

# Justice 2 Committee Official Report 14 September 2004

Col 941

**Scottish Parliament**

**Justice 2 Committee**

*Tuesday 14 September 2004*

[THE CONVENER *opened the meeting at 14:07*]

## **Fire (Scotland) Bill: Stage 1**

**The Convener (Miss Annabel Goldie):** Good afternoon. I welcome everyone to the 25<sup>th</sup> meeting of the Justice 2 Committee. Our purpose this afternoon is to continue our scrutiny of the Fire (Scotland) Bill and I am very pleased to welcome the witnesses from the Chief Fire Officers Association: Brian Murray, from the Highlands and Islands fire brigade; John Williams, from Grampian fire and rescue service; David Wynne, from Dumfries and Galloway fire brigade; and Brian Allaway and David Miller from the Lothian and Borders fire brigade.

Do any of the witnesses want to make an introductory statement?

**John Williams (Chief Fire Officers Association Scotland):** Yes, convener.

Good afternoon, ladies and gentlemen. First, I thank the committee for giving the Chief Fire Officers Association the opportunity to deliver an oral submission. We welcome the publication of the Fire (Scotland) Bill as a positive piece of legislation that will deliver better fire and rescue services in Scotland and provide a greater focus on the safety of Scotland's community. We particularly welcome the bill's provisions on fire safety and fire investigation. However, in our formal submission, we highlight a number of questions and issues that we wish to raise and that we have categorised as strategic comment, operational dimension and detailed observations. Today, CFOA Scotland would like to take this opportunity to amplify the issues that we have already identified as being of strategic concern to us.

As far as ministerial powers are concerned, we acknowledge that it is correct and proper for ministers to have appropriate powers in certain areas for the overall governance of the Scottish fire and rescue service. However, we remain concerned about the range of additional powers that ministers are proposing to take in the bill. Part of the previous debate on introducing new legislative proposals related to replacing ministerial power with increased accountability and responsibilities for fire authorities.

The bill does not appear to support that principle. There are some 27 areas in the proposed legislation in which Scottish ministers intend to take powers to direct the way in which local authority-governed fire and rescue services will be managed. It is considered that those proposals will have significant implications for the management of the fire and rescue authorities. Areas in which ministers propose to take powers are shown in appendix 1 of our submission.

As regards the governance and management of the fire and rescue service, CFOA Scotland supports the need for a clear and unambiguous understanding of the responsibilities and accountabilities of ministers, fire authorities and fire and rescue service managers. Otherwise, a diminution of standards could occur and confusion in areas of governance could arise. In particular, at present, the Fire Services Act 1947 provides for a firemaster to have direct responsibility to the fire authority for the efficient management of the service. Specifically, section 19(2) says:

"the chief officer of the fire brigade ... shall be directly responsible to the fire authority".

CFOA Scotland contends that the same provision should be contained in the Fire (Scotland) Bill to ensure that appropriate professional advice is provided directly to fire and rescue authorities. We would consider that to be consistent with, and supportive of, the Executive-sponsored principles of integrated risk management planning.

CFOA Scotland is committed to the development of more effective and efficient fire and rescue service provision in Scotland in accordance with the principles of best value. However, we are of the opinion that there needs to be greater clarity regarding the future structure of the Scottish fire and rescue service—in particular, regarding the size and numbers of fire and rescue services as they relate to the minister's proposals on the number of fire and rescue service command and control centres and to the bill's proposals on the development of a common fire service agency. Those topical areas are critical to the efficient operation and governance of the service.

Our view of the development of a common fire service agency is that it will be an overly bureaucratic forum that will add very little benefit to the service. CFOA Scotland maintains its view that further development of present arrangements of governance of the service, and the practical implementation of joint working arrangements between brigades, would allow the policy objectives of ministers to be met without the need to create an additional layer of bureaucracy for the service. Such an additional layer, together with an unnecessary financial consequence, is what a common agency would provide. CFOA Scotland

believes that its members can, by maintaining existing governance arrangements with fire authorities, support the delivery of the efficiencies, economies and effectiveness that the Executive seeks. CFOA Scotland has developed a strategic model to support its contention and would be pleased to discuss the details further with the Executive.

Finally, on the issue of fire service command and control rooms, we have submitted—under separate cover to the Executive—a detailed commentary on the Executive's consultant's report on the future of fire service control rooms in Scotland. Of the small number of possible options presented, we consider that the option of having three fire service command and control rooms, with a west, east and north distribution, would best meet the resilience and operational requirements of the service.

As with most issues of this kind, some clarity is required on the financial data identified in the consultant's report, on which the consultant's recommendations are very much based. CFOA Scotland has difficulty in reconciling the financial information to the human resource needs identified. We are firmly of the view that the projected savings are very much overstated. Detailed comments on the specifics of those matters have been made to the Finance Committee in response to its invitation to provide comment on the financial implications of the bill.

Once again, many thanks for the audience. We now invite the committee to ask any further questions as necessary.

**The Convener:** Thank you, Mr Williams. Incidentally, I should have passed on to the committee an apology from Nicola Sturgeon. I am sorry that I forgot to mention it.

One of the broad concerns of your organisation is the delicate issue of the balance between local operational flexibility and ministerial control. You mention the 27 instances where the association has identified the potential for ministerial intervention. I presume that the areas of most powerful intervention are under sections 2 and 34, which concern the ministerial power to constitute joint fire and rescue boards, and under section 35, which concerns ministers' power to issue directions in pursuance of the arrangements mentioned in section 34. Do you have a broad concern that the bill has not got the balance right, or, if individual concerns were addressed, would your association be more relaxed?

14:15

**Brian Allaway (Chief Fire Officers Association Scotland):** It is a combination of both those things. From the way in which the bill is

drafted, it appears that the minister will reserve powers to manage just about anything with regard to the service. You have brought to our attention two sections that will grant fairly broad powers. We are reasonably relaxed about section 2. However, I bring to your attention section 11, which gives the minister powers with regard to specific incidents. We are not sure how that would work in practice with regard to the command and control responsibilities that are currently vested with the firemaster.

**The Convener:** Might you be happier if that section were more precisely defined? Is there a situation in which you would not mind ministerial intervention as envisaged in section 11?

**Brian Allaway:** Yes. We would not mind the ministerial intervention that is granted in section 2—we think that that is proper. We may want it to be expanded somewhat to allow fire authorities to carry out the actions that are set out without the requirement for ministerial intervention. However, we have more specific concerns about section 11. We would prefer the firemaster's responsibilities to be more clearly defined with regard to the management of the operational resource on behalf of the fire authority. We would like that section to be redrafted.

**The Convener:** The issue strikes at the whole question of governance—who is in charge at any one time—which, judging by the introductory remarks of Mr Williams, is a concern. What do you think should be done to clarify the relationship in respect of governance?

**Brian Allaway:** We believe that the framework document that the Executive signals in the bill is the way forward on that. The Executive has indicated that it will consult on that. The framework would give the Executive the opportunity to give the appropriate level of direction to the fire service. We believe that the governance of the service should rest with the fire authorities and that the management of the service should be delegated to the firemaster.

**The Convener:** When questioned on the fact that the provision in the 1947 act for the firemaster to have a direct responsibility to the fire authority is not replicated in the bill, the Executive witnesses seemed to be of the view that that would be best left to employment terms and conditions. Is that acceptable to you?

**Brian Allaway:** No. That will start to take away the responsibility of the firemaster to the fire authority for the effective and efficient delivery of the fire service and it will start to blur the lines and make much less clear where the lines of accountability lie.

**The Convener:** From what you have said about the balance of power and accountability, it seems

Col 945

that some of it could be tweaked by more specific drafting in the relevant section and that some of it can perhaps be revealed by the national framework document. Is there any part of the bill that you think is simply irrelevant to the provision of a modern, efficient fire service?

**Brian Allaway:** It is not about being relevant; it is about being much more specific and making clear the lines of responsibility and accountability between the three levels of governance of the fire service. Currently we have a bill that would provide three levels of governance—an Executive level, a local government level through joint fire boards and a managerial level. We do not believe that the bill makes those lines of responsibility clear enough to enable us to ensure that things do not get clouded and that confusion does not arise as to the specific responsibilities of those three groupings.

**Karen Whitefield (Airdrie and Shotts) (Lab):** I draw to your attention part 1 of the bill and specifically section 1, which is on fire and rescue authorities. Many of the submissions to the committees have suggested that there needs to be a clear legal definition of the extent of each authority. How do you feel about that? Do you think that part 1 and section 1 have got it right?

**Brian Allaway:** An opportunity could have been taken to clarify current concerns. At the moment, the fire authorities' area of responsibility in relation to inshore and offshore incidents is not clear in the legal definition, which we would like to be tightened up so that fire authorities are aware of their areas of responsibility.

**Karen Whitefield:** Do you believe that the amalgamation scheme arrangements set out in section 2 will provide for joint fire and rescue boards where appropriate?

**Brian Murray (Chief Fire Officers Association Scotland):** We do not have a great problem with the way in which section 2 is drafted to allow powers to be taken. However, given the fact that this legislation could last for a long time, authorities might see a benefit in combining and they should have the power to do so, if they so wish, in pursuance of best value and meeting the needs of the community.

**Maureen Macmillan (Highlands and Islands) (Lab):** Sections 7 to 10 outline and define the main fire and rescue functions. Those are promoting fire safety, which is to do with providing information on preventing fires and death or injury by fire and providing advice on how to prevent fires and to restrict their spread in buildings and other property; firefighting, which is to do with extinguishing fires and protecting life and property; and acting in road traffic accidents and other

emergencies. Do you think that any other duties or functions ought to be added to that?

**David Wynne (Chief Fire Officers Association Scotland):** One of the areas that we believe could be improved is the fire service's role in prevention and protection beyond fires. For example, the fire service could play a proactive role in supporting communities in preventing floods and mitigating the effects of floods before they occur.

**Maureen Macmillan:** Thank you. Does anybody wish to add to that? Perhaps I could share my thoughts and see whether you want to comment.

**The Convener:** Could you put that in the form of questions for the witnesses?

**Maureen Macmillan:** Yes. Do you think that the provision to restrict the spread of fires in buildings and other property and to protect life and property will cover forest fires, heathland fires and grass fires? In the area where I live, which is covered by Brian Murray's brigade, we have a considerable number of such fires. Should those types of fire be mentioned specifically and should we perhaps address the environmental issue of destruction of flora and fauna? Is that covered in the duties? If not, should it be?

**Brian Murray:** The bill states:

"each relevant authority shall make provision for ... extinguishing fires in its area".

However, on some occasions we need to control fires before we finally extinguish them, in the interests of the environment. That is one of the finer points. The duty to extinguish fires covers forest areas as well—we see that as an important area of work and we have an important role in protecting the environment.

**Maureen Macmillan:** Would you like that to be included in the bill?

**John Williams:** We have always assumed that property is taken in its widest possible definition and includes the areas that you referred to, such as heathlands and forests, and that the definition is not strictly confined to buildings, but perhaps that was remiss of us. If the bill was far more focused and defined property in its widest possible sense, we would support that. To support what Brian Murray said, I think that the environmental impact is an important aspect and that we need to consider the way in which other legislation is being taken forward, particularly in relation to the environment. Extinguishing fire can be the last thing that we want to do, as opposed to controlling fire, so we would generally support those provisions if you could get them put in the bill.

**Maureen Macmillan:** Perhaps we should ask the Executive to define the words "property" and "life".

Col 947

**Brian Allaway:** I will pick up the point about areas that are not well defined, or even not included, in the bill. Part of our work that is very topical is our response to what we call new dimensions incidents, which might be caused by terrorists. The service is working up its ability to carry out search and rescue operations, not only in urban areas but in rural areas, and we had a fairly major example of that at Maryhill in Glasgow recently. Since then we have carried out two rescue operations in my area, one at a collapsed trench in West Lothian only last Saturday and one at a collapsed building in Leith a couple of weeks ago. We think that that area of work should be specifically included in the bill, to give the fire service a duty or responsibility to carry out the wider search and rescue role that we are asked to fulfil. *[Interruption.]*

**The Convener:** I am sorry, Mr Allaway. We have some interference, part of which is electronic and is being attended to but part of which is quite outwith my control. One of the clerks will go and investigate. I am sorry about that interruption.

Did I hear the phrase "new dimensions incidents" correctly? Will you clarify that?

**Brian Allaway:** Yes. Since the horrific incident in New York on September 11 three years ago, the emergency services throughout the entire country have been working up their ability to respond to such incidents. I am sorry for using fire brigade jargon. We refer to new dimensions incidents, which are major explosive, radiological or nuclear hazards that involve a commitment to search and rescue, normally in urban areas but also in rural areas.

**The Convener:** Would you like that to be included in the bill?

**Brian Allaway:** Yes, indeed.

**Jackie Baillie (Dumbarton) (Lab):** That is one of the points that I was going to raise, but I will raise another minor one. We are aware of the United Kingdom sea of change project and I wonder whether you have any views on whether offshore firefighting should be included in the bill, with your boundaries being specified to accommodate that.

**Brian Allaway:** Part of my response earlier was designed to indicate that we need some clarity so that we can respond to such incidents. Brigades in Scotland are involved in the sea of change project and we believe that the bill should be designed in such a way that that offshore firefighting is not precluded. Whether or not it would become a specific responsibility in the bill is something that I would

leave to the draftspeople who are building it up, but we certainly would not want to be restricted in our ability to fight fires offshore.

Col 948

14:30

**Karen Whitefield:** You will be aware that, prior to the publication of the bill, the Executive consulted at length. One of the aspects that was consulted on was the creation of a common fire services agency. We heard from Executive officials last week that they had chosen not to include those proposals in the bill, and I would be interested to hear whether you agree that there are ways in which you can allow for greater partnership working by authorities without the creation of an agency.

**Brian Allaway:** Yes, we would be very much in agreement with that. We believe that a common fire services agency could result in nothing but additional bureaucracy and likely additional cost. We have done quite a lot of work on developing a model that we believe could enable fire authorities to move forward with much more collaboration. It may be that the bill could include a section giving fire authorities a duty to collaborate, which would provide the necessary statutory framework for that to happen.

I have a document that puts our proposals into diagrammatic format. There is obviously a lot more detail behind it, but it is basically about joint project boards reporting to a strategic overview committee, with performance reporting to the Scottish Executive—to keep the Executive involved—and final reporting back to the existing fire authorities. We believe that that model could be put in place within existing resources in the main, and it would avoid the need for the additional bureaucracy and costs.

I am not sure whether you would like me to pass the diagrams round at this point, convenor, or whether you would like them sent to the committee afterwards.

**The Convener:** If they are available, the clerk will pick them up. That would be helpful.

**Karen Whitefield:** Would I be right in thinking, based on your response to the previous question, that you would prefer the bill not to be silent but to have some reference that would allow for your model, to guarantee that there would be co-operation where that would benefit the sharing of resources across authorities in Scotland?

**Brian Allaway:** We feel that that would be very helpful. Indeed, there is a current legislative model that could be considered as a way of doing that: the Local Government in Scotland Act 2003.

**Karen Whitefield:** Is the Convention of Scottish Local Authorities discussing those suggestions with Scottish Executive officials on your behalf?

**Brian Allaway:** We have been discussing them with COSLA and we have also discussed them with Scottish Executive officials. I am not sure, to

Col 949

be honest, whether COSLA has had any discussions with the Scottish Executive officials on that issue.

**Karen Whitefield:** Perhaps that is an issue that we can raise with COSLA representatives when they come to the committee.

**Maureen Macmillan:** I have some questions about fire control rooms, which you mentioned in your introduction. We have seen the separate submission that you made to the Executive, and we have also seen the one from the Highlands and Islands joint fire board. There has been a suggestion that Mott MacDonald's report did not properly address the functions of a control room. When you say that you are content to move to three centres, I wonder whether that is just making the best of a bad job or whether you feel that there could be benefits from having fewer centres. [*Interruption.*]

**The Convener:** I apologise for the noise. We are trying to get it stopped for the duration of the committee meeting, but apparently we cannot get to where it is happening, so there is a physical impasse at the moment.

**Maureen Macmillan:** Call the fire brigade.

**John Williams:** We will try to speak above the noise.

**The Convener:** Our clerks are trying to see what they can do. I am sorry.

**John Williams:** A move to three control rooms is making the best of the options that were presented to us in the consultants' recommendations. All along CFOA Scotland has been consistent in saying that each brigade should maintain its own control room for several operational reasons.

CFOA Scotland was also consistent in saying that the Mott MacDonald report was fundamentally flawed because it was developed round the number of incidents that a brigade attends as opposed to the number of calls to incidents that a brigade receives. For example, we could get as many as 40 calls to one incident. Each of those calls has to be dealt with and processed in exactly the same way as they would be if they were 40 different incidents. We have to do that to confirm to ourselves that it is the same incident that is being spoken about. Very little of that work was acknowledged in the original Mott MacDonald report.

The Executive asked Mott MacDonald to do another review and sleight of hand was used in the move from calls to incidents and raising the threshold from 20,000 incidents to 30,000 for no apparent reason. The second report does not say why that was done. I think that it was to maintain

Col 950

some kind of threshold so that the options of one, two or three control rooms could be provided.

**Maureen Macmillan:** You obviously have concerns about what would happen if the number of control rooms was reduced. What are those concerns?

**John Williams:** We are concerned about the loss of local knowledge. Perhaps a Welshman is not the right person to speak about this, but, in my area, Grampian, people speak in the local Doric accent and that has an influence with our control room operators. We are considering proposals that calls from Tayside, Grampian and the Highlands and Islands would be received in Aberdeen. We could say that the issues of local dialect and knowledge are covered in my area, but how do we deal with the Gaelic calls that will come from the Highlands and Islands? The same issues exist throughout the rest of the country and must be reflected. The consistent way in which to do so comes back to my original point that each brigade should maintain its own control room.

**David Wynne:** I have another point to add about what is technically termed resilience, or the ability of the fire service to deliver its services in larger-scale incidents. One of our concerns is that currently the eight fire brigades are coterminous with eight police force control rooms. Fire control makes a significant contribution to the local joint emergency management arrangements that have been developed under the Civil Contingencies Bill. By going to a different model, we would finish up with a different structure for police, fire and ambulance control rooms. We are concerned that that would make a difference to our ability to deliver our services in terms of resilience.

**Maureen Macmillan:** The ambulance service control rooms were rationalised not so long ago and we have an ambulance control room in Inverness that also covers Grampian. Is there a difference between what ambulance control rooms and fire service control rooms have to do?

**John Williams:** There is a fundamental difference in that a fire service control room operator provides a different kind of advice from that provided by an ambulance control room operator. An ambulance control operator would tend to give advice on immediate first aid and how to respond to the needs of a patient or casualty. The fire service would give advice on the safety of an individual who might be trapped in the building. We are able to produce tapes of a number of such calls. There is a fundamental distinction between the two. If you are asking me whether one operator could do both functions, I would have to say no.

**Maureen Macmillan:** No, I was thinking more of the geographical area that is covered by the

Col 951

control rooms. There is no problem with the ambulance control room covering Grampian and the Highlands and Islands, although there were concerns when it was first set up in that way.

**John Williams:** It does not make any difference whether the control room is located in Inverness, Aberdeen or Dundee. In our part of the country, the recommendation was made that the control room would probably be located in Aberdeen, but it makes no difference from my perspective if it is in Inverness or Dundee. We need to come back to the basic point that we made at the outset of this discussion, which is that each brigade should maintain its own control room.

**Maureen Macmillan:** But if that is not possible, what should be the criteria for reaching a decision?

**John Williams:** The obvious conclusion is to rationalise the number of brigades to the number of control rooms.

**Colin Fox (Lothians) (SSP):** I am sorry to prolong this discussion, but I have a supplementary question on control rooms. Your submission seems to express scepticism about the savings that the Mott MacDonald report concludes would be available. It seems that going from eight to three control rooms would save us the costs of five control rooms. What savings do you think would be made?

**John Williams:** I will hand that over to someone who has a far better handle on the financial aspects than I do.

**David Miller (Lothian and Borders Fire Brigade):** The bill identifies potential savings of £3 million from reducing the number of control rooms to three, but reconciling the figures is difficult. Our view is that they have probably been overstated by about 30 per cent. It is proposed that staff will be redeployed from control rooms to brigade activity, but brigades have no budgets for those staff, therefore that money has got to be found. So there are savings, but they have probably been overstated.

**Brian Murray:** Control room staff do more than just respond to emergency calls and turn out the fire engines; they perform a range of other duties. The Mott MacDonald report focuses purely on mobilising fire engines—I understand that the costs that it lists for control room duty apply purely to mobilising. The other functions that are performed by control room staff have been left out of the financial calculations, but that work would have to continue.

**Brian Allaway:** We also believe that the report underestimates the transition costs. If any change is decided upon, costs will be attached to it.

Col 952

**The Convener:** I ask members to keep their questions fairly crisp. There is still a lot of material to get through.

**Mike Pringle (Edinburgh South) (LD):** Section 15 is on charging, which appears in your list as something over which ministers can take ministerial powers. First, are you content with those provisions? Secondly, what should charging orders cover? The answer might be different for each of your areas, so you might all want to respond. Thirdly, subsection 4 of section 15 refers to authorities charging for things. Will it not cause considerable confusion if each authority charges for some things and not others, and authorities charge different amounts for different things?

**David Miller:** The provisions on charging, while broadly welcome, are restrictive. It is proposed that an order will be made to specify the extent of charges and who can be charged for particular activities. That does not necessarily reflect what happens on the ground at the moment, where brigades have fairly well-developed arrangements for income generation through charging mechanisms, particularly in the realm of industrial training. The bill's provisions seem to prevent us from carrying on with those activities, which is a downside. We wish to maintain our ability to generate income.

**Mike Pringle:** I do not know whether anybody else wants to respond. Does anybody else have a view on what you should and should not charge for?

14:45

**John Williams:** Yes. David Miller made points on the general provisions on charging, and part of our response spoke about the lack of a requirement on the minister to consult on developing a charging order in the first instance. We would like consultation on that for the reasons that Mike Pringle has identified. Not being able to apply certain charges will have significant implications for brigades' revenue budgets, because charges are a major element of them. We would like to extend the charging provisions to include charging for attendance at calls that transpire to be false alarms.

A judgment in England and Wales from some years ago precludes brigades there from charging for attending false alarms; that judgment was based on the framing of the 1947 act in respect of brigades attending a fire—it is not known that a call is a false alarm until after it has been attended. Clearly, we would like that aspect to be considered in detail during the bill's development to avoid a similar decision being made in the future. All brigades in Scotland are making efforts to reduce the impact on them of attending false

alarm calls, but what we have is very much a toothless tiger. We can write to and discuss matters with individual occupiers of premises until the cows come home, but only a financial penalty would have the desired effect on them. For example, a business might have to provide a fire authority with, say, £50,000 a year for attending false alarms at its premises.

In Grampian, we spend close on £500,000 a year on attending false alarms. Clearly, when that is replicated across the eight services, it is a huge waste of resources.

**Mike Pringle:** David Miller referred to the question of the income that his service gets from training—industrial training, I think he said. That is clearly a revenue stream for all the brigades. You mentioned the loss of other revenues. What other areas are you fearful of not being able to continue to charge for if the bill goes through as drafted?

**John Williams:** The loss of revenue from charging would not happen purely because of the bill, because there is also the impact of the Freedom of Information (Scotland) Act 2002. Currently, insurance company loss adjusters ask brigades to provide information on incidents that we have attended and we charge for that to cover administration costs that, in the worst cases, can be between £40 and £50. However, because the administration cost is less than £100, the 2002 act precludes us from applying a charge at all. We get 300 to 500 such information requests a year and not being able to charge for them has a significant effect on our bottom line. If we cannot generate income to cover the cost of dealing with such requests, the only other place that it can come from is the council tax.

**Mike Pringle:** Have you thought of just charging more than £100?

**John Williams:** Yes, but because of how the 2002 act was drafted we might be faced with a challenge to such a charge that could result in our being able to charge only 10 per cent of that. We are between a rock and a hard place on this issue. The bottom line is that our opportunities for income generation are much reduced because of a range of legislation and the bill will not help that situation. I do not know whether the bill can include a provision to disable elements of the 2002 act. Members are shaking their heads, so obviously that is not possible.

**Brian Allaway:** By the very nature of these things, we tend to give evidence about matters that we are not particularly comfortable with. We are comfortable with many things in the bill, which we think will help us to modernise the service and move forward. One of the charging aspects that we are comfortable with is that fire authorities will be specifically precluded from charging for

emergency work and we think that that provision should be supported. I thought that I would try to get something positive in this afternoon.

**The Convener:** Oh, we are not for one moment inferring that you are not positive. However, it is our business to try to push you on the slightly more contentious areas.

**Jackie Baillie:** It falls to me to ask you about the thorny subject of water hydrants, on which it appears that there is no agreement. The bill suggests that they should be your responsibility and you suggest that they should be the responsibility of Scottish Water or its successor body. Why do you think that?

**John Williams:** We currently operate under the provisions of the Fire Services Act 1947 and schedule 3 to the Water Act 1945, which says that the cost shall be defrayed to the fire authority. The service that was provided in 1947 was very different from that which is provided today. Fire hydrants are used for far more mundane purposes than those for which the fire service uses them. I would go so far as to say that there are few occasions on which the fire service uses fire hydrants. Even though they are used by councils and private contractors, if they are damaged, the cost for their repair is defrayed to the fire authority. The water undertaker utilises that clause to ensure that we pay the bill. We do not think that that is right, particularly when the water undertaker has a licensing arrangement whereby it authorises a contractor to use the hydrants. I think that, in that case, the bill should be picked up by the water undertaker.

We have extended our comments to include new developments, whose water mains should be provided by the developer or the water undertaker. In itself, that seems fairly obvious. However, the water main in a new residential area would simply be a 1in-capacity pipeline, which would not provide the volume of water that we require to extinguish a fire. We want there to be a minimum specification of water pipes so that we are able to access the volume of water that we need if we are to extinguish a fire. The minimum that we would be looking for would be about 75mm or, in old money, 3in.

**Colin Fox:** Earlier, you said that you thought that the national framework document was sufficient for ministers to give direction to authorities. Am I to infer from that that, in principle, you support the introduction of a framework document?

**Brian Allaway:** We support that in principle but we have not yet seen the detail that lies behind it. We would want to be involved in the consultation process as it is developed.

Col 955

**Colin Fox:** Are there any specific aspects that you would want to be covered in detail in the bill?

**Brian Allaway:** I am not sure that the primary legislation would be the place for detail. It would be better if the framework document contained the detail. We are particularly pleased that the framework document will be reported to the Parliament as it is implemented. We are also pleased that the Executive has signalled that it will consult prior to preparing it.

**Colin Fox:** Would the details relate to the establishment of clear lines of responsibility and a balance between ministers' centralised powers and local decision making?

**Brian Allaway:** No, I think that those issues should be dealt with in the bill. The framework document should deal with the responsibilities of fire authorities and their fire brigades, the standards to which they are expected to perform and the audit and public reporting of performance in relation to those standards.

**Jackie Baillie:** The bill seeks to abolish the Scottish Central Fire Brigades Advisory Council. I gather that you are supportive of that proposal. What negotiating arrangements would you expect to have in place of that body?

**Brian Allaway:** We have worked up what we have called a three-level approach to the governance of the Scottish fire service. Convener, I am sorry, but I have another diagram—I am a terrible person for diagrams but I think that, sometimes, they can say a lot more than words. Perhaps the clerk could pass it around.

**The Convener:** I am very happy for the clerk to do that.

**Jackie Baillie:** I think that we have the diagrams in our original papers.

**Brian Allaway:** This is a different one.

We believe that there should be a three-level approach to the governance of the Scottish fire service. We describe the first level as a practitioner level, which we believe would take into account the representative bodies and the management areas of brigades. We believe that the outcomes from that level could be consultation and consensus, which should feed into what we have described as an employers' level, which would consist of representatives of the fire authorities—probably advised by firemasters—and representatives of the work force. We believe that the outcome from that level could be negotiation and, wherever possible, agreement. The third level would be a ministerial level, at which we believe the minister may wish to set up a ministerial advisory group. The outcomes from that level would be advice to the ministers, including advice on requirements for primary or secondary

Col 956

legislation. We believe that that would be an effective governance model that would take into account all the needs of the various stakeholders and should

enable us to move forward with some confidence into the brave new future, if I can describe it as that.

**Jackie Baillie:** Your literary aspirations are evident.

Although that is one suggestion, I think that there are legitimate concerns about the duties imposed on ministers to consult, because although, in a practical sense, your model could work, there is a genuine fear that, unless there is a specific duty on the minister to consult with fire service bodies and trade unions, the consultation might not be adequate. I wonder whether you accept that, in your brave new world and brave new model, a duty to consult could also be incorporated and would not run contradictory to your proposal.

**Brian Allaway:** We believe that that could and should happen. I understand that, under the current legislation, when the Executive intends to make regulations or introduce new primary legislation there is a duty on it to consult. We suggest that the Fire (Scotland) Bill does not require a specific requirement to make that happen.

**Jackie Baillie:** Sure, but rather than have a generic duty on ministers to consult over everything, there would be no harm in focusing on the fire service.

**Brian Allaway:** Yes. Parts of the bill already do that, which indicates that the minister would consult when he or she is planning major changes—specifically, changes to primary or secondary legislation. We believe that that should be a duty on ministers.

**Brian Murray:** On consultation, I refer back to the framework document. We would like to see the consultation being widened beyond that stipulated in section 36(6) and therefore beyond the authorities and the persons who represent employees. We feel that there could be a role for wider stakeholders.

**Jackie Baillie:** Such as?

**Brian Murray:** Bear in mind the fact that the framework document will lay out directions for the fire service, businesses and the Fire Protection Association. There are other interested parties—communities themselves may wish to have a say in the direction in which their fire service is going.

**Brian Allaway:** The framework will be a governance model that looks at brigades' integrated risk management plans. The Executive has already given guidance to fire authorities and brigades about how and whom they could consult.

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That model could perhaps also be applied to the framework document.

**The Convener:** The questioning has surrounded section 45, which is about the statutory negotiation arrangements. The desire of the committee is to ascertain who you think, in the exercise of that function, the Scottish ministers should include as statutory consultees. That is distinct from what might be seen as the more fluid environment of the national framework document. Can we clarify who you think the statutory consultees, under section 45, should be, or would you like to reflect on that matter and drop a note to the committee about it?

**Brian Murray:** I would prefer to have some time before I commented on that question.

15:00

**Mike Pringle:** A number of people who have submitted evidence have expressed concerns about section 47, on the prohibition on the employment of police. Section 47 says:

"No member of a police force may be employed by a relevant authority".

The Executive has already suggested that the role of the retained or voluntary fire officer would conflict with the duties of a police officer. Do you agree, or do you think that section 47 should not be included in the bill? Moreover—

**The Convener:** Let us keep things simple. How would the witnesses respond to that first question?

**Brian Murray:** I would certainly welcome the removal of section 47, because it is difficult enough to recruit people in some areas. Those people want to serve the community and might have a number of different roles. Although the provision might not prove a huge barrier at the moment, I do not think that we should have any barriers whatever.

**John Williams:** Section 47 begins with the phrase

"No member of a police force".

I think that Brian Murray was specifically referring to special constables, who want to provide a service within the community and could well undertake the role of a retained firefighter. It would help if the phrase "No member" could be clarified or if certain exclusions were specified. We understand why full-time constables cannot become firefighters, and feel that section 47 simply replicates in many ways what is already set out in the 1947 legislation.

**Mike Pringle:** Is there a conflict between the duties and roles of a police officer and those of a fire officer?

**John Williams:** There is a conflict between the role of a professional police person and that of a special constable. Allowing special constables to be utilised as firefighters would help matters, because it would mean that people in communities would be available to serve on either force or on both.

**Mike Pringle:** As the representatives of four fire authorities, do you have any idea of the number of policemen on your force—either special constables or full-time policemen—that this problem affects? You might not be able to answer the question now, but it would be interesting to get the facts on the matter.

**John Williams:** I can say that Grampian fire and rescue service employs no special or professional constables, simply because the 1947 act precluded us from doing so. Obviously, Brian Murray and David Wynne can speak for themselves on the matter.

By and large, the service that we are able to provide and the equipment that is available to communities, particularly more rural communities, can be described as sporadic. Aberdeen draws so much employment from more rural communities that they become dormitory towns, which means that people are no longer available to provide the service. That takes us back to the point that if some community-spirited person wishes to become a special constable, we see no reason why they should not also be able to become a retained firefighter. However, the fact that section 47 refers to

"No member of a police force"

would preclude that person from undertaking that role.

**Mike Pringle:** Did I understand you correctly? Did you say that the 1947 act currently does not allow you to employ police? Is that what you said?

**John Williams:** Yes, that is what I am saying.

**The Convener:** The provision just repeats the prohibition in the 1947 act.

**Colin Fox:** Part 3 of the bill deals with fire safety duties. A number of concerns have been raised with us about whether the powers under that part of the bill will allow people to carry out those duties effectively. Do you have any concerns or remarks to make about that?

**David Wynne:** I am not aware of any concerns about those powers. In fact, we welcome the duties that the bill will place. Our comments are more about enforcement and the fire service's performance over a number of years, since a series of tragic incidents and the introduction of legislation. The proposed legislation is an enabling bill and further discussions on the detail will take

place, but we support the fire service undertaking a risk assessment and inspection role, which would maintain public safety standards.

**Colin Fox:** So it is largely a matter of enforcement.

**The Convener:** You wanted to ask about the co-ordination of fire authorities and other authorities.

**Colin Fox:** Do the witnesses have any concerns about co-ordination between fire authorities, about the powers that are being conferred to employers and employees and about how the different parties would liaise? Is there a danger that the proposed arrangements might lead to a duplication of effort?

**David Wynne:** If I understand your question, I would say that we do not so much have concerns, but we believe that small businesses require particular support, which might be a combination of support from the Scottish Executive, the fire authorities and other parties. Small businesses will find it particularly burdensome to have new duties placed on them if they do not have the capacity to deal with risk assessment or adequate risk assessment expertise. I am not sure whether that has answered your question.

**Colin Fox:** That is fine.

**Jackie Baillie:** I will highlight a specific example, which we tried to discuss with the bill team last week: the whole question of the licensing of houses in multiple occupation—HMOs. I understand that, in areas where local authorities have dedicated teams, they have, by and large, seconded fire officers to be part of them and to carry out risk assessments. Our concern, which you have started to develop, would be one of duplication. Do you envisage that risk assessment role as properly belonging to yourselves, or do the current arrangements work? At a practical level, why are we messing with them?

**David Wynne:** That was a number of questions in one. I am not sure that I will be able to give you an adequate response to all of them today. There is certainly evidence that houses in multiple occupation account for a higher proportion of fire deaths than does the private sector or even other public sector housing. One might argue that the current arrangements are not performing as well as they could, and I would like to take more time to consider how we might improve those arrangements. I believe that the fire service should play an important, pivotal role in contributing to that aspect of risk.

**John Williams:** The bill goes a long way towards rationalising the issues that you are speaking about. Various agencies are involved in fire safety, and all of the issues are now

encapsulated in the framework of the bill. We very much support that approach. For houses in multiple occupation, the duty is placed on the local authority. In other businesses, the duty is placed on the occupier of the premises. If the duty is with a body, that body must be seen to be enforcing the legislation. Our point is that, the smaller the business, the more undertaking risk assessments becomes an onerous burden. The brigades and fire and rescue services are there to support people in doing that.

The concept of risk assessment has been with us for some eight to 10 years now. It is fair to say that we are beginning to see a degradation of general fire safety standards. To be honest, I have no evidence to support that, but that is my intuition. I simply do not want people to have to sit in a forum like this in 10 to 15 years' time to consider how to develop new fire safety standards as a consequence of a major disaster. That is the last thing that we would want.

We need to make the current regulations work. Those who have a duty under those regulations must enforce that duty. I can assure the committee that we will enforce the provisions of the legislation for which the fire service has a responsibility.

**Jackie Baillie:** Sorry, but the issue is becoming less clear. At the moment, the duty for HMOs is placed on local authorities and the fire service is a statutory consultee. The system works, not just from the point of view of fire risk assessments but from a whole host of other angles. If our intent is to avoid duplication so that the fire service does not show up one day and someone else shows up the next to inspect the same establishment, why should that duty be transferred to the fire service when the current set of arrangements appears to work?

**David Wynne:** There are two aspects: people need to be aware of their duties and responsibilities and they need to comply with them. Perhaps I did not make this clear enough, but the fire service can manage a risk-based inspection regime by ensuring not only that people are aware of the duties that must be discharged but that they comply with those duties regularly. For premises that have a poor performance record, such as houses in multiples occupation, we would seek to apply that inspection regime more rigorously to ensure compliance.

**Jackie Baillie:** Are you suggesting that fire officers that are currently seconded are less rigorous than they would be if the fire service had that duty?

**David Wynne:** No, not at all. I am suggesting that, through our integrated risk management programmes, we could increase our attention on

poor-performing categories, such as houses in multiple occupation.

**Jackie Baillie:** I look forward to the written response.

**The Convener:** Jackie Baillie makes an important point. I seek clarification from Mr Wynne or one of his colleagues on one issue. We recognise that the bill will do a great deal to modernise the provision of the fire service in Scotland. By its very nature, the bill will shift certain relationships so that certain things that were once in broad emphasis will be in less obvious relief. What Jackie Baillie is trying to discover is whether the bill will prejudice in any way the continued operation of the sensible arrangements that exist on the ground for co-ordination among authorities. At the moment, the local authority is the body that is legally liable for the licensing of houses in multiple occupation. Is the bill likely to interfere with the existing arrangements? That is the first question.

**John Williams:** The short answer is that I do not think that it will.

15:15

**The Convener:** That is reassuring; thank you. If members have no other questions, on their behalf I thank Mr Williams and his colleagues for their helpful evidence this afternoon, which has assisted us in understanding how the bill's provisions will operate. We appreciate their presence with us this afternoon.