

Justice 2 Committee Official Report 14 September 2004

Scottish Parliament

Justice 2 Committee

Tuesday 14 September 2004

Fire (Scotland) Bill: Stage 1

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15:15

The Convener: I welcome representatives from the Fire Brigades Union Scotland: John McDonald, the executive council member for Scotland; Ken Ross, the Scottish regional secretary; and Frank Maguire, a solicitor for the FBU. Many thanks for attending. [*Interruption.*] I had hoped that the spectre of the phantom drill operator had been successfully transported to some far-flung spot, but apparently not, as we can still hear the noise of drilling. The clerks will do what they can to get it stopped.

Would the witnesses like to make an introductory statement?

John McDonald (Fire Brigades Union Scotland): The Fire Brigades Union represents 95 per cent of the uniformed work force in the fire service. I will begin by making a request to the committee that I think might be helpful, although I am conscious of the time. We have a fire prevention adviser who has 30 years' experience in fire prevention departments and who is now an independent consultant. After some of the responses that the committee has heard from previous occupants of these seats, I feel that a bit of expertise might be required. I do not wish to

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lengthen proceedings, but we have issued members with a list of questions that we would want to be explored with the Fire (Scotland) Bill team. If members have any questions, or if they want a short overview, I will request that Mr Evans be allowed to respond on our behalf. We have been told that we can have only three speakers, but doing that would not lengthen proceedings, I do not think, and it would provide greater clarity.

The Convener: There is no intrinsic objection to your colleague sitting at the table and speaking. For the benefit of the committee, we shall introduce him and

explain who he is. However, we have allocated time on the basis of the three of you being present, so all I would say is that, in the interest of keeping things moving, if Mr Evans is to contribute, it might be unnecessary for one of the others to contribute. Perhaps you could introduce him.

John McDonald: Mr Glyn Evans worked in the fire service for more than 30 years as a fire prevention officer. He now works as an independent consultant on fire safety issues. If there are any questions on fire safety, I assure the committee that I will have no hesitation in passing them over to Mr Evans.

The Convener: Could you clarify his relationship with the FBU? Is he a member of the FBU?

John McDonald: He is a former member of the FBU. He was a fire officer for more than 30 years and, as I said, the FBU represents 95 per cent of the work force.

The Convener: But he is not currently a member.

John McDonald: No.

The Convener: For the purposes of evidence taking, we need to be clear about who is giving evidence and in what capacity so, although he is here with you today, will he give his comments in an individual capacity?

John McDonald: Yes. We employ consultants on different areas to gain their expertise.

The Convener: And he is here as your consultant.

John McDonald: Yes.

The Convener: Right. The first area, which you probably heard sketched out in the questioning of the Chief Fire Officers Association, is the broad issue of power and responsibility. One of the intentions behind the bill was to try to create, if not to preserve, local flexibility. I would like your response. You have suggested that the bill centralises and that it does not support local decision making and accountability. May I clarify

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which parts of the bill worry you?

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John McDonald: It would be better if I gave a short introduction to where we are coming from, because we have the same difficulty as the committee, which also does not have the framework document. Would that be helpful?

The Convener: Certainly.

John McDonald: The bill, possibly like the Parliament, is a work in progress. We do not have the framework document, but it is our contention that the framework document will be the driving force for ministerial responsibility. We believe that the framework should be up for debate as the bill progresses through the Parliament, because it will give ministers overall powers of direction. Questions have been asked about which areas the framework document will cover. If we look at the UK framework under the Fire and Rescue Services Act 2004, we see that approximately eight areas are covered, including fire prevention, risk management, working together, effective response, resilience and so on. The problem is that we do not have sight of the Scottish framework document, and there is no doubt that it will give ministers powers of direction for the fire service.

The alleged ethos of the bill is to devolve power to the local authorities. In its previous discussions with the bill team, the committee has identified a problem about where accountability moves back to. As it seems to be a day for graphics, I refer members to one of our documents, in which we present a forum in which ministerial accountability can be considered and all stakeholders can express their concerns, if I can use that terminology. Members will note some of the committees in the forum—the Scottish Central Fire Brigades Advisory Council, the fire safety advisory board that we recently set up and the wilful fire raising forum that has just been formed. Members will see from the graphic that the various committees feed into a strategic advisory group, into which the Scottish ministers also feed.

I say that because, in areas of resilience, we do not have any difficulty with there being overall direction—we are well aware of the difficulties of terrorism, for example—but it is unfair, from the public's and the fire authorities' point of view, to describe the old SCFBAC as cumbersome. We have provided the committee with the agenda for the most recent meeting of the SCFBAC and members will see that the agenda items concerned the core functions of the fire service. If we are to advance the bill, we must do so on the basis of consultation with all stakeholders. Most important among them are the fire service employees who carry out the work and will have to implement the bill.

I am afraid that the English practitioners forum has excluded the Fire Brigades Union from all but

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the first tier of the consultation process. I was disappointed that Ian Snedden of the bill team stated that respondents to the consultation had provided no

meaningful grouping to replace the SCFBAC because that is not the case. Indeed, the CFOA and the FBU have proposed a model that I ask the committee to consider seriously. That would be helpful for the future of the fire service.

I should have started by saying that we welcome the bill, although we have many areas of concern. I do not wish to knock the bill throughout today's proceedings, but it is seriously flawed in certain aspects. We have grave concerns about health and safety, as members will see from our submission. Perhaps Mr Maguire will be available for questions about that. We believe that it is the bill's intent to take the fire service out of the Health and Safety at Work Act 1974, yet it is so important for our employees to be covered by that act as well as by European directives.

The bill is silent on the involvement of trade unions in consultation processes, and the bill team did not give an adequate response to questions about that. I believe that its final response was that that was a policy decision. I would like to explore that further. Within any organisation, it is fundamental that trade unions and employees have a statutory right of consultation. The Scottish Central Fire Brigades Advisory Council provided that and an adequate replacement is needed.

There are contentious areas, such as the amalgamation of controls, which I was pleased to hear the committee explore. Members will find from Her Majesty's fire service inspectorate for Scotland that when the options for amalgamating controls are three, two or one controls, the most likely option is three controls. If there are three controls, the logic is that there will be three brigades. If we have a combination of controls, that will obviously impinge on accountability and reporting back procedures for fire authorities.

The present legislation is explicit on reporting back, the functions of the chief officers and the element of democratic control. We believe that that should be replicated in the bill. The bill team said that it could foresee a point when the chief officer would not have overall responsibility for the fire service. I find that rather unusual. To use simplistic examples, the chief constable is in charge of the police and the general is in charge of the army. I would hate it if someone were put in place and then a quango was set up and there was no direct accountability.

The fire service is the premier emergency rescue service. Audit Commission reports have shown that we meet response time targets more than 94 per cent of the time. The commission determines that we are the highest functioning public service, so if someone wants to tinker with

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such an important service, they had better be careful about what they do. That is why we express concern that ministerial accountability must exist, because the minister is taking direct powers that will impinge on local authorities.

The chief officers said that the controls provide a first-class service. Less than a minute after they receive a call, an appliance is dispatched and sent on its way to an incident. I will not bore you with the details, as the previous occupants of these seats covered this, but the work that the emergency control operators do is not like running a taxi service; they co-ordinate health and safety, deal with chemical information, record statistics and provide advice in the case of fire. Theirs is a detailed and onerous task. The stress levels at our controls are high, because the staff work long hours and face the difficulty of dealing with horrendous incidents. The eight controls are working magnificently and I would hate to see the element of local accountability taken away.

We have seen recently in Lothian and Borders the problems with the police control, and the ambulance service was referred to earlier. The fire service is one of the only organisations that meets the current statutory times for attendance.

The Fire Brigades Union has supported integrated risk management from the beginning. Integrated risk management was adopted from what was known as the pathfinder report. A trial went on for more than four and a half years, cost £3.5 million and identified areas to move away from the present standards of fire cover, which of course are based on buildings rather than life, and had the full support of the Fire Brigades Union. Unfortunately, the report never came back to the Scottish Central Fire Brigades Advisory Council. It recommended a vast increase in resources and I am afraid that its recommendations have been cherry picked, taking away from what was originally intended. That is partly because of the dispute, which we cannot fail to mention. In my opinion, the current legislation in England and Wales is the child of the dispute and much of what is happening there ignores the evidence from the pathfinder trials.

The important point to remember about the pathfinder trials, which were the precursor of the integrated risk management system, is that when 50-year old standards of fire cover are replaced, despite all the research, the new system must be piloted, tested and validated prior to implementation. That is perfectly clear, but I am afraid that it was not the case with the integrated risk management system.

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The Convener: From the committee's point of view, you have already covered a number of areas and that will probably shorten the questioning to some extent, but if we are to have the opportunity of full questioning, perhaps you could mention the principal points that concern you.

John McDonald: Questioning would be the best way to explore the matter. We have provided a lot of evidence that I think might be helpful. The particular areas that we are concerned about are integrated risk management and the democratic

control and accountability of the service. We have real fears about the future of that control and about the outsourcing or privatisation of certain areas of the fire service, such as community fire safety. We believe that there is a real threat of that in the bill—I think that there were some vague references to that from the bill team. The fundamental position of the Fire Brigades Union is that the fire service must remain under local democratic control.

The Convener: You eloquently covered the area that I am interested in, which is the balance between local independence and flexibility and ministerial control. I hear clearly what you say about that in relation to the bill and I do not think that I need to explore that further as you have been very specific about your concerns.

Karen Whitefield: My question is on the principal fire and rescue functions as determined in the bill. In your written submission, you rightly welcome the fact that the fire brigade is, at long last, being recognised for the job that it has been doing for some time in relation to road traffic accidents and fire safety duties. However, you express concerns about the conferral of functions in relation to other emergencies. Why do you have those concerns?

John McDonald: I will ask Mr Maguire to answer that but, briefly, we have concerns because that seems to be a catch-all for the minister. However, areas such as training and personnel need to be addressed. The bill is rather wide-reaching and we would rather have a more defined role. The fire service has a can-do attitude, but there are limits to what we can do; we talked earlier about firefighting at sea. I ask Mr Maguire to respond.

Frank Maguire (Fire Brigades Union Scotland): Our concern is that if one is to have an additional function it is useful to know well in advance what that function will be, so that proper risk assessments and training can be put in place and operational needs taken into account. That is especially true given that additional functions are being carried out now. Earlier, the firemasters talked about our duties in relation to terrorism.

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That work is taking place now. Why cannot it be designated in the bill as an additional function?

Other areas are missing. Recently, we have had landslides; the fire brigade has been involved in work after those. We now recognise that that is an additional function that should be prepared for. We also had the disaster at Stockline Plastics Ltd, which was not a fire but an explosion. The fire brigade played a major role in that incident—another example of an incident that was not a road traffic accident or a fire, but in which the fire brigade was involved.

There are other specific examples. In our country, we dealt with the case of firefighter Nicholson, who went into a silo to rescue some employees who were

trapped. No risk assessment was done, there was no preparation and he was killed. That was not a fire or a road traffic accident. There was also a case involving retrieval from water, in which a firefighter was killed because a rope that was holding him got caught under the water—another example of a case in which preparation should have been done.

The fire service's problem is that it is now undertaking such tasks over and above road traffic incidents and fires and it urgently needs those tasks to be properly identified and given a statutory underpinning so that it can have the argument and so that resources can be put in place for firefighters to be trained in such areas. Firefighters' big concern is that it is fast becoming the case that they are there to do everything and anything. They are willing to do that, but they need to be trained and they need the proper equipment and resources. They believe that they can get those only through underpinning by statute or by additional functions being designated now so that they can be prepared for.

Karen Whitefield: We cannot, because of their nature, plan for emergencies, but there may be occasions when we can anticipate the types of skills that will be required. It may be that not all firefighters will, in the course of their normal duties, have to attend an offshore fire and will perhaps never have to attend an incident such as the tragic occurrence in Maryhill or the Rose Park nursing home fire, which was attended by some firefighters from North Lanarkshire. However, the fire service would, as an emergency service, want to respond to incidents such as those because it sees such responses as being its duty, and most firefighters would want to do their job. How do you get the balance right and allow for proper training to enable firefighters to develop their skills without confining them so that they cannot respond to emergencies that we might not be able to plan for?

Frank Maguire: Maureen Macmillan highlighted some problems in the Highlands and Islands. There are also problems pertaining to Glasgow

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whereby risk can occur. There is a geographical dimension—whether specifically geological, industrial or whatever—to the categories of cases, and the emphasis in, for example, the Highlands and Islands might be different from the emphasis in Glasgow.

We can now categorise incidents: terrorism is a category, landslides are a category and explosions are a category. Such incidents generally carry the same risks no matter where they occur. Therefore, in terms of geography, area and category we can begin to anticipate types of emergencies. Firefighters are concerned about everything being an emergency and about their having to take an ad hoc approach to every emergency. We appreciate Karen Whitefield's point that emergencies and unforeseen things will happen, but they will not be totally unforeseen. Firefighters want to foresee and prepare for as much as possible—

that is what they need training and resources for. They do not want matters to be left open so that they must run to anything and try to cope with anything.

Karen Whitefield: Are the categories that you would like to be included in the bill terrorism, explosions, offshore incidents and landslides?

Frank Maguire: I am a lawyer. I am saying only where those might fit in. It is for the fire brigades, in consultation with ministers or whoever, to identify the specific areas. The chief fire officers earlier identified terrorism. You might ask the fire brigade about landslides. There are categories that can be identified.

The Convener: The chief fire officers used the phrase "new dimensions". Are you talking the same language in describing incidents that have not previously been in the working environment of the fire service?

John McDonald: The Fire Brigades Union Scotland is supportive of the new dimensions work, with the caveat that we need training and personnel. Unfortunately, no additional personnel have come in, which is a concern of ours. In fact, every brigade in Scotland has reduced its number of firefighters following the dispute.

Firefighting is not quite as simple as it sounds, and the union has great concerns about that. For example, if a ship at sea is on fire, there are problems in identifying the owner, what chemicals are on board and what is being transported in the ship. A number of years ago, Professor Black wrote a report on firefighting at sea. Even from the point of view of safety and insurance, we have grave concerns about it. That is not to say that we do not consider all the issues and aspects of the work that we can take on; however, there seems to be a presumption among employers that we will automatically take on whatever work can be

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identified. That cannot be the case in any work force. It is not the case that supermen and superwomen do the job.

The Convener: Is your concern that the bill is restrictive in that respect?

John McDonald: Yes.

Mike Pringle: You have suggested that charging under section 15 will be contrary to the European convention on human rights. Can you explain your concerns to the committee?

Frank Maguire: Section 15(2) says that a charge can

"be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority."

If we do not specify that further, anyone could be charged. Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms says that, when someone's property or possessions are interfered with—which is what is envisaged in the bill—a provision must be formulated with sufficient clarity to enable a person who might be affected to understand and so to regulate their conduct accordingly. It could be that someone will find, out of the blue, that a charge is to be fixed on them—I am talking about another person whom the authority thinks it can fix a charge on. In such circumstances, unless it is further specified whom the other persons might be, we will not be giving notice to the public or to the people who might be concerned that that might happen to them. We would not be giving them the chance to regulate their conduct accordingly. That is missing from the bill.

Other issues arise. Is the charge a penalty, is it recompense or is it reparation? What is it? It does not seem to be reparation because it is not tied to the value of services rendered. For that reason, there is a problem in respect of the Human Rights Act 1998. If a person is to be charged with something, or penalised for it, he or she must know that they are, or might be, in the frame so that they can regulate their conduct accordingly. Who are the "other" people of section 15(2)? We can speculate, but we need them to be specified.

Mike Pringle: We heard earlier from the chief fire officers that they charge for certain things—a good example being training—and that that gives them considerable income. Will you oppose any sort of charging at all?

Frank Maguire: No—but the point is that it must be specified who might be charged. For example, it may be the insurer, the employer or—

The Convener: So it is not the principle of charging to which you object, but the imprecision of the bill.

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Frank Maguire: I object to the bill's vagueness and lack of clarity.

John McDonald: I would like to make another point on charging. We are concerned about automatic fire alarms. All brigades are trying to drive down the number of calls that we receive from automatic fire alarms but, because of the nature of automatic fire alarms, there is the danger of mistakes. They can go off by accident or because of wilful action. If a business or factory is charged every time the brigade comes out, there is a real danger that the easiest option will be just to turn off a problematic fire alarm. That concerns us, because of public safety issues.

Charges have always been in place in the fire service, under the existing legislation. As Mr Maguire has said, we are not necessarily against charging per se.

Mike Pringle: I take your point about fire alarms; I once had a factory where a strong wind would set off the fire alarm.

Section 47 of the bill talks about employment of police officers. Do you think that section 47 should be removed, and do you know how many policemen or special constables are employed in fire brigades in Scotland?

John McDonald: I would have to check, but I understand that special constables are not employed by the fire service because of their other duties. However, they might be employed as retained or volunteer firefighters. The likelihood of police officers making any significant impact on recruitment is negligible. It is not an area of great concern for us, but I think that police constables have a specific role outwith the fire service that should preclude them from being employed as firefighters. If you are talking about rural communities, there is a small—

The Convener: So you support the continuing prohibition of employing police officers?

John McDonald: Yes, we do.

Colin Fox: I was going to ask about the national framework document, but you said earlier that you thought that that would be very much the driving force for ministerial decision and dialogue, and that you had hoped that it would be ready by now.

With the convener's permission I will ask a question related to your presentation. You listed the integrated risk management system, democratic accountability, control room reductions, privatisation and local authority control as your primary concerns. Are we to infer that you feel that those issues have been thrown into sharp relief as a consequence of the dispute? You mentioned the pathfinder report. Were they the principal drivers behind that report?

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John McDonald: I ask the committee to remember that in April 2002 "The Scottish Fire Service of The Future" was published by the then Minister for Justice, and had the support of all parties, from the Convention of Scottish Local Authorities to the Fire Brigades Union to chief officers. That has now been dumped.

I hate to be cynical, but I am afraid that much of the bill has been thistle stamped and taken from the English Fire and Rescue Services Act 2004, which is seriously flawed on issues such as fire prevention. I am suspicious that the framework document will accurately reflect what is contained within that act.

The bill will have to be seriously amended. This committee and the Parliament have the opportunity to drive forward a real modernisation agenda. However, we are concerned that we are discussing a bill on the future of the fire service when we have not seen the framework document, which is one of the pillars of the bill. I heard that it should be ready in three months. All the work that was done prior to 2002 has been got rid of and a 10-week report by Bain during the strike has invalidated four and a half years and millions of pounds worth of validated research that was carried out by the pathfinder group, which is a great concern of ours.

Jackie Baillie: You touched substantially on the points that I wanted to raise about negotiation arrangements, but in so doing you have caused me to be slightly confused—which is easily done. I understood that the FBU wanted to retain the existing advisory council, yet you are providing a model for replacement. Which is it? Do you accept that it needs to go, and therefore you are hanging your hat on your suggested replacement model, or do you not accept that it should be abolished?

John McDonald: The answer is similar to that which you received on control rooms from the chief officers. There was only one answer to the question of whether there should be three, two or one. The fact is that the SCFBAC is dead in the water—it has been shot like a duck—therefore we are looking for a positive alternative. An example of what can happen is the three-tier structure in England, which excludes us from all but the lowest tier. If that goes ahead it will not be positive in terms of openness, democracy or transparency, or in terms of the future of the service. There needs to be a proper structure that can debate all the issues that affect the work force and the general public.

Jackie Baillie: I got the strong feeling that the bill team was open to that, because they did not produce a model from their back pocket and say, "This is the way things would happen." Given that

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models will change over time and that, by your own admission, the wilful fire raising forum that you see as being part of this issue is quite a new creature, is it right to prescribe a structure in legislation? Would it be more effective to place a duty on ministers to consult, and specify who they should consult, rather than to prescribe the exact form of your replacement body in the legislation?

John McDonald: The body has to be statutory. It is all very well to say that ministers will consult on certain issues, but there must be an on-going body in

which there exists the ability to put items on the agenda and discuss them; for example, fairness and diversity, on which the fire service has had a shocking record over the years. The FBU has been the driving force that has pushed those issues forward. One of the forums at which they were addressed was the SCFBAC, where we got people to take notice of those important issues, but that must be done on a statutory basis. The old SCFBAC was meant to meet every quarter, but when we were in dispute it did not—it was ignored. I would hate to see anything as flimsy as, "Oh, we may have a duty to consult on certain issues." That duty must be contained in the legislation.

Jackie Baillie: I think the duty can be made robust without specifying the structure, but that is a debating point for another day. The Scottish Trades Union Congress made the point—which you picked up on in your opening submission—about the apparent intention to disapply the Health and Safety at Work etc Act 1974, yet the bill team was absolutely clear that that was not their intention. I assume that one of you will enlighten me as to why that team is wrong and you are right.

John McDonald: As one of the bill team said when the committee asked about consulting trade unions, I will now consult my solicitor.

The Convener: Let us hear from your solicitor, then.

Frank Maguire: Is that me?

The Convener: Indeed.

Frank Maguire: I will give a brief background to the legal framework that we are dealing with. We have European directives that the European Commission issues, as the committee knows. The UK authority is obliged to implement those directives to comply with Community law.

In health and safety legislation, we had a framework directive from the European Commission and a raft of other directives about the use of equipment, the workplace and other matters. The UK authority chose to implement the directives via the Health and Safety at Work etc Act 1974, because part I of that act contains a section that allows the minister to make

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regulations. The minister made regulations that implemented the directives. Those regulations are now the cornerstone of our health and safety framework. They started with the Management of Health and Safety at Work Regulations 1992 and went on to regulations that dealt with personal use of equipment and with the workplace and other matters. The directive on fire precautions in the workplace was implemented under the Fire Precautions Act 1971 and instituted by the Fire Precautions (Workplace) Regulations 1997.

To repeal part I of the 1974 act would impliedly repeal all those regulations, which would wipe away all the implementation of the directives from the European Commission. That would be contrary to Community law and Parliament cannot act contrary to Community law. In my view, Parliament does not have the power to disapply part I of the 1974 act in so far as that part implements regulations that were designed to follow European directives.

The Convener: I see why you brought your lawyer, Mr McDonald.

Jackie Baillie: Given what I have heard, it strikes me—perhaps somebody will contradict me—that there was no policy intention to disapply the 1974 act and that the matter might be a debating point between lawyers.

Frank Maguire: It may be a debating point for the courts. If Parliament proceeded to disapply the 1974 act, scope would exist for judicial review of any decision by the Presiding Officer or anyone else to the effect that the legislation is compliant. The matter may end up in that position. If the decision was a mistake, it could be rectified—we would just ensure that part I of the 1974 act was not disapplied. The process has scope for ensuring that that mistake does not occur, however inadvertently.

One answer that the committee heard was that the situation was okay, because the 1974 act will still apply to reserved powers. That misses the point entirely; the point being that the act is being disapplied from devolved functions. That is where whoever made that comment went wrong.

The Convener: Are there no supplementary questions?

Jackie Baillie: I thought that I was doing quite well.

Maureen Macmillan: Mr McDonald spoke at length in his introduction about concerns about part 3 of the bill, which deals with fire safety. One complaint was that many provisions will be included in secondary legislation in Scotland, rather than in primary legislation, which will be used in England. Would you like to elaborate on those concerns?

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John McDonald: Mr Evans can elaborate more than I can.

Glyn Evans: If you thought that the last subject was convoluted, this will be worse. Because of devolution and the effect of reserved powers, part 3 of the bill in Scotland can go only so far.

In England and Wales, the draft Regulatory Reform (Fire Safety) Order 2004 is designed to be one-shot legislation that will repeal a substantial number of pieces

of legislation and will, in effect, become the premier legislation on fire safety matters.

A report by the House of Commons Regulatory Reform Committee outlines the effect of the reserved powers, which relate primarily to the way in which the Health and Safety at Work etc Act 1974 works. The problem is twofold. The Fire Precautions Act 1971 is a relevant statutory provision for the purpose of the Health and Safety at Work etc Act 1974, as are the Fire Precautions (Workplace) Regulations 1997 (SI 1997/2051), which were the UK's version of the fire safety elements of the workplace directives that Frank Maguire referred to earlier. The problem is therefore that you cannot repeal all of the Fire Precautions Act 1971 or the Fire Precautions (Workplace) Regulations 1997 (SI 1997/1040 because they contain reserved powers that are based on health and safety law, which is not a devolved matter.

The Convener: Just for clarification, what does the bill purport to repeal?

Glyn Evans: If your bill were of the same nature as the proposal in England and Wales, it would be a reforming bill—the purpose of part 3 of the bill would be to reform fire safety law in Scotland. However, it cannot do so. The problem, therefore, is that your legal draftsmen—for whom I have the greatest sympathy—are trying to balance three sets of legislation to produce a new fire safety framework for Scotland.

Many of the duties that are contained in the draft Regulatory Reform (Fire Safety) Order 2004 cannot be put into your bill because they are, in effect, fire safety duties and underpin the Fire Precautions (Workplace) Regulations 1997, which you will have to keep in force alongside what is proposed in part 3. It is going to be incredibly difficult for the people whom part 3 of the bill is designed to protect to understand their responsibilities. They will have to deal with part 3 of the bill, elements of the 1971 act and elements of the Fire Precautions (Workplace) Regulations 1997, which will all be in force in Scotland at the same time.

The only way in which your legal draftsmen can deal with that is to put into part 3 of the bill those duties that are not reserved duties, and to deal

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with the remainder through secondary legislation. That means that, unless your draftsmen introduce the regulations that they intend to put into force to support part 3 of the bill at the same time as the bill comes into force, part 3 of the bill will have effect only in relation to the powers that relate to prohibition and the duties under sections 49 and 51. I would genuinely not relish the thought of trying to translate all of that.

Maureen Macmillan: I understand what you are trying to say—we have had the problem before. Often, when consultation on a bill starts, the subordinate

legislation that will accompany the bill has not yet been produced. By the time we get to stage 3, however, it has been produced and we can press the Executive to take action. By stage 3 of this bill, we will know what will be dealt with by regulation in part 3. The problem that arises has to do with of the characteristics of the bill. We have to discuss that with the Executive.

Glyn Evans: I think that is right, because the regulatory process will give teeth to part 3 and we do not know what it will say.

Maureen Macmillan: I appreciate that and we will raise the point with the Executive.

The Convener: I have listened with considerable interest to what you have said, and it is clear that there are hugely technical issues that the bill team will pick up on after this evidence session. I am grateful to you for drawing our attention to those complex issues.

16:00

Glyn Evans: The Regulatory Reform Committee report suggests options—I put it no more strongly than that—about how the Executive might address those issues. Although more legislation would be required, it might be better if you asked the Executive for a report on how that legislation might be produced. You will end up with one piece of legislation once the Fire (Scotland) Bill has been enacted, but it will be supported by two other pieces of legislation and at least one piece of health and safety at work legislation under the Management of Health and Safety at Work Regulations 1999, which underpin the workplace regulations that you have to retain.

The Convener: Did you suggest that it might be helpful to the Executive to consider the report to which you referred?

Glyn Evans: Yes. I have a copy here if your clerk would like to make a note of it.

The Convener: That would be helpful.

Maureen Macmillan: My next question, which is probably for the lawyers, is about the lack of clarity over which persons will have responsibility for fire

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safety given the increasing variety of business and contractual arrangements. The bill mentions employers and employees, and says

"Where a person has control to any extent"

and

"If a person falls within subsection (1)".

In other bills, however, there is a catch-all provision, or a description into which everyone will fit. If we go down the road of making a long list of the people who could have that responsibility, someone is bound to be left out and that would create a loophole. Legislation generally tries to provide definitions into which everyone can fit rather than making a list of all the possible permutations.

Frank Maguire: The two very important duties, as highlighted by the previous witnesses—and the Fire Brigades Union Scotland agrees—are set out in sections 49 and 52, which deal with the duties of employers to employees and the specific duties of employees. No one questions that those duties should be in the bill; they must be there.

Leaving aside premises for the moment, the suggestion seems to be that those sections describe our working environment and capture our working relationships. However, more and more in the working environment, the employer-employee paradigm is becoming less and less. Casual labour is used, and there are ad hoc arrangements and contracts for services with contractors rather than employees. Such arrangements are in use in a great many premises in Scotland and many processes are carried out under them; the emphasis might vary from industry to industry. If we rest on the employer-employee relationship, there is increasing potential that many other current working relationships will be omitted. If we do not attempt to describe those other working relationships, or to include a catch-all phrase to capture them, we are saying that those people—who do the same things as employees and employers—are not under any duty regarding fire safety.

For example, the financial sector seldom has employer-employee relationships. Instead, there is a contractual relationship between a franchisee and an independent financial adviser. There could be 40 such people on the one floor. They will all occupy desks and have a deal that allows them to work there. They will be just like employees on a floor but none of them will have a fire safety duty for anyone else. The working environment has been considered in a way that is a bit too simplistic. An attempt should, and can, be made to describe other working relationships in our society.

Col 978

Maureen Macmillan: Are such relationships not covered by sections 50 and 51? Section 50 starts:

"Where a person has control to any extent of relevant premises".

Frank Maguire: We need to ask who has control of the premises in the example that I have just given.

Another point is that someone seems to think that there is a landlord-tenant relationship. Such a relationship may exist, but the people involved can be very distant from each other. There might be a lot of intermediaries between, say, the holding company in London and the tenant who, in turn, might have a licensee, who might have someone else on the premises. Such individuals will have a problem in identifying on whom the duty falls and who is the person who is in control of the premises.

We should not leave it to the parties themselves to think, "Maybe I am the one who is under this duty"; they will not know. Do not forget that the high turnover of people can mean that the individuals involved may change as soon as some action has been taken. We need to think of some mechanism whereby responsibility for fire safety can be fixed. We should not be confined to the mechanism of the legal relationships between employer and employee and between landlord and tenant.

Maureen Macmillan: Do we need a catch-all phrase to encompass every kind of permutation?

Frank Maguire: We have the problem in health and safety legislation anyway. The employer-employee relationship does not capture workers. The term "workers" and other descriptive phrases tend to be used much more.

The virtue of the old licensing system was that the duty was fixed on someone who then knew that they were responsible. Perhaps we need a provision whereby, if the person who has control of the premises cannot be found, the duty is fixed on someone who would be told, "We do not care what your relationships are or what your contract says, but we will hold you responsible." That could be done by a specific order or identification once someone had investigated the situation. Perhaps if the enforcement officers are unable to find out who has control of the premises—if they are being passed from pillar to post, in a ping-pong situation—they should have the power to say that a particular individual is responsible in terms of sections 49 and 52.

Maureen Macmillan: That brings us to your concerns about whether the duties and powers that are given to enforcement officers are sufficient.

Col 979

Frank Maguire: There is a problem for enforcement officers too. As well as those in other working relationships not realising that they are under a duty, when enforcement officers come along, they might not be able to find out who is under the fire safety duty.

Maureen Macmillan: I will move on to something—

The Convener: Watch your time and keep it crisp.

Maureen Macmillan: I will do. My question, which is about control centres, has been answered. I was pleased that John McDonald, in his opening statement, spent a lot of time speaking about the need not to amalgamate control centres. Is there anything that you want to add briefly on that?

John McDonald: I do not want to repeat myself, but as I said in my statement, the control centres are under grave threat. Over the past few years, attempts have been made to amalgamate police, fire and ambulance control centres, but that approach has been proved to be nonsense. The Executive has now moved to trying to reduce the number of fire control centres without any evidence to back up the proposal and on the basis of the seriously flawed Mott MacDonald report, which took cognisance only of the number of incidents and calls with which the control rooms deal, not their actual work load.

The control centres provide an excellent response. I do not think that it can be bettered by reducing their number, and I will not go into all the potential difficulties, such as accents and the geography of the east, the west or the north coast. The control centres are such an excellent facility that I believe that it is impossible to improve upon the service that they provide. If the system is not broke, the Executive should not go trying to fix it, because it will make a mess of the control centres if the reduction goes ahead. That is the clear view of every control centre worker and FBU member in Scotland. It is not the case that we are simply opposed to change; the reduction would reduce the control centres' effectiveness. We will soon no longer have set standards of fire cover, but integrated risk management plans, in which there are no set response times or validation process. Closing the control centres is a frightful proposition, because it will lead to further deaths.

Ken Ross (Fire Brigades Union Scotland): The simple issue is that fewer people will be dealing with more calls, so something has to give. We have seen an admission of that recently, and it is outlined in the documents that we circulated today. A facsimile was sent today to all control rooms in the United Kingdom by London fire brigade, which seems to be taking the lead on this.

Col 980

It suggested wording for a recorded message for 999 calls. If fewer people are dealing with a greater volume of calls, and if they are unable to respond to that call and have to use a recorded message, that is ludicrous. Someone who was trapped in a house fire and who was phoning up and seeking assistance might get put on hold. If that is the way forward and if that is modernisation for the fire service, we do not want to play any part in it. The simple arithmetic tells us that the present arrangements are the best arrangements.

Colin Fox: I am anxious to focus on the question of local training centres, which you mentioned in your submission. What are your concerns about local training centres? Section 44 covers

"the provision of education or training to persons who are not employees of relevant authorities".

Are you concerned about the particulars of local training centres under the bill?

John McDonald: We have local training centres at present. The Scottish Fire Services College at Gullane, which is funded by the Executive, is the central point for that.

Ken Ross: Could I ask you to say again which section of the bill you are referring to, Colin?

Colin Fox: Section 44(2)(e) is about the provision of local training centres. It says:

"the provision of education or training to persons who are not employees of relevant authorities in matters in relation to which relevant authorities have functions".

Ken Ross: We are not aware of any concerns about that. Could you refer us to the relevant part of our submission?

Colin Fox: I read in your submission that you had anxieties about the use of local training centres. As I understand it, it is proposed to have local training centres in the different fire brigade areas. Is that correct? As I understand it, it is not just about the college at Gullane, where all Scotland's firefighters are trained, but about moving towards more local training centres.

The Convener: Do you have a view on that?

John McDonald: I was not aware that we had responded in such a manner on that. We could look into it and get back to you on the issue.

Colin Fox: That would be fine.

The Convener: You could give us a note about that. That would be helpful.

If there are no other questions from committee members, I invite Mr McDonald and his colleagues to make any further points that they might have.

John McDonald: We have a couple of points to make. Indeed, Mr Maguire has a number of

matters to raise. The one issue that I wish to raise would certainly attract the public's attention. We should all be aware that Scotland accounts for the highest relative number of fire deaths in the UK. Indeed, it has the worst fire record in Europe. That is something that we wish to address. Our union is making a very strong case for zero tolerance of fire deaths. That has the opposition of the Executive.

Given the dreadful situation that exists in Scotland, we need to look towards such an aim. We had zero tolerance of violence against women. The incidence of fire deaths in Scotland is increasing, and it is at a shocking level. It should be a fundamental aim of the bill to drive down fire deaths, to set a target of zero and to adopt zero tolerance. I am aware from my involvement in discussions and negotiations at a national level, certainly in England and Wales, that there is a perception and a clear objective—

The Convener: When you use the phrase "zero tolerance", what specifically are you talking about?

John McDonald: A zero tolerance of fire deaths. One of the clear objectives in England and Wales—but hopefully not here—is to have an increase in the response time of fire engines, with fewer firefighters attending incidents. That is of great concern to the Scottish public, given the horrendous record of fire deaths in Scotland. In Edinburgh and Glasgow, it is not just about fire deaths—

16:15

The Convener: In fairness to the Executive, it is clear from the policy memorandum that the Executive is only too aware of the statistics on fire deaths in Scotland and of how those statistics relate to those of other countries. The Executive's intention in introducing the bill is to address such issues.

Do you want to raise other specific issues in relation to the bill?

Frank Maguire: I want to make a couple of brief but important points that have not been touched on. The Fire Brigades Union Scotland is concerned about the creation of an offence under section 67(2), which says:

"If—

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

section 52; and

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

or serious injury, in the event of fire,
the employee shall be guilty of an offence."

Col 982

Under section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992, an offence is committed if a person breaches a contract of service or hiring and in so doing might

"endanger human life or cause serious bodily injury".

However, section 240 of the 1992 act includes two important qualifications: an offence is committed only, first, if the person breaks the contract "wilfully and maliciously" and secondly, if the person knows that the "probable consequences" of their actions will be to endanger life or cause serious injury. The Fire Brigades Union Scotland considers that section 240 of the 1992 act is sufficient to cover the situation that is envisaged in the bill and, in any event, is concerned that section 67(2) of the bill does not include the accepted qualifications that are set out in section 240 of the 1992 act.

There is an important psychological aspect to the matter. We know that employees often take on fire safety duties willingly and voluntarily. Section 67(2) could be interpreted as being very strict and could act as a disincentive to any employee who was considering taking on responsibilities for fire safety, or encourage them to avoid that responsibility by passing it up the line to a superior. The inclusion in section 67(2) of the qualifications in section 240 of the 1992 act would maintain the status quo—that would be okay.

The Convener: You are referring to the words "wilfully and maliciously".

Frank Maguire: Yes, and the requirement that the person would have to know that the probable consequence of his action would be serious injury or loss of life. Of course it is an offence for an employee to do something that they know might cause serious injury or endanger life, but section 67(2) is far too wide and is not needed, because section 240 of the 1992 act covers the situation. If section 67(2) is thought to be necessary, it should be redrafted to repeat the qualifications that are set out in section 240 of the 1992 act.

The Fire Brigades Union Scotland is concerned that if a firefighter—I am not talking about all employees—or someone who is charged with fire safety duties were to take industrial action, they could be prosecuted under section 67(2). If such a person were to withdraw their labour from incidents or fire safety cover, the section could be used to prosecute them for taking that industrial action. There would be no immunity under the Trade Union and Labour Relations (Consolidation) Act 1992, which provides only civil, not criminal, immunity. That is

a serious concern. Section 67(2) potentially contravenes trade union rights and the right to withdraw labour.

I will not go into detail about the term "reasonably practicable", because it is quite a

Col 983

technical point and we have already been through some similar technical stuff. The interpretation of the term "reasonably practicable" to which the Scottish Executive adheres was set out in *Edwards v NCB*, but there is a challenge to United Kingdom authority in relation to that interpretation, on the grounds that it is not proper and is contrary to European Community law—that is all that I will say about the matter.

The Convener: Thank you for making those additional points.

Frank Maguire: Finally, it is worth mentioning a matter that touches on the point that was made about centralisation. It is clear that the bill would give the Scottish Executive considerable powers in relation to fire safety. Sections 36, 37, 41, 43, 31 and 11 have been mentioned and would specifically enable the Executive to tell a relevant authority what to do with its property and equipment and the instructions and guidance that it issued. The bill would give strong powers to the Scottish Executive to

"cause an inquiry to be held"

if a relevant authority were in contravention of a framework document or reinforcement scheme, or in various other circumstances. What seems to be missing from the bill is some kind of accountability on the part of the Scottish Executive. What would happen if the fault lay in part with the actions of the Scottish Executive through its framework document, instructions or guidance—or anything else? The bill contains no mechanism for holding the Scottish Executive to account.

The Convener: I think that the mechanism is called democracy—or such civil rights as may exist under law.

Frank Maguire: That might have an effect some years later, but there should be a mechanism for holding the Scottish Executive to account as it carries out the operational duties that it would give itself in the bill. If there is to be no such mechanism, a very good structure will be needed to ensure that the Scottish Executive is properly advised about what it does.

The Convener: I am sure that your comments are being noted with considerable interest.

John McDonald: Could I say—

The Convener: Mr McDonald, I am worried about time. We have tried to be generous to you, but we have overrun badly.

John McDonald: We want to make one small, brief point about fire prevention, which is important for the committee to hear.

Glyn Evans: I ask the committee to consider carefully the effect of section 34, which would in effect allow a fire and rescue authority to appoint

Col 984

any person to carry out its fire safety enforcement functions under part 3, were it so minded. That is completely outwith the proposals for England and Wales.

The Convener: I thank Mr McDonald, Mr Maguire, Mr Ross and Mr Evans for an extremely useful session. Much of the technical contribution has—if we are honest—baffled us, but we will certainly read the *Official Report* with considerable interest.

John McDonald: Thank you.