

Justice 2 Committee Official Report 21 September 2004

Scottish Parliament

Justice 2 Committee

Tuesday 21 September 2004

Fire (Scotland) Bill: Stage 1

The Convener: I welcome representatives from the Convention of Scottish Local Authorities. They are: Councillor Julie Sturrock from Dundee City Council, who is chair of the COSLA task group;

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Stephen Hunter, who is the firemaster at Tayside fire brigade; Councillor Ken Harrold, the convener of Lothian and Borders fire board; David Miller, who is head of corporate services for Lothian and Borders fire brigade; and Barbara Lindsay, who is corporate manager of COSLA. We have a positive array of talent this afternoon to divert us.

In accordance with the format that we have adopted, I assume that the witnesses are relaxed about not making introductory statements.

Councillor Julie Sturrock (Convention of Scottish Local Authorities): We were aware that that such statements been dispensed with for the previous witnesses, but Councillor Ken Harrold has a very small opening statement, which covers the spirit of our approach. It lasts only about six minutes; it is very short. It might be helpful if he could give that opening statement, although the decision is obviously in the convener's hands.

The Convener: I am conscious that COSLA was advised before the meeting of our desire to press on with questioning. I would not be content to have an opening statement of six minutes, but I will be happy for Councillor Harrold to encapsulate the principal points in two minutes.

Councillor Ken Harrold (Convention of Scottish Local Authorities): I will attempt to do that in two minutes, although I cannot promise that I will.

COSLA wants local democracy to be maintained; we want control of the fire service to be in local government hands. The bill needs to establish the roles of national Government and local government so that the strategic direction of the

service is set out jointly and so that local elected members have maximum flexibility to determine the needs of, and solutions for, their areas. There is a need to recognise that the fire service cannot make a difference to community safety on its own and that as with the police, the health service and social inclusion work, it needs to be integrated with community planning partnerships. We are also opposed to overtly prescriptive and centralising ministerial powers of intervention and direction and we have grave reservations regarding the establishment of any new quango in the form of a common fire and rescue services agency.

We also point out that audit of the Scottish fire service is continuous. So far in this financial year there have been seven audits—although some of them were part of the pay claim—and Mr Ord and his team will go out to do an eighth inspection during this financial year. If the reports on other local government services meeting targets were as good as those for the fire service, many of my fellow councillors would be very pleased.

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I am sorry for the abbreviated version of the statement, but that encapsulates our position.

The Convener: I will hold you up to all future witnesses as a model of what can be achieved, Councillor Harrold. I thank you, because you have encapsulated your approach to the points that are of interest to the committee and have referred to areas on which committee members will undoubtedly want to ask questions. Thank you for your brevity.

I will go straight in and follow on from your important point on the balance between local democratic accountability and ministerial power. I noticed that, in your introductory comments, you used the word "prescriptive". What powers in the bill are of particular concern to COSLA?

Councillor Sturrock: That has been an issue of great debate. We note that the bill will allocate the minister 27 separate powers over the fire service. We were considering that before we came in, and we have concerns about section 2 and about how section 34 is wrapped up with section 35. In fact, all the debate about the structure of the fire service could be purely academic because, if the bill were passed, the minister could completely restructure the fire service at will. That is an illustration of how wide and sweeping the ministerial powers will be. The minister could, in fact, outsource the entire service if she wanted to.

The Convener: Earlier this afternoon, Mr Ord gave his opinion on the issue, which was that it is highly unlikely that the powers will be exercised because the consequences about which you are apprehensive are unlikely ever to come about. Do you share Mr Ord's opinion?

Councillor Sturrock: No, because I feel that legislation must be based on all contingencies and not on the good will of present or foreseen incumbents. Legislation must be based on what is possible and on what it can be used for. The bill is such a wide and enabling one that the outcomes could be different, given a completely different political complexion. Who am I to foresee what may happen in 10 years? We are updating legislation from 1947; if it was to take another 60 years to update the present bill, anything could happen. At present, the bill is simply an outline and contains little detail. We are considering issues such as control rooms and the structure of the service, but with few concrete plans to go on in the bill, which simply contains wide enabling powers.

The Convener: To follow on from that, does the bill support local accountability?

Councillor Sturrock: Local accountability is threatened because of ambiguity or lack of detail in the bill. The fire service must be locally accountable but, under the bill, a local firemaster

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will not be accountable to the fire board. However, the accountability interface comes when the chief officers of a fire brigade meet elected members to discuss the shape of the service. If that system is to change, the idea that the service is locally accountable would lose credibility completely. COSLA wants to enable the fire service to be part and parcel of community planning in a real sense. As soon as we take away local power, we will take away the ability for local self-determination and the ability to shape the service for local needs.

Colin Fox: Consultation has been carried out, but the national framework document has not yet been produced. What operational objectives and targets and other details would COSLA like to be in the framework document?

Councillor Sturrock: We welcome many elements, such as integrated risk management. Stephen Hunter might be able to give a clearer outline of all the elements.

Stephen Hunter (Convention of Scottish Local Authorities): We have not seen the national framework document for Scotland; we have seen only the national framework document for England. Some of the wide-ranging powers in the bill may, when flesh is put on the bones—as the chief inspector of fire services put it—be of concern to COSLA. Although COSLA supports integrated risk management planning and the move from intervention to prevention, and it hopes that more lives will be saved and that there will be fewer injuries and fires, we are concerned that COSLA may not be able to play as effective a part in the production of the framework as it would like.

Colin Fox: Is it your feeling that the wide-ranging powers for the minister will upset the balance between local operational control and central control?

Stephen Hunter: COSLA is concerned that if it cannot sit in with ministers and the Executive team during production of the national framework, certain elements of it may be imposed through the ministerial powers.

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Councillor Sturrock: Basically, we are going back to the normal COSLA standpoint on many such issues, which is that we see a need for a national strategic approach but hope that COSLA and the Scottish Executive can work out the approach together and hand it to local authorities to allow them to work out what is most appropriate at their level.

Jackie Baillie: The proposal in the bill is to abolish the Scottish Central Fire Brigades Advisory Council. Does COSLA agree with that proposal? If so, would you replace the council with

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an alternative structure and what would that structure look like?

Councillor Sturrock: There is a need for such a structure. Either we could have a reformed version, if that were felt necessary, or we could attempt to create an interface between COSLA and ministers, which would examine the strategic approach and future planning, and would set up an advisory body made up of professionals and fire brigade members who would provide technical back-up. We would not be averse to fine tuning the body so that we could examine its tasks and perhaps deal them out differently to various bodies before bringing them together under a different heading.

There appears to be a certain impatience with the present set-up, but that does not mean that it can be disposed of or replaced by some completely different groupings. It should be possible for existing groupings to work in a different way.

Jackie Baillie: I want to be clear: you think that, as well as COSLA, stakeholders such as the trade unions, the firemasters and so on should continue to be involved. You would not change that, but would simply change the form.

Councillor Sturrock: That is correct. As I said, it might be possible to have parallel working groups whose work was presented differently.

Jackie Baillie: It is a matter of debate whether the form and function of any subsequent advisory body should be set out in statute. Do you think that it should be or would it be more useful to name the various stakeholders and place on ministers a duty to consult?

Councillor Sturrock: I am not sure. Barbara Lindsay might know whether we have had any guidance on that matter.

Barbara Lindsay (Convention of Scottish Local Authorities): The model that Councillor Sturrock refers to—a political forum with national and local focus and an officer implementation advisory group below it—is one that we have developed with the Executive in a number of important policy areas. Obviously, those groups are voluntary rather than statutory. They seem to work well in their areas.

Colin Fox: Councillor Sturrock mentioned the impatience that exists with the current set-up. Do you share that impatience? If so, does COSLA intend to suggest a model that it would like to replace the Scottish Central Fire Brigades Advisory Council?

Barbara Lindsay: The model that we suggested in the consultation response that we submitted previously was broadly similar to that which I have just outlined. That is our suggestion; if people

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were open to that, we could examine how it has been applied in other areas and we could flesh it out with a bit more detail.

Karen Whitefield: Councillor Harrold said that one of the key priorities for COSLA in assessing the bill's proposals is the need to maintain democratic local control. Do you believe that the retention of the eight fire authorities across Scotland will allow that democratic and local control to be maintained?

Councillor Harrold: The figure of eight fire authorities in Scotland is not set in tablets of stone. COSLA is not currently advocating that there should be eight, three, one or whatever number of authorities. The important matter is who is in control. Control must be concentrated locally if we want to continue to get the message across about community safety. Brigades can work together—there are a number of recent examples of that in relation to matters such as purchasing—but governance must remain with local government. It would be ironic if we witnessed the demise of the municipal fire service, given that the first such service in the world was set up in Edinburgh in 1825. That was many years ago and the fire service has moved on, but the only way of providing a good service to our constituents—and members' constituents, obviously—is by retaining local government control over the fire service.

Councillor Sturrock: In essence, any change must be proven to lead to an improvement. There is no point in change for the sake of change. Unless improvement is the demonstrable outcome, change is not advisable. We welcome the focus on prevention, integrated risk management planning and other such matters, but we are extremely proud of our response times in the current system. We should be careful about dismantling a system that is working well.

Karen Whitefield: COSLA had understandable reservations about proposals for a common fire and rescue services agency and the Executive chose not to press ahead with those proposals. Is COSLA content with the proposals in sections 2 to 5 for the establishment of joint fire and rescue boards?

Stephen Hunter: COSLA is content with the fact that the eight fire brigades—six joint boards and two unitary fire authorities—can be maintained. COSLA would be concerned if there were to be changes to that structure. The bill would provide the power to change the structure of fire brigades, but the national framework document might contain more information about the proposed changes. COSLA would certainly want a seat at the table if discussions about proposed changes were to take place. We mentioned powers of intervention; section 2 would give ministers the power to intervene to create the

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structure that they want. COSLA has concerns about that.

Jackie Baillie: Sections 7 to 9 set out the principal functions of fire authorities. Is COSLA content in general with the provisions, or is anything missing?

Stephen Hunter: COSLA has considered the provisions, which set out specific statutory duties. The bill would extend the duties that are set out in the Fire Services Act 1947—which was predominantly about firefighting—to include statutory duties in relation to road traffic accidents. The bill would also provide for conferral of functions in other emergencies. We hope that COSLA would be able to sit at the table to discuss the powers to deal with other emergencies that would likely be conferred on the service.

Jackie Baillie: Are you happy that such matters would be dealt with through secondary legislation, rather than in the bill? We have heard representations that suggest that urban search and rescue should feature in the bill, as should flooding, which is of particular interest to some local authorities. The UK sea of change project, which is due to report in April 2005, and which has implications for coastal communities, should also feature in the bill.

Stephen Hunter: The difficulty that arises in putting the bill together is in having an exhaustive list of emergencies to which the fire brigade would be capable of responding. Should we try to be exhaustive or should we try to be more general in respect of the emergency role of the service?

Councillor Sturrock: I add the rider that—as COSLA always says—if something is to be a core function, it should carry with it appropriate funding.

Jackie Baillie: Absolutely.

The Convener: I think that we would take that in tacit parentheses, Councillor Sturrock.

Councillor Sturrock: I would not like to let that past.

Jackie Baillie: Are there any concerns about the interaction of authority functions as specified under the bill and those that are specified under the Local Government in Scotland Act 2003?

Councillor Sturrock: Earlier, my colleagues and I were discussing the ability to charge, particularly in relation to some aspects of training. Under the 2003 act, we would be allowed to charge, but there are certain problems with that. I will hand over to Stephen Hunter, who will give you the details on the subject, which has been a bit bothersome.

Stephen Hunter: One of the issues under the 2003 act was community planning, in which the fire brigade wishes to remain actively involved.

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The statutory duty to be a key player in community planning at local level is supported and we also support the power in respect of best value. As Councillor Harrold mentioned, there are concerns about the possibility of a common fire and rescue services agency. If there were only one agency, which all the fire services in Scotland would address for the purposes of procurement, for example, that might not offer best value; we might not be able to demonstrate best value if we have to buy through one particular route.

With regard to what Councillor Sturrock was talking about, the 2003 act gives local authorities the ability to set up trading accounts and to trade for profit in competition in the open market. We feel that, in some respects, the bill will restrict fire authorities' ability to charge at market rate. It stipulates that charging will be just at cost to the brigade and not necessarily at the market rate.

Colin Fox: Councillor Harrold made it clear that you have grave reservations about the proposed common fire and rescue services agency on the ground that you do not see the need for such a quango, which would centralise things more than necessary. The Executive has indicated that there exists the option for the agency not to be in the bill and for the proposal to be explored further. The pace of exploratory talks would be much slower than has previously been the case. Would that satisfy COSLA's concerns?

Councillor Harrold: I would always have major reservations about such a body. In order to set up a common agency, a large bureaucracy must also be set up. We have, working in partnership with seven of the eight brigades, purchased protective clothing for firefighters and saved something like £51.50 per unit by

doing it that way. If a bureaucracy had to be set up, where would that £51 of savings come from? That would slow things up.

Over the 25 years of my involvement with the fire board, there have been a number of examples of insular or inward-looking fire authorities, but despite all the problems of the dispute, brigades working together is the way forward and the setting up of an agency—I was going to say in Edinburgh, but it could be in the Orkneys or anywhere—is not. Working together is the way forward. It would be of no benefit to the fire service to have a central agency.

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Colin Fox: So—further discussion is not really necessary because you believe that, as things stand, there are sufficient grounds for collaboration without establishing an agency to ensure that collaboration happens.

Councillor Harrold: Yes.

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Councillor Sturrock: We would prefer that that option be discounted now rather than the question be prolonged. If such a body is not regarded as a favourable option, we would greatly prefer that it be discontinued as an option rather than held over.

Stephen Hunter: It is important to add to what Councillors Harrold and Sturrock have said; many collaborative initiatives in the fire service are not just between fire brigades. Many fire brigades collaborate with their local authorities, national health service boards, the police and the academic institutions in their areas to get economies of scale in purchasing, for example.

Maureen Macmillan: What is COSLA's position on the Mott MacDonald report on the possible amalgamation of control rooms?

Councillor Sturrock: We have yet to make a formal decision. There is a feeling that the eight control rooms that exist at the moment have served us very well, but we have to consider the options that are proposed in order to work out whether they will bring benefits.

The question creates a difficulty for me in that I would have preferred to have come to the committee with a strong opinion, but the question has to go through the normal decision-making process. Although I can represent the feeling of the task group, it is difficult to provide the committee with COSLA's position.

However, it is my understanding that there is no support for there being only one control room because of the grave difficulty that would ensue should that control room ever be out of order. A great many representations have been made to

COSLA on behalf of the eight control rooms on the link between the control room and command. At the moment, the control rooms serve many different functions and they are geographically dispersed. The figures that sit behind the estimation of the number of employees to be redeployed, should the number of control rooms be reduced, are not accurate, according to the firemasters. Because the control rooms are so widely dispersed, if one was to be closed, it is unlikely that people would want to travel to be part of the new one.

There would also be problems related to the kind of thing that Mr Fox mentioned in that there might be a range of shared expertise within a geographical area. If people do not move from an area, the knowledge from that area would essentially be lost.

There are many concerns about reduction of the number of control rooms, but we do not as yet have an official stance on the question. Those are the concerns that have been voiced. There is also a problem in that we are not at all sure that the

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estimated savings can be made, at least not in the way that is proposed, and there are difficulties with determining how any reduction in the number of control rooms should be made. There are also capital costs involved; they do not appear to have been addressed. We cannot create an amalgamated control room just by putting extra people in the same room. I do not know whether Stephen Hunter has more to say on that.

Stephen Hunter: COSLA is concerned about the future governance arrangements, as any proposals to reduce the number of control rooms would reduce democratic control and result in a loss of local accountability. Although COSLA has not reached an official position, it is currently considering the issues. COSLA would be opposed to any continuation of the centralisation agenda, but it would not be opposed to evaluating any proposals that evidence showed would provide a more effective service.

Maureen Macmillan: When will COSLA come to a conclusion on that?

Councillor Sturrock: The issue is due to be discussed at the leaders' meeting on Thursday.

Maureen Macmillan: It would be helpful if we could be sent a note of COSLA's decision.

The Convener: Further to that, I want to cast back to Councillor Sturrock's earlier observation that a demonstrable case should be made before any change is proposed. In my area, Strathclyde, for 30 years we have had one brigade instead of the five brigades that we used to have and, for the past 20 years, we have had

one control centre instead of five control centres. I am anxious to tease out from you—in the sense of gently extract, rather than torment—whether that has been a bad arrangement.

Councillor Sturrock: The fact that the Strathclyde area came to its own conclusion on that arrangement may have had something to do with its success. Many other functions in Strathclyde, such as transport, are arranged along that regional boundary. My understanding was that, given that there was a layer of regional government at the time, the arrangements in Strathclyde reflected the political reality. That would not be the case if the control rooms were restructured as suggested under the bill. From the performance of Strathclyde's control room—whether that be good, bad or indifferent—it would be difficult to extrapolate the future performance of arrangements across Scotland.

The Convener: That is interesting. If I understand you correctly, you do not necessarily object in principle to the possibility of having a smaller number of control rooms. Your concern is that any conclusion that is reached should be

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arrived at on the basis of a local discussion. Is that correct?

Councillor Sturrock: Yes. The fire service is a local government function that should be for local determination. Otherwise, it ceases to be a local government function in quite the same way. There is a difference between proposals that are technically feasible and proposals that are democratically valid or locally accountable.

The Convener: But you are not saying that, in principle, reducing the number of control rooms is a bad thing.

Councillor Sturrock: It would be difficult to say whether it is a bad thing or a good thing on the basis of the sketchy information that we currently have. Most people fear that, if it were a bad thing, it would be too late to do anything about it afterwards, whereas we know that the current control rooms work. They are part and parcel of an integrated management system within each brigade. That is a very different system from one in which the control rooms are extracted from the brigades while the brigades are left as they are. Such a system almost presupposes that the whole brigades system would also be streamlined—a very emotive word. Streamlining implies improvement, but that has not yet been proved either. The proposals might better be described as the reduction of the local accountability process. The geography and sparsity levels of different parts of the country can create very different problems for each brigade. For those who believe in local government, the solution has to be one that fits each situation.

The Convener: Maureen Macmillan has a further question on fire safety and co-ordination.

Maureen Macmillan: How well do the fire safety enforcement duties fit with other local authority functions, such as the regulation of houses in multiple occupation and licensed premises? Is there likely to be a duplication of effort under the new fire safety regime?

Councillor Sturrock: With HMOs in particular, there is a determination in local government to ensure that what tenants and their neighbours are offered is safe and appropriate to the area. Local authority involvement in that covers a lot of different functions, such as environmental health, planning, licensing and the fire board. The idea is that we are all working together to ensure that the public are protected properly and that everybody is kept safe.

A reorganisation of that system would be much bigger than is hinted at in the bill. It is not something that can be covered in a sentence, because the other bodies would become the statutory consultees and the fire brigade would become the judge and jury. With the licensing

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system as it sits, we at least have a legal system that can address appeals. I will let Stephen Hunter come in, but that is my take on the matter. If there are faults, the whole system should be reviewed and checked. It has not been running for that long and we have to give it time to bed in so that we can check whether it is working. If it is not working, let us try to improve it, rather than start a completely different system.

Stephen Hunter: The fire service is only one agency that inspects and decides whether it is appropriate that HMOs or licensed premises should be granted a licence. Building control, environmental health and the police are involved in considering the licence and whether the licence holder is a fit and proper person. We would like recommendations to be given more force under the bill. As the chief inspector said earlier this afternoon, there are concerns that recommendations will be disregarded where the fire service carries out only an agency inspection.

There are many areas where more parties need to be considered, as equal partners, before a licence is granted. However, we need more than just recommendations; a fire brigade should be allowed to set out requirements before a licence is granted. The issue is all about working in effective partnerships, because the groups that are issuing the licences are the local authorities—the police come under the local authority functions. Where the system is not functioning effectively, action needs to be taken. More emphasis should be placed on fire brigade comments; rather than being treated as recommendations that can be disregarded, they should have to be considered extremely seriously.

Maureen Macmillan: Do you have evidence that those comments are not being considered seriously? Are the fire brigades' recommendations not being followed or is that just a supposition based on anecdotal evidence?

Stephen Hunter: The original question was whether the fire brigade wanted to have the powers. Where, under the Fire Precautions Act 1971 or the Fire Precautions (Workplace) Regulations 1997, we are the enforcing authority, we carry out our duties. I do not have any local examples of where there is not an effective partnership arrangement where we are an agency inspector.

Jackie Baillie: Are you saying that you would stop short of being the enforcement body if—given that currently local authorities are the enforcement body for HMOs—your status were enhanced beyond a statutory consultee?

Stephen Hunter: Yes.

The Convener: Do you want to make any concluding clarifications?

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Councillor Sturrock: We have covered many of the things that have been covered before, but our overwhelming feeling is that the bill is vague. It is concerning that bill is so vague and that the minister would stand to have such sweeping powers. As I said, if the powers were to be used, much of the committee's detailed discussion would become academic, because it would be within the minister's power to make the decisions that the committee has discussed. That is worrying for local government. We believe in local democracy and feel that, as the fire service is a local service, its future should be determined at local government level, obviously in consultation and collaboration with the Scottish Executive. That is one of the most worrying aspects of the bill. Everything else can be discussed, but the vagueness is a major difficulty.

The Convener: On behalf of the committee, I thank David Miller, Stephen Hunter, Councillor Harrold, Councillor Sturrock and Barbara Lindsay for attending the committee. Their evidence has been extremely helpful.