

JUSTICE 2 COMMITTEE

Tuesday 28 September 2004

Session 2

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JUSTICE 2 COMMITTEE

27th 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)

Mr Stewart Maxwell (West of Scotland) (SNP)

*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

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 ALSO ATTENDED:

Mr Kenny MacAskill (Lothians) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Hugh Henry (Deputy Minister for Justice)

Glyn Morgan (Fire Officers Association)

John Russell (Fire Officers Association)

CLERK TO THE COMMITTEE

Gillian Baxendine

Lynn Tullis

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 4

Scottish Parliament

Justice 2 Committee

Tuesday 28 September 2004

[THE CONVENER *opened the meeting at 14:01*]

Item in Private

The Convener (Miss Annabel Goldie): Good afternoon everybody, and welcome to the 27th meeting this year of the Justice 2 Committee, at which we will continue our consideration of the Fire (Scotland) Bill.

First, I welcome Kenny MacAskill to the meeting as an attender. We are happy to have you with us. It is perfectly competent for you to ask questions, but we shall have to ask you to leave for the private session if we decide to have one. We have an apology from Stewart Maxwell.

Item 1 is to ask the committee whether it is agreeable to taking item 4 in private. Is that agreed?

Members *indicated agreement.*

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 the 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, how would you resolve the possible perception of conflict between the role of a fire officer and that of a police officer?

Glyn Morgan: We refer to that issue in our written response. Like the Chief Fire Officers Association, we support the removal of the provision. We have to consider the needs of remote communities in which the same people tend to want to serve the community in a variety of functions. It is often difficult to find people who are

willing to do that; we have difficulty in recruiting volunteers and retained firefighters in remote areas.

There should not be a conflict of interests, because I presume that people can do only one job at a time. If a police constable is off duty, I see no good reason why they cannot be a member of the retained service or a volunteer. When they are called out to a fire, they perform the role of a firefighter. Similarly, when they are called out on a police function, they work within the set of parameters that apply to police officers. We therefore think that, to provide community protection in remote areas, it would be helpful to take a more flexible approach and not to have section 47. We do not see a major conflict of interests.

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.

14:45

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.

The Convener: Are you asking the witness to clarify the situation?

Jackie Baillie: Yes.

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 SCFBAC 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—*[Interruption.]*

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 members 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 an 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 Convener: I mentioned the role of the firemaster. The relationship between the firemaster and the board has involved a clear line of authority and accountability, but that is not carried over into the bill. The explanation that has been given for that is that the Executive believes that the matter should be left to the employment conditions of the fire officer. However, that is not

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 catch-all, but will the minister clarify what the thinking is behind that? Why are the words "recognised trade unions" not included explicitly in section 45?

Hugh Henry: To some extent, Jackie Baillie has answered her own question, in that section 45

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 disapply 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 changes 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.

Subordinate Legislation

Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004 (SSI 2004/383)

The Convener: We now move into private session.

16:12

Meeting continued in private until 17:04.

16:12

The Convener: Agenda item 3 is subordinate legislation. I declare an interest as an enrolled solicitor in Scotland. Members have received a note from the clerk, together with a copy of the regulations. Are there any questions?

Members: No.

The Convener: Can I take it that the committee is content with the regulations?

Members *indicated agreement.*

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