspension order”) the suspension order shall be effective only from its making.
(4A) If not recalled by the sheriff, a suspension order shall cease to have effect on—

(a) the making of an order under subsection (1); or
(b) the abandonment of the application under this section.

(5) An application under this section shall be made by summary application.

(6) In this section—

“relevant notice” means—

(a) a prohibition notice;
(b) an enforcement notice; or
(c) an alterations notice; and

“relevant period” means the period beginning with the making of an application under this section and ending with—

(a) the making of an order under subsection (1); or
(b) the abandonment of the application.

62 Determination of disputes

(1) Where—

(a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties; but
(b) in relation to the duty in question the person and the enforcing authority cannot agree on the action that requires to be taken to comply with the duty,

the person and the authority may, subject to subsection (2), refer the matter to the person appointed under section 39(1)(a) for determination.

(2) If the enforcing authority is the person appointed under section 39(1)(a), the matter may be referred to the Scottish Ministers for determination.

(3) The Scottish Ministers may by regulations make provision about references under this section.

(4) Subject to subsection (5), where a determination is made by virtue of subsection (1) or (2), the enforcing authority may not—

(a) serve an enforcement notice; or
(b) include in such a notice directions,

if the notice or, as the case may be, the directions would conflict with the determination.

(5) Subsection (4) shall 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 they are put.
CHAPTER 3

MISCELLANEOUS

63 Prohibition on charging employees
No employer shall charge, or permit the charging of, any employee of the employer in respect of anything done or provided in pursuance of any of the Chapter 1 duties.

64 Civil liability for breach of statutory duty
(1) Subject to subsection (2), nothing in this Part shall be construed as conferring a right of action in any civil proceedings (other than proceedings for recovery of a fine).

(2) Breach of a duty imposed on an employer by virtue of this Part shall, in so far as it causes damage to an employee, confer a right of action on that employee in civil proceedings.

65 Consequential restriction of application of Part I of Health and Safety at Work etc. Act 1974
(1) Except as respects its application in relation to the aspects of fire safety set out in paragraph (b) of the sentence on interpretation in Section H2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46) (reserved matters), Part I of the Health and Safety at Work etc. Act 1974 (c.37) (“the 1974 Act”) and any regulations made under it shall not apply in relation to fire safety.

(2) Nothing in subsection (1) affects the operation of Part I of the 1974 Act or any such regulations where an enforcing authority is also, for the purposes of that Part or, as the case may be, those regulations, an enforcing authority (as defined in section 18(7)(a) of the 1974 Act).

65A Suspension of terms and conditions of licences dealing with same matters as this Part
(1) This section applies where—
(a) an enactment provides for the licensing of—
   (i) premises; or
   (ii) a person in respect of premises;
(b) the authority responsible for issuing licences under such an enactment (the “licensing authority”) is required or authorised to impose terms, conditions or restrictions in connection with the issue of such licences; and
(c) such a licence is required in respect of relevant premises.

(2) A term, condition or restriction imposed in connection with the issue under such an enactment of the licence shall be of no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of this Part.

(3) References in this section to the issue of licences include references to their renewal, transfer or variation.
(4) References in this section to licensing include references to certifying and registering; and “licence” shall be construed accordingly.

(5) This section does not apply where the licensing authority is also (other than by virtue of paragraph (c) of subsection (6) of section 56) the enforcing authority.

CHAPTER 4

OFFENCES

67 Offences

(1) If—

(a) a person fails to carry out a duty to which the person is subject by virtue of—

(i) section 49;

(ii) section 50; or

(iii) section 51; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(2) If—

(a) an employee fails to carry out a duty to which the employee is subject by virtue of section 52; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the employee shall be guilty of an offence.

(3) If—

(a) a person fails to comply with a requirement or prohibition to which the person is subject by virtue of regulations made under section 53 or 54; and

(b) the failure to comply with the requirement or prohibition in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(4) It shall be an offence for a person—

(a) to fail, without reasonable excuse, to comply with a requirement imposed by an enforcement officer under section 57(2)(c);

(b) falsely to pretend to be an enforcement officer;

(c) intentionally to obstruct an enforcement officer in the carrying out of the officer’s functions under this Part;

(d) to fail to comply with a restriction or prohibition imposed by a prohibition notice;

(e) to fail to comply with a requirement imposed by—

(i) an enforcement notice; or

(ii) an alterations notice;
(f) to contravene section 63;

(g) to make in any register, book, notice or other document required by virtue of this Part to be kept, served or given an entry which the person knows to be false in a material particular;

(h) to give any information which the person knows to be false in a material particular, or recklessly to give any information which is false in a material particular, where the information is given in purported compliance with a requirement to give information imposed by virtue of this Part.

(5) A person guilty of an offence under subsection (1), (3) or (4)(d) or (e) shall be liable—

(a) on summary conviction, to a fine not exceeding £20,000;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(6) A person guilty of an offence under subsection (2) shall be liable—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to a fine.

(7) A person guilty of an offence under subsection (4)(a), (c), (f), (g) or (h) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) A person guilty of an offence under subsection (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Subject to subsection (9A), it shall be a defence for a person charged with an offence under this section (other than an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(9A) The Scottish Ministers may make regulations specifying cases in relation to which subsection (9) shall not apply.

(10) In any proceedings for an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.

(11) The Scottish Ministers may make regulations applying subsection (10) in relation to proceedings for offences specified in the regulations.

(12) The Scottish Ministers may by regulations provide that in proceedings for such offences under this Part as may be specified in the regulations the onus of showing that it was not practicable to do more than was done shall be on the accused.

68 Offences by bodies corporate and partnerships

(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a relevant person, the relevant person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a relevant person.
(3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In this section, “relevant person”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

68A Offence due to fault of other person

(1) Where the commission by any person (“A”) of an offence under this Part is due to the act or default of some other person (“B”), B shall be guilty of the offence.

(2) B may be charged with and convicted of an offence by virtue of subsection (1) whether or not proceedings are taken against A.

69 Employee’s act or omission not to afford employer defence

Nothing in this Part shall be construed as affording an employer a defence in any proceedings in pursuance of section 67 or 68 by reason only of any act or omission of—

(a) an employee of the employer; or

(b) a person of a description specified in regulations made by the Scottish Ministers on whom duties are imposed by virtue of section 54(1).

CHAPTER 5

GENERAL

70 Service of documents

(1) Any document required or authorised by virtue of this Part to be served on any person may be served—

(a) by delivering it to the person or by leaving it at the person’s proper address or by sending it by post to the person at that address;

(b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary or clerk of the body;

(c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or

(d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.

(2) For the purposes of this section and paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) (service of documents by post) (“the Order”) in its application to this section, the proper address of any person on whom a document is to be served shall be the person’s last known address, except that—

(a) in the case of service on a body corporate (other than a limited liability partnership), its secretary or clerk, it shall be the address of the registered or principal office of the body;
(b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;

(c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outwith the United Kingdom or of a partnership carrying on business outwith the United Kingdom is its principal office within the United Kingdom.

(4) Subsection (5) applies if a person who is to be served by virtue of this Part with any document by another has specified to that other an address within the United Kingdom other than the person’s proper address (as determined under subsection (2)) as the one at which the person or someone on the person’s behalf will accept documents of the same description as that document.

(5) In relation to that document, that address shall be treated as the person’s proper address for the purposes of this section and paragraph 4 of Schedule 1 to the Order in its application to this section, instead of that determined under subsection (2).

(6) The Scottish Ministers may by regulations make provision for or in connection with specifying procedures which must, or may, be followed when serving documents required or authorised by virtue of this Part to be served on any person.

71 Crown application

(1) The provisions of this Part, and of regulations made under it, shall bind the Crown.

(2) No contravention by the Crown of any provision of this Act or of any regulations made under it shall make the Crown criminally liable; but the Court of Session may, on the application of an enforcing authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (2), the provisions of this Part and of regulations made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this Part authorises the entry of any relevant premises occupied by the Crown.

(5) Nothing in this section affects Her Majesty in Her private capacity.

(6) This Part shall apply in relation to relevant premises owned or occupied by the Parliamentary corporation as it applies in relation to relevant premises owned or occupied by the Crown.

72 Meaning of “relevant premises”

(1) In this Part, “relevant premises” means any premises other than those mentioned in subsection (2).

(2) Those premises are—

(a) domestic premises;
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(b) construction sites, ships and hovercraft, mines and offshore installations;

c) premises which, on 1 July 1999, were of a description specified in Part I of Schedule I to the Fire Certificates (Special Premises) Regulations 1976 (S.I. 1976/2003);

d) borehole sites to which the Borehole Sites and Operations Regulations 1995 (S.I. 1995/2038) apply;

e) premises occupied solely for the purposes of the armed forces of the Crown;

(f) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5);

(g) premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;

(h) if the undertaking carried on in premises is agriculture or forestry, any land other than buildings which is situated away from the undertaking’s buildings.

(3) For the purposes of subsection (1), “premises” includes in particular—

(a) any place;

(b) any installation on land;

(c) any tent or movable structure; and

(d) vehicles other than those mentioned in subsection (4).

(3A) In paragraph (a) of subsection (2), “domestic premises” means premises occupied as a private dwelling (including a stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is used in common by the occupants of more than one such dwelling); but does not include premises such as are mentioned in subsection (3B).

(3B) Those premises are—

(a) a house as respects which the giving of permission to occupy it is an activity for which a licence under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (S.S.I. 2000/177) is required;

(b) premises used for the provision of a care home service (as defined in subsection (3) of section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8));

(c) premises used for the provision of a school care accommodation service (as defined in subsection (4) of that section);

(d) premises used for the provision of an independent health care service (as defined in subsection (5) of that section);

(e) premises used for the provision of a secure accommodation service (as defined in subsection (9) of that section);

(f) premises which would fall within paragraph (a) but for there being in force in respect of them a control order under section 178 of the Housing (Scotland) Act 1987 (c.26); and

(g) premises which would fall within paragraph (a) but for there being in force in respect of them a management control order granted by virtue of section 74 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
(4) The vehicles referred to in subsection (3)(d) are—
   (a) any aircraft, locomotive, rolling stock, trailer or semi-trailer used as a means of transport;
   (b) any vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 (c.22);
   (c) any vehicle which is exempt from duty under that Act.

(5) References in this Part to relevant premises include references to a part of relevant premises.

(6) The Scottish Ministers may by regulations modify subsections (1) to (4).

(7) Where the Scottish Ministers exercise the power in subsection (6), they may by regulations make any modifications of this Part in its application, in consequence of the exercise of that power, to relevant premises specified in the regulations under that subsection that they consider necessary or expedient.

73 Interpretation of Part 3

(1) In this Part, unless the context otherwise requires—
   “Chapter 1 duties” means—
   (a) the duties imposed by sections 49, 50, 51 and 52; and
   (b) any duties imposed by regulations made under section 53 or 54;
   “employee” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37); and related expressions shall be construed accordingly;
   “enforcement officer” means an enforcement officer appointed under section 56(3);
   “enforcing authority” has the meaning given by section 56(6);
   “fire safety measures” shall be construed in accordance with schedule 2;
   “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);
   “operational task” means—
   (a) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 8;
   (b) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 9; or
   (c) a function such as is mentioned in an order under section 10(1);
   “public road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c.54);
   “relevant person”, in relation to premises, means—
   (a) any person who is, or may be, lawfully in the premises; or
   (b) any person—
      (i) who is, or may be, in the immediate vicinity of the premises; and
(ii) whose safety would be at risk in the event of fire in the premises;

but does not include an employee of a relevant authority who is engaged in the
performance of an operational task and, in its application to section 50, a person
such as is mentioned in subsection (2);

“work” and “at work” shall be construed in accordance with section 52 of the
Health and Safety at Work etc. Act 1974 (c.37);

“workplace”, in relation to an employer and the employer’s employees, means any
relevant premises which are used for the purposes of an undertaking carried on by
the employer and made available to an employee of the employer as a place of
work; and includes—

(a) any part of those premises to which an employee of the employer has
access while at work;

(b) any relevant premises (other than a public road)—

   (i) which are a means of access to or egress from the place of work; or

   (ii) where facilities are provided for use in connection with the place of

(2) The person is, where the person (“the employer”) subject to the requirement to carry out
an assessment (or a review) under section 50 is also subject to the requirement to carry
out an assessment (or a review) under section 49, any employee of the employer.

(3) For the purposes of section 52 references in the definition of “relevant person” in
subsection (1) to premises shall be construed as references to the workplace.

PART 4
MISCELLANEOUS

74 Inquiries

The Scottish Ministers may cause an inquiry to be held into—

(a) the manner in which a relevant authority is carrying out any of its functions under
this Act;

(b) the circumstances of, or the steps taken to deal with—

   (i) a fire;

   (ii) a road traffic accident; or

   (iii) an emergency of another kind in relation to which a relevant authority has
functions under this Act.

75 Inquiries: supplementary

(1) The Scottish Ministers may by regulations make provision in connection with inquiries
under this Act.

(2) The reference in subsection (1) to inquiries does not include inquiries mentioned in
section 40.

(3) Regulations under subsection (1) may in particular make provision for or in connection
with—
(a) the persons who may conduct an inquiry and their appointment to do so;
(b) the giving of notice of an inquiry;
(c) requiring persons to attend an inquiry—
   (i) to give evidence; or
   (ii) produce documents;
(d) the taking of evidence on oath;
(e) the payment of expenses—
   (i) of witnesses; and
   (ii) of or concerning the production of documents;
(f) the making of awards of expenses in respect of—
   (i) an inquiry; or
   (ii) arrangements made for an inquiry which does not take place;
(g) what expenses may be included in such awards;
(h) how expenses are to be calculated; and
(i) recovery of expenses.

Consultation requirements

76 Pre-commencement consultation
Where—
(a) consultation is required to take place under a provision of this Act; and
(b) before the provision comes into force, consultation takes place which would have satisfied the requirements of the provision to any extent if it had been in force, those requirements shall be taken to have been satisfied to that extent.

Advisory bodies

77 Payments in respect of advisory bodies
(1) The Scottish Ministers may make any payments they consider appropriate in respect of the expenses of a body established for the purpose of advising them on any matter in relation to which provision is made by this Act.
(2) The Scottish Ministers may make a payment under this section—
   (a) to any person; and
   (b) subject to any conditions,
they consider appropriate.

78 Abolition of Scottish Central Fire Brigades Advisory Council
The Scottish Central Fire Brigades Advisory Council is hereby abolished.
False alarms

79 False alarms

(1) A person who knowingly gives or causes to be given to a person acting on behalf of a relevant authority a false alarm of—
   (a) fire;
   (b) a road traffic accident; or
   (c) an emergency of another kind,
shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction—
   (a) to a fine not exceeding level 5 on the standard scale;
   (b) to imprisonment for a term not exceeding 3 months; or
   (c) to both.

Disposal of land

79A Disposal of land

A relevant authority may sell or dispose of any land vested in it which is no longer required by it.

PART 5

GENERAL

80 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment, instrument or document.

81 Orders and regulations

(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations shall be exercisable by statutory instrument.

(2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—
   (a) may be exercised so as to make different provision for different purposes; and
   (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(3) A statutory instrument containing an order or regulations made under this Act (other than an order under section 83) shall, subject to subsection (4), be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—
(za) an order under section 2(1) or section 5(3);

(a) an order under section 80(1) modifying an enactment; or

(b) regulations under section 56(7), 72(6) or 75,

shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

82 Minor and consequential amendments and repeals

(1) Schedule 3, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.

(2) The enactments mentioned in the first column of schedule 4 (which include enactments that are spent) are repealed to the extent set out in the second column.

83 Commencement

This Act, other than this section and section 81, shall come into force on such day as the Scottish Ministers may by order appoint.

84 Short title

This Act may be cited as the Fire (Scotland) Act 2005.
SCHEDULE 1
(introduced by section 4)

JOINT FIRE AND RESCUE BOARDS: SUPPLEMENTARY PROVISION

Status

1 A joint fire and rescue board constituted by a scheme made under section 2(1) shall be a body corporate and shall have a common seal.

General powers

2 (1) Subject to this Act and the scheme made under section 2(1) by which it is constituted, a joint fire and rescue board may do anything which appears to it to be appropriate for the purposes of, or in connection with, the carrying out of its functions; and it may in particular—

(a) acquire and dispose of land and other property; and

(b) borrow money.

(2) The power to acquire land in sub-paragraph (1)(a) includes power to purchase land compulsorily, and section 71 of the Local Government (Scotland) Act 1973 (c. 65) (acquisition of land compulsorily) shall apply to a joint fire and rescue board as it applies to a local authority.

Pensions

3 For the purposes of the Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850), the appropriate superannuation fund shall be—

(a) in relation to the pensionable employees of a joint fire board constituted by an administration scheme under section 36 of the Fire Services Act 1947 (c.41) or section 147 of the Local Government (Scotland) Act 1973 (c.65), the superannuation fund of such one of the councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) whose area is comprised in the area of the joint fire board as may be determined by or under the administration scheme; and

(b) in relation to the pensionable employees of a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1), the superannuation fund of such one of the councils constituted as mentioned in paragraph (a) whose area is comprised in the area of the joint fire and rescue board as may be determined by or under the amalgamation scheme.

SCHEDULE 2
(introduced by section 49(4))

FIRE SAFETY MEASURES

1 Subject to paragraph 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 fighting 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 by the Scottish Ministers by regulations.

2 Nothing in paragraph 1 shall be construed as including process fire precautions.

SCHEDULE 3
(introduced by section 82(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

The Civil Defence Act 1948 (c.5)

A1(1) The Civil Defence Act 1948 shall be amended as follows.

(2) In subsection (1)(b) of section 1 (civil defence functions of Ministers), for “fire brigades” substitute “employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

(3) In section 5 (civil defence obligations)—
   (a) for “and fire brigades” substitute “, employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”;
   (b) the words “and brigades” are repealed; and
   (c) for “respectively” substitute “and by employees of relevant authorities (as so defined)”.

(4) In section 9(1) (interpretation) the definition of “fire brigade” is repealed.

The Pipe-lines Act 1962 (c.58)

B1 In section 37 of the Pipe-lines Act 1962 (persons to be notified of certain pipe-line accidents)—
   (a) in each of subsections (1)(a) and (2)(a), after “fire” insert “and rescue authority”; and
   (b) in subsection (4), for paragraph (a) substitute—

   “(a) “fire and rescue authority”, in relation to any area, means a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) for the area;”.

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Fire (Scotland) Bill
Schedule 3—Minor and consequential amendments

The Gas Act 1965 (c.36)

C1(1) The Gas Act 1965 shall be amended as follows.

(2) In section 17 (provisions in relation to gas-related accidents), in subsection (5)(a) for “fire authority” substitute “fire and rescue authority”.

(3) In section 28(1) (interpretation), for the definition of “fire authority” substitute—

“fire and rescue authority” means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00);”.

The Transport Act 1968 (c.73)

D1 In section 102(4) of the Transport Act 1968 (application to the Crown and exemptions)—

(a) the words “or fire brigade” are repealed; and

(b) after “purposes” insert “or for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government (Scotland) Act 1973 (c.65)

1 In section 63A of the Local Government (Scotland) Act 1973 (disapplication of sections 62A to 62C in relation to fire authorities), after “fire” insert “and rescue”.

The Control of Pollution Act 1974 (c.40)

1A In subsection (2)(a) of section 62 of the Control of Pollution Act 1974 (restrictions on use of loudspeakers in streets)—

(a) the words “, fire brigade” are repealed; and

(b) after “purposes,” insert “for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government (Scotland) Act 1975 (c.30)

1B(1) The Local Government (Scotland) Act 1975 shall be amended as follows.

(2) For paragraph (a) of section 23(2) (authorities subject to investigation) substitute—

“(a) any joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 00);”.

(3) In subsection (3)(b) of section 29A (consideration of adverse reports), for “fire” substitute “joint fire and rescue boards”.

The Licensing (Scotland) Act 1976 (c.66)

1C(1) The Licensing (Scotland) Act 1976 shall be amended as follows.

(2) In each of—

(a) subsection (1)(e) of section 16 (objections in relation to licence applications);
(b) subsections (5) and (6) of section 23 (special provisions relating to applications for a new licence);

(c) subsection (1) of section 24 (special provisions relating to applications for renewal of a licence);

(d) subsection (3) of section 35 (consent of licensing board required for works to certain licensed premises); and

(e) subsection (2)(c) of section 105 (procedure on application for grant or renewal of registration),

after “fire” insert “and rescue”.

(3) In subsection (1) of section 139 (interpretation), for the definition of “fire authority” substitute—

“‘fire and rescue authority’ means a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Water (Scotland) Act 1980 (c.45)

2 (1) The Water (Scotland) Act 1980 shall be amended as follows.

(2) In section 109(1) (interpretation), in the definition of “fire authority” for the words from “has” to the end substitute “means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)”.

(3) In section 1(1) of Schedule 4 (provisions incorporated in orders relating to water undertakings), in the definition of “fire authority” for the words from “has” to the end substitute “means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)”.

The Local Government, Planning and Land Act 1980 (c.65)

2A In subsection (1) of section 2 of the Local Government, Planning and Land Act 1980 (local authorities to whom a duty to publish information applies), for paragraph (h) substitute—

“(h) a joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 00);”.

The Road Traffic Regulation Act 1984 (c.27)

30 2B In section 87 of the Road Traffic Regulation Act 1984 (exemptions from speed limits)—

(a) the words “fire brigade,” shall be repealed; and

(b) after “purposes” insert “or for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Housing (Scotland) Act 1988 (c.43)

2C In the Housing (Scotland) Act 1988—

(a) for sub-paragraph (vii) of subsection (3)(a) of section 43 (conditions necessary to make a tenancy a housing association tenancy or secure tenancy) substitute—
“(vii) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));” and

(b) for paragraph (g) of subsection (4) of section 45 (certain tenancies not to be capable of being protected or secure tenancies) substitute—

“(g) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Tay Road Bridge Order Confirmation Act 1991 (c.iv)

2D In the Schedule (Provisional Order confirmed by Act) to the Tay Road Bridge Order Confirmation Act 1991, in paragraph (b) of subsection (2) of section 54, for the words from “a” where it first occurs to the end of that paragraph substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Strathclyde Regional Council Order Confirmation Act 1991 (c.xx)

2E In the Schedule to the Strathclyde Regional Council Order Confirmation Act 1991, in paragraph (a) of subsection (8) of section 3—

(a) the word “a fire” shall be repealed; and

(b) after “services” insert “, or by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government etc. (Scotland) Act 1994 (c.39)

2F In subsection (4) of section 43 (guidance as to exercise of traffic powers) of the Local Government etc. (Scotland) Act 1994, in paragraph (b) substitute—

“(b) the relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Merchant Shipping Act 1995 (c.21)

2G In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night), for “fire brigade” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) or any other employer of fire-fighters”.

The Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (c xii)

2H In the Schedule to the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996, in subsection (9) of section 6 for “the fire service” substitute “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Housing (Scotland) Act 2001 (asp 10)

2I In paragraph 2 of schedule 1 to the Housing (Scotland) Act 2001 (tenancies which are not Scottish secure tenancies)—

(a) in sub-paragraph (b), for the words from “a” where it first occurs to “(c.41)” substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”; and

(b) in sub-paragraph (c), for “fire brigade” substitute “authority”.
The Freedom of Information (Scotland) Act 2002 (asp 13)

2J In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities), for paragraph 9, substitute “Her Majesty’s Chief Inspector of Fire and Rescue Authorities”.

The Scottish Public Services Ombudsman Act 2002 (asp 11)

3 For paragraph 13 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities) substitute—

“13 A joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2005 (asp 00).”

The Local Government in Scotland Act 2003 (asp 1)


(A2) In subsection (1)(d) of section 16 (community planning: further provision), for the words from “board” to the end of that paragraph substitute “fire board”.

(A3) In subsection (9) of section 22 (limits on power to advance well-being), at the beginning insert “Subject to section 15(3) of the Fire (Scotland) Act 2005 (asp 00),”.

(A4) In section 25 (scrutiny of local authorities’ police and fire functions)—

(a) in subsection (2)—

(i) for “Services for Scotland” substitute “and Rescue Authorities”;

(ii) for “24 of the Fire Services Act 1947 (c.41)” substitute “39 of the Fire (Scotland) Act 2005 (asp 00)”;

(iii) in paragraph (a), after “fire” insert “and rescue”; and

(b) in subsection (3)(a), after “fire” insert “and rescue”.

(1) In section 61 (definitions), in the definition of “joint fire board” for the words from “board”, where it secondly occurs, to the end substitute “and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2005 (asp 00)”.

The Emergency Workers (Scotland) Act 2005 (asp 00)

5 In section 7 of the Emergency Workers (Scotland) Act 2005 (savings for certain offences), the words from “or section 30” to the end are repealed.
### SCHEDULE 4
*(introduced by section 82(2))*

#### REPEALS

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<td>The Fire Services Act 1959 (c. 44)</td>
<td>The whole Act except sections 8 to 10.</td>
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<tr>
<td>The Town and Country Planning (Scotland) Act 1959 (c. 70)</td>
<td>In paragraph 2 of the Fourth Schedule, the words “the Fire Services Act, 1947;”.</td>
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<td>The Local Government (Scotland) Act 1973 (c. 65)</td>
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<tr>
<td>The Water Industry (Scotland) Act 2002 (asp 3)</td>
<td>In section 55(12), the words from “, any” where it secondly occurs to “1947”.</td>
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<tr>
<td>The entries relating to the Fire Services Act 1947 (c. 41) in the table in each of Parts II and III of Schedule 2.</td>
<td>The entries relating to the Fire Services Act 1947 (c. 41) in the table in each of Parts II and III of Schedule 2.</td>
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Fire (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives 89/391/EEC, 89/654/EEC, 91/383/EEC, 94/33/EC, 98/24/EC and 99/92/EC; to make other provision in relation to fire safety in certain premises; and for connected purposes.

Introduced by: Cathy Jamieson
On: 28 June 2004
Supported by: Hugh Henry
Bill type: Executive Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these are revised Explanatory Notes to accompany the Fire (Scotland) Bill, as amended at Stage 2.

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

4. The main purpose of this Bill is to deliver modernised fire and rescue services that respond to the particular demands of the 21st Century and contribute to building a safer Scotland.

5. The Bill repeals and re-enacts many of the provisions of the Fire Services Act 1947 (c.41) (“the 1947 Act”) as they currently apply in Scotland.


7. These proposals included the reform of fire safety legislation in Scotland, which is also addressed in the Bill.

8. The consultation paper mentioned above built on the issues raised in, and the responses received to, the policy paper The Scottish Fire Service of the Future which was published in April 2002. The paper also took account of 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.
THE BILL – AN OVERVIEW

9. The Bill covers various aspects of the fire and rescue services and is in 5 Parts:

(a) Part 1 – Fire and Rescue Authorities: determines the bodies which are the fire and rescue authorities (section 1); provides schemes for the creation, variation and revocation of joint fire and rescue boards and supplementary provision (sections 2, 3, 4 and 5) and provides a meaning of ‘relevant authority’ (section 6).

(b) Part 2 – Fire and Rescue Services (10 Chapters): sets out the requirement for a Chief Officer to be appointed (section 6A); sets out the principal functions of relevant authorities (sections 7 to 10); sets out ancillary functions (sections 11 to 15); determines responsibilities for the supply of water for use by relevant authorities (sections 16 to 22); sets out the powers of employees of relevant authorities (sections 23 to 30); provides for reinforcement schemes (sections 31 and 32); provides for assistance other than from relevant authorities (sections 33); enables arrangements to be made for the carrying out of functions by others (sections 34 and 35); provides for the amendment of the Emergency Workers (Scotland) Act 2005 (section 35A); provides for the preparation of a fire and rescue framework for Scotland (sections 36 to 38); provides for Inspectors of relevant authorities (sections 39 and 40); provides for the supervision and support of fire and rescue authorities (sections 41 to 44); deals with employment by relevant authorities (sections 45 and 46); prohibits the employment of police (section 47) and provides an interpretation of Part 2 (section 48).

(c) Part 3 – Fire Safety (5 Chapters): consolidates and rationalises much of the existing fire safety legislation in respect of the duties of employers to their employees and in relation to premises (sections 49 and 50); sets out considerations about the taking of fire safety measures (section 51); the general duties of employees (section 52); sets out a power for the Scottish Ministers to make regulations in relation to risk assessments, fire safety and securing the safety of fire-fighters (sections 53, 54 and 54A); suspends fire safety duties in certain limited circumstances (section 55); determines the enforcing authorities and sets out the duties of the enforcing authorities (section 56); sets out the powers of enforcement officers (section 57); details the notice and appeals procedures (sections 58 to 62); establishes a duty not to charge employees for things done or provided (section 63) and sets out miscellaneous provisions in relation to civil liability for breach of statutory duty (section 64); disapplies the Health and Safety at Work etc. Act 1974 in respect of certain fire safety matters, while preserving the operation of Part I of that Act where an enforcing authority under that Part is also an enforcing authority under Part 3 (section 65); suspends the terms and conditions of licences dealing with matters under Part 3 (section 65A); creates offences related to Part 3 (sections 67 and 68); makes provision where the commission of an offence is due to the fault of another person (section 68A); makes provision on defences available to an employer (section 69); provides for service of documents (section 70); sets out Crown application (section 71); and addresses the interpretation of terms used in Part 3 (sections 72 and 73).

Part 3 is intended to continue the implementation of, and provide for implementation by subordinate legislation of, the provisions of 6 EU Directives on health and safety at work:

Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;

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 these provisions relate to matters within devolved competence, general fire safety measures to be taken by employers and in so far as more specific legislation does not make appropriate provision.

(d) Part 4 – Miscellaneous: details the provisions in relation to inquiries (sections 74 and 75); addresses the issue of pre-commencement consultation (section 76); enables payments in respect of advisory bodies (section 77); provides for the abolition of the Scottish Central Fire Brigades Advisory Council (section 78); sets out the offence that may be committed in relation to false alarms of fire (section 79); and sets out the power of relevant authorities to sell or dispose of land (section 79A).

(e) Part 5 – General: this part covers general provisions such as the making of orders and regulations and minor and consequential amendments and repeals. In particular it provides powers for the Scottish Ministers to make ancillary provision (section 80); makes provision for orders and regulations (section 81); addresses minor and consequential amendments and repeals (section 82); covers commencement for the Act (section 83); and the short title of the Act (section 84).

THE BILL – SECTION BY SECTION

PART 1 – FIRE AND RESCUE AUTHORITIES

Section 1 – Fire and rescue authorities

10. This section defines what is meant in the Bill by “fire and rescue authority”: the council for the local government area as constituted under section 2 of the Local Government etc. (Scotland) Act 1994 and if it extends into the sea, the low water mark shall constitute the seaward boundary.

Sections 2, 3, 4 and 5 – Joint fire and rescue boards

11. These provisions allow for the combining of fire and rescue authorities in an amalgamation scheme made by order by the Scottish Ministers on the grounds of improving efficiency, effectiveness and economy. Schemes will be subject to a power to vary or revoke
them by order. Any such scheme will constitute a joint board to carry out the functions of each authority for the combined area. Schedule 1 also relates to the powers of joint boards.

12. In all cases, the Scottish Ministers will be required to consult the existing fire authorities which will, or may be, affected and such other persons as Ministers consider appropriate. Similar schemes already exist under section 147 of the Local Government (Scotland) Act 1973. Section 5 provides that these schemes will continue to have effect despite the repeal of the Fire Services Act 1947 and section 147 of the Local Government (Scotland) Act 1973 and that they will be deemed to be section 2(1) schemes under this Bill. This section also makes provision for the transfer of property, rights, liabilities and staff from an existing board to a joint fire and rescue board constituted by a section 2(1) scheme. The orders under section 2(1) and 5(3) are subject to affirmative resolution of the Scottish Parliament.

Section 6 – Meaning of “relevant authority”

13. The term “relevant authority” is used throughout the Bill and is defined at section 6 as a fire and rescue authority as constituted under section 1 or a joint board constituted under an amalgamation scheme under section 2(1). “Relevant authority” is used throughout these Notes in the same way.

PART 2 – FIRE AND RESCUE SERVICES

Chapter A1 – Appointment of Chief Officer

Section 6A – Appointment of Chief Officer

14. This section provides for the appointment of a Chief Fire Officer who will be responsible to the relevant authority for the discharge of the authority’s functions by employees of the authority.

Chapter 1 – Principal fire and rescue functions

Section 7 – Fire safety

15. This provision places a statutory duty on relevant authorities to make provision for the purpose of promoting fire safety. At present, fire authorities undertake community fire safety initiatives. These take various forms, for example, schools education programmes, safety information advisory sessions for community groups and attendance at public events, fetes, etc. In some cases individual home fire safety advisory visits are undertaken and advice is given to homeowners on fire prevention issues. This work is currently carried out on a discretionary basis and the effect of section 7 is to make it a statutory duty.

Sections 8 and 9 – Fire-fighting and road traffic accidents

16. Section 8 re-enacts the existing statutory duty for a relevant authority to plan and provide arrangements for fighting fires and protecting life and property from fires within its area. A relevant authority is required to secure sufficient equipment etc. and training to discharge its duty in normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions; the latter
might include, for example, information about the nature and characteristics of buildings within the authority’s area or availability of, and access to, water supplies.

17. Section 9 places a duty on a relevant authority to make provision for rescuing persons from road traffic accidents and for dealing with the aftermath of such accidents. Historically, the risk of fire was the trigger for attendance at such an incident. Whilst advances in vehicle design have seen the incidence of fire following an accident decrease, calls to assist with the rescue of people from wreckage and protect them from harm from spillage of hazardous substances have increased dramatically. A relevant authority is required therefore to secure sufficient resources and training to discharge its duties in all normal circumstances. It must also put in place effective arrangements for receiving and responding to calls for help and for obtaining information to exercise its functions (for example, knowledge of local road and trunk road networks).

18. Under both sections 8 and 9 relevant authorities must seek to prevent or limit damage to property in exercising these statutory functions.

Section 10 – Conferral of functions in relation to other emergencies

19. This section allows the Scottish Ministers to confer on a relevant authority specified functions by order (an “additional function order”). This would relate to such matters as flooding, chemical spills and terrorist incidents.

20. The Scottish Ministers will also have the power, by additional function order, to direct relevant authorities as to how they should plan, equip for, and respond to such emergencies. This may include, for example, directions as to the deployments of mass decontamination equipment for civil resilience purposes. The intention is to ensure consistency of approach towards emergencies, particularly in response to terrorist incidents.

21. This section also allows the order to require an authority to respond to an emergency that has arisen outside its own area if, for example, it has more appropriate equipment and training than the authority in whose area the emergency has occurred.

22. The term “emergency” is defined for the purposes of this Bill, at section 48.

Chapter 2 – Ancillary functions

Section 11 – Emergency directions

23. Section 11 gives the Scottish Ministers power to direct relevant authorities to respond to a particular fire or emergency incident, either in its own area or in that of another authority. The Scottish Ministers will also be able to direct an authority not to take any action in the event of such an emergency if, for example, another authority is better equipped to do so.

Section 12 – Power to respond to other eventualities

24. This section provides relevant authorities with discretion to equip, and respond to, events beyond its core functions provided for at sections 7 to 10 and 56. Such an authority will be free
to act where it believes there is a risk to life or the environment. This would allow, for example, specialist activities such as rope rescue.

Section 13 – Provision of other services
25. Section 13 provides a relevant authority with the power to agree to the use of its equipment or personnel for any purpose it believes appropriate and wherever it so chooses. For example, an authority may agree to help pump a local pond as a service to its community.

Section 14 – Provision of centres for education and training
26. This section re-enacts provisions in the Fire Services Act 1947 that allow a relevant authority to establish training centres in respect of any function conferred under these provisions.

Section 15 – Charging
27. Section 15 allows the Scottish Ministers to set out by order, following consultation, the services for which a relevant authority may charge and the persons who may be subject to the charge. At present fire authorities have discretionary powers to charge for exercising certain functions. Relevant authorities will not be able to charge for activity in extinguishing fires, protecting property in the event of fires or protecting life, except in relation to fighting fires at sea (beyond the low water mark). In other words, where the circumstances of the incident are such that there is no duty on the fire authority under section 8 because the incident is outwith their area.

28. Subsection (4) maintains the existing arrangement that allows fire authorities to set their own level of charge, and to vary the charge depending on the type of service provided and the circumstances of a particular incident, or to choose not to charge at all.

29. Subsection (5) sets out that in setting the amount of any charge a relevant authority shall secure that the income from charging does not exceed the cost to the relevant authority for providing the service for which charges are levied when looked at over any particular financial year.

Chapter 3 – Water supply

Section 16 – Duty to secure water supply
30. This section re-enacts section 13 of the Fire Services Act 1947, requiring relevant authorities to take all reasonable measures to ensure an adequate supply of water and the purposes for which they should secure that supply.

Section 17 – Use of water
31. This section allows a relevant authority to use any suitable supply of water. Whilst it provides for payment of reasonable compensation for water this is limited by reference to section 9A of the Water (Scotland) Act 1980, which expressly forbids charging by a water undertaker in respect of: water taken for the purpose of extinguishing fires or for any other emergency purposes; water taken for testing apparatus used for extinguishing fires; or for fire fighting training. This section re-enacts section 15(2) of the Fire Services Act 1947.
**Section 18 – Agreements in relation to water supply**

32. This section re-enacts subsections 14(1) and (4) of the Fire Services Act 1947 and allows a relevant authority to enter into agreements with Scottish Water and persons other than Scottish Water in order to secure the use of water; to improve access to water; or to lay and maintain pipes and to carry out other works in connection with the use of water. Subsection (2) allows for any agreement to include terms for payment, other than for the purposes covered by section 9A of the Water (Scotland) Act 1980.

33. Subsection (3) places a requirement on Scottish Water not to unreasonably refuse to enter into an agreement in relation to water supply and subsection (4) provides that Scottish Ministers may determine whether any refusal by Scottish Water to enter into an agreement under this section is unreasonable.

**Section 19 – Emergency supply by Scottish Water**

34. This section re-enacts sections 30(4) and (4A) of the Fire Services Act 1947. Subsection (1) places an obligation on Scottish Water to take all necessary steps to increase supply and pressure of water if requested to do so by a relevant authority for the purposes in section 16(2). Subsection (2) allows Scottish Water to shut off water from the mains and pipes in any area to enable it to comply with a request to increase supply and water pressure. Subsection (3) safeguards the relevant authority, Scottish Water or any other person from any liability for anything done by Scottish Water in complying with its obligations. Subsection (4) make it an offence for Scottish Water, without reasonable excuse, to fail to take any steps which it is obliged to take and provides for a level 5 fine (currently £5,000) on summary conviction.

**Section 20 – Fire hydrants: provision etc.**

35. Subsection (1) re-enacts the first part of section 14(3)(a) of the Fire Services Act 1947 in respect of the requirement to provide fire hydrants. Access to the water supply is by connection to a fire hydrant. Hydrants may be fitted by Scottish Water at the request of a relevant authority. Subsection (2) requires Scottish Water to mark the location of every fire hydrant with a notice or distinguishing mark and under subsection (4) the costs of doing this can be charged to the relevant authority in whose area the hydrant is situated.

36. Subsection (5) grants the Scottish Ministers power to make regulations providing for uniformity in fire hydrants and the distinguishing marks and notices indicating their location. This re-enacts section 14(6) of the 1947 Act.

37. Subsection (6) provides that, in circumstances where a hydrant is damaged as a result of authorised use which was not for the purposes of fire fighting or other relevant authority purposes, the liability for the cost of repair or replacement will not fall on the relevant authority. This re-enacts section 14(3)(b) of the 1947 Act.

**Section 21 – Fire hydrants: offences**

38. This section makes it an offence for any person to use a fire hydrant provided by Scottish Water other than for fire fighting or any other purpose of a relevant authority, or other than for any purpose authorised by Scottish Water. It also makes it an offence to damage or obstruct a
fire hydrant provided by Scottish Water other than as a consequence of its use for fire fighting, for any other authority purpose or for any purpose other than one authorised by Scottish Water.

39. Under subsection (3) a person guilty of an offence under subsection (1) is liable on summary conviction to a level 5 fine. This re-enacts section 14(5) of the Fire Services Act 1947.

Section 22 – Notice of works affecting water supply and fire hydrants

40. This section re-enacts sections 16(1) to (3) of the Fire Services Act 1947 and requires any person who proposes to carry out any works for the purpose of supplying water to any part of the area of a relevant authority to give written notice to the authority under subsection (1). The notice period for doing so must be either 14 days in a case where proposed works are to be carried out under a requirement under any Act other than the Water (Scotland) Act 1980, or 6 weeks in any other case. A person proposing to carry out any works affecting a fire hydrant is required to give at least seven days notice in writing.

41. Under subsection (4), if it is not practicable for written notice to be given, the person is regarded as having given such notice if he gives it as soon as practicable. It is an offence under subsection (5), if, without reasonable excuse, a person fails to give notice as required. Under subsection (6) a person is liable on summary conviction to a maximum of a level 5 fine.

Chapter 4 – Powers of employees and constables

Section 23 – Powers of authorised employees in relation to emergencies

42. This section provides an authorised employee of a relevant authority with powers to deal with fires, road traffic accidents and other emergencies. It replaces section 30(1) of the Fire Services Act 1947 which was limited to dealing with extinguishing or preventing the spread of fires and recognises the wider range of duties of fire fighters, including the work which fire authorities do in responding to road traffic accidents.

Section 24 – Powers of constables in relation to fires

43. This section sets out the powers of constables in the event of fire breaking out and replicates powers that currently exist under the 1947 Act.

Section 25 – Powers of authorised employees in relation to obtaining information.

44. This section allows an authorised officer of a relevant authority to enter premises to obtain information that is needed for the discharge of the core functions of fire fighting (section 8), dealing with road traffic accidents (section 9) and specified emergencies (section 10). Such entry cannot be forcible and 24 hours notice must be given to the occupier of a private dwelling, unless authorised by a Sheriff or Justice of the Peace.

Section 26 – Giving of notices required by section 25

45. Section 26 provides for the means by which a notice under section 25 may be served.
Section 27 – Powers of authorised employees in relation to investigating fires

46. This section allows an authorised officer of a relevant authority to enter premises where a fire has occurred (including land and premises in which there is a vehicle in which there has been a fire (such as a garage)) in order to investigate the cause and progression of the fire that has occurred there, and grants that officer powers, including the power to take samples.

Section 28 – Exercise of powers under sections 25 and 27: securing of premises

47. Section 28 obliges an authorised employee of a relevant authority who has entered a place under section 25 or 27 to leave the premises as secure against unauthorised entry as the authorised employee found them.

Section 29 – Sections 25 and 27: offences

48. Section 29 makes failure (without reasonable excuse) to comply with any requirement under sections 25(4)(b) and 27(2)(g) an offence and a person may be liable on summary conviction to a maximum of a level 4 fine (currently £2500).

Section 30 – Use of commercially sensitive information

49. Section 30 replicates the 1947 Act provisions making it an offence for any person to make use or disclose any commercially sensitive information which they obtain in the course of exercising their powers under sections 23, 24, 25 or 27. A person is liable on summary conviction to a fine not exceeding level 4 or to 3 months’ imprisonment.

Chapter 5 – Mutual assistance etc.

Sections 31 and 32 – Reinforcement schemes and directions about reinforcement schemes

50. These sections re-enact the existing provisions of the Fire Services Act 1947 on reinforcement schemes and extend them to apply to road traffic accidents and other serious emergencies (as set out by additional function order under section 10). Section 31 obliges relevant authorities to group together (so far as practicable) to provide mutual assistance. If there are cases where such authorities are unable to come to an agreement about forming such a group then, at the request of one of the authorities concerned, section 32 gives the Scottish Ministers the power to direct authorities involved to make, vary or revoke such a scheme.

51. Before giving a direction, the Scottish Ministers will give all authorities concerned the opportunity to make representations to them and may also instruct an inquiry.

Section 33 – Assistance other than from relevant authorities

52. This section will extend existing powers in the Fire Services Act 1947 which allow fire authorities to enter into agreements with organisations that employ their own fire-fighters. For example, a relevant authority could arrange with an industrial company for their in-house fire-fighters to provide assistance to the authority outwith the company premises if requested and required. In addition, assistance may be provided by a non fire-fighter if approved by the Chief Officer. For example, a Chief Officer may approve a forestry worker to assist fire-fighters engaged in extinguishing a heathland fire. The cost of this assistance could be reimbursed.
These arrangements can also apply to any of the authority’s functions covered by sections 7 to 10 and sections 12 and 56.

53. The arrangements under this section cannot be between two relevant authorities as this type of relationship would be covered under sections 31 and 32.

Sections 34 and 35 – Arrangements for carrying out of functions by others

54. Section 34 extends existing powers in the Fire Services Act 1947 to provide relevant authorities with the ability to enter into contractual arrangements with others (including other authorities) to provide services in the execution of their functions (covered by sections 7 to 10, 12 and 56). An example would be an agreement where a relevant authority contracts with a local authority to promote fire safety within its schools. Another example would be where a relevant authority specialises in rope rescue and a neighbouring relevant authority contracts with it to provide some, or all, of its response to incidents requiring rope rescue.

55. However, a relevant authority can only delegate its fire-fighting functions to another authority or others that employ fire-fighters.

56. Section 35 re-enacts provisions in the Fire Services Act 1947 that provide the Scottish Ministers with the ability to require relevant authorities to enter into contractual arrangements under section 34 (or to vary or cancel any such arrangements). The Scottish Ministers can exercise the power on their own initiative, but the power must be exercised in the interests of economy, efficiency and effectiveness.

57. Before issuing a direction, the Scottish Ministers must give the relevant authorities concerned the opportunity to make representations to them and they may hold an inquiry.

Chapter 5A – Assaulting or impeding employees and others

Section 35A – Amendment of Emergency Workers (Scotland) Act 2005

58. This section makes it an offence under the Emergency Workers (Scotland) Act 2005 to assault, obstruct or hinder a person acting in the capacity of an employee of a relevant authority or someone providing assistance to them in carrying out functions under sections 8 to 12 (fire fighting, road traffic accidents, other emergencies, emergency directions and other eventualities) or exercising powers under sections 23 (powers of authorised employees in relation to emergencies), 25 (powers to obtain information) and 27 (powers in relation to investigating fires). The penalty for such an offence under the 2005 Act is, on summary conviction, imprisonment not exceeding 9 months or a fine not exceeding level 5 on the standard scale or both.

Section 35B – Assaulting or impeding employees discharging certain functions

59. Section 35B makes it an offence to assault, obstruct or hinder an employee of a relevant authority or an enforcing authority whilst carrying out their duties under sections 7 (fire safety), 16 (duty to secure water supply) and 56 (enforcing authorities). The offence is punishable on summary conviction with a period of imprisonment not exceeding 9 months or a fine not exceeding level 4 on the standard scale.
Chapter 6 – Central supervision and support

Section 36 – Framework document

60. This section requires the Scottish Ministers to consult on, and prepare, a Fire and Rescue Service National Framework (“the Framework”), keep the Framework under review and consult on any significant revisions made to it. The Framework (and any significant revision) will come into effect by order.

Section 37 – Adherence

61. This section requires relevant authorities to have regard to the Framework when carrying out their functions. The Scottish Ministers have the power to intervene if authorities fail to act in accordance with the Framework by setting out, by order, an obligation for an authority to act in accordance with the Framework where they consider that the authority is failing to do so. Before making such an order, the Scottish Ministers must consult the authority.

Section 38 – Reporting

62. This section requires the Scottish Ministers to report to the Parliament on the extent to which relevant authorities are acting in accordance with the Framework and any action they have taken to ensure the authorities do so.

Sections 39 and 40 – Inspectors of Fire and Rescue Authorities and functions of Inspectors of Fire and Rescue Authorities

63. Section 39 sets out the arrangements for appointing inspectors of relevant authorities.

64. Section 40 sets out the functions of the inspectors, including the submission of reports to the Scottish Ministers on matters arising under the Bill and on the general performance of relevant authorities. The Scottish Ministers are required to lay any report submitted on the state and efficiency of relevant authorities generally before Parliament.

Section 41 – Directions for public safety purposes

65. This section provides the Scottish Ministers with the power to give general directions (“a property and facilities order”) to relevant authorities as to the use and disposal of their property or facilities for the purposes of public safety. Such a direction may cover all kinds of property and facilities. An example of when this power might be used is during a period of industrial action when official relevant authority cover to deal with emergencies is insufficient to deal with local risks and, in order to ensure public safety, their equipment needs to be used by others providing emergency fire cover.

Section 42 – Requirements concerning equipment and services

66. This section confers on the Scottish Ministers the power (by order) to oblige relevant authorities to use and maintain equipment and services as specified. An example would be the new Firelink radio system where in order to ensure inter-operability between the emergency services, and to enable relevant authorities to work across their own boundaries in the event of an emergency, it is essential that all authorities use the same radio system.
Section 43 – Provision of equipment etc.

67. This section allows the Scottish Ministers to provide and maintain equipment, facilities, organisations and services which may be used by relevant authorities. This power must be exercised in the interests of economy, efficiency and effectiveness. For example, this section will give the Scottish Ministers the specific authority to provide equipment to deal with civil resilience incidents and standardised systems for radio communications. This will help to ensure consistency of approach in the case of major emergencies such as a terrorist incident.

Section 44 – Central institution and other centres for education and training

68. This section allows the Scottish Ministers to set up and maintain a central training institution for the purposes set out in subsection (2). Some training which is best suited to local delivery may be undertaken by relevant authorities under powers in section 14 and the Scottish Ministers may make arrangements with relevant authorities for central training (for the purposes set out in subsection (2)) to be delivered at local centres.

Chapter 7 – Employment

Section 45 – Statutory negotiation arrangements

69. This section provides the Scottish Ministers with power to establish negotiating machinery for the fire and rescue services. The power allows the Scottish Ministers to determine the number, composition and chair of such a negotiating body or bodies.

70. Subsection (2) requires that any such body include representatives of employers and employees (which may include a trade union), and an independent chair.

71. Should any negotiating body be set up under these powers, subsection (7) would prevent the body being undermined by negotiations being held in another forum. Subsections (4), (5) and (6), however, would allow the statutory body to make arrangements for some conditions of service to be negotiated locally either in their entirety or within nationally agreed parameters.

Section 46 – Guidance

72. Any negotiating body, whether established voluntarily or under section 45, is required by this section to have regard to any guidance given by the Scottish Ministers in connection with the negotiation of conditions of service.

Section 47 – Prohibition on employment of police

73. This section re-enacts section 32 of the Fire Services Act 1947 and provides that a relevant authority may not employ a police constable as a firefighter. If an off-duty constable was employed by a relevant authority, for example as a firefighter on the retained duty system and available for response by pager call, difficulties may arise at the scene of a fire or other emergency due to confusion over which employer has the primary claim on the constable’s services.
Chapter 8 – Interpretation

Section 48 – Interpretation of Part 2

74. This section gives meanings to three terms used in Part 2 of the Bill – in particular it provides a definition of ‘emergency’, for the purposes of this Part.

PART 3 – FIRE SAFETY

Chapter 1 – Fire safety duties

Section 49 – Duties of employers to employees

75. Section 49 provides that employers have a general duty to ensure so far as is reasonably practicable the safety of their employees in respect of harm caused by fire in the workplace. The formulation of this duty is very similar to that in section 2 of the Health and Safety at Work Act etc. 1974 (c.37) (“the 1974 Act”). In that context the words have been considered by the Court of Appeal in Edwards v NCB [1949] 1 All ER 743, where they held that it is a narrower term than “physically possible” and implies that a computation must be made in which the quantum of risk is placed in one scale and the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk is placed in the other. If it can be shown that there is a gross disproportion between them, the risk being insufficient in relation to the sacrifice, the person on whom the burden is placed discharges the burden of providing that compliance was not reasonably practicable. This interpretation has been consistently applied by the courts in subsequent decisions.

76. Subsection (2) sets out specific employer duties in relation to carrying out a risk assessment to identify fire safety risks, and taking the necessary fire safety measures to ensure that they comply with their general duty under subsection (1). The obligations apply whether or not the requirements relate to matters within their control. There is therefore a difference between this duty and that found in section 50, where persons who have control of premises to a certain extent, have a duty to the same extent. This reflects the high standard which is expected of employers in domestic and European legislation.

77. Fire safety measures are defined in schedule 2. Paragraph 2 of schedule 2 makes it clear that these measures do not include process fire precautions which are a reserved matter under Section H2 of Schedule 5 to the Scotland Act 1998. The term “process fire precautions” is not defined anywhere in statute but is widely used and understood as being distinct from general fire safety. Essentially, “process fire precautions”, which include risk assessment, are 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. This is to be distinguished from “general fire precautions” which relate to the means of fire warning, fire fighting and escape, thereby dealing with the means to ensure people can escape safely once a fire has started.

78. Subsection (3) imposes a duty on the employer to review the risk assessment in accordance with regulations and to take the necessary fire safety measures to ensure compliance with the general duty under subsection (1).
Section 50 – Duties in relation to relevant premises

79. Section 50 provides that, in cases where a person has control of premises, they must carry out a risk assessment to identify fire safety risks to relevant persons in respect of harm caused by fire on the relevant premises. There is a definition of “relevant premises” in section 72. The person in control of the relevant premises would include the employer (where there is one), a person in control of the premises in connection with the carrying on of a trade, business or other undertaking, or the owner. For example, a shopkeeper who is a sole trader with no employees carrying out a business in leased premises would have duties under section 50 on the basis that they have control of the premises to an extent. In this example, the owner of the premises may also have section 50 duties. Other people, such as landlords or contractors who take responsibility for installation and maintenance of fire precautions or fire safety measures may be in a position to exercise varying degrees of control over premises and they may bear a relevant degree of responsibility under section 50.

80. The term “relevant person” is defined in section 73 and means persons who are or may be lawfully on the premises and persons in, or who may be in, the immediate vicinity of the premises whose safety would be at risk in respect of harm caused by fire in the premises. Employees of fire and rescue authorities and joint boards are excluded from the definition when they are carrying out specified operational tasks. Where the person subject to the duty in section 50 is an employer their employees are excluded because they are already protected by the section 49 employer/employee duty. Following the risk assessment the obligation is to take such fire safety measures as would be reasonable for a person in that position to take to ensure the safety of relevant persons, bearing in mind all the circumstances. Where the person in control of the premises is not the owner or a person carrying on an undertaking then the owner is also subject to the subsection (2) duties.

81. Subsection (4) imposes the subsection (2) duties on persons who have obligations under contracts or tenancies in relation to maintenance or repair or in relation to fire safety. The subsection (2) duty is imposed but only to the extent that those persons have such obligations. This would include e.g. contractors who take responsibility for installation and maintenance in relation to fire alarms.

82. Subsection (5) imposes an obligation on the persons subject to the subsection (2)(a) duty to review their risk assessment in line with the regulations made under section 53 and to take measures to ensure safety in line with their subsection (2)(b) duty.

Section 51 – Taking of measures under section 49 or 50: considerations

83. Section 51 details the considerations of which a person taking fire safety measures under section 49 or 50 should take account. These considerations include avoiding risks, adapting to technical progress and the development of a comprehensive policy on fire prevention. The measures set out in the Bill correspond with those set out in article 6(2) of the Framework Directive.

Section 52 – Duties of employees

84. This section places a duty on employees while at work to take, in respect of fire safety, reasonable care of themselves and others in or around the workplace who may be affected by their acts or omissions (namely, other relevant persons). Employees must also co-operate with
their employer so far as is necessary to enable the employer to meet their obligations and duties under the Bill.

Sections 53 and 54 – Risk assessments: power to make regulations and Scottish Ministers’ power to make regulations about fire safety

85. These sections provide the Scottish Ministers with the necessary powers to make regulations in connection with the carrying out of risk assessments, including their review, and to make regulations in connection with fire safety in premises to which Part 3 applies.

86. It is intended that regulations will cover – among other things - duties to record fire safety arrangements in particular circumstances, duties not to employ certain types of employee before assessments are made which take into account factors relevant to, for example, young employees the need to equip premises with fire-fighting equipment and fire detection equipment, requirements to provide safe routes to emergency exits, the standards required of such emergency exits, the need to establish appropriate safety procedures and the provision of information in connection with risks and fire safety measures in particular premises.

Section 54A – Power to make further provision for protection of fire-fighters

87. This provision enables Scottish Ministers to apply provisions in regulations concerning maintenance requirements in respect of measures provided for the protection of fire-fighters (e.g. rising mains), to the common areas of private dwellings.

Section 55 – Special case: temporary suspension of Chapter 1 duties

88. This section provides that in circumstances where the carrying out of the duties imposed by sections 49 to 52 and regulations under sections 53 and 54 (defined in section 73 as the “Chapter 1 duties”) would prevent a member of the armed forces of the Crown, a visiting force, a police constable or any other person of a description prescribed in regulations from carrying out their operational duties (as defined in subsection (4)), that there is a special case for temporarily suspending the Chapter 1 duties during that period. Subsection (3) provides that in these circumstances the person who has had their duties temporarily suspended must still ensure so far as is possible the safety of relevant persons in respect of harm caused by fire.

Chapter 2 – Enforcement

Section 56 – Enforcing authorities

89. This section imposes an obligation on enforcing authorities to enforce the Chapter 1 duties. In most cases the enforcing authorities will be the fire and rescue authority or joint board. However it is recognised that there are some special areas where it is more appropriate for another authority to enforce. The other enforcing authorities are: the local authority for major sports grounds, and the Chief Inspector of Fire and Rescue Authorities for Scotland – for Crown owned or occupied premises generally and for the United Kingdom Atomic Energy Authority premises.

90. Subsection (2) requires enforcing authorities to have regard to any guidance issued by the Scottish Ministers when carrying out their duties. Subsection (3) gives enforcing authorities the power to appoint “enforcement officers”. The Chief Inspector of Fire and Rescue Authorities
can appoint as an enforcement officer a person who has been appointed as an enforcement officer by a relevant authority, subject to the consent of that relevant authority and subject to the appointment being made in writing. Subsection (6) defines an “enforcing authority” for different types of premises, and subsection (7) enables the amendment of subsection (6) by regulations.

**Section 57 – Powers of enforcement officers**

91. Section 57 sets out the powers of enforcement officers in relation to the carrying out of the enforcing authorities’ duties. Subsection (3) provides that an enforcement officer must produce evidence of their authority to exercise these powers, if required to do so.

92. These powers include a power of entry and powers to take possession of, or samples of, articles found in the premises. Subsection (2)(c) requires persons on the premises to provide the enforcement officer with information, documents or other assistance etc. Subsection (6) requires the enforcement officer to undertake any activities mentioned in subsection (2)(d) or (e) in the presence of any person with Chapter 1 duties in relation to the relevant premises, if requested. Subsection (4) obliges an enforcement officer exercising the power under subsection (2)(f) to take samples to leave a notice at the premises. Similarly, subsection (6A) requires an enforcement officer exercising their power under subsection (2)(h) to leave a notice at the relevant premises indicating what has been removed and by whom.

93. Subsection (7) requires enforcement officers, in circumstances where they have exercised their powers of entry, to leave the premises as secure as found.

**Section 58 – Prohibition notices**

94. Where the use of relevant premises involves or will involve a risk to relevant persons so serious that their use ought to be prohibited or restricted, an enforcing authority may prohibit or restrict their use until such time as the matters giving rise to the risk have been remedied. This is done by the issuing of a prohibition notice. The process is similar to provisions that appeared in section 10 of the Fire Precautions Act 1971 (c.40). Under section 61 there is an appeal against the service of a prohibition notice to the Sheriff Court. The sheriff can make an order suspending the operation of the prohibition notice pending the determination of the appeal. Subsection (8) provides for the withdrawal in writing of a prohibition notice by the enforcing authority.

**Section 59 – Enforcement notices**

95. This section provides for the issue of an enforcement notice by the enforcing authority in cases where there is non-compliance with the Chapter 1 duties (except the employee’s duty of co-operation in section 52). The provisions are similar to equivalent provisions in section 20 of the Health and Safety at Work etc. Act 1974 (c.37) and provisions that appeared in the Fire Precautions (Workplace) Regulations 1997/1840. An enforcement notice sets out what duties have not been complied with, the reason why it is considered that the duty has not been complied with and what action should be taken to remedy the position.

96. Where an enforcement notice requires the making of alterations to premises, the enforcing authority must consult other bodies that have enforcement or approval responsibilities in respect of the premises prior to the issue of the notice, to ensure that measures required are appropriate in the light of other restrictions that may apply to the premises. Failure to comply
with the consultation requirement does not affect the validity of the notice. Subsection (7) provides for the withdrawal in writing of an enforcement notice by the enforcing authority. Under section 61 it is possible to appeal against the service of an enforcement notice in the Sheriff Court. The bringing of the appeal has the effect of suspending the notice whilst the appeal is ongoing.

Section 60 – Alterations notices

97. Where premises pose a serious risk to relevant persons, or could pose a serious risk to relevant persons in respect of harm caused by fire if changes were made to the premises, the enforcing authority can issue an alterations notice, the effect of which is to require the “appropriate person” (that is, the person subject to requirements in respect of the premises in terms of section 49 or 50) to notify the enforcing authority of their intentions prior to making any specified changes. The alterations notice advises the recipient that where they intend to make changes of a type falling within subsection (5), and where the change or changes would constitute a serious risk to relevant persons in respect of harm caused by fire, they must notify the enforcing authority of the changes they intend to make. This enables the enforcing authority to be alerted to any potential problems and allows an intervention before changes are made which significantly increase the risk.

98. The issue of an alterations notice does not preclude the appropriate person from undertaking the changes proposed. However, it requires them to notify the enforcing authority in advance of the change or changes being made. Subsection (6) provides for the withdrawal in writing of an alterations notice by the enforcing authority.

Section 61 – Appeals

99. The rights of individuals are protected in relation to the service of prohibition notices, enforcement notices and alterations notices by rights of appeal and this section provides for a right of appeal to the Sheriff Court.

Section 62 – Determination of disputes

100. This section provides a right to seek a determination where the enforcing authority considers that there has been a failure to comply with the Chapter 1 duties but there is a difference of opinion on the action that requires to be taken to rectify this. The person alleged to have failed to comply with the Chapter 1 duties and the enforcing authority must jointly agree to seek such a determination. The matter will be referred either to Her Majesty’s Chief Inspector of Fire and Rescue Authorities but, if the enforcing authority is the Chief Inspector, the matter will be referred to Scottish Ministers. The determination might avoid the need to go before the courts on appeal against an enforcement notice when the matter to be considered is purely technical—for example where the disagreement concerns the standard of fire alarm which is appropriate in the circumstances of the case.

101. Where a determination has been made, an enforcing authority may not issue an enforcement notice which conflicts with the determination. However, this provision will not apply in circumstances where a change has been made in relation to the premises or their use which significantly increases the risk posed to relevant persons.
Chapter 3 – Miscellaneous

102. This chapter deals with a number of miscellaneous issues.

103. Section 63 imposes a prohibition on charging employees in respect of anything an employer may do in pursuance of their Chapter 1 duties. This reflects the requirements of article 6(5) of the Framework Directive.

104. Section 64 prevents civil proceedings being pursued in respect of failures to comply with the Chapter 1 duties. The exclusion does not, however, apply in relation to a breach of Chapter 1 duties by an employer that causes damage to an employee. This reflects Article 4 of the Framework Directive which requires that an effective legal remedy is available to employees for breach by their employer of the obligations imposed by the Directive and thereby ensures its effective implementation.

105. Section 65 ensures that Part I of the Health and Safety at Work etc. Act 1974 (c.37) (the “1974 Act”), and regulations made under that Part, do not apply in relation to devolved fire safety matters except where the enforcing authority is also an enforcing authority under Part I of the 1974 Act. At present, the 1974 Act and the regulations made under it are capable of making provision for certain matters of general fire safety that are to be dealt with in the Bill. It is therefore appropriate to disapply the 1974 Act in the context of creating a new devolved fire safety code.

Section 65A – Suspension of terms and conditions of licences dealing with the same matters as this Part

106. This section ensures that fire safety matters are dealt with under Part 3 (and related regulations) and not in licensing, certification or registration provisions in other enactments.

Chapter 4 – Offences

Sections 67 and 68 – Offences and offences by bodies corporate and partnerships

107. These sections set out the offences and associated penalties in respect of the provisions contained in Part 3. The most serious offences under Part 3 are subject to a maximum penalty on summary conviction of either a fine not exceeding £20,000 or on conviction on indictment to imprisonment not exceeding 2 years or to a fine, or to both. In other cases on summary conviction the statutory maximum applies (currently £5,000) and on conviction on indictment the penalty is a fine. Other less serious offences are subject to lesser maximum penalties. The offences of failing to comply with the duties under sections 49 to 52 and any requirement or prohibition under regulations apply only where the failure puts a relevant person at risk of death, or serious injury, in respect of harm caused by fire. The offence would therefore only be committed where serious consequences might result. More minor contraventions might be dealt with either through informal advice or through the service of an enforcement notice (failure to comply with such a notice being an offence under section 67(4)(e)(i)). In relation to the offence under subsection (1) in respect of a failure to comply with the duty in section 49 of the Bill (duty to ensure fire safety of employees so far as is reasonably practicable), subsection (10) provides that the onus of showing that it was not reasonably practicable to comply with the duty is on the accused. This is similar to the offence in section 40 of the Health and Safety at Work etc. Act 1974, relating to the employer’s duty in section 2 of the 1974 Act to ensure the safety of
employees at work so far as is reasonably practicable. The reverse legal burden of proof provided by section 40 of the 1974 Act was considered by the Court of Appeal in *R v Davies [2002] All ER (d) (Dec)* and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate.

108. The reverse burden of proof may also be applied in cases specified in regulations, concerning the breach of duties to fulfil requirements so far as is practicable, or so far as is reasonably practicable.

109. Subsection (9) provides for a defence of due diligence except in relation to the employer’s duties under section 49. Again, the exclusion of the employer from this defence reflects the high standards required of employers under the relevant European legislation. Subsection (9A) enables Scottish Ministers, by regulations, to specify further cases in which the due diligence defence would not apply.

Section 68A – Offence due to fault of other person

110. This section enables the prosecution under Part 3 of a third party whose act or default has resulted in an offence being committed under Part 3 by a person with fire safety duties under that Part. This is a similar provision to that which appeared in section 24 of the Fire Precautions Act 1971.

Section 69 – Employee’s act or omission not to afford employer defence

111. This section ensures that the acts or omissions of employees, or other persons specified in regulations, will not afford the employer a defence in relation to proceedings for any offence.

Chapter 5 – General

Section 70 – Service of documents

112. This section sets out the methods by which documents issued under Part 3 may be served and subsection (6) further provides that the Scottish Ministers may make regulations as to the procedures to be followed in relation to the service of documents.

Section 71 – Crown application

113. This section provides that Part 3 of the Bill and any regulations made under it shall bind the Crown. Subsection (2) ensures that instead of making the Crown criminally liable for any contravention, the Court of Session may declare unlawful any act or omission of the Crown which constitutes a contravention. The powers of entry cannot be exercised in relation to Crown premises.

Section 72 – Meaning of “relevant premises”

114. This defines the meaning of relevant premises for the purposes of Part 3. The Bill applies to most non-domestic premises used or operated by employers, the self-employed and the voluntary sector. It also applies under subsection (3B) to houses licensed under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 S.S.I. 2000/177) (as amended), such as hostels. Other types of premises to which Part 3 applies
are listed in subsection (3B). These include premises used for the provision of a care home service, those used for the provision of a school care accommodation service, and those used for the provision of an independent health care service.

115. Types of premises which are not affected by Part 3 are offshore installations, certain means of transport, boreholes and fields, woods and agricultural land. There are special considerations associated with these areas and consequently separate safety regimes shall continue for the areas.

116. In addition, ships and hovercraft and mines are excluded from the definition. Fire safety on these premises is a reserved matter by virtue of Section H2 of Schedule 5 to the Scotland Act 1998 (as amended). Various defence premises are also excluded from the definition of “relevant premises” under subsections (2)(e) to (g) in consequence of the reservation of defence in Part I, paragraph 9 of Schedule 5 to the Scotland Act 1998, since fire safety on defence premises is regarded as being directly linked to the defence reservation and is regarded as having a direct impact on defence functions.

117. Under subsections (6) and (7), Scottish Ministers have power by regulations to modify the definition of “relevant premises” to which Part 3 applies, and to modify the application of Part 3 to relevant premises when the subsection (6) power is exercised.

PART 4 – MISCELLANEOUS

Sections 74 and 75 – Inquiries and inquiries: supplementary

118. These sections re-enact section 33 of the Fire Services Act 1947, in an amended form. The Scottish Ministers will be able to hold a public inquiry into the performance of a relevant authority or its handling of a particular incident. Section 75 provides that the Scottish Ministers may make regulations about inquiry procedure under the Bill.

Section 76 – Pre-commencement consultation

119. Section 76 sets out that where consultation is required under a provision in the Bill and before that provision comes into force consultation takes place, any such consultation will count as consultation required by and to the extent set out under that provision. In effect this will allow consultation prior to Royal Assent to be treated as consultation under the relevant provision. An example where this may be the case is preparation of the Framework Document.

Section 77 – Payments in respect of advisory bodies

120. Section 77 gives the Scottish Ministers powers to pay the expenses of any body established for the purpose of offering them advice on matters in relation to which provision is made under the Bill.

Section 78 – Abolition of Scottish Central Fire Brigades Advisory Council

121. Section 78 abolishes the Scottish Central Fire Brigades Advisory Council which was established for Scotland under section 36(18) of the Fire Services Act 1947 to provide general
advice to the Scottish Ministers on matters relating to the operation of that Act. The Council also served as statutory consultee prior to the exercise by the Scottish Ministers of certain of their regulation making powers under the 1947 Act. Where such regulation making powers are re-enacted elsewhere in the Bill the Scottish Ministers will consult any such persons as they consider appropriate.

**Section 79 – False alarms**

122. Section 79 supersedes section 31 of the Fire Services Act 1947. It provides that a person who knowingly gives or causes someone else to give a false alarm of fire to a person acting on behalf of a relevant authority is liable to a level 5 fine, prison sentence not exceeding 3 months or both.

**Section 79A – Disposal of land**

123. This section provides relevant authorities with powers to sell or dispose of land which it no longer requires. It re-enacts section 36(20) of the Fire Services Act 1947.
Delegated powers scrutiny: The Committee agreed to raise points with the Executive on the delegated powers provisions in the following Bill—

Fire (Scotland) Bill as amended at Stage 2

and to lodge amendments reflecting its concerns for consideration at Stage 3.
Fire (Scotland) Bill: as amended at stage 2

The Convener: Item 6 is on the Fire (Scotland) Bill as amended at stage 2. Section 2(1) deals with schemes to constitute joint fire and rescue boards. During a stage 1 evidence session, the Deputy Minister for Justice gave assurances that the power would be amended so that it would be subject to the affirmative procedure in order to ensure a greater level of parliamentary scrutiny. Are we content with the situation now?

Members indicated agreement.

Gordon Jackson: If we were not content, what could we do? There are no meetings of Parliament or committees next week and stage 3 is to be held on Wednesday afternoon of the following week—the bill goes to stage 3 almost right away.

The Convener: The next opportunity to deal with the matter would be the stage 3 debate.

Gordon Jackson: I have a reason for knowing when the stage 3 debate will be held—it will be held on the first afternoon that we are back and we are on holiday after tomorrow. What mechanism
could we use to intimate that we do not like something? There would be no point in going back to the lead committee, because it will not meet again before stage 3.

**The Convener:** There will be a report to the Parliament.

**Gordon Jackson:** So if we have any issues we would need to raise them during the stage 3 debate.

**The Convener:** Yes. We did that once before.

**Gordon Jackson:** How would we do that? The stage 2 amendments would not be discussed at stage 3. I am trying to understand how, if we are not entirely happy with something after stage 2—and given that the amendments will not be lodged again at stage 3—we could get the issue into the domain of argument.

**The Convener:** We would have to tap into the timetable for lodging amendments at stage 3.

**Mr Maxwell:** We would need to lodge an amendment.

**Gordon Jackson:** If, as a committee, we did not like something—I am not saying that that is the case on this occasion—the mechanism to address the issue would be to lodge an amendment at stage 3.

**The Convener:** If we wanted to do something, we would either have to do it today or members could delegate the matter to me and we would put the proposal forward as an amendment. Alternatively, any member could lodge an amendment individually.

**Mr Maxwell:** We did that once before.

**The Convener:** Yes. That is what we did previously. I recall that there was a very tight timescale.

As we are agreed on that matter, we will move on to section 5(3), which deals with the power to transfer staff, property rights or liabilities to a joint fire board. Section 5 was amended at stage 2 to insert a new transitional provision, which gives ministers the power by order to transfer the property rights, liabilities or staff of existing joint fire boards made under existing administration schemes to the joint fire and rescue boards made under section 2(1) of the bill. Are we content with the changes that have been made?

**Members indicated agreement.**

**The Convener:** Section 53(2)(f), which provided a power for Scottish ministers to specify intervals at which reviews must be carried out, has been deleted.

Section 54(2)(l), which provided a power to create criminal offences and specify rules on the burden of proof in relation to such offences, was also removed from the bill at stage 2.

Section 54A, on the power to make further provision for the protection of firefighters, allows Scottish ministers to apply such provision to common areas of private dwellings, where such equipment is often located. It is a new section, which extends the power that is exercisable under section 54(1). Are we content with the changes?

**Members indicated agreement.**

**The Convener:** Section 55, which is on “special case: temporary suspension of Chapter 1 duties” has been amended to confer a power on Scottish ministers to prescribe by regulations further categories of persons who may cause temporary suspension of fire duties. Are members happy with that?

**Gordon Jackson:** There is an issue about whether the affirmative procedure would be more appropriate.

**The Convener:** It was considered that a regulation-making power would be helpful to enable the persons who are covered by the section to be added. Our legal advice is that it is possibly all right as a negative instrument, but is the procedure acceptable?

**Murray Tosh:** I am inclined to agree with Gordon Jackson about going for the affirmative procedure.

**The Convener:** You think that annulment does not provide the right level of scrutiny.

**Gordon Jackson:** That is what the committee would say if it was considering the matter at stage 1. I do not know whether the matter is worth dying in a ditch for at so late a stage. There is no doubt that our normal response would be to say to the Executive, “Hey guys, why don’t you make this affirmative?” The question is whether it is worth an amendment at stage 3.

**The Convener:** We could make one last—

**Gordon Jackson:** Request.

**The Convener:** If we make a request to the Executive, it might consider the matter.

**Gordon Jackson:** We would normally ask for that.

**The Convener:** Yes. We will ask the Executive again whether it will consider using the affirmative procedure.

Section 56 is on enforcing authorities. A new power has been added at section 56(7) to enable

13:15

**The Convener:** Section 53(2)(f), which provided a power for Scottish ministers to specify intervals at which reviews must be carried out, has been deleted.
Scottish ministers by regulation to modify section 56(6). Our legal advice is that that is okay.

Members indicated agreement.

The Convener: Section 67 is on offences. A number of changes were made at stage 2 to modify and extend the delegated powers. The issue is either that the power needs to be redrafted because it is too wide, or that it ought to be subject to the affirmative procedure.

Gordon Jackson: This is an example of the point that I raised. In such cases, we would normally ask for clarification and the matter would be sorted out between the committee and the Executive. The problem arises because it is so late.

The Convener: Our response depends on how strongly the committee feels about the matter. We can write a letter to say that we are concerned about it, or we can go for some form of amendment.

Murray Tosh: We should do the former.

Gordon Jackson: I am inclined to flag up the matter.

The Convener: The report will state that we are concerned about the matter and that we raised the issue of a possible amendment. I do not know whether we can do much more than that.

Mr Maxwell: Have we agreed that that we will write to the Executive about subsections (11) and (12)?

The Convener: Yes.

Mr Maxwell: I accept that we will not get a response in time, but it would still be worth while for us to write to the Executive. What is the deadline for the Executive to lodge an amendment?

The Convener: The deadline is 10 February.

Murray Tosh: So we will fax that one, will we?

The Convener: Perhaps we should say quickly to the Executive that we still have concerns not only about section 67, but about section 55, as we will not have our report ready. We will flag up those two sections. Obviously, there is more to do on section 67 and there is the possibility of an amendment.

Mr Maxwell: Can we also say that the power ought to be subject to the affirmative procedure? We would probably agree that that is more appropriate, as a fairly wide Henry VIII power is involved. There are a number of wide powers in the bill, but that could be mentioned.

The Convener: Yes. The provision is either too widely drafted and needs redrafting or, if it is to stay as it is, the affirmative procedure needs to be used. Are members agreed?

Members indicated agreement.

The Convener: Is section 69(b) okay?

Members indicated agreement.

The Convener: Sections 72(6) and 72(7) are on the meaning of "relevant premises". The Executive honoured its undertaking to lodge an appropriate amendment at stage 2, but I wonder whether subsection (7) also merits the affirmative procedure.

Murray Tosh: We can link that to the other two issues that will be raised with the Executive and ask the Executive to lodge the necessary amendments by 10 February.

Gordon Jackson: In such situations, I suppose that there is nothing to stop us lodging our own amendments and asking the Executive to agree to them. Of course, we can always withdraw them. It sounds a bit cynical to say that we will withdraw our amendments if we are given a good answer, but the position will be covered by our lodging amendments. Is that too circular?

The Convener: That is up to the committee.

Gordon Jackson: The Executive could say, "Well, you're probably quite right, but we left it a bit late and we cannae get them in now." Amendments could be lodged for the Executive, as it were. It could be decided later whether to insist on them.

Murray Tosh: I assume that we could do that in relation to the affirmative rather than the negative procedure, but I do not think that we should try to disentangle subsections (11) and (12).

Gordon Jackson: I do not mean that. If we think that there should be changes in respect of the affirmative procedure, there is nothing to stop us lodging an amendment. The Executive cannot then come back and say that it did not have time to lodge an amendment. We could say that we have an amendment that we prepared earlier. We could give the Executive a "Blue Peter" amendment. That is just a thought.

The Convener: If the committee agrees, we are saying that we want to lodge an amendment to three different parts of the bill so that the affirmative procedure will be used.

Gordon Jackson: By the time of our next meeting, which will be the day before stage 3, we could consider the Executive response and decide whether we will insist on the amendments.

The Convener: Absolutely. In fact, we will make that point when we write to the Executive. We will also do so when we write our report.
Gordon Jackson: We will visit the matter again the day before stage 3, but that covers it.

The Convener: Absolutely. Are members agreed?

Members indicated agreement.
Present:
Mr Adam Ingram          Gordon Jackson (Deputy Convener)
Mr Stewart Maxwell      Murray Tosh

Apologies were received from Dr Sylvia Jackson, Christine May and Mike Pringle.

**Delegated powers scrutiny:** The Committee considered correspondence from the Executive in relation to the following Bill—

the Fire (Scotland) Bill as amended at Stage 2

and agreed not to move its lodged amendment at Stage 3.
Delegated Powers Scrutiny

Fire (Scotland) Bill: as amended at stage 2

The Deputy Convener (Gordon Jackson): Welcome to the sixth meeting in 2005 of the Subordinate Legislation Committee. Sylvia Jackson is not well. Mike Pringle is in Africa, no doubt for some legitimate reason.

The first item on the agenda is the Fire (Scotland) Bill, as amended at stage 2. Members are well aware of the action that we took on the bill. The bottom line is that the Executive has agreed to lodge stage 3 amendments—indeed, the best way of putting it is to say that the Executive has agreed to do more than we asked it to do. There is no doubt that we did things in what has proved to be the right way. Are members content that, as the Executive has addressed our concerns, we should not move the committee amendment at stage 3? It seems fairly obvious that that was our tactic.

Members indicated agreement.

The Deputy Convener: We are required to report on the bill as amended at stage 2. The timescales demand that the report is issued for publication tonight so that it is published tomorrow, in advance of the stage 3 debate. Members will receive a copy of the draft report this afternoon. I expect that they will pore over it in word-by-word detail. I ask members to let the clerk know of any concerns that they might have.

Members have also received copies of the correspondence from the Executive about further subordinate legislation amendments at stage 3. Do members have any comments on the correspondence?

Murray Tosh (West of Scotland) (Con): It all seems to be in order.
Subordinate Legislation Committee

7th Report, 2005 (Session 2)

Fire (Scotland) Bill as amended at Stage 2
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

   (a) any-

      (i) subordinate legislation laid before the Parliament;

      (ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

   and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

   (c) general questions relating to powers to make subordinate legislation; and

   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

   *(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Stewart Maxwell
Christine May
Mike Pringle
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Assistant Clerk
 Bruce Adamson

Support Manager
Catherine Fergusson
The Committee reports to the Justice 2 Committee as follows—

Introduction

1. At its meetings on 8 and 22 February 2005, the Committee considered the inserted or substantially amended delegated powers provisions in the Fire (Scotland) Bill as amended at stage 2. The Committee reports to the Parliament on these provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided a subordinate legislation memorandum to the Committee, which is published at Annex A to this report. Correspondence received in response to points raised by the Committee is published at Annex B.

Delegated Powers: issues raised by the Committee

3. Of the delegated powers provisions amended or inserted at Stage 2, the Committee had concerns in relation to those at sections 55, 67 and 72(7). The Committee wrote to the Executive but, due to the short timescales, in addition agreed to lodge an amendment to the effect that all three provisions highlighted should be subject to affirmative procedure. The Executive has subsequently responded to the Committee by lodging appropriate amendments at stage 3, which the Committee welcomes. The Committee’s concerns and the related responses received from the Executive are set out below.

Section 55: Special case: temporary suspension of Chapter 1 duties

4. The purpose of section 55 is to ensure that fire safety duties imposed in Part 3 and in regulations made under Part 3 are not a barrier to the military and emergency services responding to operational incidents. Accordingly, it provides that where the application of the Chapter 1 duties would prevent a listed person from carrying out their duties, the Chapter 1 duty in question would not apply for
the requisite period. Section 55 has been amended to confer a power on Scottish Ministers to prescribe by regulations further categories of persons who may cause temporary suspension of fire duties.

5. This section was amended at stage 2 to make it clearer that the emergency service personnel listed require to be undertaking “operational duties”, as defined, before the suspension would be triggered.

6. A stage 2 amendment also removed the reference to a “member of a police force” on the basis that the meaning of “member of a police force” has arguably become broader through its use in other legislation. The amendment makes it clear that section 55(2) applies only to constables and not for example to control room operators.

7. The Committee considered that this power should be subject to affirmative procedure and lodged an amendment to that effect. The Executive has subsequently accepted that, as suggested by the Committee, this power should be subject to affirmative procedure and has lodged an appropriate amendment to section 81.

8. The Committee is content that the drafting of the Executive’s amendment addresses its concerns.

Section 67: Offences

9. The Committee noted that section 67(9A) is a Henry VIII power in that it allows the Scottish Ministers to make regulations that would amend the primary legislation to disapply section 67(9). This provision allows Scottish Ministers to make regulations specifying cases where the due diligence defence would not apply. The Committee accepted that it is necessary to disapply the due diligence defence in some cases in order to achieve the policy intention of holding employers to the higher standard in those cases. The Committee noted that the higher standard is achieved in section 67(11), by placing the onus on the accused to show that it was not reasonably practicable to do more than was done. Section 67(12) applies an even higher standard by placing the onus on the accused to show that it was not practicable to do more than was done.

10. However, the Committee was concerned that as section 67(9A) is not linked to sections 67(11) or (12), the provision could be used to disapply the due diligence defence in other cases, thereby creating strict liability offences, where not even those higher standards of conduct would be enough to avoid conviction.

11. The Committee considered this power to be too wide and, if it was to remain unchanged, was of the view that it should be subject to affirmative procedure. The Committee therefore lodged an amendment to make the relevant provisions subject to affirmative procedure.

12. The Executive responded to the Committee’s concerns in correspondence and indicated that the Committee’s comments caused it to look again at these provisions. The Executive has now taken the view that the policy should be made
clear on the face of the bill without the need for a regulation making power. It has therefore lodged amendments to section 67 to remove the delegated powers that gave the Committee cause for concern and replace them with substantive provisions. The Committee therefore strongly welcomes the Executive's stage 3 amendments to this section.

Sections 72(6) and 72(7): Meaning of “relevant premises”

13. Section 72 sets out the premises which are subject to the fire safety regime in Part 3 of the Bill. Under subsection (6), the Scottish Ministers may make regulations to modify (by addition or deletion) the list of premises subject to the regime. At stage 1 the Committee was content with the order-making power but questioned the use of negative procedure. The Committee therefore welcomed the fact that the subsection, by virtue of an amendment to section 81(4)(b), has been made subject to affirmative resolution procedure.

14. The Committee also noted, however that section 72 has been further amended by the addition of subsection (7) to provide a power by which Scottish Ministers by regulations can modify the application of Part 3 to premises which become “relevant premises”. It was proposed that this power would be subject to negative procedure but the Committee considered that similarly to 72(6) it should be subject to affirmative procedure. The Executive acknowledged in correspondence that the exercise of the power could potentially affect significantly the application of part 3 of the bill and reconsidered whether a more onerous procedure would be merited.

15. The Executive has accepted the Committee’s recommendation that the power under section 72(7) should be subject to affirmative procedure and has lodged an appropriate amendment. The Committee therefore welcomes the Executive’s stage 3 amendment to this subsection.

Delegated powers: other amendments

16. The Committee was content with the amendments made to Sections 2(1), 5(3), 53(2)(f), 54(2)(l), 54A, 56 and 69(b)
ANNEX A

SUPPLEMENTARY MEMORANDUM TO THE SUBORDINATE LEGISLATION COMMITTEE BY THE SCOTTISH EXECUTIVE

FIRE (SCOTLAND) BILL

Purpose

This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.7.9 of the Parliament’s Standing Orders, of the Fire (Scotland) Bill. This memorandum refers to the Bill as amended at Stage 2. It describes the purpose of those provisions conferring power to make subordinate legislation which were amended or added at Stage 2, explains why the newly delegated matters are to be left to subordinate legislation and why the stated parliamentary procedure applying to each power has been chosen as the most appropriate option in each case. This memorandum supplements the Executive’s previous memorandum to the Subordinate Legislation Committee, in connection with the Bill as introduced.

Delegated Powers following Stage 2

Consideration of the Bill at Stage 2 resulted in a number of amendments across the Bill. In particular amendments to sections 67, 72, 81 and new section 54A have the effect of altering or extending existing subordinate legislation powers contained in the existing sections of the Bill, whilst amendments to sections 53 and 54 removed powers, and amendments to 5, 55 and 56 have the effect of conferring new powers. The rationale for these changes is set out below.

Section 2(1): Schemes to constitute joint fire and rescue boards

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* order made by statutory instrument  
*Parliamentary procedure:* affirmative resolution procedure

The Parliamentary procedure applicable to section 2(1) has been altered. Section 2(1) of the Bill allows Scottish Ministers by order to combine fire and rescue authorities for the purposes of carrying out the functions of a fire and rescue authority.

In response to concerns raised during the Stage 1 evidence sessions, the Deputy Minister for Justice gave assurances that whilst the detail of the amalgamation scheme provisions was properly a matter for subordinate legislation, the power would be amended so that it would become subject to the affirmative resolution procedure of the Scottish Parliament, in order to ensure a greater level of parliamentary scrutiny. An amendment to subsection (4) of section 81 (Orders and regulations) was accordingly made at Stage 2.

Section 5(3): Power to transfer staff, property, rights or liabilities of a joint fire board

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* order made by statutory instrument  
*Parliamentary procedure:* affirmative resolution procedure
New subsection (3) has been added to section 5. As set out above, section 2 of the Bill allows for the combining of the areas of two or more fire and rescue authorities in an amalgamation scheme. This may be done by the Scottish Ministers by order, where such an order appears to them to be in the interests of greater efficiency, effectiveness and economy. Schedule 1 also relates to the powers of joint fire and rescue boards. Similar schemes already exist under section 147 of the Local Government (Scotland) Act 1973. Section 5 provides that these schemes will continue to have effect despite the repeal of the Fire Services Act 1947 and section 147 of the Local Government (Scotland) Act 1973 and that they will be deemed to be section 2(1) schemes under this Bill.

Section 5 was amended at Stage 2 to insert at subsection (3) a new transitional provision giving Ministers the power by order to transfer the property, rights, liabilities or staff of existing joint fire boards made under existing administration schemes to joint fire and rescue boards made under section 2(1) of the Bill. The power is an administrative one which will enable existing joint fire boards constituted by the schemes set out in section 5(1) to have a smooth transition when becoming joint fire and rescue boards under section 2(1). For this reason, it is thought appropriate to leave the matter to subordinate legislation.

New amalgamation schemes under section 2(1) are subject to consultation and to the affirmative resolution procedure. Consistent with this, the new power in section 5(3) is also to be exercised using the affirmative resolution procedure (per section 81(4)(za) as amended at Stage 2).

Section 53(2)(f): Power to specify intervals at which reviews must be carried out

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution procedure

Section 53(2)(f) was removed at Stage 2. Section 53(1) provides that the Scottish Ministers may make regulations in relation to the carrying out of fire safety risk assessments and reviews of those assessments under sections 49 (Duties of employers to employees) and 50 (Duties in relation to relevant premises). Subsections (2)(a) – (f) of section 53 had detailed matters that may in particular be addressed in those regulations.

Section 53(2)(f) had established that the power at section 53(1) in particular enabled Scottish Ministers to make provision specifying intervals at which reviews must be carried out. It is intended that these powers will be exercised to ensure that assessments are undertaken regularly and it is unlikely in policy terms, at least in the short-term, that there will be a need to specify precise timescales.

On further reflection, the Executive has concluded that the general enabling power at 53(1) will be sufficient for both of these purposes. The power at 53(2)(f) has therefore been deleted on the basis that it is no longer deemed necessary.

Section 54(2)(l): Power to create criminal offences and specify rules as to the burden of proof in relation to such offences

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution procedure

Section 54(2)(l) was removed from the Bill at Stage 2. Under section 54(1), the Scottish Ministers may make regulations about fire safety in premises covered by the Bill. The
power is modelled on section 12 of the Fire Precautions Act 1971. Subsection (2)(l) provided that Scottish Ministers may make provisions in regulations creating criminal offences, and may also specify rules as to the burden of proof in relation to those offences.

This power was the subject of correspondence between the Scottish Executive and the Subordinate Legislation Committee. In particular, the Executive’s letters of 23 September and 30 September 2004 elaborated the policy behind the power.

It had been the Executive’s intention to include in fire safety regulations made under the power in section 54, provisions in relation to electrical luminous tube signs. The current provisions are contained in the Electrical Luminous Tube Signs (Scotland) Regulations 1990 S.I. 1990/ 683. These include an offence provision where there is failure to comply either with the requirements of the Regulations or with any notice issued under the Regulations.

Following discussion with colleagues in the Scottish Building Standards Agency who have responsibility for issuing Scottish Building Regulations it was agreed that their legislation was a much more appropriate vehicle for these provisions. As a result this offence-creation power, which was only included for the purpose of replicating the 1990 Regulations, is no longer required.

Section 54A: Power to make further provision for protection of fire-fighters

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution procedure

The new section 54A, which was added at Stage 2, extends the power exercisable under section 54(1). Stage 2 amendments have been brought forward to section 72 and to the long title of the Bill which clarify and further define the “relevant premises” to which the Part 3 fire safety regime extends. These amendments were necessary because at introduction the regime extended to all shared or common areas of domestic premises. This would have resulted in, for example, a shared driveway between two private homes being subject to the regime. This was not the intention. The amendments clarify that private dwellings and their common areas are excluded from the definition of “relevant premises”.

However, this exclusion results in a gap in relation to the ability to impose maintenance requirements on fire safety equipment or facilities which are located in the common areas of private dwellings and which are provided for the express purpose of ensuring the safety of firefighters. For example, many blocks of flats have facilities such as dry riser inlets or firefighters’ lifts which need to be properly maintained in order to protect fire-fighters when they are responding to operational incidents and fires.

The Bill has therefore been amended to enable the extension of this one aspect of the regulations made under Part 3 to the common areas of private dwellings. It is therefore intended that regulations under section 54 will make provision ensuring the proper maintenance of such equipment and facilities specifically required to ensure the safety of fire-fighters. This provision enables Scottish Ministers also to apply such a provision to common areas of private dwellings, where such equipment is often located. The power has been left to subordinate legislation because of its close link to the duty to be set out in subordinate legislation.
This safeguarding provision is the only provision under Part 3 which is currently intended to extend to common parts of ‘private dwellings’.

The amendment amounts to an extension of the existing subordinate legislation provisions at section 54(1). The powers are exercisable under the negative resolution procedure, which is the procedure applied to section 54 regulations.

**Section 55: Special case: temporary suspension of Chapter 1 duties**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution procedure

Section 55 has been amended to confer a power on Scottish Ministers to prescribe by regulations further categories of persons who may cause temporary suspension of fire duties. The purpose of section 55 is to ensure that fire safety duties imposed in Part 3 and in regulations made under Part 3 are not a barrier to the military and emergency services responding to operational incidents. Accordingly it provides that where the application of the Chapter 1 duties would prevent a listed person from carrying out their duties, the Chapter 1 duty in question would not apply for the requisite period.

This section was amended at Stage 2 to make it clearer that the emergency service personnel listed require to be undertaking “operational duties”, as defined, before the suspension would be triggered. The suspension provision should not apply when such personnel are not carrying out duties connected with their work. On introduction, the personnel who could trigger such a suspension were listed as being a member of the armed forces of the Crown or a visiting force and a constable or any other member of a police force.

A Stage 2 amendment removed the reference to a “member of a police force” on the basis that the meaning of “member of a police force” has arguably become broader through its use in other legislation. We wished to ensure that it was clear that the provision in section 55(2)(b) applies only to police constables (and special constables) and does not apply to, for example, other employees of a police authority, such as police civilian drivers or control room operators etc. who would have no such aegis in these circumstances.

As terminology is subject to change it was also considered that a regulation-making power would be helpful to enable the persons covered by this section to be added to. It is also anticipated that this power will be used to extend the provision to, for example, the ambulance service. The power will be used to adjust the application of the provision, and the descriptions of those who should be affected and the administrative nature of this provision, in addition to the need for flexibility in its use, make it appropriate to be set out in subordinate legislation and subject to the negative procedure.

**Section 56: Enforcing authorities**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* order made by statutory instrument  
*Parliamentary procedure:* affirmative resolution procedure

A new power has been added at section 56(7) of the Bill, enabling Scottish Ministers by regulations to modify section 56(6). Section 56(6) sets out those organisations that are enforcing authorities for the purposes of Part 3 of the Bill. There is a power in section
72(6) enabling the amendment of the types of premises to which Part 3 applies. It is possible that if this power is exercised, consequential changes would have to be made to section 56(6). It is also likely that, for other unforeseen reasons, the identities of enforcing authorities for relevant premises will require to be amended in the fullness of time.

It is considered appropriate to incorporate a clear and specific power for this purpose into the Bill, given that the power could significantly change the content of section 56(6). A consequential amendment has also been made to section 81 to ensure that the new regulation-making power is subject to the affirmative resolution procedure, in recognition that a greater degree of Parliamentary scrutiny would be appropriate for a power that, as set out above, could alter section 56(6) of the Bill. It also aligns the procedure applicable to section 56(7) with that applicable to the section 72(6) power.

### Section 67: Offences

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution procedure

A number of changes have been made to section 67 at Stage 2 that modify and extend delegated powers. Section 67 sets out offences and associated penalties in respect of the provisions contained in Part 3 of the Bill.

As originally drafted, subsection (10) reversed the burden of proof for the offence that could be committed in relation to the duty in section 49; section 67(1)(a)(i) provides that it is an offence for an employer to fail to carry out his or her duty to ensure, so far as is reasonably practicable, the safety of the employer's employees. Other duties which should be carried out to the same "so far as is reasonably practicable" standard will be set out in regulations. There will also be duties in regulations that should be carried out to the "so far as is practicable" standard.

The Stage 2 amendment that has become section 67(11) enables regulations to reverse the burden of proof concerning the "so far as is reasonably practicable" standard in relation to specified offences. Consequently it will be for the accused to prove that it would not have been reasonably practicable for him or her to do more than was in fact done. Similarly, the Stage 2 amendment that has become section 67(12) enables regulations to reverse the burden of proof in relation to the "so far as is practicable" duty in specified offences. Regulations will therefore make clear that where a fire safety duty is placed on a person "so far as is practicable", in proceedings for the connected offence the onus of showing that it was not practicable to do more than was done shall be on the accused.

A linked Stage 2 amendment has been made to section 67(9), and a new section 67(9A) has been inserted. Section 67(9) had provided that in every offence under section 67, other than that which could be committed by the employer under section 67(1)(a)(i), a due diligence defence was available. Therefore the only situation in which the defence was not available was where the employer bore the reverse burden of proof and had to show that it was not reasonably practicable for him or her to do more than was done. As it is the policy intention also to reverse the burden of proof where fire safety duties in regulations consist of a duty to do something "so far as is practicable" or "so far as is reasonably practicable", the due diligence defence is also to be disapplied to these offences. It was accordingly necessary to insert an amendment enabling Scottish
Ministers, by regulations, to disapply the due diligence defence to offences caused by breaches of duties set out in regulations.

The modification and extension of these powers are required to reflect the fact that the detailed duties, for example in relation to dangerous substances, are to be contained in fire safety regulations and the use of the negative procedure is considered appropriate for regulations under this section as their exercise will be closely linked to existing regulation-making provisions at section 54 which are subject to the negative procedure, and the exercise of the power will result, as with the exercise of the section 54 power, in provisions of a detailed and technical nature.

Section 69(b): Employee’s act or omission not to afford employer defence

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative resolution procedure

A new regulation-making power has been added at section 69(b). Section 69 makes provision for an employee’s acts or omissions not to be used by an employer as a defence in any proceedings under sections 67 or 68. A new power has been added at section 69(b) to enable Scottish Ministers, by regulations, to extend this provision to persons of a description specified in regulations. It is currently intended that regulations under section 54 will enable an employer to assign fire safety assistance duties to competent persons. Such competent persons would then assist the employer in meeting his or her fire safety duties under the Bill. Consequently, Scottish Ministers may wish to specify in regulations that the employer cannot put forward a defence to proceedings brought under sections 67 or 68 relying on the acts or omissions of such competent persons.

The use of the negative procedure is considered appropriate as the exercise of the power under section 69(b) would therefore be closely linked to the exercise of the power in section 54, to which the negative resolution procedure applies.

Sections 72(6) and 72(7): Meaning of “relevant premises”

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative resolution procedure (for section 72(6)) & negative resolution procedure (for section 72(7))

Section 72(6), by virtue of an amendment to section 81(4)(b), has been made subject to affirmative resolution procedure. A new linked power has also been added at section 72(7) enabling the consequential modification of Part 3 when new premises are brought within its ambit by the section 72(6) power.

Section 72 sets out the premises which are subject to the fire safety regime in Part 3 of the Bill. Under subsection (6), the Scottish Ministers may make regulations to modify (by addition or deletion) the list of premises subject to the regime.

When the Bill was introduced the Subordinate Legislation Committee (SLC) queried the use of the negative resolution procedure in respect of the order making power at section 72(6) given that this power will be used to amend primary legislation. Following further consideration of the point, we wrote to the SLC agreeing that affirmative resolution procedure would be more appropriate, enabling closer Parliamentary scrutiny of any exercise of the power, and confirming that we would bring forward an amendment at Stage 2 to this effect.
Section 72 has been further amended by the addition of subsection (7) to provide a power by regulations by which Scottish Ministers can modify the application of Part 3 to premises which become “relevant premises”, in any way which the Scottish Ministers consider necessary or expedient. This grants the Scottish Ministers a modification power, so that Part 3 can be applied, if required, in a modified form to different categories of relevant premises. It is thought that such a power could be necessary where a provision in Part 3 should apply in some respects, but not all. The power to modify Part 3 would therefore enable Scottish Ministers to clarify the applicable law, and avoid doubt and uncertainty, and possibly inappropriate consequences, where new types of premises are to be brought within the definition of “relevant premises”. At the time of instructing the amendment it was considered that the detailed nature of the provisions that would be prepared under section 72(7) meant that the negative resolution procedure was appropriate. However, the Executive has been considering further the type of procedure that should apply to the power in section 72(7), in recognition of the fact that its exercise could potentially significantly affect the application of Part 3 of the Bill.
ANNEX B

EXECUTIVE RESPONSE TO ISSUES RAISED BY THE SUBORDINATE LEGISLATION COMMITTEE ON THE FIRE (SCOTLAND) BILL: STAGE 3 AMENDMENTS

When I wrote on 10 February in response to the Committee’s queries on our Stage 2 Executive amendments I indicated that I would write separately on three further Executive amendments inserting new delegated powers provisions which we had lodged for Stage 3 consideration.

Two of the amendments introduce new delegated powers and the third modifies an existing delegated power in the Bill. I thought it might be helpful if I were to set out the detail of these amendments.

Regulation-making power under Schedule 4 of the Water (Scotland) Act 1980: Provisions incorporated in order relating to water undertakings

- *Power conferred on:* the Scottish Ministers
- *Power exercisable by:* regulations made by statutory instrument
- *Parliamentary procedure:* negative resolution of the Scottish Parliament

An amendment to Schedule 4 of the Water (Scotland) Act 1980 ("the 1980 Act") has been lodged. Section 21 of Schedule 4 to the 1980 Act provides that the cost of fire hydrants and of fixing, maintaining and renewing them is to be defrayed by the fire authority. The Executive amendment that appears at number 3 of the Marshalled List would insert a new section 21A into Schedule 4 to the 1980 Act, and would provide Scottish Ministers with a regulation-making power enabling them to set out the circumstances in which and/or the persons from whom a relevant authority could recover costs of fixing, maintaining and renewing fire hydrants, but the provision expressly excludes Scottish Water from being an organisation from whom these costs may be recovered. A consequential amendment is also made to section 22 of Schedule 4 to the 1980 Act.

Section 20(1) of the Bill re-enacts the first part of section 14(3) of the Fire Services Act 1947 in respect of the requirement to provide fire hydrants. Access to the water supply is by connection to a fire hydrant. Hydrants must be fitted by Scottish Water at the request of a relevant authority.

The cost of installing and maintaining hydrants, which has to be borne by fire and rescue authorities and joint fire and rescue boards, can be contentious and the issue was raised by various parties in Stage 1 evidence. The issue of hydrants was not consulted on as part of the pre-legislation consultation exercise and we therefore intend to carry out the necessary consultation in order to establish to whom and in what circumstances it would be suitable for hydrants costs to be defrayed to other organisations. The new power would then enable Scottish Ministers to make legislative provision on the issue if that was appropriate. This is accordingly why the matter is to be left to subordinate legislation.

Section 101 of the 1980 Act currently sets out that regulations may be made prescribing anything required to be prescribed. The regulations made under this power would be subject to negative procedure, as covered by section 101(2), in line with the standard procedure used for subordinate legislation in the 1980 Act. This is appropriate as the content of the regulations would relate to matters covered by the 1980 Act, and the negative procedure would ensure an adequate level of Parliamentary scrutiny following a period of consultation on the defrayal of such costs.
Regulation-making power under section 54: Fire Safety

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution of the Scottish Parliament

An amendment to section 54 has been lodged to ensure that regulations made under section 54(1) can allow persons with fire safety duties in respect of “relevant premises” under Part 3 of the Bill, where those premises form part of a building, to enter into arrangements with owners or occupiers of other parts of the building to enable them to comply with their fire safety duties.

Section 5(3) of the Fire Precautions Act 1971 places a duty on fire authorities which is aimed at ensuring that before issuing a fire certificate for premises within a building (or granting an exemption), the authority should take into account the risk, hazards and precautions in the building as a whole, including the effect on the fire precautions of other occupiers in the building.

With the repeal of the 1971 Act, fire certificates are abolished. However, the “whole building” approach is desirable in the context of fire safety risk assessments and enforcement of fire safety legislation. The amendment therefore makes provision for regulations to specify such an approach to enable those in “relevant premises” which form part of a building to develop fire safety arrangements with others in that building that will enable them to comply with their duties.

The effect of this is to enable co-operation and co-ordination in respect of fire safety matters between all occupiers of a multiple-occupied building, where perhaps only part of that building is defined as “relevant premises” by virtue of Part 3.

The power is subject to the negative procedure on the basis that the section 54 regulation-making power is already subject to the negative procedure due to their detailed and technical nature. These provisions will similarly relate to the detailed fire safety regulations to be made under section 54. The policy intention is to enable the making of arrangements with other owners/occupiers of multiple-occupied buildings in respect of specific fire safety duties to be set out in regulations. This is therefore also why the power is to be left to subordinate legislation.

Regulation-making power under section 56: the making of arrangements by relevant authorities for the carrying out of their functions

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* regulations made by statutory instrument  
*Parliamentary procedure:* negative resolution of the Scottish Parliament

We have lodged an amendment that would introduce a new power at section 56 so that a relevant authority may make arrangements with a person prescribed in regulations for such of the functions conferred on the authority by virtue of Part 3 as may be specified in the arrangements to be carried out (with or without payment) on its behalf by that person in relation to a specified workplace.
Section 56(5) currently only enables such an arrangement to be entered into with the Health and Safety Commission. However this is unduly restrictive as we are aware of changes proposed in other legislation which will result in the need to extend this provision so that a relevant authority may enter into arrangements with other organisations with workplace health and safety functions. A regulation making power provides the necessary flexibility to achieve this and will be subject to the negative procedure on the basis that the power is an administrative one linked to the ways in which relevant authorities, in their capacity as enforcing authorities, may arrange to carry out their operational functions.

Please do not hesitate to contact me if you require any further clarification. I am aware of the time pressures caused by the current recess period, and would therefore hope that the information in this letter is of assistance.

Yours sincerely

Ian A Snedden
Head of Division
CORRESPONDENCE FROM THE SCOTTISH EXECUTIVE TO THE CLERK OF THE SUBORDINATE LEGISLATION COMMITTEE, 10 FEBRUARY 2005

FIRE (SCOTLAND) BILL as amended at Stage 2

Thank you for your letter of 8 February to Catherine Hodgson in which you sought an explanation on a number of matters contained in the Supplementary Delegated Powers Memorandum. I am happy to deal with each concern in turn below.

Section 55: Special Case: temporary suspension of Chapter 1 duties

I note that whilst the Committee were content with the regulation making power proposed they considered that it should be subject to affirmative procedure. On reflection we acknowledge that the exercise of this power could have a fairly significant effect, and we were therefore content to lodge an amendment on 9 February to that effect.

Section 67: Offences

The Committee commented that the new power at subsection (9A) was a very wide power and also noted that this power was not expressly linked to the exercise of subsection (11) and (12) powers. They indicated that in their view new subsection (9A) should either be linked to subsections (11) and (12) or be made subject to affirmative procedure, and that the affirmative procedure should apply to subsections (11) and (12).

The Committee has also asked whether there might be an overlap between subsections (11) and (12). The Committee’s comments have caused us to look at these provisions again.

Subsection 9A

In response to the Committee’s concerns on subsection (9A), we acknowledge that the power was not linked to the provisions that we intended it to apply to. However on looking at this again, we considered that the policy could be given effect to in a different way which would also deal with the concerns expressed by the Committee. The policy is to remove the due diligence defence in all cases in which the regulations impose a “so far as reasonably practicable” requirement that will give rise to an offence under section 67(3). In passing we should say that we had intimated in the Supplementary Delegated Powers Memorandum that it would also apply in the case of the “so far as practicable” requirement, but this is not in fact the policy.

The policy can be made clear on the face of the Bill without the need for a regulation making power.

An amendment has therefore been lodged replacing section 67(9A) with a revised (9A); a further, linked amendment has been lodged removing wording from section 67(9) in consequence of this revisal.

The deletion of subsection (9A) removes the power of Scottish Ministers to specify in regulations the cases in which the due diligence defence will not apply. The revised subsection (9A) incorporates in paragraph (a) the provision deleted from subsection (9), under which the due diligence does not apply to the offence that may be committed by an employer under section 67(1)(a)(i). Paragraph (b) establishes that the only other situation in which the due diligence will not apply is in relation to offences that may be committed
under section 67(3), which involve breach of a requirement or prohibition which concern a duty to do something “so far as is reasonably practicable”.

In order to assist the Justice 2 Committee’s consideration of the Bill at Stage 2, the Executive provided the Parliament with a draft set of fire safety regulations – to be made under powers in sections 53 and 54 - setting out in greater detail the requirements and prohibitions that could result in an offence being committed under section 67(3). Draft regulation 12 (Elimination or reduction of risks from dangerous substances) is the only regulation that imposes a “so far as is reasonably practicable” duty and at present this is the only situation in regulations to which the due diligence defence will not apply. Obviously, if the Executive were to revise the regulations made under section 54 at any point in the future, Parliament would have the opportunity to scrutinise the amending regulations under the negative resolution procedure. The scrutiny would be carried out in the knowledge that if any further fire safety duties concerned “so far as is reasonably practicable” duties, the due diligence defence would not apply. Thus, there is now a clear link in the Bill between the “so far as is reasonably practicable” duty in regulations, the offence in section 67(3) and the disapplication of the due diligence defence. The provision disapplying the due diligence defence is clearly consequential on a duty in regulations which is expressed to apply “so far as is reasonably practicable which gives rise to an offence under section 67(3)

Subsections (11) and (12)

The Committee queried whether there was some degree of overlap between subsections (11) and (12), and proposed that affirmative procedure should apply to subsections (11) and (12). We respond to these points below, as well as explaining the effect of the Executive amendments lodged at Stage 3 that alter subsections (11) and (12).

These subsections, inserted at Stage 2, enabled Scottish Ministers to reverse the burden of proof in relation to offences concerning duties to comply with requirements or prohibitions “so far as is practicable” or “so far as is reasonably practicable”. The amendments to these subsections that have been lodged dispense with the regulation-making powers and replace them instead with a clear provision in the Bill that in any proceedings for an offence under section 67(3) consisting of a failure to comply with a requirement or prohibition that requires to be carried out “so far as is reasonably practicable” or “so far as is practicable”, the onus of showing that it was not reasonably practicable to do more than was done should be on the accused. This is because the policy is that the burden of proof should be reversed in all cases where a requirement or prohibition is limited by a duty to do only “so far as practicable” or “so far as reasonably practicable” and where this gives rise to an offence under section 67(3).

At present the policy, as reflected in the draft regulations provided to the Justice 2 Committee, is that the only circumstances in which this would apply are the requirements or prohibitions under draft regulations 12(1) (Elimination or reduction of risks from dangerous substances) and 15(2)(a) (Procedures for serious and imminent danger and for danger areas).

It is considered that the automatic reverse burden in these circumstances is justified because the offence provision in section 67(3) will only apply where persons are put at risk of death or serious injury. Furthermore, the person on whom the reverse burden is imposed should, by virtue of the nature of the duty in question, be in possession of all the information that is required in order to meet the burden. In addition, Scottish Ministers are required to act compatibly with ECHR when making regulations that impose such requirements or prohibitions. Scottish Ministers will therefore have to be alert to the applicability of
subsections (11) and (12), and the reversed burden of proof, whenever they impose a “so far as is practicable” or “reasonably practicable” limitation, and can only therefore limit the requirement or prohibition in cases where they are satisfied that the accompanying reverse burden would be ECHR compliant.

In response to the Committee’s point on a potential overlap between what is “reasonably practicable” in subsection (11) and what is “practicable” in subsection (12), there is a significant difference between taking measures “so far as is reasonably practicable” and “so far as is practicable”. “Practicable” by itself means that which is feasible or possible. In considering what is “reasonably practicable”, however, the expense and other disadvantages of safety measures must be balanced against the magnitude of the risk. Thus, where the “reasonableness” requirement is incorporated, if there were a gross disproportion between the risk on one hand and the sacrifice involved in averting the risk, precautionary measures in connection with fire safety might not require to be taken.

Sections 72(6) and 72(7): Meaning of relevant premises

Again the Committee considered that the section 72(7) power should be subject to affirmative procedure. In his letter of 4 February, the Deputy Minister for Justice indicated that the Executive had been considering further the type of procedure that should apply to the power in section 72(7), in recognition of the fact that its exercise could potentially significantly affect the application of Part 3 of the Bill. The Executive has subsequently decided that the power should be subject to affirmative procedure and lodged an amendment to that effect on 9 February.

Thank you again for your helpful consideration of the Stage 2 amendments, I hope the information in this letter is useful and I attach also for your information a copy of the Stage 3 amendments referred to above. You will perhaps have noted that we have lodged 3 other amendments which introduce new powers or modify existing powers. I intend to write separately on these by 14 February.

I am also copying this letter to the Clerk to the Justice 2 Committee.

Ian Snedden
Head of Division
Fire Services Division
Fire (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 84
Schedules 1 to 4
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 11

Cathy Jamieson

1 In section 11, page 6, line 8, after <kind,> insert <as is>

Section 18

Cathy Jamieson

2 In section 18, page 8, line 22, after <enter> insert <into>

After section 20

Cathy Jamieson

3 After section 20, insert—

<Fire hydrants: recovery of costs>

(1) Schedule 4 to the Water (Scotland) Act 1980 (c.45) (provisions incorporated in orders relating to water undertakings) shall be amended as follows.

(2) After section 21 insert—

“21A The Scottish Ministers may by regulations make provision as to—

(a) the persons (other than Scottish Water) from whom; or

(b) the circumstances in which,

fire authorities may recover costs defrayed under section 21 of this Schedule.”.

(3) In section 22, for the words “the last but one foregoing section” substitute “section 20 of this Schedule”.

Section 23

Cathy Jamieson

4 In section 23, page 10, line 36, leave out from <without> to end of line 37
Cathy Jamieson
5 In section 23, page 10, line 39, leave out <without the consent of its owner>

Section 24

Cathy Jamieson
6 In section 24, page 11, line 16, leave out <without the consent of its owner>

Section 35A

Cathy Jamieson
7 In section 35A, page 17, line 30, after <under> insert <any of>

Cathy Jamieson
8 In section 35A, page 17, line 32, leave out <or> and insert <and>

Section 35B

Cathy Jamieson
9 In section 35B, page 18, line 11, leave out from <or> to <56> in line 12

Cathy Jamieson
10 In section 35B, page 18, line 13, leave out from <relevant> to <enforcing> in line 14

Cathy Jamieson
11 In section 35B, page 18, line 17, leave out <or, as the case may be, an enforcing authority>

Cathy Jamieson
12 In section 35B, page 18, line 18, leave out <or 34>

Cathy Jamieson
13 In section 35B, page 18, line 19, at end insert—
< ( ) A person who assaults, obstructs or hinders another person who is by virtue of section 34 carrying out a function conferred on a relevant authority by virtue of section 7 or 56 commits an offence.>

Section 45

Bill Butler
27 In section 45, page 23, line 18, at end insert—
<( ) The reference in subsection (2)(b) to persons representing the interests of some or all employees of relevant authorities includes trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)) whose membership consists of or includes employees of relevant authorities.>

Section 46

Bill Butler

28 In section 46, page 24, line 13, at end insert—

<( ) The reference in subsection (2)(b)(i) to persons representing the interests of some or all employees of relevant authorities includes trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)) whose membership consists of or includes employees of relevant authorities.>

Section 49

Colin Fox

29 In section 49, page 25, line 7, leave out <reasonably>

Section 52

Cathy Jamieson

14 In section 52, page 26, line 31, leave out <the event of> and insert <respect of harm caused by>

Section 54

Cathy Jamieson

15 In section 54, page 27, line 33, at end insert—

<( ) 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;>

Section 56

Cathy Jamieson

16 In section 56, page 29, line 20, at end insert—

<( ) A relevant authority may make arrangements with a person prescribed in regulations by the Scottish Ministers for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the person in relation to a workplace so specified.>
Section 60

Cathy Jamieson

17 In section 60, page 34, line 17, at end insert—

<( ) An enforcing authority may include in an alterations notice provision requiring the appropriate person—

(a) to keep records of such information as, by virtue of paragraph (d) of subsection (2) of section 53, is specified in regulations under subsection (1) of that section;

(b) to keep records of arrangements made, in accordance with regulations under section 54(1), for the planning, organisation, control, monitoring or review of the fire safety measures;

(c) if notifying the authority of a proposed change, to give the authority—

(i) a copy of the assessment carried out under section 49 or, as the case may be, 50; and

(ii) a summary of the changes the appropriate person proposes to make to the fire safety measures.>

Section 65

Cathy Jamieson

18 In section 65, page 36, line 17, after <regulations> insert <and orders>

Cathy Jamieson

19 In section 65, page 36, line 20, after <regulations> insert <or orders>

Cathy Jamieson

30 In section 65, page 36, line 21, leave out <those regulations> and insert <the regulations or order>

Section 67

Cathy Jamieson

20 In section 67, page 37, line 33, at end insert—

<(ca) intentionally to obstruct a person taken by virtue of section 57(2)(b) onto relevant premises;>

Cathy Jamieson

21 In section 67, page 38, line 16, after <(c)> insert <, (ca)>

Cathy Jamieson

31 In section 67, page 38, line 21, leave out from <(other) to <subsection)> in line 22
In section 67, page 38, line 25, leave out subsection (9A) and insert—

<(9A) Subsection (9) shall not apply in relation to—

(a) an offence under subsection (1) in respect of a failure to comply with the duty
mentioned in paragraph (a)(i) of that subsection;

(b) an offence under subsection (3) in respect of a failure to comply so far as is
reasonably practicable with a requirement or, as the case may be, a prohibition.>

In section 67, page 38, line 29, leave out <reasonably>

In section 67, page 38, line 30, leave out subsections (11) and (12) and insert—

<(  ) In any proceedings for an offence under subsection (3) in respect of a failure to comply
so far as is practicable with a requirement or, as the case may be, a prohibition, the onus
of showing that it was not practicable to do more than was done shall be on the accused.

(  ) In any proceedings for an offence under subsection (3) in respect of a failure to comply
so far as is reasonably practicable with a requirement or, as the case may be, a
prohibition, the onus of showing that it was not reasonably practicable to do more than
was done shall be on the accused.>

In section 78, page 44, line 33, at end insert—

<(  ) The Scottish Ministers, following consultation, shall by regulations provide for the
setting up of a replacement body to directly advise the Scottish Ministers.>

In section 81, page 46, line 3, after <section> insert <55(2)(c)>

In section 81, page 46, line 3, after <72(6)> insert <or (7)>

In section 81, page 46, line 3, leave out <56(7), 72(6)> and insert <55(2)(c), 56(7), 67(9A), (11)
or (12), 72(6) or (7)>

In section 81, page 46, line 3, after <72(6)> insert <or (7)>
Schedule 3

Cathy Jamieson

24 In schedule 3, page 50, line 28, at end insert—

<The Civic Government (Scotland) Act 1982 (c.45)

In section 54 of the Civic Government (Scotland) Act 1982 (playing instruments, singing, playing radios etc.)—

(a) in paragraph (a) of subsection (3), for “fire brigade” substitute “fire-fighting”; and

(b) after that subsection insert—

“(4) In subsection (3)(a), the reference to fire-fighting purposes is a reference to—

(a) the purposes of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)); or

(b) fire-fighting functions of any other employer of fire-fighters.”.>
Fire (Scotland) Bill

Groupings of Amendments for Stage 3

Note: The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must (subject to Rules 9.8.4A or 9.8.5A of Standing Orders) be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

Group 1: Minor and consequential amendments
1, 2, 7, 8, 14, 18, 19, 30, 24, 25, 26

Group 2: Fire hydrants – recovery of costs
3

Group 3: Powers in emergencies – consent of owner
4, 5, 6

Group 4: Assaulting or impeding employees discharging certain functions
9, 10, 11, 12, 13

Debate to end no later than 20 minutes after proceedings begin

Group 5: Statutory negotiating arrangements – trade union involvement
27, 28

Group 6: Fire safety: duties of employers to employees
29, 33

Group 7: Regulations about fire safety
15

Group 8: Fire safety – enforcing authorities
16

Group 9: Fire safety – alterations notices
17

Group 10: Fire safety – offences
20, 21

Debate to end no later than 45 minutes after proceedings begin

Group 11: Fire safety – defences and burden of proof and other regulation-making powers
31, 32, 34, 22, 36, 23
Group 12: Abolition of Scottish Central Fire Brigades Advisory Council

Debate to end no later than 1 hour after proceedings begin
Note: (DT) signifies a decision taken at Decision Time.

**Business Motion:** Ms Margaret Curran, on behalf of the Parliamentary Bureau, moved S2M-2464—That the Parliament agrees that during Stage 3 of the Fire (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time-limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

- Groups 1 to 4 – 20 mins
- Groups 5 to 10 – 45 mins
- Groups 11 and 12 – 1 hour

The motion was agreed to.

**Fire (Scotland) Bill – Stage 3:** The Bill was considered at Stage 3.

The following amendments were agreed to without division: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 27, 28, 14, 15, 16, 17, 18, 19, 30, 20, 21, 31, 32, 34, 22, 23, 24, 25 and 26.

The following amendments were disagreed to (by division)—

- 29 (For 6, Against 90, Abstentions 5)
- 35 (For 33, Against 70, Abstentions 0)

Amendments 33 and 36 were not moved.

**Fire (Scotland) Bill – Stage 3:** The Deputy Minister for Justice (Hugh Henry) moved S2M-2421—That the Parliament agrees that the Fire (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 102, Against 3, Abstentions 4).
Parliamentary Bureau Motions

The Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S2M-2464, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Fire (Scotland) Bill.

Motion moved,

That the Parliament agrees that during Stage 3 of the Fire (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4(A), be brought to a conclusion by the time-limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Groups 1 to 4 – 20 mins
Groups 5 to 10 – 45 mins
Groups 11 and 12 – 1 hour.—[Ms Margaret Curran.]

Motion agreed to.

Fire (Scotland) Bill: Stage 3

The Presiding Officer (Mr George Reid): The next item of business is stage 3 of the Fire (Scotland) Bill. Members should have the bill as amended at stage 2, the marshalled list of amendments that I have selected for debate and the groupings.

I will allow an extended voting period of two minutes for the first division. Thereafter, I will allow a voting period of one minute for the first division after a debate on a group. All other divisions will be 30 seconds long.

Section 11—Emergency directions

The Presiding Officer: Amendment 1, in the name of the minister, is grouped with amendments 2, 7, 8, 14, 18, 19, 30, 24, 25 and 26.

The Deputy Minister for Justice (Hugh Henry): The amendments in the group are minor and consequential. Amendments 1, 2, 7 and 8 are aimed at improving the grammar and drafting of sections 11, 18 and 35A. Amendment 14 will correct an oversight from stage 2, whereby section 52 was not included in the group of amendments that replaced the words “in the event of fire” with “safety ... in respect of harm caused by fire”.

Amendments 18, 19 and 30 are minor amendments that will correct references in section 65 to part I of the Health and Safety at Work etc Act 1974 to ensure that orders as well as regulations that are made under part I of the 1974 act are preserved if an enforcing authority under the bill is also an enforcing authority within the meaning of the 1974 act.

Amendments 24, 25 and 26 will amend schedule 3 and make minor and consequential amendments to other legislation. The amendments will replace references in statute to “fire authorities”, “fire brigades”, “joint fire boards” and other terms that are used in the Fire Services Act 1947. It will no longer be appropriate to use such references when the 1947 act has been repealed and the proposed legislation comes into force. It is therefore necessary that we replace those terms with the updated terminology that the bill uses.

I move amendment 1.

Mr Stewart Maxwell (West of Scotland) (SNP): I agree with the minister that the amendments are minor and consequential—we have no problem with them. However, I seek clarification on one matter. Amendment 24 will insert new section
54(4)(b) into the Civic Government (Scotland) Act 1982. The new section refers to the “fire-fighting functions of any other employer of fire-fighters”.

Would the provision include, for example, BAA Ltd? Will he clarify to which other employers of firefighters the provision refers?

Hugh Henry: I do not have access to the full details, but I will clarify the matter for Stewart Maxwell.

Amendment 1 agreed to.

Section 18—Agreements in relation to water supply

Amendment 2 moved—[Hugh Henry]—and agreed to.

After section 20

The Presiding Officer: Amendment 3, in the name of the minister, is in a group on its own.

Hugh Henry: In its stage 1 report, the Justice 2 Committee considered that there was merit in Scottish Water’s having responsibility for maintaining fire hydrants, but wanted clarification of the financial implications for the fire service were such a transfer of responsibility to be effected. The committee drew my attention to evidence that was taken and invited me to consider the issue further. I am sympathetic to our trying to do what we can to rebalance the costs that are associated with maintenance of hydrants.

Mike Pringle lodged two amendments at stage 2 that would have transferred all the costs to Scottish Water, but he withdrew the amendments to enable me to consider further the available options. Ultimately, we are talking about shifting costs. We did not expressly consult on the issue when we drew up the legislative proposals, so it would be wrong to place new burdens on organisations without the necessary prior consultation. I see no benefit in simply moving costs between two public services—fire services and water services. Such an approach would have no positive effect and would raise questions about funding if, for example, there were a transfer of funds from fire grant-aided expenditure allocation or if bills for all water customers were allowed to increase to meet the new costs, which would be contrary to the principle that the charges that users face should generally reflect the costs that they impose on the system.

Amendment 3 therefore represents a sensible and flexible solution. It will allow the implications of any policy on hydrant costs to be fully considered. Thereafter it will allow—which is important—consultation of all the relevant and interested parties, in order to identify whether a change in the existing legal provisions is necessary. For example, in the case of new housing or new industrial or commercial developments, we would consult on whether there was support for a way of requiring the developer—on newly developed or on redeveloped sites—to meet the costs of installing hydrants.

I move amendment 3.

Mr Maxwell: I support amendment 3 and I acknowledge the minister’s comments. Difficulties arose because the possible transfer of responsibility for fire hydrants between the fire authorities and Scottish Water was not included in the original consultation. I am disappointed that the issue was not dealt with then.

The minister says that we will consider the issue in the future, which is a positive step. There are many logical reasons why fire hydrants should be transferred between fire authorities and Scottish Water. Those reasons might come up in the debate later on; I am sure that they will come up during any consultation by the minister of the various authorities.

The details should be left to ministerial powers, as amendment 3 suggests. The circumstances of defraying of costs to other bodies will be largely administrative. Liabilities will change over time and it is perfectly reasonable to put them within ministerial powers.

Amendment 3 agreed to.

Section 23—Powers of authorised employees in relation to emergencies

The Presiding Officer: Amendment 4, in the name if the minister, is grouped with amendments 5 and 6.

Hugh Henry: Amendments 4, 5 and 6 are minor tidying amendments that will remove unnecessary wording from the powers in sections 23 and 24 and will bring those provisions into line with section 24(2)(a) and section 57, in which similar powers are conferred. The meaning of the affected subsections is unchanged.

I move amendment 4.

Mr Maxwell: I wish to raise a minor point in relation to section 23(2)(b). The amendments in this group will affect section 23(2)(a) and section 23(2)(c) by removal of the words

"without the consent of the owner"
and
"without the consent of its owner"
respectively. However, in section 23(2)(b), the words
"without the consent of its owner"
have been left in.
I understand that that was done because there was not absolute clarity that force would be used on the occasions that are covered by section 23(2)(b). Will the minister confirm that that is the reason? I feel that it would have been better for clarity either to leave the words in all three paragraphs, or to take them out of all three.

Hugh Henry: Stewart Maxwell has, in essence, described why we have done what we have done. We think that it made sense for us to make the proposals in the three amendments.

Amendment 4 agreed to.

Amendment 5 moved—[Hugh Henry]—and agreed to.

Section 24—Powers of constables in relation to fires

Amendment 6 moved—[Hugh Henry]—and agreed to.

Section 35A—Amendment of Emergency Workers (Scotland) Act 2005

Amendments 7 and 8 moved—[Hugh Henry]—and agreed to.

Section 35B—Assaulting or impeding employees discharging certain functions

The Presiding Officer: Amendment 9, in the name of the minister, is grouped with amendments 10 to 13.

Hugh Henry: Amendments 9, 10, 11, 12 and 13 address an overlap in the bill in section 35B. In that section, “enforcing” authorities are identified as being separate entities to “relevant” authorities. In fact, an enforcing authority can also be a relevant authority. Amendments 9, 10 and 11 will therefore remove the references to “enforcing” authorities from section 35B. The intention of section 35B is to deal with offences that may be committed against employees of relevant authorities. Reference to relevant authorities is therefore, I believe, adequate.

Amendments 12 and 13 will improve the references in section 35B(2) to persons operating under arrangements made under section 34. Section 33 is concerned with those who assist relevant authorities; section 34, however, is concerned with those who carry out the functions of relevant authorities. The amendments will therefore remove the existing reference to section 34 and insert a new subsection that will cover persons carrying out functions under section 34 arrangements.

I move amendment 9.

Amendment 9 agreed to.

Amendments 10 to 13 moved—[Hugh Henry]—and agreed to.

Section 45—Statutory negotiation arrangements

14:45

The Presiding Officer: Amendment 27, in the name of Bill Butler, is grouped with amendment 28.

Bill Butler (Glasgow Anniesland) (Lab): Amendments 27 and 28, which are in my name, concern trade union involvement in statutory negotiating arrangements.

During the stage 1 evidence sessions and in the stage 1 debate, the view was expressed by many of my colleagues on the Justice 2 Committee and by members in general that the bill should contain an express duty to consult recognised trade unions. However, as members will know, union recognition is a matter for employers. The fact that a union sits on a national negotiating body does not mean that each employer that is represented on the national body recognises that union. Conversely, a union can be recognised by an employer but have no seat on a national negotiating body.

During stage 2, committee members were right to continue to express concern on the matter; indeed, my committee colleague Colin Fox lodged seven amendments to sections 45 and 46. Following the defeat of his first amendment, Colin Fox did not move his six subsequent amendments, but I recall that he expressed the hope that “a middle way” could be found at stage 3. As a Labour Co-operative MSP, I support the politics of a progressive third way and I hope that my two amendments will provide that acceptable middle way.

Sections 45 and 46 provide that statutory negotiation bodies and relevant negotiation bodies shall include “persons representing the interests of some or all employees of relevant authorities”.

That definition includes representatives of trade unions who represent employees of relevant authorities. However, amendments 27 and 28 will make it clear on the face of the bill that sections 45 and 46 enable inclusion in the statutory negotiation bodies and the relevant negotiation bodies of representatives of trade unions “whose membership consists of or includes employees of relevant authorities.”

I stress that my amendments would not exclude any trade unions or representative bodies, such as bodies that had not previously been recognised for negotiating purposes.
I hope that the Executive will accept my amendments and that Parliament will support them. I believe that they address concerns that members and trade union representatives expressed during earlier stages of the bill’s consideration and they have been lodged for the avoidance of doubt.

I move amendment 27.

Mr Maxwell: I support all the comments that Bill Butler made on amendments 27 and 28—

Jackie Baillie (Dumbarton) (Lab): Including his remarks about a third way?

Mr Maxwell: I agree with all his comments except those about a third way, and I thank Ms Baillie for that reminder.

The Justice 2 Committee was concerned about the lack of official trade union recognition in the statutory negotiating arrangements—all members were worried because such an omission had occurred. I hope that I am correct in saying that at the time, the minister stated that he felt that it was not necessary to have such recognition on the face of the bill, and that he sought to reassure the committee about that.

It is important that the trade unions be mentioned in sections 45 and 46, so the Scottish National Party will support amendments 27 and 28. I am glad that Bill Butler supports statutory arrangements and I hope that he will support statutory arrangements for other bodies when we come to deal with later amendments.

The Presiding Officer: I call Duncan McNeil.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I am sorry; I must have pressed my button by mistake.

The Presiding Officer: Mr McNeil’s name was showing on my screen.

Hugh Henry: I welcome Bill Butler’s amendments. Consultation with recognised trade unions was the subject of a great deal of discussion at stages 1 and 2, as Stewart Maxwell and Bill Butler both said. I listened with interest to the strong arguments that were made for the bill’s having an express duty to include trade union representatives in any statutory negotiating bodies that are established under section 45(1).

I believe that amendments 27 and 28 will put it beyond doubt that sections 45 and 46 incorporate provisions that will enable any statutory negotiation body set up under section 45, or any relevant negotiation body as defined in section 46, to include representatives from trade unions “whose membership consists of or includes employees of relevant authorities.”

It was never our intention to exclude trade unions—we gave a commitment on that. However, Bill Butler’s amendments 27 and 28 will give added advantage and I am happy to support them.

Bill Butler: I welcome the Executive’s support and that of the Scottish National Party. I welcome the minister’s words and hope that all parties will see amendments 27 and 28 as being coherent and responsible and that they will support them.

Amendment 27 agreed to.

Section 46—Guidance

Amendment 28 moved—[Bill Butler]—and agreed to.

Section 49—Duties of employers to employees

The Presiding Officer: Amendment 29, in the name of Colin Fox, is grouped with amendment 33.

Colin Fox (Lothians) (SSP): I am glad that there has been consensus so far in the debate—I hope that it continues.

Amendment 29 seeks to draw on recent European health and safety legislation, which has repeatedly and rigorously tested the criterion that measures should be “reasonably practicable” and preferred instead to apply a much stiffer test on health and safety matters with regard to the duties of employers to their employees. European Union directives and regulations make it clear that, for example, with control of or handling of substances that are hazardous to health, or in respect of manual handling practices, a risk assessment must be carried out and a calculation or computation made of the perceived dangers therein. The legislation makes it clear that, after a health and safety calculation has been made, it is insufficient for precautions to be ruled out on the ground of cost as measured against low risk. The European directives overrule the economic-test approach in favour of a far higher standard of safety assessment.

Amendment 29 would delete the discredited phrase “reasonably practicable” from the bill. Mr Snedden, the head of the fire services division of the Justice Department was, in a letter of 10 February to the Justice 2 Committee, at pains to explain the terms of the debate at greater length. He pointed out that only one instance of the phrase “reasonably practicable” remains in the bill, which, I believe, supports my point. Mr Snedden reminded us that “Scottish Ministers are required to act compatibly with ECHR when making regulations that impose such requirements or prohibitions.”

However, in considering what is reasonably practicable, the expense of safety measures is balanced against the magnitude of the risk.
Amendment 29 is necessary to ensure that the bill is EU compliant and that employers provide their employees with the higher standard of health and safety cover. Amendment 33 is consequential on amendment 29.

I move amendment 29.

**Hugh Henry:** I note Colin Fox’s point about achieving consensus, which can often be helpful. In the spirit of consensus, perhaps he will reflect on the fact that his suggestion received no support from members at stage 2.

Colin Fox says that the concept of being reasonable is discredited—I do not know what that says about Colin Fox’s thinking process, but the word “reasonably” is important in the bill. Mr Fox questions whether the bill is EU compliant but, as members know, we could not propose legislation that was not compliant. We have met our obligations. The bill is not, as Colin Fox suggests, in contradiction of any European legislation. I have put it on the record a number of times, and I will do so again today, that we are content that the approach that is adopted in the bill will correctly implement the high standards that are placed on employers in respect of workers’ health and safety, as set out in the EU framework directive. I repeat that the bill is within the Parliament’s legislative competence.

Part 3 reflects the duty that is placed on employers in relation to other aspects of health and safety at work in the Health and Safety at Work etc Act 1974, which the United Kingdom regards as the legislation that implements the 1989 European Council directive in that regard.

There are important reasons why amendment 29 should not be agreed to. The Executive does not have difficulty with the proposition that employers should be required to apply the strictest possible standards to the safety of their employees in this area. The United Kingdom’s record on health and safety at work is among the best in Europe, but amendment 29 goes too far in that it would impose an unfair burden on employers. If the amendment were agreed to, employers would be required to take measures where it was practical to do so, but with no assessment of whether those measures were reasonable in the circumstances. If employers were unable to conduct some sort of balancing exercises against countervailing circumstances, that could in some cases lead to absurd results. Employers could be required to take extra steps even if they were manifestly disproportionate to the risk. I accept that the matter is difficult, but I strongly believe that the bill strikes the right balance between the rights and the responsibilities of employers and the paramount safety of their employees. The Executive therefore does not support amendments 29 and 33.

**Colin Fox:** It is my intention to press amendment 29. The minister says that he does not wish to place an unfair burden on employers. The Executive has never shown a tendency to put unfair burdens on employers—it has put very few burdens on them.

As the minister knows full well, the phrase “reasonably practicable” that he tries to trivialise has been tested repeatedly in European Union legislation and has failed those tests on economic grounds. All the other references to “reasonably practicable” in the bill as it was introduced have been omitted. If the minister is on the record as saying that he wants the highest standards to be protected, he is duty bound to support amendment 29.

**The Presiding Officer:** The question is, that amendment 29 be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

FOR

Byrne, Ms Rosemary (South of Scotland) (SSP)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Sheridan, Tommy (Glasgow) (SSP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnis, Ross (West of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Section 54—Scottish Ministers’ power to make regulations about fire safety

15:00

The Presiding Officer: Amendment 15, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 15 ensures that regulations that are made under section 54(1) can allow persons with fire safety duties in respect of relevant premises to enter into arrangements with owners or occupiers of other parts of the building in which their relevant premises are located. The amendment will enable co-operation and co-ordination on fire safety matters among occupiers and owners of a multiple-occupied building where perhaps only part of the building is defined as relevant premises. It reflects the whole-building approach that was provided for in the Fire Precautions Act 1971 and which will be repealed by the bill. Such an approach would, for example, enable maintenance arrangements that are made under the bill to cover a system or precaution as a whole, not only those parts of it that are located in relevant premises.

I move amendment 15.

Amendment 15 agreed to.

Section 56—Enforcing authorities

The Presiding Officer: Amendment 16, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 16 allows relevant authorities to enter into arrangements with a person prescribed in regulations to carry out such part 3 functions of the authority as specified. The exercise of the power would enable arrangements to be made with prescribed persons in a similar manner to arrangements that can be made under section 56(5), which is limited to the making of arrangements with the Health and Safety Commission. We intend to exercise the power to prescribe the proposed new Office of Rail Regulation as such a person.

I move amendment 16.

Mr Maxwell: I ask the minister to confirm the limits of the amendment. The SNP has some concerns about the amendment, as, on the surface, it appears to open up the possible definition of an enforcing authority from only the HSC to the HSC and anybody else that ministers decide. I ask the minister to confirm what organisations he has in mind. He mentioned the Office of Rail Regulation, but are we talking about prescribing in regulations organisations that are like the HSC? I ask him therefore to confirm that the amendment does not introduce a wide-open power that could be used to identify anybody as an enforcing authority.

Section 52—Duties of employees

Amendment 14 moved—[Hugh Henry]—and agreed to.

ABSTENTIONS

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Harvie, Patrick (Glasgow) (Green)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)

The Presiding Officer: The result of the division is: For 6, Against 90, Abstentions 5.

Amendment 29 disagreed to.
Hugh Henry: The exercise of the power under amendment 16 would mirror the exercise of the power in section 56(5), under which the relevant authority “may make arrangements with the Health and Safety Commission” for specified functions “to be carried out (with or without payment) on its behalf by the Health and Safety Executive in relation to” specified workplaces. We would seek to use the powers within those parameters and if anything moved in a direction that we have not described today, I would inform the Parliament of that through the Justice 2 Committee. Our intent is specific.

Amendment 16 agreed to.

Section 60—Alterations notices

The Presiding Officer: Amendment 17, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 17 sets out a number of requirements that an enforcing authority may impose on a person in an alterations notice. They include: the keeping of records on the assessment of risk; the recording of arrangements that are made for the planning, monitoring and review of fire safety measures; and, when notifying the enforcing authority of a proposed change to fire safety measures, the provision of a copy of the assessment and a summary of the changes proposed. The amendment strengthens the provisions on alterations notices and clarifies the requirements that can be placed on persons in such notices.

I move amendment 17.

Amendment 17 agreed to.

Section 65—Consequential restriction of application of Part I of Health and Safety at Work etc Act 1974

Amendments 18, 19 and 30 moved—[Hugh Henry]—and agreed to.

Section 67—Offences

The Presiding Officer: The next group is on fire safety and concerns defences, the burden of proof and other regulation-making powers. Amendment 31 is grouped with amendments 32, 34, 22, 36 and 23.

Hugh Henry: The Executive amendments in this group respond to the concerns referred to by Sylvia Jackson, which were raised by the Subordinate Legislation Committee following its consideration of the supplementary delegated powers memorandum after stage 2. Amendments 22 and 23 make the powers at sections 55(2)(c) and 72(7) subject to the affirmative procedure, as the committee recommended.

The Subordinate Legislation Committee was also concerned that the powers at section 67, subsections (9A), (11) and (12), were too wide. The committee proposed that those powers should be linked and that the powers under subsections (11) and (12) should be made subject to the affirmative procedure. On further reflection, we considered that the policy can be achieved in a different manner, involving the removal of the delegated powers and a clarification of situations
in which due diligence defences will not apply and of those in which a reverse burden of proof will apply.

We concluded that, in light of the Subordinate Legislation Committee’s recommendations and comments, it would be better to make the policy intention very clear in the bill rather than in regulations, as we had intended. Accordingly, amendments 31 and 32 remove the power under subsection (9A) and include in the bill provisions to make clear the circumstances in which the defence of due diligence will be removed.

Amendment 34 replaces subsections (11) and (12) with a provision creating an automatic reverse burden of proof whenever the regulations under sections 53 or 54 impose “so far as is practicable” or “so far as is reasonably practicable”, a duty or requirement resulting in an offence being committed under section 67(3).

I am aware that the timing of the recent recess brought added pressures to bear on the Subordinate Legislation Committee’s consideration of the bill as amended at stage 2 and that amendment 36 has been lodged on behalf of the committee on a contingency basis. I believe that the Executive’s amendments, which remove the relevant powers, narrow the range of potential situations in which the disapplication of the due diligence defence and the reverse burden of proof can apply. The amendments clearly display the link between the defence and the reverse burden of proof.

I hope that the measures are satisfactory to Sylvia Jackson and the Subordinate Legislation Committee and that, having listened to the detail of our response, the committee’s members are satisfied that our amendments make amendment 36 redundant.

I move amendment 31.

Dr Jackson: We are more than adequately pleased with what the minister has recommended. The Executive’s amendments indeed make the Subordinate Legislation Committee’s amendment 36 redundant.

Mr Maxwell: I welcome the minister’s comments and commend the work of the Subordinate Legislation Committee in this area. The committee, of which I am a member, had a number of concerns, particularly in relation to section 67, subsections (9A), (11) and (12), and the other provisions that the minister mentioned, which prompted amendment 36. I agree that the Executive has made that amendment redundant, and I am pleased that it has gone further and has included the provisions in the bill itself. My only concern is that the Executive will make the Subordinate Legislation Committee redundant, too.

Hugh Henry: I am afraid that that is outwith my competence, Presiding Officer.

The Presiding Officer: What is within our competence is putting the question. The question is, that amendment 31 be agreed to.

Amendment 31 agreed to.

Amendment 32 moved—[Hugh Henry]—and agreed to.

Amendment 33 not moved.

Amendment 34 moved—[Hugh Henry]—and agreed to.

Section 78—Abolition of Scottish Central Fire Brigades Advisory Council

The Presiding Officer: Amendment 35, in the name of Colin Fox, is in a group on its own.

Colin Fox: Amendment 35 seeks to ensure that the replacement for the Scottish Central Fire Brigades Advisory Council has the requisite powers to advise the Parliament and demand the direct involvement of the minister. The SCFBAC has played precisely that role since 1947, and the minister has said on the record that he wants the new body to be more dynamic than the body that it will replace. Amendment 35 would provide for the establishment of just such a reputable and dynamic body.

Extra powers are afforded to the minister under the bill, yet the body that has existed in statute since 1947 to advise ministers on strategic matters is to be replaced with a much less authoritative body that will have no teeth and will not be required to have input from, or direct access to, the minister. The bill proposes many new and additional powers for the minister in areas such as fire safety, yet it reduces the requirement for him to have to hand the necessary expertise and advice on the operational requirements that will be placed upon him.

I recognise that a consultation is taking place on the replacement of the SCFBAC but my amendment seeks to ensure that the replacement body that is agreed to—whoever sits on it, whatever its agenda and approach and however frequently it meets—is meaningful and not a toothless tiger that the minister may ignore if he so chooses. My amendment seeks to set parameters for the replacement advisory body to work within. A non-statutory body in which the minister plays no part would be a diminution of what we have at present and would be much less able to advise the Parliament on fire safety.
I move amendment 35.

Mr Maxwell: I am sure that the minister is aware of my opinion on the matter as we have discussed it many times. It is clear that the Scottish Central Fire Brigades Advisory Council is in need of updating and perhaps even modernising, and perhaps it is best to abolish it and start with a clean sheet. However, the bill states only that the council will be abolished. It is silent on any possible replacement. I believe that it is important to replace the SCFBAC with a new body, and provision to do so should be in the bill. In other words, there should be a new statutory body to replace a statutory body that is now long past its sell-by date.

Colin Fox's amendment 35 is not prescriptive. It does not determine the size or make-up of the body and will not cause the Executive any problems. It should give ministers wide flexibility. The important point is that the new body should be statutory; it should have the power and the teeth to deal with the issues that it faces and should be able to talk to the minister face to face. Therefore, we will support amendment 35.

Hugh Henry: As members have indicated, the matter was discussed extensively at stages 1 and 2. It is significant that at stage 2 the committee voted against an identical amendment. As Colin Fox is aware, the Executive is consulting on the most appropriate advisory structure for the future and the consultation period will not conclude until early March. In the consultation paper we make it clear that that consultation should take place within the parameters that the body will be statutory and that it is necessary not to ignore the conclusions of the people with expertise whom the minister talked about.

The new body needs to protect the essence of the advisory council that was established 50 years ago. As the minister knows, I welcome the consultation, but it is important that the Parliament send the message that the consultation must ensure that a statutory body replaces the advisory council and that the Parliament gives that body credibility. I will press the amendment.

The Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Fabiani, Linda (Central Scotland) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

whom ministers should consult nor the circumstances in which advice must be given. Therefore, the amendment would provide no framework on which to hang the regulatory detail.

Our position is clear. We do not believe that we need to establish the advisory body on a statutory basis. Far from leaving us where we are in legislation, Colin Fox's amendment would cause more problems than it seeks to solve. I hope that he will reflect on that and withdraw his amendment. If not, I hope that the Parliament will reject his proposal.
Scott, Eleanor (Highlands and Islands) (Green)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
White, Ms Sandra (Glasgow) (SNP)

AGAINST
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (West of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Glen, Marilyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeil, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteilth, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeen and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)

The Presiding Officer: The result of the division is: For 33, Against 70, Abstentions 0.

Amendment 35 disagreed to.

Section 81—Orders and regulations
Amendment 22 moved—[Hugh Henry]—and agreed to.
Amendment 36 not moved.
Amendment 23 moved—[Hugh Henry]—and agreed to.

Schedule 3
MINOR AND CONSEQUENTIAL AMENDMENTS
Amendments 24 to 26 moved—[Hugh Henry]—and agreed to.

The Presiding Officer: That ends our consideration of amendments.
Fire (Scotland) Bill

The Presiding Officer (Mr George Reid): The next item of business is a debate on motion S2M-2421, in the name of Cathy Jamieson, that the Fire (Scotland) Bill be passed.

15:20

The Deputy Minister for Justice (Hugh Henry): I am pleased to have the opportunity to open this debate. Today marks the culmination of an extensive process of consultation and parliamentary consideration, which began as long ago as April 2002 with the publication of the document entitled “The Scottish Fire Service of the Future”. Our partnership agreement gave a clear commitment to taking forward the 2002 white paper by introducing a fire bill to modernise the service, meet local needs, increase local decision making and improve consultation with the workforce. The Fire (Scotland) Bill is the outcome of that process.

The bill’s parliamentary passage has been assisted by a great many people, and before I proceed to comment briefly on the bill’s key provisions, I want to thank a number of them. I thank those who took time to respond to the various consultations; those who gave evidence to the committees; members of the Finance Committee and the Subordinate Legislation Committee and, in particular, members of the Justice 2 Committee for considering the bill so carefully and constructively; and the clerking teams of those committees. I also want to record my appreciation of the Scottish Executive bill team, which has worked hard to support ministers and has given advice and information to MSPs as requested. The team has done an exceptionally good job. I am also happy to confirm that Her Majesty has given her consent to the application of part 3 of the bill to the Crown in Scotland.

Some complex issues were inherent in the bill, particularly in relation to part 3, and we needed fortitude to work through the intricacies of fire safety legislation. Specifically, we have had to address the reserved-devolved divide between general fire safety and process fire safety and how the fire safety regime in Scotland will apply to so-called reserved premises. I can confirm that an order under section 30 of the Scotland Act 1998 is being used to transfer legislative competence for fire safety on special premises and construction sites to the Scottish Parliament. I can also confirm that we have in-principle agreement from Whitehall departments—subject to reaching detailed policy agreement and satisfying the statutory tests—to progress other issues, such as fire safety on Ministry of Defence premises and on certain ships and hovercraft and including the Health and Safety Executive and the Ministry of Defence fire services as enforcing authorities through a section 104 order under the 1998 act. Work is continuing at official level with Whitehall counterparts on a number of other issues.

The bill will deliver modern legislation for a modern fire and rescue service that responds to the demands of the 21st century. At times, the bill has been portrayed in some quarters as a vehicle for centralisation and micromanagement of the service by ministers—in effect, a takeover by the Scottish Executive. There have also been allegations that the bill will breach our European obligations and will make it an offence to take strike action—members will have heard that in previous discussions. That the Parliament’s rigorous scrutiny process ably demonstrated that the bill will do none of those things is comforting. Above all, the bill will achieve a statutory framework that places fire prevention and fire safety at its heart. For a country that—unfortunately—continues to have the worst fire fatality record in the United Kingdom, driving down the risk of fire, especially in the home, which is where many fatalities happen, must be a priority.

Through the national framework, there will be clear strategic direction for the service, which will ensure local democratic accountability and the local delivery of a key service to meet local needs. The clarification and strengthening of fire and rescue authority powers will provide the means and flexibility for authorities to achieve the best delivery for their areas.

Shona Robison (Dundee East) (SNP): I want to ask about local delivery, although the issue is not covered by the bill itself. The minister will be aware of concerns about local control rooms. In the debate on 18 November, he gave an assurance that there would be further consultation on control rooms and that the issue would be referred back to the Parliament through the proper mechanisms. What further consultation has been carried out? What will the proper mechanisms be? Will the Parliament have the final say on local control rooms?

Hugh Henry: We are still working on issues that were identified in responses from a number of stakeholders. Consultation will take place with key stakeholders, including trade unions, local authorities and the fire boards once we have all the information to hand. We still have some way to go. We have made it clear that we will come back to Parliament, and the committee will have further discussions before anything further happens. We are still some way from any decision or conclusion. It is right that we should take our time to consider the specific concerns that have been raised about the need for local geographic
knowledge and about the financial robustness of certain proposals. Once that information is to hand, there will be full consultation with all stakeholders, including the trade unions.

The bill will also enable a co-ordinated and Scotland-wide response to significant and even unprecedented emergencies. In the post-September 11 environment in which we all live, the provisions to ensure resilience are, sadly, necessary and I hope that they will be welcomed.

I hope that the various amendments that we made at stage 2 and today have given some assurances to those who were a bit uncertain and unclear. Where we can, we have attempted to accommodate and clarify. I hope that we can consider the bill as being just one part of a change process that is moving the fire service forward. I am clear that the bill is a central plank in that process and I am confident that it will stand the test of time. The process has been long, deliberate and rigorous and I warmly commend the bill to the Parliament.

I move,

That the Parliament agrees that the Fire (Scotland) Bill be passed.

15:26

Mr Stewart Maxwell (West of Scotland) (SNP):

I start by supporting the minister’s comments and praising many of those involved in the process. I particularly praise the fire service. The work done by operational firefighters, fire safety officers and non-uniformed support staff clearly creates the most effective and efficient public service in the country. That opinion might be slightly biased, given my 10-year service in Strathclyde fire brigade. However, it is an excellent service that responds when the public call and is there to save lives and property. We are all very thankful for that.

I support the bill because we believe that it is essential to have a modern fire service at the start of the 21st century. The fire service requires modern legislation and there is a lot to commend in the bill.

One of the smaller things that has not been mentioned so far but is worth referring to is some of the name changes. For example, firemasters are now chief fire officers. The term “firemaster” is an old term and suggests that the person at the top of the fire brigade will always be a man. Although that is only a small change, it is welcome. Changing the term “fire brigades” to “fire and rescue services” means that the name much more accurately reflects the work that the service does. It does not just deal with fires; it deals with a range of other incidents.

On that point, I welcome the inclusion of road traffic accidents in the bill. That is a positive step. I also applaud the emphasis on protecting firefighters that is included at chapter 5A of the bill. Again, that is a positive step.

As the minister has just said, modernisation of fire safety legislation is central to much of the bill. It is one of the most important shifts in emphasis in the bill. The idea that we consider causes and do not just deal with problems once they have arisen is an important step in the right direction. The emphasis on fire safety legislation in the bill is therefore very welcome.

I am also very pleased to acknowledge Bill Butler’s amendments to include the trade unions in any negotiating body and I am pleased that those amendments have been agreed to. Again, that is a good move and I thank Bill Butler for those amendments.

I was disappointed by some aspects of the bill. A replacement body for the Scottish Central Fire Brigades Advisory Council is not in the bill. I will certainly be paying close attention to the consultation in that area and to any regulations that the Executive proposes to create a new non-statutory body. I hope that the minister will be as good as his word and will create an effective, efficient and powerful body to advise him and his team.

I am also slightly disappointed that only RTAs, along with firefighting, have been included on the face of the bill, as there are other emergency incidents that could and, possibly, should have been included. Chemical and nuclear incidents, flooding and rail emergencies are well-known examples of incidents that could have been included on the face of the bill, instead of being left to ministerial order. I hope that the issue will be cleared up by ministerial order and that provision will be made for all such incidents.

It is also unfortunate that the opportunity has not been taken to consider who should be responsible for the maintenance of fire hydrants. We discussed the issue during consideration of stage 3 amendments a moment ago, but I think that the current system lacks logic and is basically inefficient. It is not just about transferring resources from one organisation to another. At the moment, when Scottish Water identifies a broken fire hydrant, it informs the fire service. When the service has inspected the hydrant and agreed that it is broken, it raises an order with Scottish Water, which sends out someone to replace it. The bill is sent to the brigades, which pay Scottish Water. In my view, that is not a particularly logical or efficient system. The whole matter must be looked at again.
I put on record our reservations about where fire services in Scotland may end up. Although we support the bill in general terms, it is important that I indicate our concerns for the future. If there is an attempt in the future to contract out fire brigade services, we will oppose it. If there is an attempt to cut control rooms, staff and safety, we will fight such proposals. If there is an attempt to undermine a first-class public service through privatisation, we will do everything in our power to prevent that from happening. I hope that the minister and the Executive will not go down that road. Down south, privatisation, contracting out and cuts have been mentioned as possibilities, but I hope that the idea that those will improve the service will have no place in the Parliament.

With the general reservations that I have expressed, I welcome the bill and the move forward that is being made. I welcome the fact that we are emphasising fire safety legislation and putting it at the heart of our fire safety work. The Scottish National Party will support the bill at decision time this evening.

15:32

Miss Annabel Goldie (West of Scotland) (Con): Today we are dealing with an important piece of legislation. As I did in the stage 1 debate, I pay tribute to our fire service in Scotland for the work that it does. At stage 1, I said that I have been the beneficiary of the service’s skill and expertise. We should be under no illusions about how vital the service is to Scotland.

In consideration of any legislation, it is important that we are clear that attempts to modernise services are proceeding in a reasonably transparent and readily understood fashion. I thank the minister for his comments in respect of the Justice 2 Committee and repeat my thanks to members of the committee, of which I am the convener. The committee found the bill an interesting piece of legislation to scrutinise and we had good debates. At stage 2, the Executive made considerable progress in allaying legitimate concerns that existed at stage 1.

The Conservative party was sufficiently unclear about the Executive’s intentions in the text on the face of the bill to feel unable to support the bill at stage 1. We lodged an amendment that was not agreed to, which left us unable to support the bill at that stage, because of genuine concern about lack of clarity. However, I am grateful to the minister for emphasising at stage 2 his desire to achieve a degree of transparency and for giving members of the Justice 2 Committee certain welcome reassurances that we accepted in the spirit in which they were given. As our doubts have been reasonably dispelled, Conservative members intend to support the bill this afternoon.

As has been mentioned in the debate and during consideration of amendments, there are some residual concerns about the bill. I refer to the briefing from the Fire Brigades Union. The FBU may be surprised to hear this from someone such as me, but I thought that its briefing, as a model of lucidity, took some beating. It was a very clear piece of work. I might not have agreed with everything in the document, but I certainly felt that it was very well prepared.

Shona Robison has referred to control rooms, and so shall I. The minister said in his response that the consultation is still to happen, but he said specifically that the matter would come back to Parliament via the committee. Although that is reassuring in a general sense, we would all welcome a slightly more specific indication of what form that return of information will take. Perhaps the minister will expand on that when he winds up.

The other relevant issue that the FBU raised concerns the national framework document. I expressed concern during the stage 1 debate that the content of that important and significant strategic document was still pretty vague at the time of the bill’s drafting and that it would be subject to consultation and final clarification before the Parliament. I accept that that parliamentary scrutiny will be a safeguard, but the FBU makes some legitimate points about the need to ensure that the document reflects slightly greater diversity in policies and procedures. I was sympathetic to some of the points that the FBU raised in that regard and I draw to the minister’s attention the need to be sure that the document takes a truly comprehensive and holistic approach. If we want the legislation to provide the most modernised service that we can achieve, the content of that document will be pivotal in trying to attain that objective.

Some of the Executive’s amendments at stage 3 did a lot to dispel residual concerns. I am pleased to see that there will be a reliance on affirmative rather than negative procedure in the Parliament for certain provisions. That is a conciliatory sign from the Executive and I receive it as such.

In short, my party welcomes the bill—it is a solid piece of work for the future. I hope that it will create the type of modern conditions that we all want for our fire service personnel. My party will support the bill.

15:37

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I rise to support the bill. I pay tribute to my colleague Mike Pringle who, with the Justice 2 Committee, saw the passage of the bill through stage 1 and stage 2 of the legislative process. As a former member of the Finance
Committee, where the bill was first considered—I will touch on that in a moment—it is my pleasant duty to support the bill this afternoon as it nears its final stage.

As the minister said, this is the first dedicated Scottish legislation for the fire service in 50 years. The bill will allow the streamlining of fire safety legislation in devolved areas; it will provide a statutory footing for a wider role for the fire service; it recognises the developments over recent years, especially in areas such as serious flooding; and it responds to terrorist incidents and road traffic accidents. Those are all areas in which firefighters have acquitted themselves admirably over recent years. They have been proactive and up for new challenges, as other members have said, and for that they deserve our thanks.

Even with the new bill, I hope that we do not move the service down the line towards working purely within statutory duties, even though it is beneficial to have some of those duties emphasised in the bill. Our fire service is outstanding because of its flexibility and the ease with which firefighters co-operate with the other emergency services. After visiting firefighters in Galashiels and the retained officers in Penicuik in my constituency, I have seen that at first hand. We all wish to be confident that the fire safety regulations are consensual and that they have the confidence of all firefighters.

Firefighters are at the forefront of joint working on fire safety. For example, the community safety forum in the Borders would not function as well as it does without the time and dedication of firefighters there. As an example, today I spoke to Jim Fraser, a senior fire officer in the Borders. It was his day off, and he was spending it briefing the planning officers in Scottish Borders Council on the new sprinkler regulations that this Parliament introduced. Jim Fraser’s team in the Borders has installed 100 smoke detectors in houses across the region; leafleted and knocked on doors; and linked in with social workers to provide benefits to the community while diligently performing its core role, which the bill will extend. I hope that, if there has been a tendency in the past to take for granted or not to recognise such additional work, the bill will lead to proper respect for the profession’s work and its wider benefit to the community.

Much of the debate within and outwith the committee has centred on fire control centres, which is another area in which regulations outside the bill will be important to the service. When I visited the force communication centre for Lothian and Borders police in Bilston just outside my constituency, I saw at first hand the major teething problems that are faced by a rationalised contact centre and control room. I understand that, although the major reforms that were introduced in the fire service all those years ago have by and large worked well, it was right to review existing practice. For example, the Strathclyde control room, which 20 years ago replaced five control rooms, currently takes 48 per cent of 999 calls in Scotland.

Scottish ministers are carrying out further consultation following the Mott MacDonald report. I hope that, after that consultation is concluded, we will have a considered debate on the effectiveness and efficiency of control rooms that will cover not only their number but their function and links with other emergency services. I also hope that the consultation that the minister has indicated will take place with trade unions and fire boards will be extended to other emergency services and, crucially, to communities. At the start of this process, the Finance Committee raised a number of issues about proposed short-term and long-term savings, and the FBU highlighted those matters in its briefing.

I am confident that the minister has addressed the concerns that have been expressed about ministerial powers. As with other existing powers, such powers are prescribed in the bill. Instead of seeking to centralise decision making, the bill seeks to devolve it, which is the right approach.

Ultimately, the bill seeks to shape the fire service in Scotland in a way that will equip it properly to save lives. After all, Scotland has a very poor record in that area. Many firefighters to whom I spoke during the dispute remarked that their constructive relationship with the Scottish Executive was better than the relationship that colleagues south of the border had with the Westminster Government. The bill secures and takes forward that relationship. Its aims are to save more lives; reduce the number of accidental fires in the first place; and allow the service to be equipped for more modern challenges. With the Executive’s continuing financial support, our fire service will be equal to those challenges.

I support the bill.

The Deputy Presiding Officer (Murray Tosh): I have three members on the screen, and I will be able to call them all if they restrict their comments to the four minutes available.

Jackie Baillie (Dumbarton) (Lab): I join other members in welcoming the Fire (Scotland) Bill and record my thanks to the clerks of the Justice 2 Committee, everyone who gave evidence, the bill team and ministers. Although the process has been complex and has sometimes resulted in arguments, it has been worth it just to hear the consensus that has emerged. Even the SNP—or
at least Stewart Maxwell—now accepts that a third way is desirable and should be supported.

Mr Maxwell: Will the member give way?

Jackie Baillie: No.

The previous piece of legislation on the fire service was passed almost 60 years ago, in 1947. As it is quite clear that the service has changed dramatically and that its range of responsibilities is diverse, it is appropriate that we reflect the new realities that firefighters face. I join other members in paying tribute to the men and women who work in the fire service and who sometimes risk their lives to protect us in our homes and communities. They deserve our thanks.

The bill seeks to give the fire service flexibility in how it deploys its resources and in finding out how it can best serve our communities. For a start, it sets out a range of core functions that better reflect current duties including, for the first time, dealing with road traffic accidents and offshore firefighting.

Let me spend a minute on the subject of offshore firefighting. Considerable work has been undertaken at UK level on what is called the sea of change project to ensure that fires that happen on vessels at sea can be dealt with appropriately. Given the extensive coastline that we enjoy, it is only common sense that we make provision for firefighting at sea. However, I understand that some concerns have been expressed, principally about no-fault insurance liability cover for firefighters who are involved in events that happen on a vessel that, for example, might be owned in one country but registered in another. I trust that the minister will continue his dialogue with the trade unions to resolve those matters.

I want to raise another concern that I have discussed previously with the minister. For the benefit of members, let me explain that section 67(2) of the bill will make it an offence for an employee to fail to co-operate with his employer in carrying out his duties in terms of part 3. The duty to co-operate is set out in paragraph (b) in section 52. The Executive’s helpful amendments at stage 2 put it beyond any doubt that section 67(2) would not apply in the event of strike action. However, it is unclear whether official industrial action short of strike, such as working to rule or a go-slow, would be similarly exempt. Will the minister confirm that section 67(2) is not intended to apply to an employee who does not so co-operate by reason of otherwise lawful industrial action, including industrial action short of strike?

In my concluding minute or two—

The Deputy Presiding Officer: You have only one minute.

Jackie Baillie: Thank you, Presiding Officer.

In my concluding minute, I want to deal with what I consider to be the essence of the bill, which is the greater emphasis that it places on fire prevention and community fire safety. In the tragic event of a fire, especially those that break out at night, the fire service—no matter how fast it is—often arrives too late and fatalities result. Therefore, we should see enormous benefit from the greater emphasis that the bill will place on prevention. Risk assessment must be used as a key tool by building on the risk-based approach that is contained in the Fire Precautions (Workplace) Regulations 1997, which require employers to identify risks and to take steps to remove or reduce them. In that way, the bill will affect virtually all those who are responsible for non-domestic premises, including shops, offices, educational establishments and care homes.

We all want to see a modern 21st century fire service with a framework that recognises and values our firefighters, provides flexibility to develop the service in the interest of our communities and has prevention of fire at its heart. The bill will provide an essential foundation on which we can build.

15:47

Mr Kenny MacAskill (Lothians) (SNP): As my colleague Stewart Maxwell said, the Scottish National Party is happy to support the bill. We pay tribute not only to those who were involved in drafting the published document that is before us, but to those who put in a great deal of hard work in research and consultation both before and after the bill went to the committee. All those involved, from the top to the bottom, deserve our thanks and the credit that is due to them.

The bill has been introduced not so much because the fire service has changed, but because society has changed around it. There is no suggestion of any fault on the part of the service—indeed, quite the opposite is true, given that all members have voiced their thanks for the current service. We are well served by the fire brigades, both by those who are involved in the control rooms and at auxiliary level and by the front-line firefighters and divisional officers. All of us, in the Parliament and in the country of Scotland, owe them a debt of gratitude.

However, life has changed and society is much more complicated. As Jackie Baillie pointed out, the bill will update existing legislation. Schedule 4 to the bill indicates the extent to which existing legislation will be repealed. For the Fire Services Act 1947, the repeal applies to

“The whole Act except sections 26 to 27A.”

For the Fire Services Act 1959, it applies to

“The whole Act except sections 8 to 10.”
Those sections were the basis on which the current fire service was organised, but it is clear that our society has changed in many ways, radically and irrevocably, since those times. We need to change with society and to ensure that our fire service is able to deal with matters.

Often, such change in society has not been for the better. Given the need to address matters such as fire officers who are assaulted in the line of duty, it is clear that some changes in our society have been significantly for the worse. However, such issues must be addressed both in the bill and in other legislation that is working its way through the Parliament.

In response to Ms Baillie, let me clarify that the SNP views the bill not as a third way so much as a statutory basis. I take on board the points that the minister has made, but we feel that it is necessary for the central authority to have some form of statutory basis. I welcome the bill because it introduces the facility and the framework that will allow the fire service better to serve not only us as legislators but the whole of our community.

We have mentioned two specific points, which are not about matters that are contained within the bill but relate to where the bill and, ultimately, the act may go. First, we have put on record, through Mr Maxwell and through my colleague Shona Robison, our worries about control rooms. Those concerns have been elaborated on previously and we reserve our right to return to the issue. Secondly, we feel that it would have been better for the central authority to have some form of statutory basis. I take on board the points that the minister has made, but we feel that it is necessary to ensure that there is a framework around which the authority can operate and of which ministers have some ownership and control so that it is not made into a quango or agency, or put out and sidelined.

With those two caveats, we are more than happy to support the bill at decision time.

Mr MacAskill: The member may well regret saying that. There has been an element of consensus and there is no suggestion that one party has a greater claim than any other over the fire service. The service benefits all people in Scotland irrespective of who they are, how they vote and whether they are rich or poor. That is as it always should be and no one party should lay any claim to such a service.

The SNP pays tribute to the fire service. We welcome the bill because it introduces the facility and the framework that will allow the fire service to provide the fire service with the necessary facilities and legislative framework.

Jackie Baillie: Does the member agree that the modern Scottish way is, in fact, the Labour way?

Like other members, I pay tribute to the firefighters—the men and women throughout Scotland who provide a first-class service that is held in high regard by the population of Scotland. I welcome, as did Annabel Goldie, the work that has been put into the bill by the Fire Brigades Union Scotland, although I confess that if Annabel Goldie has been won over to the union’s side, I must reassess my relationship with those comrades.

Nonetheless, I have concerns that the bill represents a sea change in the Executive’s attitude to the fire service compared with that before the strike. As the minister knows, I believe that the bill faces in an entirely different direction from the pathfinder report and the Executive’s “The Scottish Fire Service of the Future” document, which was published in 2002. To me, the bill is an amalgam of the much-criticised Bain report on the one hand and the report by the Office of the Deputy Prime Minister, which was published after the strike.

I have similar concerns to other members, the most obvious of which is the contentious possibility of cuts in the number of control rooms from eight to three, two or one. There was pretty clear unanimity in the body of evidence that was presented in favour of retaining the current eight control rooms and providing a better service to the public rather than have a lowering in the standard of the service, which would be the danger if we moved to having fewer than eight, or one in each fire authority.

I have concerns, which I expressed during the consideration of amendments, about the advisory council and its lack of teeth. I also have concerns...
about the extra power that the minister is handed by the bill. The Scottish Socialist Party has concerns about those matters so we still have concerns about the bill, although we hope that many of those fears will not materialise. We will not oppose the bill, but neither will we support it at 5 o’clock as we intend to abstain.

15:54  
**Hugh Henry**: Despite Colin Fox’s unwillingness to assume any responsibility for improving legislation in this country, the process has, in general, been a positive one with constructive suggestions being made at various stages.

It is right that members of all parties have recorded their appreciation of the work of fire service staff throughout Scotland. The staff are dedicated and professional and their dedication and professionalism have saved many lives. It is unfortunate that sometimes people’s habits and attitudes let our fire service down. Many people are still not prepared to assume the appropriate degree of responsibility for fire safety and work on education remains to be done to improve fire safety in this country.

If dedicated professionals are to deliver a service, it is right that the legislation should reflect the reality of modern Scotland, as the bill does. During the debate members raised a number of issues, which I will try to address. Stewart Maxwell asked whether BAA would be an example of “any other employer of fire-fighters”.

The answer to his question is yes. He also rightly talked about equal opportunities and the need for greater diversity in the fire services. The chief officer would not necessarily be a man and it is right that we change our attitudes in that regard.

Stewart Maxwell said that he was disappointed that certain powers are not mentioned in the bill. However, we need flexibility to be able to respond to changing circumstances and the approach that we have taken enables us to move more quickly than would otherwise be the case. That approach, rather than the inclusion of rigid provisions in the bill, is appropriate to the circumstances that confront us.

I was disappointed that, notwithstanding the consensus on the bill, Stewart Maxwell took the opportunity to create a degree of fear and alarm by making outrageous and unfounded comments about the contracting out of services and privatisation. There is no truth whatever in his allegations.

Annabel Goldie asked about control rooms. When the information has been collated and consultation has taken place, we will inform the Justice 2 Committee in writing of the outcome of the consultation. Annabel Goldie also raised specific issues about diversity, but I believe that we have addressed matters to do with diversity.

I will try quickly to address the points that Jackie Baillie made. We listened carefully to what was said about strike action and fire safety provisions. I make it absolutely clear that no provisions in the bill make the taking of lawful industrial action illegal. The amendments that were made to the bill at stage 2 made it clear that an offence would be committed only if a fire service employee failed to carry out his responsibilities for fire safety in the workplace while he was at work. In many respects, the provisions reflect those on health and safety at work for other employees. The approach is in no way out of step with the broader aspects of health and safety at work, which apply to employees in a range of services.

**Gordon Jackson (Glasgow Govan) (Lab)**: Will the minister give way?

**The Deputy Presiding Officer**: No, the minister is out of time.

**Hugh Henry**: There has been very good scrutiny and people have worked hard. We have tried to allay fears and make helpful amendments. I hope that we have put in place a bill that, when it is enacted, will reflect the needs of modern Scotland, make modern Scotland safer and ensure that our fire service staff have access to legislation that makes their job much more effective.
17:03

Robin Harper (Lothians) (Green): On a point of order, Presiding Officer. This afternoon, during a vote at stage 3 of the Fire (Scotland) Bill, a glitch or confusion in the electronics meant that my vote was confused with Annabel Goldie’s vote. With due respect to Miss Goldie, I do not want to be recorded as voting against my own party and I am quite sure that she would not like to be recorded as not having voted at all. I draw the Presiding Officer’s attention to the matter and ask whether it can be dealt with in some way. If not, perhaps we should find a way of dealing with such electronic glitches in future.

Bill Aitken (Glasgow) (Con): On the same point of order, Presiding Officer. I confirm that what Mr Harper says is entirely correct. I do so on behalf of Miss Goldie, who has had to leave the chamber on other business.

This is not a great issue, although I imagine that it would have caused some excitement if the Executive had lost a vote by one. In the circumstances, might it be in order to report back at least to business managers on what exactly went wrong and on the action that should be taken to avoid this situation in future?

Margo MacDonald (Lothians) (Ind): On a point of order, Presiding Officer. I hesitate to take the chamber’s time, but has the matter not already been recorded through the two members’ points of order?

The Deputy Presiding Officer (Trish Godman): I have noted what was said in the points of order. We will get back to those concerned.
17:05

The Deputy Presiding Officer (Trish Godman): There are eight questions to be put as a result of today’s business.

The first question is, that motion S2M-2421, in the name of Cathy Jamieson, on the Fire (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Mrs Wendy (Paisley North) (Lab)
Aruckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baille, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eade, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Finnie, Ross (South of Scotland) (LD)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Glen, Marilyn (North East Scotland) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewert (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAteer, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pervis, Jeremy (Tweddle, Edderton and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stronie, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Tosh, Murray (West of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST
Byrne, Ms Rosemary (South of Scotland) (SSP)
Curran, Frances (West of Scotland) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)

ABSTENTIONS
Fox, Colin (Lothians) (SSP)
MacDonald, Margo (Lothians) (Ind)
Sheridan, Tommy (Glasgow) (SSP)

Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 102, Against 3, Abstentions 4. Motion agreed to.

That the Parliament agrees that the Fire (Scotland) Bill be passed.
Chris Ballance (South of Scotland) (Green):
On a point of order, Presiding Officer. I want to register my vote in favour of the Fire (Scotland) Bill. My voting console did not work.

The Deputy Presiding Officer: That point has been duly noted. We will get back to you.
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Fire (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives 89/391/EEC, 89/654/EEC, 91/383/EEC, 94/33/EC, 98/24/EC and 99/92/EC; to make other provision in relation to fire safety in certain premises; and for connected purposes.

PART 1

FIRE AND RESCUE AUTHORITIES

Fire and rescue authorities

1 (1) The council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) for a local government area shall be the fire and rescue authority for that area.

(2) In subsection (1), “local government area” has, subject to subsection (3), the same meaning as in that Act.

(3) If a local government area extends into the sea, its seaward boundary shall, for the purpose of subsection (1), be the low water mark.

Joint fire and rescue boards

2 Schemes to constitute joint fire and rescue boards

(1) Where it appears to the Scottish Ministers that, for the purposes of this Act, it would be in the interests of greater economy, efficiency and effectiveness that the areas of two or more fire and rescue authorities be combined, they may by order make an amalgamation scheme for that combined area.

(2) An amalgamation scheme is a scheme constituting, for the combined area of the fire and rescue authorities specified in it (the “constituent authorities”), a joint fire and rescue board consisting of such number of members, being members of the constituent authorities, as are specified in the scheme.
(3) An amalgamation scheme may include such supplementary, incidental or consequential provision as the Scottish Ministers consider appropriate.

(4) Provision that may be made under subsection (3) may include in particular provision with respect to—

(a) the proceedings of the board;

(b) its funding and financial arrangements, including in particular—

(i) provision for the payment of its expenses out of a combined fire and rescue service fund maintained by the constituent authorities;

(ii) provision about the carrying-forward from one financial year to the next of any money received by the board in respect of the first year from the constituent authorities under provision made under paragraph (b)(i) and remaining unspent at the end of the first year;

(c) the transfer to the board of any property, rights and liabilities of the constituent authorities;

(d) the transfer to the board of any staff of the constituent authorities;

(e) officers of the board;

(f) the supply of services or facilities by the constituent authorities to the board;

(g) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the board.

(5) Before making an amalgamation scheme, the Scottish Ministers shall consult—

(a) the fire and rescue authorities in respect of which the scheme is proposed;

(b) such other fire and rescue authorities as appear to them likely to be affected; and

(c) such other persons as they consider appropriate.

3 Schemes under section 2: amendment and revocation

(1) An order amending or revoking an amalgamation scheme made under section 2(1) may include provision for the transfer of staff, property, rights and liabilities from the joint fire and rescue board constituted by the scheme to—

(a) any fire and rescue authority; or

(b) any other such board.

(2) Before making an order such as is mentioned in subsection (1), the Scottish Ministers shall consult—

(a) the joint board constituted by the scheme;

(b) the fire and rescue authorities specified in the scheme; and

(c) such other—

(i) fire and rescue authorities; and

(ii) joint fire and rescue boards,

as appear to them likely to be affected.
4 Joint fire and rescue boards: supplementary provision

Schedule 1, which makes provision about joint fire and rescue boards constituted by schemes made under section 2(1), shall have effect.

5 Existing joint fire boards

(1) An administration scheme under section 36 of the Fire Services Act 1947 (c.41) or section 147 of the Local Government (Scotland) Act 1973 (c.65) which is in force immediately before the repeal of those sections by this Act shall continue to have effect notwithstanding that repeal.

(2) A scheme such as is mentioned in subsection (1) shall be taken to be a scheme made under section 2(1); and a joint fire board constituted by such a scheme in respect of an area shall be taken to be a joint fire and rescue board constituted by the scheme for that area.

(3) The Scottish Ministers may by order make provision for and in relation to the transfer to a joint fire and rescue board constituted by a scheme made under section 2(1) of—

(a) any property, rights or liabilities of a joint fire board (“an existing board”) constituted by a scheme such as is mentioned in subsection (1); and

(b) any staff of an existing board.

Meaning of “relevant authority”

6 Meaning of “relevant authority”

In this Act “relevant authority” means—

(a) a fire and rescue authority which is not specified in a scheme made under section 2(1); or

(b) a joint fire and rescue board constituted by such a scheme.

PART 2

FIRE AND RESCUE SERVICES

CHAPTER A1

APPOINTMENT OF CHIEF OFFICER

6A Appointment of Chief Officer

(1) Each relevant authority shall appoint a person to be known as a Chief Officer.

(2) A Chief Officer shall be responsible to the relevant authority for the discharge of the functions conferred on the authority by virtue of this Act by any person employed by the authority for the purpose of discharging those functions.
CHAPTER 1

PRINCIPAL FIRE AND RESCUE FUNCTIONS

7 Fire safety

(1) Each relevant authority shall make provision for the purpose of promoting fire safety in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular, to the extent that the authority considers it reasonable to do so, make arrangements for—

(a) the provision of information, publicity and encouragement in respect of the steps to be taken to prevent—

(i) fires; and

(ii) death or injury by fire;

(b) the giving of advice, on request, about—

(i) how to prevent fires and restrict their spread in buildings and other property; and

(ii) the means of escape from buildings and other property in the event of fire.

8 Fire-fighting

(1) Each relevant authority shall make provision for the purpose of—

(a) extinguishing fires in its area; and

(b) protecting life and property in the event of fires in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular—

(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;

(b) secure the provision of training for personnel;

(c) make arrangements for—

(i) dealing with calls for help; and

(ii) summoning personnel,

in the event of fire;

(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;

(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

9 Road traffic accidents

(1) Each relevant authority shall make provision for the purpose of—

(a) rescuing persons in the event of road traffic accidents in its area; and
to the extent that it considers it reasonable to do so, protecting persons from serious harm in the event of road traffic accidents in its area.

(2) In making provision under subsection (1) a relevant authority shall in particular—

(a) secure the provision of the personnel, services and equipment necessary to meet efficiently all normal requirements;

(b) secure the provision of training for personnel;

(c) make arrangements for—

(i) dealing with calls for help; and

(ii) summoning personnel,

in the event of road traffic accidents;

(d) make arrangements for obtaining information required or likely to be required for the purpose mentioned in that subsection;

(e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection.

10 Conferral of functions in relation to other emergencies

(1) The Scottish Ministers may by order (an “additional function order”) confer on a relevant authority (the “specified authority”) a function relating to an emergency of a kind specified in the order (the “additional function”).

(2) An additional function order may not specify as a kind of emergency—

(a) a fire; or

(b) a road traffic accident,

in the area of the specified authority.

(3) An additional function order may make provision for or in connection with—

(a) requiring the additional function to be carried out by the specified authority outwith its area;

(b) specifying what the specified authority shall or may do for the purpose of the additional function;

(c) requiring or authorising the specified authority—

(i) to secure the provision of personnel, services and equipment;

(ii) to secure the provision of training for personnel;

(iii) to make arrangements for dealing with calls for help and summoning personnel;

(iv) to make arrangements for obtaining information required or likely to be required for the purpose of carrying out the function;

(v) to make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from carrying out the function.
CHAPTER 2

ANCILLARY FUNCTIONS

11 Emergency directions

(1) The Scottish Ministers may issue a direction (an “emergency direction”) requiring a relevant authority to—
   (a) take such action; or
   (b) refrain from taking such action,
   in relation to a fire, or emergency of another kind, as is specified in the direction.

(2) An emergency direction may require an authority to act outwith its area.

(3) An emergency direction may be varied or revoked by a further such direction.

12 Power to respond to other eventualities

(1) A relevant authority may take any action it considers appropriate—
   (a) in response to an event or situation that causes or is likely to cause—
      (i) a person to die, be injured or become ill; or
      (ii) harm to the environment (including the life and health of plants and animals and the fabric of buildings); or
   (b) for the purpose of enabling it to take action in response to such an event or situation.

(2) The power conferred by subsection (1)—
   (a) includes power to secure the provision of equipment; and
   (b) may be exercised by an authority within or outwith its area.

13 Provision of other services

(1) A relevant authority may provide—
   (a) the services of any persons employed by it; or
   (b) any equipment maintained by it,
   to any person for any purpose that appears to the authority to be appropriate.

(2) An authority may provide services or equipment under this section within or outwith its area.

14 Provision of centres for education and training

A relevant authority may establish and maintain one or more centres for providing education and training in matters in relation to which relevant authorities have functions.
15 Charging

(1) The Scottish Ministers may by order (a “charging order”) authorise a relevant authority to charge a person of a description specified in the order for any action so specified taken by the authority.

(2) A charging order may authorise a charge to be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority.

(3) A charging order may authorise charging for—

(a) extinguishing fires;
(b) protecting life; or
(c) protecting property in the event of fires,

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).

(4) Where a relevant authority authorised by a charging order to charge for taking action of a particular description decides to do so—

(a) the amount of the charge shall be set by the authority;
(b) different amounts may be charged in different circumstances (and the authority may charge nothing).

(5) In setting the amount of a charge, a relevant authority shall secure that, taking one financial year with another, the authority’s income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed.

(6) In subsection (5) “financial year” means the period of 12 months ending on 31 March.

CHAPTER 3
WATER SUPPLY

Supply and use of water

16 Duty to secure water supply

(1) A relevant authority shall take all reasonable measures for securing that an adequate supply of water will be available for the authority’s use for the purposes mentioned in subsection (2).

(2) Those purposes are—

(a) extinguishing fires in the area of the authority;
(b) protecting life and property in the event of fires in its area;
(c) rescuing people in the event of road traffic accidents in its area;
(d) protecting people from serious harm in the event of road traffic accidents in its area;
(e) carrying out any function conferred on the authority by an order under section 10; and
(f) fulfilling any requirement made of the authority by a direction given to it under section 11.
17 Use of water

(1) Subject to—
   (a) an agreement under section 18(1); and
   (b) section 9A of the Water (Scotland) Act 1980 (c.45) (charging for emergency use of water),

a relevant authority may use any suitable supply of water for the purposes mentioned in section 16(2).

(2) A relevant authority shall pay reasonable compensation for water used by virtue of subsection (1).

18 Agreements in relation to water supply

(1) For the purposes of section 16, a relevant authority may—
   (a) enter into an agreement with Scottish Water; or
   (b) enter into an agreement to—
      (i) secure the use of water under the control of a person other than Scottish Water;
      (ii) improve access to any such water;
      (iii) lay and maintain pipes and carry out other works in connection with the use of such water.

(2) Subject to section 9A of the Water (Scotland) Act 1980 (c.45) (charging for emergency use of water), an agreement mentioned in subsection (1)(a) may include terms as to payment to be made to Scottish Water.

(3) Scottish Water shall not unreasonably refuse to enter into an agreement mentioned in subsection (1)(a) which is proposed by a relevant authority.

(4) Any question whether Scottish Water has unreasonably refused to enter into an agreement mentioned in subsection (1)(a) shall be determined by the Scottish Ministers.

19 Emergency supply by Scottish Water

(1) If a relevant authority requests Scottish Water to provide a supply or pressure of water for a purpose mentioned in section 16(2) that is greater than it would otherwise provide, it shall take all necessary steps in order to do so.

(2) For the purposes of complying with its obligation under subsection (1) Scottish Water may shut off the water from the mains and pipes in any area.

(3) Scottish Water (and any other person) shall not be liable to any penalty or claim arising because of anything done by Scottish Water in complying with its obligation under subsection (1).

(4) If, without reasonable excuse, Scottish Water fails to take any step which it is obliged to take under subsection (1), it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
Fire hydrants

20 Fire hydrants: provision etc.
(1) Sections 19 to 22 of Schedule 4 to the Water (Scotland) Act 1980 (c.45) (requirement to provide fire hydrants etc.) shall apply to Scottish Water.
(2) Scottish Water shall cause the location of every fire hydrant provided by it to be clearly indicated by—
   (a) a notice; or
   (b) a distinguishing mark.
(3) Scottish Water may place such a notice or mark on a wall or fence adjoining a road or public place.
(4) The expenses incurred by Scottish Water under subsection (2) in relation to a hydrant shall be borne by the relevant authority in whose area the hydrant is located.
(5) The Scottish Ministers may make regulations providing for uniformity in—
   (a) fire hydrants provided by Scottish Water; and
   (b) notices or marks indicating locations of such hydrants.
(6) Where a fire hydrant provided by Scottish Water is damaged as the result of any use made of it with the authority of Scottish Water (other than use for the purposes of firefighting or any other purposes of a relevant authority) the relevant authority in whose area the hydrant is located shall not be liable for the cost of repairing or replacing it.

20A Fire hydrants: recovery of costs
(1) Schedule 4 to the Water (Scotland) Act 1980 (c.45) (provisions incorporated in orders relating to water undertakings) shall be amended as follows.
(2) After section 21 insert—
   “21A The Scottish Ministers may by regulations make provision as to—
   (a) the persons (other than Scottish Water) from whom; or
   (b) the circumstances in which,
   fire authorities may recover costs defrayed under section 21 of this Schedule.”.
(3) In section 22, for the words “the last but one foregoing section” substitute “section 20 of this Schedule”.

21 Fire hydrants: offences
(1) A person who—
   (a) uses a fire hydrant provided by Scottish Water otherwise than for a purpose mentioned in subsection (2); or
   (b) damages or obstructs such a fire hydrant otherwise than in consequence of use for such a purpose,
shall be guilty of an offence.
(2) Those purposes are—
(a) fire-fighting;
(b) any other purpose of a relevant authority;
(c) any purpose authorised by Scottish Water.

(3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Works affecting supply and hydrants

22 Notice of works affecting water supply and fire hydrants

(1) A person who proposes to carry out works for the purpose of supplying water to any part of the area of a relevant authority shall give the relevant period’s notice in writing to the authority.

(2) In subsection (1) the “relevant period” is—
   (a) in the case where the works are proposed to be carried out to comply with a requirement imposed under any enactment other than the Water (Scotland) Act 1980 (c.45), 14 days;
   (b) in any other case, 6 weeks.

(3) A person who proposes to carry out works affecting a fire hydrant shall give at least 7 days’ notice in writing to the relevant authority in whose area the hydrant is situated.

(4) If it is not practicable for a person to give notice as required by subsection (1) or (3), the person shall be regarded as having given such notice if it is given as soon as practicable.

(5) A person who, without reasonable excuse, fails to give notice as required by subsection (1) or (3) shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

CHAPTER 4

POWERS OF EMPLOYEES AND CONSTABLES

Powers in emergencies

23 Powers of authorised employees in relation to emergencies

(1) An employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) and on duty may—

   (a) if the employee reasonably believes that a fire has broken out, do anything the employee reasonably believes to be necessary for the purpose of—
      (i) extinguishing the fire; or
      (ii) protecting life or property;
   (b) if the employee reasonably believes that a road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of—
      (i) rescuing people; or
      (ii) protecting them from serious harm;
(c) if the employee reasonably believes that an emergency other than a fire or road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of carrying out any function conferred on the authority in relation to the emergency; and

(d) do anything the employee reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from action taken as mentioned in paragraph (a), (b) or (c).

(2) An authorised employee may in particular under subsection (1)—

(a) enter premises or a place (by force if necessary);

(b) move a vehicle without the consent of its owner;

(c) force open and enter a lockfast vehicle;

(d) close a road;

(e) stop and regulate traffic;

(f) restrict the access of persons to premises or a place.

24 Powers of constables in relation to fires

(1) A constable may—

(a) if the constable reasonably believes that a fire has broken out, do anything the constable reasonably believes to be necessary for the purpose of—

(i) extinguishing the fire; or

(ii) protecting life or property; and

(b) do anything the constable reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from anything done as mentioned in paragraph (a).

(2) A constable may in particular under subsection (1)—

(a) enter (by force if necessary) premises or a place;

(b) move a vehicle without the consent of its owner;

(c) force open and enter a lockfast vehicle;

(d) restrict the access of persons to premises or a place.

Obtaining information

25 Powers of authorised employees in relation to obtaining information

(1) Subject to subsection (2) an employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) may at any reasonable time enter premises for the purpose of obtaining information needed for the carrying out of the authority’s functions under section 8, 9 or 10.

(2) An authorised employee may not under subsection (1)—

(a) enter premises by force; or
(b) demand admission to premises occupied as a private dwelling unless 24 hours’ notice in writing has first been given to the occupier of the dwelling.

(3) If, on the application of an authorised employee, a sheriff or justice of the peace is satisfied—

(a) that—

(i) it is necessary for the employee to enter premises for the purposes of subsection (1); and

(ii) the employee is unable to do so, or is likely to be unable to do so, otherwise than by force,

the sheriff or justice may issue a warrant authorising the employee to enter the premises by force at any reasonable time; or

(b) that it is necessary for the employee to enter premises for the purposes of subsection (1) without giving notice as required by subsection (2)(b), the sheriff or justice may issue a warrant authorising the employee to enter the premises at any time (by force if necessary).

(4) If an authorised employee exercises a power of entry by virtue of this section, the employee may—

(a) take onto the premises—

(i) such other persons; and

(ii) such equipment,

as the employee considers necessary; and

(b) require any person present on the premises to provide the employee with any—

(i) facilities, information, documents or records; or

(ii) other assistance,

that the employee may reasonably request.

(5) An authorised employee exercising a power of entry by virtue of this section shall, if so required, produce the items mentioned in subsection (6)—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(6) Those items are—

(a) evidence of the employee’s authorisation for the purpose of this section; and

(b) any warrant under subsection (3)(a) or (b).

26 Giving of notices required by section 25

(1) The notice required by section 25(2)(b) may be given—

(a) by delivering it to the occupier of the dwelling;

(b) by leaving it for that person at the dwelling; or

(c) by sending it by post to that person at the dwelling.
(2) If the name or address of the person to whom notice under section 25(2)(b) is required to be given cannot be ascertained after reasonable inquiry, the notice may be given—

(a) by leaving it in the hands of a person who is, or appears to be, resident in the dwelling; or

(b) by leaving it fixed to a conspicuous part of the dwelling.

27 Powers of authorised employees in relation to investigating fires

(1) An employee of a relevant authority who is authorised in writing by the authority for the purposes of this section (an “authorised employee”) 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 employee exercises the power mentioned in subsection (1) the employee may—

(a) take onto the premises—

(i) such other persons; and

(ii) such equipment,

as the employee 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—

(i) the premises; or

(ii) an article or substance found on the premises,

that the employee 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 employee has power to do under paragraph (c) or (e);

(ii) ensuring that it is not tampered with before the employee’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;

(g) require a person present on the premises to provide the employee with any—

(i) facilities, information, documents or records; or
(ii) other assistance,

that the employee may reasonably request.

(3) An authorised employee exercising the power mentioned in subsection (1) shall, if so required, produce evidence of the employee’s authorisation for the purpose of this section—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(4) If an authorised employee exercises the power in subsection (2)(d) the employee shall—

(a) leave a notice at the premises with a responsible person (or, if that is impracticable, fixed in a prominent position) giving particulars of the article or substance and stating that the employee has taken a sample of it; and

(b) if it is practicable to do so, give such a person at the premises a portion of the sample marked in a manner sufficient to identify it.

(5) If an authorised employee exercises the power in subsection (2)(f) the employee shall leave a notice at the premises (either with a responsible person or if that is impracticable fixed in a prominent position) giving particulars of the article or substance and stating that the employee has taken possession of it.

(6) This section shall apply in relation to vehicles as it applies in relation to premises; but subject to the following modifications—

(a) the power conferred by subsection (1) includes power to enter premises in which a vehicle in which there has been a fire is being kept;

(b) the power conferred by paragraph (a) of subsection (2) includes power to take persons and equipment to the place where a vehicle is; and

(c) references to premises in subsections (2)(g) and (3) to (5) include references to premises in which vehicles are kept.

(7) In this section “premises” includes land.

28 **Exercise of powers under sections 25 and 27: securing of premises**

An employee of a relevant authority who, by virtue of section 25 or 27, enters premises—

(a) which are unoccupied; or

(b) from which the occupier is temporarily absent,

and who is authorised to do so by virtue of those sections shall on departure leave the premises as effectively secured against unauthorised entry as the employee found them.

29 **Sections 25 and 27: offences**

(1) If, without reasonable excuse, a person fails to comply with any requirement under section 25(4)(b) or 27(2)(g), the person shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
Use of information

30 Use of commercially sensitive information

(1) If, without reasonable excuse, a person—
   (a) makes use of; or
   (b) discloses,
any commercially sensitive information obtained by the person while on premises entered in exercise of a power conferred by virtue of section 23, 24, 25 or 27, the person shall be guilty of an offence.

(2) In subsection (1) “commercially sensitive information” means information with regard to any—
   (a) manufacturing process; or
   (b) trade secret.

(3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months.

CHAPTER 5

Mutual assistance etc.

Assistance in discharge of functions

31 Reinforcement schemes

(1) Each relevant authority shall, so far as practicable, enter into a reinforcement scheme with other relevant authorities.

(2) A reinforcement scheme is a scheme for securing mutual assistance as between the relevant authorities participating in it for the purpose of carrying out the functions conferred by virtue of sections 8 to 10 on any of them.

(3) A reinforcement scheme may make provision for apportioning between the participating authorities any expenses incurred in taking measures to secure the efficient operation of the scheme.

(4) The participating authorities shall notify the Scottish Ministers of—
   (a) the making of the scheme;
   (b) any variation of the scheme; and
   (c) the revocation of the scheme.

(5) The participating authorities shall give effect to the scheme.

32 Directions about reinforcement schemes

(1) Where subsection (2) applies, the Scottish Ministers may direct two or more relevant authorities to make a reinforcement scheme in the terms specified in the direction.

(2) This subsection applies where—
(a) one of the authorities has asked the other (or others) to agree to the making of the scheme;

(b) the authorities are unable to agree as to—

(i) that matter; or

(ii) the terms proposed for the scheme; and

(c) one of them asks the Scottish Ministers to make such a direction.

(3) Where subsection (4) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to vary the scheme in the terms specified in the direction.

(4) This subsection applies where—

(a) one of the authorities has asked the other (or others) to agree to the variation of the scheme;

(b) the authorities are unable to agree as to that matter; and

(c) one of them asks the Scottish Ministers to make such a direction.

(5) Where subsection (6) applies, the Scottish Ministers may direct the relevant authorities participating in a reinforcement scheme to revoke the scheme.

(6) This subsection applies where—

(a) one of the authorities has asked the other (or others) to agree to the revocation of the scheme;

(b) the authorities are unable to agree as to that matter; and

(c) one of them asks the Scottish Ministers to make such a direction.

(7) Before giving a direction under this section, the Scottish Ministers—

(a) shall give the authorities concerned an opportunity to make representations; and

(b) may cause an inquiry to be held.

(8) A direction given under this section may be varied or revoked by a further such direction.

(9) In this section “reinforcement scheme” has the meaning given by section 31(2).

33 Assistance other than from relevant authorities

(1) A relevant authority may enter into arrangements with a relevant person for securing the provision by that person of assistance for the purpose of the carrying out by the authority of a function conferred on it by virtue of any of sections 7 to 10, 12 and 56.

(2) In subsection (1) “relevant person” means a person who—

(a) is not a relevant authority; and

(b) in the case of arrangements for the securing of assistance for the purpose of extinguishing fires—

(i) employs fire-fighters; or

(ii) is approved for that purpose by the Chief Officer of a relevant authority.
(3) Arrangements under this section may include provision as to the terms (including terms as to payment) on which assistance is to be provided.

Performance of functions by others

34 Arrangements for carrying out of functions by others

1 A relevant authority may enter into arrangements with a relevant person for the carrying out by that person of a function conferred on the authority by virtue of any of sections 7 to 10, 12 and 56.

2 In subsection (1) “relevant person” means—
   (a) in the case of arrangements in relation to the authority’s function of extinguishing fires—
      (i) another relevant authority; or
      (ii) any other person who employs fire-fighters;
   (b) in any other case—
      (i) another relevant authority; or
      (ii) any other person.

3 Arrangements under this section may include provision as to the terms (including terms as to payment) on which any function is to be carried out.

35 Section 34: directions

1 The Scottish Ministers may—
   (a) direct two relevant authorities to enter into arrangements under section 34; or
   (b) direct two relevant authorities who have entered into such arrangements—
      (i) to vary the arrangements in the terms specified in the direction; or
      (ii) to terminate the arrangements.

2 Before giving a direction under this section, the Scottish Ministers—
   (a) shall give the authorities concerned an opportunity to make representations; and
   (b) may cause an inquiry to be held.

3 The Scottish Ministers may give a direction under this section only where, after considering—
   (a) any representations made under subsection (2)(a); and
   (b) the report of any person by whom any inquiry under subsection (2)(b) is held,
      they consider it expedient to do so with a view to securing greater economy, efficiency and effectiveness.

4 A direction given under this section may be varied or revoked by a further such direction.
CHAPTER 5A

ASSaultING OR IMPeding EMPLOYEES AND OTHERS

35A Amendment of Emergency Workers (Scotland) Act 2005

(1) The Emergency Workers (Scotland) Act 2005 (asp 2) shall be amended as follows.

(2) For paragraph (b) of section 1(3) substitute—

“(zb) that of a person employed by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) while discharging any of the authority’s functions under any of sections 8 to 12 (fire-fighting, road traffic accidents, other emergencies, emergency directions and other eventualities), 23, 25 and 27 (powers of authorised employees in relation to emergencies, obtaining information and investigating fires) of that Act;

(b) that of a person providing assistance under arrangements made by virtue of section 33 (assistance other than from relevant authorities) or 34 (arrangements for carrying out of functions by others) of the Fire (Scotland) Act 2005 other than assistance given to a relevant authority (as defined in section 6 of that Act) for the purpose of carrying out any of the authority’s functions conferred on the authority by section 7 or 56 of that Act;”.

35B Assaulting or impeding employees discharging certain functions

(1) A person who assaults, obstructs or hinders another person who is—

(a) an employee of a relevant authority; and

(b) discharging any of the functions conferred on the authority under section 7, 16 or 56,

commits an offence.

(2) A person who assaults, obstructs or hinders another person who is providing assistance to a relevant authority under arrangements made by virtue of section 33 for the purpose of the carrying out by that authority of any of the functions conferred on it by virtue of section 7 or 56 commits an offence.

(2A) A person who assaults, obstructs or hinders another person who is by virtue of section 34 carrying out a function conferred on a relevant authority by virtue of section 7 or 56 commits an offence.

(3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a period not exceeding 9 months or to a fine not exceeding level 4 on the standard scale.

CHAPTER 6

CENTRAL SUPERVISION AND SUPPORT

Fire and Rescue Framework for Scotland

36 Framework document

(1) The Scottish Ministers shall prepare a document—
Part 2—Fire and rescue services
Chapter 6—Central supervision and support

(a) setting out priorities and objectives for relevant authorities in connection with the carrying out of their functions; and
(b) containing—
   (i) such guidance in connection with the carrying out of any of those functions; and
   (ii) such other matters relating to those authorities or those functions, as the Scottish Ministers consider appropriate.

(2) The Scottish Ministers—
   (a) shall keep the document prepared under subsection (1) under review; and
   (b) may from time to time revise it.

(3) The Scottish Ministers shall carry out the functions conferred on them by subsection (1) and (2) in the manner and to the extent that appears to them to be best calculated to promote—
   (a) public safety;
   (b) the efficiency and effectiveness of fire and rescue authorities; and
   (c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

(4) The document prepared under subsection (1), and any revision of it which appears to the Scottish Ministers to be significant, shall have effect only when brought into effect by the Scottish Ministers by order.

(5) In preparing—
   (a) the document mentioned in subsection (1); and
   (b) any revision of it which appears to them to be significant,
the Scottish Ministers shall consult the persons mentioned in subsection (6).

(6) Those persons are—
   (a) each relevant authority or such persons as the Scottish Ministers consider represent those authorities; and
   (b) such persons as the Scottish Ministers consider represent employees of those authorities.

37 Adherence

(1) In carrying out their functions, relevant authorities shall have regard to the document prepared under section 36(1).

(2) Subsections (3) and (4) apply where the Scottish Ministers consider that a relevant authority is failing, or is likely to fail, to act in accordance with the document prepared under section 36(1).

(3) The Scottish Ministers may cause an inquiry to be held into the matter.

(4) Subject to subsection (5), the Scottish Ministers may, for the purpose of securing that the authority acts in accordance with the document, by order require the authority—
   (a) to take; or
(b) to refrain from taking, such action as is specified in the order.

(5) The Scottish Ministers may make an order under subsection (4) only where they consider that it would promote—

(a) public safety;

(b) the efficiency and effectiveness of the authority; or

(c) efficiency and effectiveness in connection with the matters in relation to which relevant authorities have functions.

(6) Before making an order under subsection (4), the Scottish Ministers shall consult the authority in respect of which it is proposed to be made.

(7) Where the document prepared under subsection (1) of section 36 has been revised under subsection (2)(b) of that section, the references in this section and section 38 to that document shall be taken to refer to that document as revised.

38  Reporting

(1) The Scottish Ministers shall report to the Scottish Parliament on—

(a) the extent to which relevant authorities are acting in accordance with the document prepared under section 36(1); and

(b) any steps taken by them for the purpose of securing that relevant authorities so act.

(2) The first report under subsection (1) shall be made before the expiry of the period of two years starting on the date when the document prepared under section 36(1) is brought into effect.

(3) Every subsequent such report shall be made before the expiry of the period of two years starting on the date on which the last such report was made.

39  Inspectors of Fire and Rescue Authorities

(1) Her Majesty may by Order in Council appoint—

(a) a Chief Inspector of Fire and Rescue Authorities; and

(b) such number of Inspectors of Fire and Rescue Authorities as the Scottish Ministers may determine.

(2) The Scottish Ministers may appoint Assistant Inspectors of Fire and Rescue Authorities.

(3) The Scottish Ministers shall pay to the persons appointed under this section such remuneration as the Scottish Ministers may determine.

(4) A person who, immediately before the coming into force of this section, is by virtue of appointment under section 24 of the Fire Services Act 1947 (c.41)—

(a) the Chief Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(a);
(b) an Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (1)(b);

(c) an Assistant Inspector of Fire Services for Scotland, shall be taken to have been appointed under subsection (2).

40 Functions of Inspectors of Fire and Rescue Authorities

(1) The Scottish Ministers may direct a person appointed under section 39 to—

(a) inquire into a matter mentioned in subsection (2); and
(b) to submit to them a written report on that matter by a date specified by them.

(2) Those matters are—

(a) the state and efficiency of relevant authorities generally;
(b) the manner in which—

(i) a relevant authority is carrying out any of its functions under this Act; or
(ii) relevant authorities are carrying out such functions generally;
(c) technical matters relating to a function of a relevant authority under this Act.

(3) The Scottish Ministers shall lay a copy of each report submitted to them under subsection (1)(b) on the matter mentioned in subsection (2)(a) before the Scottish Parliament.

41 Directions for public safety purposes

(1) Where the Scottish Ministers consider it necessary to do so for public safety purposes, they may make an order (a “property and facilities order”) giving general or specific directions to a relevant authority (or two or more such authorities) about the use or disposal of property or facilities.

(2) A direction under subsection (1) given to an authority may in particular include provision—

(a) about the use or disposal by the authority of property or facilities belonging to it or under its control;
(b) about the use by the authority of property or facilities belonging to or under the control of—

(i) another relevant authority; or
(ii) a person who has made, or is willing to make, the property or facilities available;
(c) requiring payments to be made by the authority to—

(i) another relevant authority; or
(ii) any other person,
in respect of the use of property or facilities.
(3) In subsection (2)(b) a reference to property or facilities belonging to a person includes a reference to land occupied by the person.

42 Requirements concerning equipment and services

The Scottish Ministers may make an order requiring a relevant authority (or two or more such authorities)—

(a) to use and maintain equipment—
   (i) specified in the order; or
   (ii) of a description so specified; or

(b) to use services—
   (i) so specified; or
   (ii) of a description so specified.

43 Provision of equipment etc.

(1) The Scottish Ministers may—

   (a) provide and maintain any equipment, facilities and services;

   (b) contribute to the provision and maintenance of any equipment, facilities and services;

   (c) establish and maintain any organisations; or

   (d) contribute to the establishment and maintenance of any organisations, they consider appropriate for promoting the economy, efficiency and effectiveness of relevant authorities.

(2) Subject to subsection (3), charges may be imposed for the use of equipment, facilities and services—

   (a) provided by the Scottish Ministers under subsection (1)(a); or

   (b) provided by an organisation established or maintained by the Scottish Ministers under subsection (1)(c).

(3) Any such charge shall not exceed the costs reasonably incurred in providing the equipment, facility or service to which it relates.

Training

44 Central institution and other centres for education and training

(1) The Scottish Ministers may establish and maintain a central training institution for one or more of the purposes mentioned in subsection (2).

(2) Those purposes are—

   (a) the provision of education and training to employees of relevant authorities;

   (b) the provision of advice and assistance to relevant authorities in connection with the provision of such education and training;

   (c) the supervision and regulation of the provision of such education and training;
(d) the provision of education and training to persons who provide (or are to provide) such education and training;

(e) the provision of education or training to persons who are not employees of relevant authorities in matters in relation to which relevant authorities have functions;

(f) the provision of advice and assistance in connection with the provision of such education and training.

(3) The Scottish Ministers may make arrangements with a relevant authority for a centre established under section 14 to be used for one or more of the purposes mentioned in subsection (2).

CHAPTER 7

EMPLOYMENT

Negotiation of conditions of service

45 Statutory negotiation arrangements

(1) The Scottish Ministers may by order make provision for the establishment of a body of persons (a “statutory negotiation body”), or two or more such bodies, for the purpose of negotiating the conditions of service of employees of relevant authorities.

(2) An order under subsection (1) shall provide for the statutory negotiation body established by it to be composed of—

(a) persons representing the interests of some or all relevant authorities;

(b) persons representing the interests of some or all employees of relevant authorities; and

(c) a person who does not fall within subsection (3), who shall chair the body.

(3) A person falls within this subsection if the person is—

(a) a member or employee of a relevant authority;

(b) a member or employee of a body representing the interests of some or all employees of relevant authorities; or

(c) an office-holder in, or a member of the staff of, the Scottish Administration.

(3A) The reference in subsection (2)(b) to persons representing the interests of some or all employees of relevant authorities includes trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)) whose membership consists of or includes employees of relevant authorities.

(4) A statutory negotiation body may make arrangements for the purpose of enabling conditions of service of employees of relevant authorities to be negotiated at local level (“local negotiation arrangements”).

(5) Local negotiation arrangements may in particular include provision as to—

(a) the—

(i) persons; or

(ii) descriptions of person,
by whom, or by means of whom, negotiations are authorised to be carried out at local level;

(b) the conditions of service and descriptions of conditions of service authorised to be negotiated at local level.

(6) Local negotiation arrangements may be made by a statutory negotiation body in respect of employees of a particular description only if the statutory negotiation body includes persons representing the interests of employees of that description.

(7) Where there is a statutory negotiation body which includes persons representing the interests of employees of a particular description, an agreement as to the conditions of service of employees of that description which is made by or on behalf of a relevant authority and by or on behalf of employees of the description concerned is a legally enforceable contract only where the terms of the agreement were negotiated—

(a) by means of the statutory negotiation body; or

(b) in accordance with local negotiation arrangements made by the statutory negotiation body in respect of employees of that description.

46 Guidance

(1) A relevant negotiation body shall, in negotiating the conditions of service of employees of relevant authorities, have regard to any guidance given by the Scottish Ministers in connection with that matter.

(2) In subsection (1) “relevant negotiation body” means—

(a) a body established by virtue of section 45(1); or

(b) any other body of persons which—

(i) includes both persons representing the interests of some or all relevant authorities and persons representing the interests of some or all employees of relevant authorities; and

(ii) is constituted in accordance with what appear to the Scottish Ministers to be appropriate arrangements for the negotiation of the conditions of service of employees of relevant authorities.

(3) The reference in subsection (2)(b)(i) to persons representing the interests of some or all employees of relevant authorities includes trade unions (as defined in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)) whose membership consists of or includes employees of relevant authorities.

Supplementary

47 Prohibition on employment of police

A relevant authority may not employ a constable for the purpose of carrying out any of the functions conferred on the authority by virtue of this Act.
CHAPTER 8

INTERPRETATION

48 Interpretation of Part 2

In this Part, unless the context otherwise requires—

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

(a) a person to die;

(b) a person to suffer serious—

(i) injury; or

(ii) illness; or

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

“extinguishing”, in relation to a fire, includes containing and controlling;

“road” has the same meaning as in Part 4 of the New Roads and Street Works Act 1991 (c.22).

PART 3

FIRE SAFETY

CHAPTER 1

FIRE SAFETY DUTIES

Duties

49 Duties of employers to employees

(1) Each employer shall ensure, so far as is reasonably practicable, the safety of the employer’s employees in respect of harm caused by fire in the workplace.

(2) Each employer shall—

(a) carry out an assessment of the workplace for the purpose of identifying any risks to the safety of the employer’s employees in respect of harm caused by fire in the workplace;

(b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).

(3) Where under subsection (2)(a) an employer carries out an assessment, the employer shall—

(a) in accordance with regulations under section 53, review the assessment; and

(b) take in relation to the workplace such of the fire safety measures as are necessary to enable the employer to comply with the duty imposed by subsection (1).

(4) Schedule 2 makes provision as to the fire safety measures.
50 Duties in relation to relevant premises

(1) Where a person has control to any extent of relevant premises the person shall, to that extent, comply with subsection (2).

(2) The person shall—

(a) carry out an assessment of the relevant premises for the purpose of identifying any risks to the safety of relevant persons in respect of harm caused by fire in the relevant premises; and

(b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in respect of harm caused by fire in the relevant premises.

(3) If a person falls within subsection (1) other than by virtue of—

(a) having control to any extent of relevant premises in connection with the carrying on by the person (whether for profit or not) of an undertaking; or

(b) owning relevant premises,

the person who owns the relevant premises shall also comply with subsection (2).

(4) A person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to—

(a) the maintenance or repair of—

(i) relevant premises; or

(ii) anything in relevant premises; or

(b) safety in respect of harm caused by fire in relevant premises,

shall also comply, to the extent of the obligation, with subsection (2).

(5) Where under subsection (2)(a) a person carries out an assessment, the person shall—

(a) in accordance with regulations under section 53, review the assessment; and

(b) take in relation to the relevant premises such of the fire safety measures as in all the circumstances it is reasonable for a person in his position to take to ensure the safety of relevant persons in respect of harm caused by fire in the relevant premises.

51 Taking of measures under section 49 or 50: considerations

(1) Subsection (2) applies where under section 49(2)(b) or (3)(b) or 50(2)(b) or (5)(b) a person is required to take any fire safety measures.

(2) The person shall implement the fire safety measures on the basis of the considerations mentioned in subsection (3).

(3) Those considerations are—

(a) avoiding risks;

(b) evaluating risks which cannot be avoided;

(c) combating risks at source;

(d) adapting to technical progress;
(e) replacing the dangerous with the non-dangerous or the less dangerous;
(f) developing a coherent overall fire prevention policy which covers technology, organisation of work and the influence of factors relating to the working environment;

(g) giving collective fire safety protective measures priority over individual measures; and
(h) giving appropriate instructions to employees.

52 **Duties of employees**

Each employee shall while at work—

(a) take reasonable care for the safety in respect of harm caused by fire of—

(i) the employee; and

(ii) any other relevant person who may be affected by acts or omissions of the employee; and

(b) in relation to any requirement imposed by virtue of this Part on the employee’s employer, co-operate with the employer in so far as is necessary for the purpose of enabling the employer to comply with the requirement.

**Regulations**

53 **Risk assessments: power to make regulations**

(1) The Scottish Ministers may make regulations about the carrying out of assessments and reviews under sections 49 and 50.

(2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying matters which persons must 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.

54 **Scottish Ministers’ power to make regulations about fire safety**

(1) The Scottish Ministers may by regulations make provision about fire safety in relevant premises.

(2) Regulations under subsection (1) 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 fighting 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;

(ga) 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;

(h) securing that employees receive appropriate instruction or training in what to do in the event of fire;

(i) securing that, in circumstances so specified, numbers of attendants so specified are stationed in parts of the relevant premises so specified;

(j) the keeping of records of instruction or training given, or other things done, in pursuance of the regulations; and

(k) 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.

54A Power to make further provision for protection of fire-fighters

(1) This section applies where regulations under section 54(1) make provision for or in connection with the maintenance of premises, facilities or equipment with a view to securing the safety of fire-fighters (whether employees of relevant authorities or otherwise) in the event of a fire in relevant premises (“safeguarding provision”).

(2) The Scottish Ministers may by regulations apply, subject to any modifications (specified in the regulations) that they consider necessary, the safeguarding provision to common areas of private dwellings.

(3) In subsection (2), “common area” includes, where a stair, passage, garden, yard, garage, outhouse or other appurtenance of a private dwelling is used in common by the occupants of more than one private dwelling, that stair, passage, garden, yard, garage, outhouse or other appurtenance.
Special case

55 Special case: temporary suspension of Chapter 1 duties

(1) If in relation to any relevant premises the application of any of the Chapter 1 duties would prevent a person who falls within subsection (2) from carrying out the person’s operational duties, the Chapter 1 duty (or, as the case may be duties) in question shall be deemed not to apply in relation to those relevant premises during the period when the person is carrying out those duties.

(2) A person falls within this subsection if the person is—

(a) a member of—

(i) the armed forces of the Crown; or

(ii) a visiting force;

(b) a constable; or

(c) of such other description as the Scottish Ministers may by regulations prescribe.

(3) A person subject to the Chapter 1 duty (or duties) which, by virtue of subsection (1) is (or are) deemed not to apply in relation to relevant premises shall, during the period mentioned in that subsection, ensure so far as is possible the safety of relevant persons in respect of harm caused by fire in those premises.

(4) For the purposes of this section, “operational duties”, in relation to a person falling within subsection (2), means anything done—

(a) while the person is at work in the capacity in which the person falls within that subsection; and

(b) which the person is required to do by virtue of being at work in that capacity.

CHAPTER 2

Enforcement

56 Enforcing authorities

(1) Each enforcing authority shall enforce the Chapter 1 duties.

(2) In carrying out the duty imposed by subsection (1), an enforcing authority shall have regard to any guidance given by the Scottish Ministers.

(3) For the purpose of carrying out the duty imposed by subsection (1), an enforcing authority may appoint enforcement officers.

(3A) If the enforcing authority is the person appointed under section 39(1)(a), the authority may, subject to subsection (3B), appoint under subsection (3) a person who has been appointed under subsection (3) as an enforcement officer by a relevant authority.

(3B) A person may be appointed by virtue of subsection (3A) only if—

(a) the appointment is made with the consent of the relevant authority concerned; and

(b) the appointment is made in writing.

(4) Subsection (1) does not authorise an enforcing authority to institute proceedings for an offence.
(5) A relevant authority may make arrangements with the Health and Safety Commission for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the Health and Safety Executive in relation to a workplace so specified.

(5A) A relevant authority may make arrangements with a person prescribed in regulations by the Scottish Ministers for such of the functions conferred on the authority by virtue of this Part as may be specified in the arrangements to be carried out (with or without payment) on its behalf by the person in relation to a workplace so specified.

(6) In this section, “enforcing authority” means—

(a) in relation to relevant premises which are—
   (i) a sports ground designated in an order under section 1 of the Safety of Sports Grounds Act 1975 (c.52) (safety certificates for large sports stadia);
   (ii) a sports ground to which Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27) applies; or
   (iii) a regulated stand within the meaning of section 26(5) of that Act of 1987 (safety certificates for stands at certain sports grounds),
   the local authority in whose area the relevant premises are situated;

(b) in relation to relevant premises in respect of which—
   (i) the Crown; or
   (ii) the United Kingdom Atomic Energy Authority, is subject to any of the Chapter 1 duties, the person appointed under section 39(1)(a);

(c) in relation to any other relevant premises, the relevant authority in whose area the relevant premises are, or are to be, situated.

(7) The Scottish Ministers may by regulations modify subsection (6).

57 Powers of enforcement officers

(1) An enforcement officer may do anything necessary for the purpose mentioned in section 56(3).

(2) An enforcement officer may in particular under subsection (1)—

(a) at any reasonable time (or, in a situation which in the opinion of the officer is or may be dangerous, at any time), enter relevant premises and inspect the whole or part of the relevant premises and anything in them;

(b) take onto the relevant premises—
   (i) such other persons; and
   (ii) such equipment,
   as the officer considers necessary;

(c) require a person on the relevant premises who is subject to any of the Chapter 1 duties to provide the officer with any—
   (i) facilities, information, documents or records; or
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(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 relevant premises;

(e) carry out any inspections, measurements and tests in relation to—

(i) the relevant premises; or

(ii) 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 respect of harm

caused by 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

paragraph (e) or (g);

(ii) ensuring that it is not tampered with before the officer’s examination of it is

completed;

(iii) ensuring that it is available for use as evidence in proceedings for an

offence relevant to the inspection.

(3) An enforcement officer exercising the power mentioned in subsection (2)(a) shall, if so

required, produce evidence of the officer’s authority to do so—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(4) If an enforcement officer exercises the power in subsection (2)(f), the officer shall—

(a) leave a notice at the relevant premises with a person who is subject to any of the

Chapter 1 duties in relation to the relevant premises (or, if that is impracticable,

fix the notice in a prominent position at the relevant 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 mentioned in subsection (2)(g), an enforcement officer

shall 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 any

of the Chapter 1 duties in relation to the relevant premises, an enforcement officer shall

cause—
(a) anything which the officer proposes to do on the relevant premises under the power mentioned in paragraph (d) or (e) of subsection (2); or
(b) anything which the officer proposes to do under the power mentioned in paragraph (g) of that subsection,
to be done in the presence of that person.

(6A) If an enforcement officer exercises the power in subsection (2)(h), the officer shall leave a notice at the relevant premises with a person who is subject to any of the Chapter 1 duties in relation to the relevant premises (or, if that is impracticable, fix the notice in a prominent position at the relevant premises) giving particulars of the article or substance and stating that the officer has taken possession of it.

(7) An enforcement officer who, by virtue of this section, enters relevant premises—
(a) which are unoccupied; or
(b) from which the occupier is temporarily absent,
shall on departure leave the relevant premises as effectively secured against unauthorised entry as the officer found them.

58 Prohibition notices

(1) Where subsection (2) applies in relation to relevant premises, an enforcing authority may serve a prohibition notice on the occupier of the relevant premises.

(2) This subsection applies where having regard in particular to the matter mentioned in subsection (3), the enforcing authority considers that use of the relevant premises involves or will involve a risk to relevant persons so serious that use of the relevant premises ought to be prohibited or restricted.

(3) The matter is anything affecting relevant persons’ escape from the relevant premises in the event of fire.

(4) A prohibition notice is a notice—
(a) stating that the enforcing authority considers that subsection (2) applies;
(b) specifying the matters which the enforcing authority considers give rise or, as the case may be, will give rise to the risk;
(c) directing that until those matters have been remedied the use to which the prohibition notice relates is—
   (i) prohibited; or
   (ii) restricted to such extent as may be specified in the notice; and
(d) subject to subsection (5), specifying when the notice shall take effect.

(5) An enforcing authority may specify that a notice shall take effect on service of the notice only if the authority considers that, in consequence of the matters specified under subsection (4)(b), there is or, as the case may be, will be an imminent risk of serious personal injury to relevant persons.

(6) A prohibition notice may specify steps which may be taken to remedy the matters specified in the notice.
(7) If relevant premises fall within paragraph (a) of subsection (3B) of section 72, the enforcing authority shall, before serving the prohibition notice and if it is practicable to do so, notify the local authority in whose area the relevant premises are situated of—

(a) the enforcing authority’s intention to serve a prohibition notice; and

(b) the use which it is intended to prohibit or, as the case may be, restrict.

(8) Where an enforcing authority serves a prohibition notice on the occupier of relevant premises, the authority may, by notice in writing to the occupier, withdraw the prohibition notice.

59 Enforcement notices

(1) Where an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, the authority may serve an enforcement notice on the person.

(2) An enforcement notice is a notice—

(a) stating that the enforcing authority considers that the person on whom the notice is served has failed to comply with the Chapter 1 duty specified in the notice;

(b) specifying why the authority considers that the person has failed to comply with the duty in question; and

(c) requiring 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) Where—

(a) an enforcing authority (the “first enforcing authority”) proposes to serve an enforcement notice on a person; and

(b) the first enforcing authority considers that the person has failed to comply with any of the Chapter 1 duties in relation to—

(i) a workplace in relation to which some other authority is the enforcing authority; or

(ii) employees who work in such a workplace,

any enforcement notice served by the first enforcing authority may include requirements relating to that workplace or those employees.

(4) Before serving an enforcement notice including a requirement such as is mentioned in subsection (3) the first enforcing authority shall consult the other enforcing authority.

(5) Before serving an enforcement notice including a requirement to make an alteration to relevant premises, the enforcing authority shall consult—

(a) subject to subsection (5A), the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier in relation to those premises;

(b) if the notice relates to a workplace in relation to which the authority responsible to any extent for enforcing Part I of the Health and Safety at Work etc. Act 1974 (c.37) and the existing statutory provisions is—

(i) the Health and Safety Executive; or

(ii) by virtue of Part I of that Act or the existing statutory provisions, any other authority,
the Executive or, as the case may be, that other authority; and

c) any other person whose consent to the alteration would be required by virtue of any enactment.

(5A) If the local authority in whose area the relevant premises are situated is also in relation to those premises—

(a) the enforcing authority; and

(b) the person appointed under section 7(1) of the Building (Scotland) Act 2003 (asp 8) as verifier,

the enforcing authority need not consult the local authority.

(6) Failure to comply with subsection (4) or (5) shall not affect the validity of an enforcement notice.

(7) Where an enforcing authority serves an enforcement notice on a person, the authority may—

(a) before the expiry of the period specified in the notice, by notice in writing to the person withdraw the enforcement notice;

(b) except where an application under section 61 has been made and not determined, extend, or further extend, the period specified in the enforcement notice.

(8) In subsection (5)(b), “existing statutory provisions” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37).

(9) For the purposes of this section, “Chapter 1 duties” does not include the duty imposed by section 52.

60 Alterations notices

(1) Where subsection (2) or (3) applies in relation to relevant premises, the enforcing authority may serve an alterations notice on the appropriate person.

(2) This subsection applies where there would be a serious risk to relevant persons in respect of harm caused by fire in the relevant premises.

(3) This subsection applies where—

(a) subsection (2) does not apply; but

(b) if any of the changes mentioned in subsection (5) were made, it is likely that subsection (2) would apply.

(4) An alterations notice is a notice requiring the appropriate person where—

(a) it is proposed that a change mentioned in subsection (5) be made to the relevant premises; and

(b) if made, the change would constitute a serious risk to relevant persons in respect of harm caused by fire in the relevant premises,

to notify the enforcing authority of the change before it is made.

(5) Those changes 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; and

(d) a change in the use to which the relevant premises are put (or, where they are put to more than one use, a use to which they are put).

(5A) An enforcing authority may include in an alterations notice provision requiring the appropriate person—

(a) to keep records of such information as, by virtue of paragraph (d) of subsection (2) of section 53, is specified in regulations under subsection (1) of that section;

(b) to keep records of arrangements made, in accordance with regulations under section 54(1), for the planning, organisation, control, monitoring or review of the fire safety measures;

(c) if notifying the authority of a proposed change, to give the authority—

(i) a copy of the assessment carried out under section 49 or, as the case may be, 50; and

(ii) a summary of the changes the appropriate person proposes to make to the fire safety measures.

(6) Where an enforcing authority serves an alterations notice on an appropriate person, the authority may, by notice in writing to the appropriate person, withdraw the alterations notice.

(7) In this section, “appropriate person”, in relation to relevant premises, means a person subject to a requirement under section 49 or 50 in relation to the relevant premises.

61 Appeals

(1) On the application of the person on whom a relevant notice is served or, if the relevant notice is a prohibition notice, a person who in relation to the relevant premises to which the notice relates is subject to the duties imposed by section 49 or 50, the sheriff may make an order—

(a) revoking the notice;

(b) varying it in such manner as may be specified in the order; or

(c) confirming the notice.

(2) Any application under this section shall be made before the expiry of the period of 21 days beginning with the service of the relevant notice to which the application relates.

(3) If the application relates to—

(a) an enforcement notice; or

(b) an alterations notice,

the notice shall be suspended during the relevant period.

(4) If, pending the making of an order under subsection (1), the sheriff makes an order suspending a prohibition notice (a “suspension order”) the suspension order shall be effective only from its making.

(4A) If not recalled by the sheriff, a suspension order shall cease to have effect on—

(a) the making of an order under subsection (1); or
(b) the abandonment of the application under this section.

(5) An application under this section shall be made by summary application.

(6) In this section—
   “relevant notice” means—
   (a) a prohibition notice;
   (b) an enforcement notice; or
   (c) an alterations notice; and

“relevant period” means the period beginning with the making of an application under this section and ending with—
   (a) the making of an order under subsection (1); or
   (b) the abandonment of the application.

62 Determination of disputes

(1) Where—
   (a) an enforcing authority considers that a person has failed to comply with any of the
       Chapter 1 duties; but
   (b) in relation to the duty in question the person and the enforcing authority cannot
       agree on the action that requires to be taken to comply with the duty,

the person and the authority may, subject to subsection (2), refer the matter to the person
appointed under section 39(1)(a) for determination.

(2) If the enforcing authority is the person appointed under section 39(1)(a), the matter may
be referred to the Scottish Ministers for determination.

(3) The Scottish Ministers may by regulations make provision about references under this
section.

(4) Subject to subsection (5), where a determination is made by virtue of subsection (1) or
(2), the enforcing authority may not—
   (a) serve an enforcement notice; or
   (b) include in such a notice directions,

if the notice or, as the case may be, the directions would conflict with the determination.

(5) Subsection (4) shall 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 they are put.
CHAPTER 3
MISCELLANEOUS

63 Prohibition on charging employees

No employer shall charge, or permit the charging of, any employee of the employer in respect of anything done or provided in pursuance of any of the Chapter 1 duties.

64 Civil liability for breach of statutory duty

(1) Subject to subsection (2), nothing in this Part shall be construed as conferring a right of action in any civil proceedings (other than proceedings for recovery of a fine).

(2) Breach of a duty imposed on an employer by virtue of this Part shall, in so far as it causes damage to an employee, confer a right of action on that employee in civil proceedings.

65 Consequential restriction of application of Part I of Health and Safety at Work etc. Act 1974

(1) Except as respects its application in relation to the aspects of fire safety set out in paragraph (b) of the sentence on interpretation in Section H2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46) (reserved matters), Part I of the Health and Safety at Work etc. Act 1974 (c.37) (“the 1974 Act”) and any regulations and orders made under it shall not apply in relation to fire safety.

(2) Nothing in subsection (1) affects the operation of Part I of the 1974 Act or any such regulations or orders where an enforcing authority is also, for the purposes of that Part or, as the case may be, the regulations or order, an enforcing authority (as defined in section 18(7)(a) of the 1974 Act).

65A Suspension of terms and conditions of licences dealing with same matters as this Part

(1) This section applies where—

(a) an enactment provides for the licensing of—

(i) premises; or

(ii) a person in respect of premises;

(b) the authority responsible for issuing licences under such an enactment (the “licensing authority”) is required or authorised to impose terms, conditions or restrictions in connection with the issue of such licences; and

(c) such a licence is required in respect of relevant premises.

(2) A term, condition or restriction imposed in connection with the issue under such an enactment of the licence shall be of no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by virtue of this Part.

(3) References in this section to the issue of licences include references to their renewal, transfer or variation.
(4) References in this section to licensing include references to certifying and registering; and “licence” shall be construed accordingly.

(5) This section does not apply where the licensing authority is also (other than by virtue of paragraph (c) of subsection (6) of section 56) the enforcing authority.

CHAPTER 4

OFFENCES

67 Offences

(1) If—

(a) a person fails to carry out a duty to which the person is subject by virtue of—

(i) section 49;
(ii) section 50; or
(iii) section 51; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(2) If—

(a) an employee fails to carry out a duty to which the employee is subject by virtue of section 52; and

(b) the failure to carry out the duty in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the employee shall be guilty of an offence.

(3) If—

(a) a person fails to comply with a requirement or prohibition to which the person is subject by virtue of regulations made under section 53 or 54; and

(b) the failure to comply with the requirement or prohibition in question puts a relevant person at risk of death, or serious injury, in the event of fire,

the person shall be guilty of an offence.

(4) It shall be an offence for a person—

(a) to fail, without reasonable excuse, to comply with a requirement imposed by an enforcement officer under section 57(2)(c);
(b) falsely to pretend to be an enforcement officer;
(c) intentionally to obstruct an enforcement officer in the carrying out of the officer’s functions under this Part;
(ca) intentionally to obstruct a person taken by virtue of section 57(2)(b) onto relevant premises;
(d) to fail to comply with a restriction or prohibition imposed by a prohibition notice;
(e) to fail to comply with a requirement imposed by—
(i) an enforcement notice; or
(ii) an alterations notice;
(f) to contravene section 63;
(g) to make in any register, book, notice or other document required by virtue of this Part to be kept, served or given an entry which the person knows to be false in a material particular;
(h) to give any information which the person knows to be false in a material particular, or recklessly to give any information which is false in a material particular, where the information is given in purported compliance with a requirement to give information imposed by virtue of this Part.

(5) A person guilty of an offence under subsection (1), (3) or (4)(d) or (e) shall be liable—
(a) on summary conviction, to a fine not exceeding £20,000;
(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(6) A person guilty of an offence under subsection (2) shall be liable—
(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
(b) on conviction on indictment, to a fine.

(7) A person guilty of an offence under subsection (4)(a), (c), (ca), (f), (g) or (h) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(8) A person guilty of an offence under subsection (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Subject to subsection (9A), it shall be a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(9A) Subsection (9) shall not apply in relation to—
(a) an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection;
(b) an offence under subsection (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition.

(10) In any proceedings for an offence under subsection (1) in respect of a failure to comply with the duty mentioned in paragraph (a)(i) of that subsection, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.

(11) In any proceedings for an offence under subsection (3) in respect of a failure to comply so far as is practicable with a requirement or, as the case may be, a prohibition, the onus of showing that it was not practicable to do more than was done shall be on the accused.

(12) In any proceedings for an offence under subsection (3) in respect of a failure to comply so far as is reasonably practicable with a requirement or, as the case may be, a prohibition, the onus of showing that it was not reasonably practicable to do more than was done shall be on the accused.
68 Offences by bodies corporate and partnerships

(1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a relevant person, the relevant person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a relevant person.

(3) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) In this section, “relevant person”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

68A Offence due to fault of other person

(1) Where the commission by any person (“A”) of an offence under this Part is due to the act or default of some other person (“B”), B shall be guilty of the offence.

(2) B may be charged with and convicted of an offence by virtue of subsection (1) whether or not proceedings are taken against A.

69 Employee’s act or omission not to afford employer defence

Nothing in this Part shall be construed as affording an employer a defence in any proceedings in pursuance of section 67 or 68 by reason only of any act or omission of—

(a) an employee of the employer; or

(b) a person of a description specified in regulations made by the Scottish Ministers on whom duties are imposed by virtue of section 54(1).

CHAPTER 5

GENERAL

70 Service of documents

(1) Any document required or authorised by virtue of this Part to be served on any person may be served—

(a) by delivering it to the person or by leaving it at the person’s proper address or by sending it by post to the person at that address;

(b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary or clerk of the body;

(c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or

(d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.
(2) For the purposes of this section and paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I. 1999/1379) (service of documents by post) ("the Order") in its application to this section, the proper address of any person on whom a document is to be served shall be the person’s last known address, except that—

(a) in the case of service on a body corporate (other than a limited liability partnership), its secretary or clerk, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;

(c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.

(3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outwith the United Kingdom or of a partnership carrying on business outwith the United Kingdom is its principal office within the United Kingdom.

(4) Subsection (5) applies if a person who is to be served by virtue of this Part with any document by another has specified to that other an address within the United Kingdom other than the person’s proper address (as determined under subsection (2)) as the one at which the person or someone on the person’s behalf will accept documents of the same description as that document.

(5) In relation to that document, that address shall be treated as the person’s proper address for the purposes of this section and paragraph 4 of Schedule 1 to the Order in its application to this section, instead of that determined under subsection (2).

(6) The Scottish Ministers may by regulations make provision for or in connection with specifying procedures which must, or may, be followed when serving documents required or authorised by virtue of this Part to be served on any person.

71 Crown application

(1) The provisions of this Part, and of regulations made under it, shall bind the Crown.

(2) No contravention by the Crown of any provision of this Act or of any regulations made under it shall make the Crown criminally liable; but the Court of Session may, on the application of an enforcing authority, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding subsection (2), the provisions of this Part and of regulations made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) Nothing in this Part authorises the entry of any relevant premises occupied by the Crown.

(5) Nothing in this section affects Her Majesty in Her private capacity.

(6) This Part shall apply in relation to relevant premises owned or occupied by the Parliamentary corporation as it applies in relation to relevant premises owned or occupied by the Crown.
Meaning of “relevant premises”

(1) In this Part, “relevant premises” means any premises other than those mentioned in subsection (2).

(2) Those premises are—

(a) domestic premises;
(b) construction sites, ships and hovercraft, mines and offshore installations;
(c) premises which, on 1 July 1999, were of a description specified in Part I of Schedule 1 to the Fire Certificates (Special Premises) Regulations 1976 (S.I. 1976/2003);
(d) borehole sites to which the Borehole Sites and Operations Regulations 1995 (S.I. 1995/2038) apply;
(e) premises occupied solely for the purposes of the armed forces of the Crown;
(f) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (c.5);
(g) premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;
(h) if the undertaking carried on in premises is agriculture or forestry, any land other than buildings which is situated away from the undertaking’s buildings.

(3) For the purposes of subsection (1), “premises” includes in particular—

(a) any place;
(b) any installation on land;
(c) any tent or movable structure; and
(d) vehicles other than those mentioned in subsection (4).

(3A) In paragraph (a) of subsection (2), “domestic premises” means premises occupied as a private dwelling (including a stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is used in common by the occupants of more than one such dwelling); but does not include premises such as are mentioned in subsection (3B).

(3B) Those premises are—

(a) a house as respects which the giving of permission to occupy it is an activity for which a licence under the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (S.S.I. 2000/177) is required;
(b) premises used for the provision of a care home service (as defined in subsection (3) of section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8));
(c) premises used for the provision of a school care accommodation service (as defined in subsection (4) of that section);
(d) premises used for the provision of an independent health care service (as defined in subsection (5) of that section);
(e) premises used for the provision of a secure accommodation service (as defined in subsection (9) of that section);

(f) premises which would fall within paragraph (a) but for there being in force in respect of them a control order under section 178 of the Housing (Scotland) Act 1987 (c.26); and

(g) premises which would fall within paragraph (a) but for there being in force in respect of them a management control order granted by virtue of section 74 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).

(4) The vehicles referred to in subsection (3)(d) are—

(a) any aircraft, locomotive, rolling stock, trailer or semi-trailer used as a means of transport;

(b) any vehicle for which a licence is in force under the Vehicle Excise and Registration Act 1994 (c.22);

(c) any vehicle which is exempt from duty under that Act.

(5) References in this Part to relevant premises include references to a part of relevant premises.

(6) The Scottish Ministers may by regulations modify subsections (1) to (4).

(7) Where the Scottish Ministers exercise the power in subsection (6), they may by regulations make any modifications of this Part in its application, in consequence of the exercise of that power, to relevant premises specified in the regulations under that subsection that they consider necessary or expedient.

73 Interpretation of Part 3

(1) In this Part, unless the context otherwise requires—

“Chapter 1 duties” means—

(a) the duties imposed by sections 49, 50, 51 and 52; and

(b) any duties imposed by regulations made under section 53 or 54;

“employee” has the meaning given by section 53(1) of the Health and Safety at Work etc. Act 1974 (c.37); and related expressions shall be construed accordingly;

“enforcement officer” means an enforcement officer appointed under section 56(3);

“enforcing authority” has the meaning given by section 56(6);

“fire safety measures” shall be construed in accordance with schedule 2;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“operational task” means—

(a) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 8;

(b) a function such as is mentioned in paragraph (a) or (b) of subsection (1) of section 9; or

(c) a function such as is mentioned in an order under section 10(1);
“public road” has the meaning given by section 151(1) of the Roads (Scotland) Act 1984 (c.54);

“relevant person”, in relation to premises, means—
(a) any person who is, or may be, lawfully in the premises; or
(b) any person—
   (i) who is, or may be, in the immediate vicinity of the premises; and
   (ii) whose safety would be at risk in the event of fire in the premises;

but does not include an employee of a relevant authority who is engaged in the performance of an operational task and, in its application to section 50, a person such as is mentioned in subsection (2);

“work” and “at work” shall be construed in accordance with section 52 of the Health and Safety at Work etc. Act 1974 (c.37);

“workplace”, in relation to an employer and the employer’s employees, means any relevant premises which are used for the purposes of an undertaking carried on by the employer and made available to an employee of the employer as a place of work; and includes—
(a) any part of those premises to which an employee of the employer has access while at work;
(b) any relevant premises (other than a public road)—
   (i) which are a means of access to or egress from the place of work; or
   (ii) where facilities are provided for use in connection with the place of work.

(2) The person is, where the person (“the employer”) subject to the requirement to carry out an assessment (or a review) under section 50 is also subject to the requirement to carry out an assessment (or a review) under section 49, any employee of the employer.

(3) For the purposes of section 52 references in the definition of “relevant person” in subsection (1) to premises shall be construed as references to the workplace.

PART 4
MISCELLANEOUS

30 74 Inquiries
The Scottish Ministers may cause an inquiry to be held into—
(a) the manner in which a relevant authority is carrying out any of its functions under this Act;
(b) the circumstances of, or the steps taken to deal with—
   (i) a fire;
   (ii) a road traffic accident; or
   (iii) an emergency of another kind in relation to which a relevant authority has functions under this Act.
75 Inquiries: supplementary

(1) The Scottish Ministers may by regulations make provision in connection with inquiries under this Act.

(2) The reference in subsection (1) to inquiries does not include inquiries mentioned in section 40.

(3) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) the persons who may conduct an inquiry and their appointment to do so;

(b) the giving of notice of an inquiry;

(c) requiring persons to attend an inquiry—

(i) to give evidence; or

(ii) to produce documents;

(d) the taking of evidence on oath;

(e) the payment of expenses—

(i) of witnesses; and

(ii) of or concerning the production of documents;

(f) the making of awards of expenses in respect of—

(i) an inquiry; or

(ii) arrangements made for an inquiry which does not take place;

(g) what expenses may be included in such awards;

(h) how expenses are to be calculated; and

(i) recovery of expenses.

Consultation requirements

76 Pre-commencement consultation

Where—

(a) consultation is required to take place under a provision of this Act; and

(b) before the provision comes into force, consultation takes place which would have satisfied the requirements of the provision to any extent if it had been in force, those requirements shall be taken to have been satisfied to that extent.

Advisory bodies

77 Payments in respect of advisory bodies

(1) The Scottish Ministers may make any payments they consider appropriate in respect of the expenses of a body established for the purpose of advising them on any matter in relation to which provision is made by this Act.

(2) The Scottish Ministers may make a payment under this section—

(a) to any person; and
(b) subject to any conditions,
they consider appropriate.

78 Abolition of Scottish Central Fire Brigades Advisory Council
The Scottish Central Fire Brigades Advisory Council is hereby abolished.

False alarms

79 False alarms
(1) A person who knowingly gives or causes to be given to a person acting on behalf of a relevant authority a false alarm of—
(a) fire;
(b) a road traffic accident; or
(c) an emergency of another kind,
shall be guilty of an offence.
(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction—
(a) to a fine not exceeding level 5 on the standard scale;
(b) to imprisonment for a term not exceeding 3 months; or
(c) to both.

Disposal of land

79A Disposal of land
A relevant authority may sell or dispose of any land vested in it which is no longer required by it.

PART 5
GENERAL

80 Ancillary provision
(1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.
(2) An order under subsection (1) may modify any enactment, instrument or document.

81 Orders and regulations
(1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations shall be exercisable by statutory instrument.
(2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—
(a) may be exercised so as to make different provision for different purposes; and
(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(3) A statutory instrument containing an order or regulations made under this Act (other than an order under section 83) shall, subject to subsection (4), be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—
   (za) an order under section 2(1) or section 5(3);
   (a) an order under section 80(1) modifying an enactment; or
   (b) regulations under section 55(2)(c), 56(7), 72(6) or (7) or 75,
shall not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

82 Minor and consequential amendments and repeals

(1) Schedule 3, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.

(2) The enactments mentioned in the first column of schedule 4 (which include enactments that are spent) are repealed to the extent set out in the second column.

83 Commencement

This Act, other than this section and section 81, shall come into force on such day as the Scottish Ministers may by order appoint.

84 Short title

This Act may be cited as the Fire (Scotland) Act 2005.
SCHEDULE 1
(introduced by section 4)

JOINT FIRE AND RESCUE BOARDS: SUPPLEMENTARY PROVISION

Status

1 A joint fire and rescue board constituted by a scheme made under section 2(1) shall be a body corporate and shall have a common seal.

General powers

2 (1) Subject to this Act and the scheme made under section 2(1) by which it is constituted, a joint fire and rescue board may do anything which appears to it to be appropriate for the purposes of, or in connection with, the carrying out of its functions; and it may in particular—
   (a) acquire and dispose of land and other property; and
   (b) borrow money.

   (2) The power to acquire land in sub-paragraph (1)(a) includes power to purchase land compulsorily, and section 71 of the Local Government (Scotland) Act 1973 (c. 65) (acquisition of land compulsorily) shall apply to a joint fire and rescue board as it applies to a local authority.

Pensions

3 For the purposes of the Local Government Superannuation (Scotland) Regulations 1987 (S.I. 1987/1850), the appropriate superannuation fund shall be—
   (a) in relation to the pensionable employees of a joint fire board constituted by an administration scheme under section 36 of the Fire Services Act 1947 (c.41) or section 147 of the Local Government (Scotland) Act 1973 (c.65), the superannuation fund of such one of the councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39) whose area is comprised in the area of the joint fire board as may be determined by or under the administration scheme; and
   (b) in relation to the pensionable employees of a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1), the superannuation fund of such one of the councils constituted as mentioned in paragraph (a) whose area is comprised in the area of the joint fire and rescue board as may be determined by or under the amalgamation scheme.

SCHEDULE 2
(introduced by section 49(4))

FIRE SAFETY MEASURES

1 Subject to paragraph 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 fighting 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 by the Scottish Ministers by regulations.

2 Nothing in paragraph 1 shall be construed as including process fire precautions.

SCHEDULE 3
(introduced by section 82(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

The Civil Defence Act 1948 (c.5)

A1(1) The Civil Defence Act 1948 shall be amended as follows.

(2) In subsection (1)(b) of section 1 (civil defence functions of Ministers), for “fire brigades” substitute “employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

(3) In section 5 (civil defence obligations)—
   (a) for “and fire brigades” substitute “, employees of relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”;
   (b) the words “and brigades” are repealed; and
   (c) for “respectively” substitute “and by employees of relevant authorities (as so defined)”.

(4) In section 9(1) (interpretation) the definition of “fire brigade” is repealed.

The Pipe-lines Act 1962 (c.58)

B1 In section 37 of the Pipe-lines Act 1962 (persons to be notified of certain pipe-line accidents)—
   (a) in each of subsections (1)(a) and (2)(a), after “fire” insert “and rescue authority”; and
   (b) in subsection (4), for paragraph (a) substitute—
   “(a) “fire and rescue authority”, in relation to any area, means a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) for the area;”.

659
The Gas Act 1965 (c.36)

C1(1) The Gas Act 1965 shall be amended as follows.

(2) In section 17 (provisions in relation to gas-related accidents), in subsection (5)(a) for “fire authority” substitute “fire and rescue authority”.

(3) In section 28(1) (interpretation), for the definition of “fire authority” substitute—

““fire and rescue authority” means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00);”.

The Transport Act 1968 (c.73)

D1 In section 102(4) of the Transport Act 1968 (application to the Crown and exemptions)—

(a) the words “or fire brigade” are repealed; and

(b) after “purposes” insert “or for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government (Scotland) Act 1973 (c.65)

1 In section 63A of the Local Government (Scotland) Act 1973 (disapplication of sections 62A to 62C in relation to fire authorities), after “fire” insert “and rescue”.

The Control of Pollution Act 1974 (c.40)

1A In subsection (2)(a) of section 62 of the Control of Pollution Act 1974 (restrictions on use of loudspeakers in streets)—

(a) the words “, fire brigade” are repealed; and

(b) after “purposes,” insert “for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government (Scotland) Act 1975 (c.30)

1B(1) The Local Government (Scotland) Act 1975 shall be amended as follows.

(2) For paragraph (a) of section 23(2) (authorities subject to investigation) substitute—

“(a) any joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 00);”.

(3) In subsection (3)(b) of section 29A (consideration of adverse reports), for “fire” substitute “joint fire and rescue boards”.

The Licensing (Scotland) Act 1976 (c.66)

1C(1) The Licensing (Scotland) Act 1976 shall be amended as follows.

(2) In each of—

(a) subsection (1)(e) of section 16 (objections in relation to licence applications);
(b) subsections (5) and (6) of section 23 (special provisions relating to applications for a new licence);
(c) subsection (1) of section 24 (special provisions relating to applications for renewal of a licence);
(d) subsection (3) of section 35 (consent of licensing board required for works to certain licensed premises); and
(e) subsection (2)(c) of section 105 (procedure on application for grant or renewal of registration),

after “fire” insert “and rescue”.

(3) In subsection (1) of section 139 (interpretation), for the definition of “fire authority” substitute—

““fire and rescue authority” means a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Water (Scotland) Act 1980 (c.45)
2 (1) The Water (Scotland) Act 1980 shall be amended as follows.

(2) In section 109(1) (interpretation), in the definition of “fire authority” for the words from “has” to the end substitute “means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)”.

(3) In section 1(1) of Schedule 4 (provisions incorporated in orders relating to water undertakings), in the definition of “fire authority” for the words from “has” to the end substitute “means a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)”.

The Local Government, Planning and Land Act 1980 (c.65)
2A In subsection (1) of section 2 of the Local Government, Planning and Land Act 1980 (local authorities to whom a duty to publish information applies), for paragraph (h) substitute—

“(h) a joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005 (asp 00);”.

The Civic Government (Scotland) Act 1982 (c.45)
2AA In section 54 of the Civic Government (Scotland) Act 1982 (playing instruments, singing, playing radios etc.)—

(a) in paragraph (a) of subsection (3), for “fire brigade” substitute “fire-fighting”; and
(b) after that subsection insert—

“(4) In subsection (3)(a), the reference to fire-fighting purposes is a reference to—

(a) the purposes of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)); or
(b) fire-fighting functions of any other employer of fire-fighters.”.
The Road Traffic Regulation Act 1984 (c.27)

2B In section 87 of the Road Traffic Regulation Act 1984 (exemptions from speed limits)—
(a) the words “fire brigade,” shall be repealed; and
(b) after “purposes” insert “or for or in connection with the exercise of any function of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Housing (Scotland) Act 1987 (c.26)

2BA In section 82 of the Housing (Scotland) Act 1987 (interpretation of Part III of Act), in the definition of “fire authority”, for the words from “fire”, where it secondly occurs, to the end, substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Housing (Scotland) Act 1988 (c.43)

2C In the Housing (Scotland) Act 1988—
(a) for sub-paragraph (vii) of subsection (3)(a) of section 43 (conditions necessary to make a tenancy a housing association tenancy or secure tenancy) substitute—
“(vii) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”; and
(b) for paragraph (g) of subsection (4) of section 45 (certain tenancies not to be capable of being protected or secure tenancies) substitute—
“(g) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.

The Tay Road Bridge Order Confirmation Act 1991 (c.iv)

2D In the Schedule (Provisional Order confirmed by Act) to the Tay Road Bridge Order Confirmation Act 1991, in paragraph (b) of subsection (2) of section 54, for the words from “a” where it first occurs to the end of that paragraph substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Strathclyde Regional Council Order Confirmation Act 1991 (c.xx)

2E In the Schedule to the Strathclyde Regional Council Order Confirmation Act 1991, in paragraph (a) of subsection (8) of section 3—
(a) the word “, fire” shall be repealed; and
(b) after “services” insert “, or by a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Local Government etc. (Scotland) Act 1994 (c.39)

2F In subsection (4) of section 43 (guidance as to exercise of traffic powers) of the Local Government etc. (Scotland) Act 1994, for paragraph (b) substitute—
“(b) the relevant authorities (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00));”.
The Merchant Shipping Act 1995 (c.21)

2G In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night), for “fire brigade” substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)) or any other employer of fire-fighters”.

The Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (c xii)

2H In the Schedule to the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996, in subsection (9) of section 6 for “the fire service” substitute “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”.

The Housing (Scotland) Act 2001 (asp 10)

2I In paragraph 2 of schedule 1 to the Housing (Scotland) Act 2001 (tenancies which are not Scottish secure tenancies)—

(a) in sub-paragraph (b), for the words from “a” where it first occurs to “(c.41)” substitute “an employee of a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00))”; and

(b) in sub-paragraph (c), for “fire brigade” substitute “authority”.

The Scottish Public Services Ombudsman Act 2002 (asp 11)

3 For paragraph 13 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities) substitute—

“13 A joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2005 (asp 00).”.

The Freedom of Information (Scotland) Act 2002 (asp 13)

2J In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities), for paragraph 9, substitute “Her Majesty’s Chief Inspector of Fire and Rescue Authorities”.

The Local Government in Scotland Act 2003 (asp 1)


(A2) In subsection (1)(d) of section 16 (community planning: further provision), for the words from “board” to the end of that paragraph substitute “fire board”.

(A3) In subsection (9) of section 22 (limits on power to advance well-being), at the beginning insert “Subject to section 15(3) of the Fire (Scotland) Act 2005 (asp 00),”.

(A4) In section 25 (scrutiny of local authorities’ police and fire functions)—

(a) in subsection (2)—

(i) for “Services for Scotland” substitute “and Rescue Authorities”;

(ii) for “24 of the Fire Services Act 1947 (c.41)” substitute “39 of the Fire (Scotland) Act 2005 (asp 00)”;
(iii) in paragraph (a), after “fire” insert “and rescue”; and
(b) in subsection (3)(a), after “fire” insert “and rescue”.

(1) In section 61 (definitions), in the definition of “joint fire board” for the words from “board”, where it secondly occurs, to the end substitute “and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2005 (asp 00)”.

The Fire and Rescue Services Act 2004 (c.21)

4A In subsection (10) of section 34 of the Fire and Rescue Services Act 2004 (pensions etc.), for the words from “fire”, where it secondly occurs, to the end substitute “relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 00)).”.

The Emergency Workers (Scotland) Act 2005 (asp 2)

5 In section 7 of the Emergency Workers (Scotland) Act 2005 (savings for certain offences), the words from “or section 30” to the end are repealed.
## Schedule 4—Repeals

**SCHEDULE 4**  
*(introduced by section 82(2))*

### REPEALS

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<td>The whole Act except sections 8 to 10.</td>
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<td>In section 55(12), the words from “, any” where it secondly occurs to “1947”.</td>
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<td>The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)</td>
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Fire (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about fire and rescue authorities and joint fire and rescue boards; to restate and amend the law in relation to fire services; to make provision in relation to the functions of such authorities and boards in connection with certain events and situations other than fires; to make provision for implementing in part Council Directives 89/391/EEC, 89/654/EEC, 91/383/EEC, 94/33/EC, 98/24/EC and 99/92/EC; to make other provision in relation to fire safety in certain premises; and for connected purposes.

Introduced by: Cathy Jamieson
On: 28 June 2004
Supported by: Hugh Henry
Bill type: Executive Bill