

JUSTICE 2 COMMITTEE

Thursday 9 September 2004

Session 2

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JUSTICE 2 COMMITTEE

24th Meeting 2004, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

Colin Fox (Lothians) (SSP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mike Pringle (Edinburgh South) (LD)

Nicola Sturgeon (Glasgow) (SNP)

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Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Michael Matheson (Central Scotland) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Jill Clark (Scottish Executive Justice Department)

Brian McKenzie (Her Majesty's Fire Service Inspectorate for Scotland)

Robert Marshall (Scottish Executive Legal and Parliamentary Services)

Ian Snedden (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Gillian Baxendine

Lynn Tullis

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Thursday 9 September 2004

[THE CONVENER *opened the meeting at 14:06*]

Item in Private

The Convener (Miss Annabel Goldie): On behalf of the committee, I welcome everyone to the 24th meeting this year of the Justice 2 Committee. Today is our first meeting in connection with a number of items, in particular the Fire (Scotland) Bill. Before I proceed with the agenda, I intimate apologies from Nicola Sturgeon and Colin Fox.

I will give some electronic guidance, not only to members but to our witnesses. You do not need to press the buttons on your consoles if you want to speak; the sound operator will switch you on automatically—at least, that is the theory. In the event that we hit any glitches with the sound system, we will resort to prayer, because I have no idea what we do if that occurs. However, we hope that it is not a challenge with which we will have to contend.

Does the committee agree to take item 4 in private?

Members *indicated agreement.*

Prisoner Escort and Court Custody Services Contract

14:07

The Convener: Item 2 concerns our previous interest in the prisoner escort and court custody services contract. Members should have a paper that has been prepared by the clerks, which lays out what has happened since our meetings and subsequent developments. I want to ascertain from the committee how it would like to proceed. The suggestion is that we await the report from the group led by the Association of Chief Police Officers in Scotland or the report from the Auditor General, at which point the committee may wish to consider matters further.

Karen Whitefield (Airdrie and Shotts) (Lab): The clerk's suggestion is the right one. All committee members have a considerable interest in this important issue, to which we want to give further careful consideration, but at the moment we do not have all the information that we require to be able to deliberate and make recommendations. We should wait until the Auditor General and ACPOS have reported, then we can consider whether we require to revisit the issue and take further evidence. We should definitely keep it on our agenda.

Mike Pringle (Edinburgh South) (LD): Do we have any idea when the reports are likely to be produced?

The Convener: I am not sure that we do, mainly because they are outwith our control as they are under the control of external bodies.

Mike Pringle: I just wondered whether we had had any indication at all.

The Convener: I have not received any information.

Gillian Baxendine (Clerk): The ACPOS report was originally due during the summer, but that was extended. I believe that it is now with ministers—or it will be with them imminently—but we do not know when it will be published.

Mike Pringle: We should come back to the issue as soon as possible. It should not be delayed indefinitely.

The Convener: If the committee desires, I can write to the Auditor General and to the Minister for Justice to ascertain whether there is any information on timescales.

Mike Pringle: That would be helpful.

The Convener: On that basis, is the committee happy to proceed as outlined by Karen Whitefield?

Members *indicated agreement.*

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 brigade. 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

have the control room somewhere else? For example, I cannot remember how many Sandwicks there are in Orkney, Shetland and Lewis. In addition, if the fire brigade control room fails for any reason, Northern constabulary—whose boundaries are coterminous with those of the Highlands and Islands fire brigade—provides the back-up. If those boundaries were not coterminous, how would the back-up systems work? I think that there are issues beyond those in the consultation document that need to be explored before a decision can be made.

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

controversial. However, you are also consulting on the establishment of a common fire services agency. Can you give the committee an indication of the responses that you have received and what the thinking is on what you may do in the light of those?

Ian Snedden: Our consultation paper included proposals to set up a common fire services agency, because we believed that some of the services that individual brigades undertake might be delivered more efficiently centrally and that that might take the strain off some smaller brigades. In the paper, we said that we intended to consider that issue.

Quite a large number of respondents expressed concerns about the impact of setting up a common fire services agency. There were suggestions that it was a centralisation measure by the Executive. We have recognised those concerns and have taken on board the suggestion that there are other ways of meeting the same objective, by encouraging more collaboration.

We have not included in the bill powers to establish a common fire services agency. We have said that, in the bill, we will provide for powers to consider with stakeholders whether such a body might be helpful. We will examine the issue at a much slower pace and, if the establishment of a common fire services agency is considered necessary or advantageous, we will progress the matter. However, we have not taken powers to set up such an organisation.

Karen Whitefield: Section 9 of the bill rightly recognises the important role that the fire service plays in dealing with road traffic accidents. A number of the written responses that the committee has received from fire authorities around the country have welcomed that, but they have also sought clarification. People are keen to know whether you can clarify what you mean by partnership arrangements and powers of authority when you refer to the prevention of road traffic accidents. Highlands and Islands fire brigade and Lothian and Borders fire brigade, in particular, have raised that issue. Can you offer the committee some clarification?

Ian Snedden: The fire service attends twice as many road traffic accidents as it does fires—that is a matter of fact. As a result, it has acquired a great deal of expertise in extricating casualties of road traffic accidents from vehicles. In the bill, we recognise the fact that the fire service is doing that job and doing it well. We have underpinned the work that the service does in that regard by making it a statutory duty.

We have not gone as far as we have in relation to community fire safety, where we are giving the fire authorities a duty to be much more effective

with regard 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?

15:15

Ian Snedden: I will ask my legal adviser to tell us whether there is a specific legal reason why we did not include that wording.

Jackie Baillie: It was a really easy question as well. For goodness' sake.

Ian Snedden: It is never too soon to call your solicitor.

Robert Marshall: Will you clarify exactly what you are asking? Are you talking about the trade union representation or something slightly different?

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: It might well be.

Robert Marshall: It is a matter of policy whether certain bodies are going to be consulted, so, in a sense, I cannot answer your question. However, we do talk about consulting such persons as appropriate, which might include a trade union, so, to that extent, trade unions appear there. There is a general duty for ministers to consult before they sign and make orders. That is standard statutory instrument practice. There might be omissions of that type throughout the bill. It might say nothing about consulting simply because that is expected—that is what happens and there is no legal requirement for it to be stated in the bill. Where the policy is that a particular body ought to be consulted, we have put that in the bill specifically. For the negotiating body, we wanted to make it absolutely clear that "appropriate body" includes trade unions; the policy is to ensure that they feel included in that.

Ian Snedden: 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: I understand that and I am not suggesting that you should list every single trade union in legislation, because even unions are prone to merge from time to time and change their names. However, the phrase "recognised trade union" is broadly accepted, which is why I

wondered why it was omitted from the bill. You are saying that that is a policy point and I shall therefore explore it with others.

I would like your reaction to a point raised by the Scottish Trades Union Congress. The suggestion in the STUC submission is that the bill appears to disapply section 1 of the Health and Safety at Work etc Act 1974. I see the lawyers turning pages—you have a response to that. The STUC goes on to say that it would be concerned about that, because it feels that it would be a contravention of a European Commission directive and lead to fragmentation. You are going to tell me that I am entirely wrong.

Robert Marshall: The answer to that is no, the bill does not repeal part 1 of the Health and Safety at Work etc Act 1974 as it applies to Scotland in respect of reserved matters. If that answers your question, I need not go any further.

The Convener: Although I am sure that you want to enter into a semantic debate about precisely why that is the case.

Maureen, did you have a supplementary question on the theme that Mike Pringle was pursuing?

Maureen Macmillan: Yes indeed. I am still not exactly clear about what was said about houses in multiple occupation. It seems that we will have two acts working alongside each other and that there may be two lots of people inspecting premises. If the bill places a duty on the fire service to inspect premises, it will have to do it, but there is also a duty on the HMO licensing body to inspect premises. What is happening? Is there something strange about the definition of houses in multiple occupation? I do not see what is happening.

Ian Snedden: I understand your point entirely. Fire safety is one of the statutory responsibilities that the Scottish Commission for the Regulation of Care has for residential care premises and until now, the commission has been responsible for ensuring that proper fire safety measures are in place for residential care premises. The care commission will retain all the functions that have been given to it in relation to its proper responsibilities for monitoring residential care premises except that it will not have responsibility for monitoring fire safety, which will move to the fire service under the bill. That is the same as what we intend to happen in relation to HMOs.

Maureen Macmillan: Does that mean that we will have a raft of legislation amending all sorts of other acts?

Ian Snedden: No.

Jackie Baillie: It strikes me that we have a joined-up service that you are attempting to unravel into its constituent parts. If I am on the

receiving end of a visit for an HMO, I am going to be visited twice, which strikes me as a duplication of effort and contradicts the points that you made earlier. The Edinburgh example is apposite. It has a dedicated team that is resourced to do HMO licensing and which seconds a fire officer to the team to bring that degree of expertise. The duty is on the local authority, but there is a joined-up service that does not miss a thing. My concern is that we will start to fragment the service, and naturally I would expect the fire service to turn round and say, "Where are the resources for us to assume all these new responsibilities?"

Brian McKenzie: 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 Executive's proposals?

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 board. 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 masquerade as a firefighter, because no one has brought that particular issue to our attention.

15:30

Karen Whitefield: It was certainly mentioned in Strathclyde fire board's submission. In particular, the board is concerned about the misuse of uniform, letterheads and equipment. Perhaps you could consider the issue and get back to the committee on it.

Jill Clark: The first time we came across the matter was when we read that evidence. We will certainly consider it.

The Convener: Mr Marshall, is there a common-law offence of impersonating 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: 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 CFA, 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.

The Convener: The committee will move into private session for agenda item 4, but this might be an appropriate time for anyone who wants a cup of tea or coffee to get it. We will have a five-minute suspension.

15:39

Meeting suspended until 15:50 and thereafter continued in private until 16:06.

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