

Justice 2 Committee Official Report 28 September 2004

Scottish Parliament

Justice 2 Committee

Tuesday 28 September 2004

Fire (Scotland) Bill: Stage 1

The Convener: I welcome the Deputy Minister for Justice, Hugh Henry. The minister is accompanied by Ian Snedden, who is head of the fire services division of the Scottish Executive Justice Department, and Robert Marshall, who is a Scottish Executive solicitor—I note that he is not just any Scottish Executive solicitor. We are pleased to have you with us. I understand that you want to make some comments, minister. We were told that your introductory statement would be brief, in which case it will be welcome.

15:00

The Deputy Minister for Justice (Hugh Henry): How could I refuse such a request? I will make a brief statement.

The bill team has submitted further written evidence that addresses some of the FBU's concerns about the legislative competence of the bill. I hope that that submission clarifies the situation.

Concerns have been expressed that some of the bill's provisions seem to point towards a centralisation of the fire and rescue service. I put on the record that that is not the case—*[Interruption.]*

Mike Pringle: There are two people having a go at you now.

Col 1057

The Convener: The person who is drilling outside is not one of my near relatives.

Hugh Henry: I thought that the noise might have something to do with your approach to recalcitrant witnesses—perhaps you drill into their knee-caps.

We want to make it clear that the fire and rescue service will remain a local government service and that its day-to-day operation and management will take place at local level. In response to criticisms about the lack of strategic direction from Government, I hope that the national framework will set out the objectives

for the service, what is expected of fire and rescue authorities and the Scottish Executive's role in the achievement of those objectives. The framework will form the basis of the future partnership between the Executive and the fire and rescue authorities. It is vital that the framework is prepared in consultation with local authorities and other key stakeholders. The draft framework document is currently being drafted and we expect to issue it for pre-consultation within the next few weeks. Full consultation will follow before the end of the year.

The bill includes 19 provisions that confer ministerial powers to make subordinate legislation. I acknowledge that that is a significant number and I understand the concerns that have been expressed. However, I assure members that the bill is not a mechanism for the centralisation of the service. Seven of the 19 provisions re-enact or update an existing power and a further provision places existing practice on a statutory footing. Of the remaining 11 provisions, five relate to administrative procedures, one is technical in nature and relates to the making of fire safety regulations and five confer powers that we consider to be powers of last resort.

Only one of the 11 new powers potentially would not be subject to consultation and parliamentary process. That is the power in section 11 to make an emergency direction. I hope that the power will never be needed, but it would be reckless of the Executive to ignore the reality of global terrorism and the possibility of an incident that was of such proportions that local services could not cope. In such circumstances, an emergency direction would provide the necessary flexibility to ensure an effective and co-ordinated response.

The committee received evidence about the advisory structure and our intention to abolish the SCFBAC. We undoubtedly need a forum in which we can discuss issues of strategic importance to fire and rescue services and ministers will need advice about the development of the service. However, the advisory council has long since lost sight of its remit and its machinery is cumbersome. We want to explore more effective methods of enabling all stakeholders appropriately to discuss

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issues of concern. We will consider alternative models and consult stakeholders shortly.

I noted with interest the reservations that the committee expressed about the new fire safety regime that the bill proposes—for example, the concerns about fire and rescue authorities being given a statutory role as an enforcing authority and concerns about the implications for licensing arrangements for houses in multiple occupation. The aim of the proposed regime is to remove multiple and overlapping fire safety provisions and it is clear that the fire and rescue authorities would be best placed to inspect and enforce the new regime. The committee also expressed its concern about the need for consistency in the

application of fire safety standards. I believe that having one primary enforcement authority is key to achieving that consistent approach.

Finally, although the bill makes no direct reference to control rooms, I am aware that the future structure of control rooms has generated a great deal of discussion in evidence-taking sessions. We first indicated our intention to explore the potential for collaboration in respect of control room facilities in our consultation paper "The Scottish Fire Service of The Future". During subsequent consultation on our legislative proposals, we advised that we were in the process of appointing consultants to undertake a review of the future of fire service control rooms in Scotland.

The consultants have substantial experience in this area. Their review included consideration of how control rooms operate in the ambulance and police services as well as of arrangements in other countries. They produced a detailed report that recommended a rationalisation of the number of control rooms. A number of options were explored and we invited stakeholders to comment. The consultation period has ended and we are analysing the responses. There will be further consultation with stakeholders before any final decision is made.

The Convener: Thank you, minister. That was a commendable attempt to quell the natural inquisitiveness of committee members. However, I know them well and I am sure that they will not be suitably deterred. On behalf of the committee, I thank you for the helpful letter that we received from Mr Snedden, which addressed issues that were raised in evidence. Mr Fox has a general introductory question.

Colin Fox: Before I turn to the remarks that you made about the national framework document, minister, I have a general question. It has been suggested that the bill is motivated by afters from the national fire brigades dispute and that it represents an about-face from the pathfinder report on which £3.5 million—

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The Convener: I am sorry, Mr Fox, motivated by what? We could not hear.

Colin Fox: I am saying that a lot of the bill has arisen from issues that were raised during the national fire dispute. I am happy to reiterate that more clearly for the convener.

The point that I am making is that the bill is an about-face from the essence of the pathfinder report and the Scottish Executive's "The Scottish Fire Service of The Future" document. Does the minister share that view? Will he explain the apparent about-face?

Hugh Henry: Colin Fox raises two separate issues. On the generality of the bill, much of what it contains was in the public domain before the dispute started. We

have simply built on a consensus that has been developing over a number of years. I categorically refute the suggestion.

The point about the pathfinder report is probably linked to some of the issues relating to integrated risk management. Undoubtedly, things moved on as a result of the dispute: a number of issues were raised and a number were accelerated. All of us need to live with the consequence of the way in which things have changed as a result of the dispute. We accept those consequences.

I believe that we are proposing a sensible set of suggestions that will help to deliver an efficient and effective fire service. If we were to try to go back to some of the work that was done around the pathfinder project, that would delay the modernisation and improvements that are needed. I see no justification in that suggestion.

Colin Fox: I will press you on that point. You do not accept that the bill is motivated by the dispute but you accept that it addresses issues that were raised by the dispute. Is that a fair comment?

Hugh Henry: No, what I said was that many of the issues were already in process long before the fire services dispute. On the specific point, I accept that some issues were accelerated as a result of the experience of the dispute, but they were not motivated by it.

Colin Fox: I appreciate that the national framework document is in its draft stage and note that we can anticipate its publication in the next few weeks. As I am sure you are aware from the *Official Report*, previous witnesses have expressed the anxiety that the national framework document is not available to be read in tandem with the bill. What are your feelings about those concerns? Is consideration of the bill restrained because the detail of the bill and the document cannot be examined at the same time?

Hugh Henry: I do not see it like that. The first draft is being prepared and we hope to issue it

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early in October. It will go out to stakeholders for pre-consultation. Once we have received comments from key stakeholders, the revised draft will be issued for wider consultation. That is probably consistent with the progress that is being made on the bill at stage 1 and stage 2. Nothing significant should be read into it and I am sure that it will not cause any great difficulties.

Colin Fox: I will press you on that point. Last week, the chief fire officers suggested that we could largely guess what is in the national framework document and that it might not be significantly different from what we have anticipated. I am not asking for an exclusive today—I am sure that we can wait

six weeks—but is that fair comment or does the result really depend on what comes out of the stakeholders' input?

Hugh Henry: The stakeholders' input will come when we put the document out for consultation. We have reflected on what has been happening in the fire service in recent years. We have tried to reflect the relationship that exists at national and local level. There is a need for a consistent set of objectives so that, at a local level, people can see a consistency of approach while local brigades are left with the right to manage and deliver the service for their local needs.

As member will recognise, since the Scottish Parliament's inception, although there has been agreement that there should be subsidiarity in decision making and that decisions should be made locally on a range of services and not just on the fire service, people have been increasingly unwilling to accept differing standards of service in different communities across Scotland. They do not accept the argument that that is up to local decision makers. We are trying to balance what we believe are the rightful objectives of the service and a framework that will address all the key issues with ensuring that local decision makers can make appropriate decisions for their local communities using an understanding of what is expected of the fire service throughout the country.

Karen Whitefield: The Executive consulted on the possibility of establishing a common fire and rescue services agency, but the proposals have not been included in the bill. What is the Executive's thinking on that?

Hugh Henry: You are right to indicate that, following some initial suggestions, we have not included that agency in the bill. Our view is that, if we can encourage better co-operation for more effective and efficient delivery and procurement of services, we should examine that carefully. However, we do not want to set up another bureaucracy or another infrastructure that becomes so complex that it defeats our purposes.

Col 1061

We have deliberately not gone with the proposals, but we are still alive to the possibility of encouraging co-operation between brigades and other organisations where appropriate.

At the moment, we are not making any suggestions that would set up a superstructure or a bureaucracy. There are already examples in local government where services co-operate with one another in the procurement, design and delivery of services; those examples might well suggest to us what could be applied to the fire service in future. However, the last thing that anyone wants to do is to impose yet another bureaucracy that militates against improvements.

15:15

Karen Whitefield: Most of the witnesses who have come to the committee over the past few weeks have said clearly that they do not believe that there is a need for the agency, because they think that there are already examples of situations in which fire authorities have worked in partnership to ensure that there are related benefits to all authorities and that they save money. Last week, COSLA representatives gave us an example of that when they spoke about the procurement of uniforms.

Today, just before you came to the committee, we heard evidence from representatives of the Fire Officers Association, who suggested that, although there was evidence of joint working, there was sometimes a need to ensure that joint working actually happened and was not just spoken about. How will you get the balance right without establishing a bureaucracy that nobody wants, to ensure that there is joint working where that is appropriate and necessary?

Hugh Henry: We need regular correspondence, communication and discussion with all those charged with the delivery of the service. In the first instance, that would mean the brigades specifically. However, you will know that in Strathclyde, where there is a lead-authority model, one authority provides much of the support infrastructure for the brigade. Do arrangements such as that offer a solution? I think that we should look at that. Are there other ways for one brigade to take a lead—in the provision of information technology services, pension organisation, procurement or training, for example? If such a model worked and could be demonstrated to be effective, we would prefer that degree of informal flexibility.

If a model was not proving effective, we would clearly have to make other arrangements, in the interests of the service. However, I repeat the point that any such arrangement could not involve another huge body that had a life of its own,

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separate from the brigades, and that spawned all sorts of off-shoots with chief executives and senior managers, so that before we knew it the whole service became top heavy. The issue is about trying to get a balance.

The Convener: In your introductory remarks, you spoke fully about ministerial powers and I think that you said that there was no intention to interfere with what you described as day-to-day activity. However, various witnesses have expressed considerable concerns about ministerial powers. In what situation do you envisage the powers under section 11, on emergency directions, being invoked?

Hugh Henry: It would be hard to specify all the situations where the powers under that section could readily be invoked. If we were able to foresee precisely everything that might happen, we could easily just spell it out in an exhaustive list. Part of the problem in dealing with emergencies is that it is often the unforeseeable and unexpected that causes the problem. In those situations of

unexpected emergency, we need to be able to respond. There could be natural catastrophes that no one could ever have imagined, or there could be terrorist incidents. Although we might argue about whether the authorities in the United States knew of what was about to happen before 11 September, the reality is that it was unexpected and that no one could have anticipated the precise nature of that attack. I would therefore hesitate before giving a precise definition of those circumstances, other than to say that the situation would be one to which the response would be beyond the normal activities of any of our brigades or other agencies.

The Convener: So you expect section 11 to be used in extraordinary situations that are over and above the normal incidents that our fire servicemen and women are asked to deal with.

Hugh Henry: That is correct. We do not expect the section to be invoked frequently or lightly.

Colin Fox: Do you consider a national firefighters' strike to be an emergency in which a ministerial power would be needed? You referred to an unforeseen and unexpected emergency. We did not have a strike for 25 years, but you must know from negotiations whether a strike is coming up, so I presume that you would not envisage covering it under the section.

Hugh Henry: I do not imagine that we needed the power in that situation, because a previous strike had taken place, as you say. The arrangements that were put in place were appropriate to the circumstances, without the need to invoke ministerial powers. A lack of preparedness because people were on strike or equipment had not been properly deployed would

Col 1063

require a reaction, but that was factored into all the discussions that took place locally and nationally. I do not see that as a situation in which ministerial powers would come into play.

Could an unforeseen threat to life, limb and public safety result from an industrial dispute? God forbid that that should happen, but if it did, we would need to react. However, most trade unions take a sensible view of such situations. Although they may have a dispute with an employer, they are always willing to respond to situations in which people are under threat.

Colin Fox: Notwithstanding the length of time that it takes for a national dispute to come to fruition, you seem to be leaving the door open a little—you say that you would not rule out using powers.

Hugh Henry: I think that I made it clear that it would be foolish of me to rule out exercising ministerial powers in the unlikely event that a catastrophe that neither

you nor I can envisage occurred during an industrial dispute and could not be coped with in the normal course of events. You raised that in the context of the firefighters' dispute, during which nothing happened that would have justified the use of ministerial powers. I repeat that trade unions have always taken a responsible attitude to threats to life and limb, although they may have disputes with employers, and I do not expect that to change. If you can tell me that a catastrophe will never happen during a dispute, you are a better person than I am and you are imbued with powers that many of the rest of us do not have.

Colin Fox: I am tempted, but you are here to answer the questions, not me.

The Convener: We will move on to the actualities of the bill.

I will return to situations that might involve issuing a ministerial direction, not just under section 11, but perhaps under sections 2 or 35, for example. Concern has been expressed about where the exercise of that power would leave the operating responsibilities of the other individuals in the service. For example, we have the authorities and the fire and rescue service managers—I will come to the firemaster later. A genuine concern is being expressed that, if ministerial directions were issued, nobody might know who was in charge. Do you share that concern?

Hugh Henry: No. On the contrary, if ministerial powers were invoked in a situation of potential confusion, that would probably ensure that responsibility was clearly allocated in the middle of a crisis. I hope that, in the extremely few situations in which the powers would be invoked, we would be able to give guidance and direction. I do not see that as being a recipe for further confusion.

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The Convener: Because this is all unfamiliar territory for the committee, I would like to outline a possible scenario. An offshore incident occurs and your advisers tell you that that is a circumstance that would merit exercising the ministerial power of direction under the bill. Already dealing with the incident are the existing personnel, such as the fire authority, the firefighters and the firemaster. Who is in control? Will the people on the ground be free to take operational decisions about what needs to be done or will you and your advisers preside from Edinburgh from the moment the power is exercised? That is a genuine matter of concern.

Hugh Henry: The example that you gave is not the best one because the arrangements that would be put in place in many of the situations that can occur in that example are already tried, tested and planned for by local agencies. However, I take the general thrust of what you are saying.

If something catastrophic happened and there was a major disruption of services—for example, water supplies were contaminated, energy supplies were disrupted, houses were left without electricity and gas and there was a threat to

public health as a result of the combination of circumstances—everyone would rightly expect ministers to be able to assume some kind of control in order to ensure that emergency services were co-ordinated and better able to respond. That is where the power of direction would come in. The way in which that arrangement would translate into activity in a local area would be a matter for the local decision makers. Certainly, they would refer to the centre, but they would be best placed to know exactly what was happening in any locality.

We would all expect that, if such a catastrophe happened in the north of Scotland, services in the south of Scotland and central Scotland would be on standby and would have cleared the ground in order to be able to provide the necessary support, that each of the services was being co-ordinated, that we knew exactly who would be responsible for the activities that were taking place and that the room for confusion was minimised. However, I do not envisage ministers or politicians of any description being sent out to manage the services in a locality. We need to rely on the people with the appropriate training, skills and experience. The approach is to combine all the available skills.

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

Col 1065

the view of other witnesses to whom we have listened. Can you explain the thinking behind that explanation? I think that that line of accountability is something that the committee can understand. In relation to what you were saying about day-to-day operational activity, there is concern that accountability and lines of authority have become a little blurred.

Hugh Henry: We believe that the areas to which you referred are more in the nature of employment practice, which should be a matter between the firemaster and the board, or whatever other arrangement exists. The relationship between the firemaster and the board could be specified in the board's standing orders or in the contract of employment; after all, the accountable body is the board rather than ministers.

The Convener: That implies that different parts of Scotland could have separate arrangements.

Hugh Henry: Separate arrangements for what?

The Convener: Could there be separate arrangements for relationships between firemasters and boards?

15:30

Hugh Henry: Absolutely, if such arrangements were felt to be justified by local practice. However, no arrangements should be inconsistent with the national framework that we seek to develop. I am not sure that it is wise to speculate on what completely outrageous things might happen. However if, say, a board were to grant the firemaster such arbitrary and authoritarian powers that the firemaster started to act without reference to normal employment practices or good employee relationships and the board could do nothing about the resulting drop in morale because of the firemaster's relationship with the board in the contract, the conditions of service or in the board's standing orders, we would seek to exercise our reserve powers to make the arrangement consistent with the national framework. However, day-to-day directions on what the firemaster should or should not do would be entirely a matter for the board.

Jackie Baillie: Further to Ian Snedden's helpful letter, I have some quick questions to clarify things for my simple mind. First, as the minister will be aware, there are concerns about section 45's lack of reference to the need to consult recognised trade unions. I understand that the section contains a generic catch-all, but will the minister clarify what the thinking is behind that? Why are the words "recognised trade unions" not included explicitly in section 45?

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

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contains a generic description. Some organisations are part of the service and some are not recognised for the purposes of bargaining on pay and conditions. We feel that it would not be right to exclude all organisations from the wider aspects of the bill.

Jackie Baillie: Would it be possible to include phraseology about recognised trade unions within a much wider general context?

Hugh Henry: That would depend on the purposes for which the trade unions were recognised. Some trade unions that are not recognised for the purposes of pay bargaining might be recognised for other purposes, so one would need to define further what was meant by recognition.

Jackie Baillie: I want to move on—

The Convener: We are under pressure of time, but Colin Fox may ask a brief supplementary question.

Colin Fox: I have a brief question that follows Jackie Baillie's line of inquiry. What is the relationship between the Executive and the major trade union—the Fire Brigades Union—following the dispute?

Hugh Henry: You would need to ask the Fire Brigades Union. I see no problems.

Colin Fox: I am asking the Executive.

Hugh Henry: I have met FBU representatives on several occasions. They have probably had more access to ministers and officials than most trade unions and I do not detect any great problems that have arisen as a result of the fire dispute. The union's representatives may seek to differ on that, but that is a matter for them.

Jackie Baillie: Returning to the substance of the bill, I want to move on to the contention that the bill seeks to disapply the Health and Safety at Work etc Act 1974. I want clarification. I made a valiant attempt to understand the Executive's elegant explanation, but am I correct in saying that section 65 of the bill will disapply only the fire safety aspects of part 1 of the 1974 act? That is my first, technical question.

The Convener: Perhaps we should let the minister and his colleagues respond.

Hugh Henry: I am advised that Jackie Baillie is absolutely right.

Jackie Baillie: That is great, because it means that I read the explanation correctly.

Secondly, aspects of part 1 of the 1974 act will be applied specifically elsewhere in the bill. Will there be no effect from that?

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Hugh Henry: We do not want, either intentionally or unintentionally, to disapply health and safety legislation.

Jackie Baillie: It is helpful to have that clarified for the record.

I have another concern about sections 67(2) and 52(b), which also have helpful explanations. I want to be clear that you are saying that a person being on strike would not in and of itself be treated as an offence.

Hugh Henry: There is no intention to create an offence of a person being on strike.

Jackie Baillie: Okay—people would want to avoid that provision being misinterpreted at some future point.

Hugh Henry: We will have another look at that matter, but it is not our intention to create such an offence, nor do we believe that it will be created. If there is a requirement to clarify the matter further, we will do so to ensure that there are no unintended consequences.

Jackie Baillie: Thank you. That would be helpful.

Finally, we have heard a number of differing views on fire and rescue services and what functions should be specified in the bill. For example, it has been said that sections 7 to 10 should be expanded, particularly to include urban search and rescue and to take on board the outcomes of the on-going work of the sea of change project, which will report in April 2005. Do you have a view on whether that should be included in the bill?

Hugh Henry: Such matters will be in a section 10 order.

Maureen Macmillan: Before I come to the question that I was going to ask, I have a supplementary to Jackie Baillie's question about the fire and rescue services. As the minister will know, we have many retained and voluntary fire services in the Highlands and Islands and we are not sure of their future because we are waiting to hear about transitional funding for those services. Can you tell me whether that will be announced in the near future?

Hugh Henry: Yes. You lodged a parliamentary question on the matter for Thursday, but it is fairly low down on the list, although I intended to answer that point if the question was called. Obviously, if the question was not called, you would have received a written answer. However, I can put it on the record today that I confirm that the Executive will release £15.12 million in new funding to support the modernisation of the fire service, with the possibility of a further £1.68 million next month. That would include up to £3 million in extra

Col 1068

money for the Highlands and Islands fire brigade to fund station improvements and the costs that are associated with the upgrading of staff from volunteer to retained firefighter status.

Maureen Macmillan has pursued that issue vigorously. I hope that what I have announced will go some way towards assuring her and others in the Highlands and Islands fire brigade that we intend to see our commitment through.

Colin Fox: That was a lucky question.

Maureen Macmillan: I asked the question more in hope than in expectation.

Members: Oh!

Colin Fox: What are the chances of that?

The Convener: The phrase "pulled out a plum" comes to mind.

Maureen Macmillan: I have also written to the minister about fire control rooms. You will realise that the Mott MacDonald report has probably raised more hackles than anything else has—in or out of the bill. What is the driver behind the proposals? Why, all of a sudden—as it seems to some people—are we looking to reduce the number of fire control rooms? Is the present system not working?

Hugh Henry: The present system is working up to a point, but it requires further investment to continue to work effectively. The immediate driver was not the bill, but the necessity to fund the firelink project. We thought that it would be inappropriate to invest in and upgrade eight control rooms throughout Scotland under the current structure, but then to feel in the near future that experience and investment decisions were pushing us towards having fewer control rooms. That is why we commissioned the consultants' report.

The report has come back, information has been circulated and the consultation is now complete. My view is that that work demonstrates clearly that in a country the size of Scotland we could operate with one fire control room and that resilience and back up could be provided by other parts of the United Kingdom. That would release significant savings that could be invested across the piece in the fire service, or used to help to maintain the record levels of investment that we are putting in.

Half the population of Scotland is already served effectively by one fire control room; it services something like 12 local authorities, ranges from Oban in the north to south of Girvan and covers a significant number of islands and disparate communities. That experience has shown that centralisation of the service could work well.

On the other hand, we have seen a number of submissions that argue that resilience would be

Col 1069

better provided within Scotland, rather than other parts of the United Kingdom. I know that fire boards representing 23 of the 32 local authorities in Scotland have suggested that we should consider having three control rooms. A minority have said that the status quo should remain. We will obviously reflect on that, but it is only fair to say that I am not, at the moment, persuaded that the status quo is justified. We will announce our proposals in the near future.

Maureen Macmillan: When will you make your decision?

Hugh Henry: We will need to do so fairly soon, because we are being pressed contractually for investment in the firelink facilities. The sooner we can clarify matters, the better.

Colin Fox: It has been said that centralisation of control rooms would lead to a greater volume of calls with fewer staff to take them. Do you accept that and do you accept what is perhaps the critical point, which is that the public want to be reassured that they will have a better service as a consequence of reducing the number of control rooms from eight to three—or even to one, as the chief inspector of fire service would prefer?

Hugh Henry: Perhaps you could clarify something for me before I answer that. You said that the centralisation of fire control rooms would lead to more calls. I do not understand that.

Colin Fox: I asked whether you accept that centralisation would lead to a greater volume of calls being taken by a reduced number of staff.

15:45

Hugh Henry: You have the advantage of me—I have seen no evidence that suggests that centralisation would lead to a greater number of calls. That is obviously a matter that I shall go back and look at, but I am not aware of that argument.

There would certainly be fewer staff. In 2001-02, the eight control rooms that we have at the moment handled nearly 122,000 incidents. More than 61,000—or 50 per cent—of those were handled by one control room, with the other seven handling the other 61,000. The smallest number of incidents—2,000—was handled by Dumfries and Galloway fire brigade, which has 18 staff. Strathclyde's control room's cost per incident is £30, compared to Dumfries and Galloway's cost per incident of £80. I do not think that there would necessarily be a reduction in efficiency or effectiveness. The same arguments were made when Strathclyde reduced and centralised its control rooms, but that centralisation seems to have worked fairly well.

Colin Fox: Do you accept that, even with the same volume of calls, we may be talking about a

Col 1070

smaller number of control-room operators?

Hugh Henry: Yes. If there are fewer control rooms there will be fewer control-room operators.

Colin Fox: Thank you.

Mike Pringle: I am sure that the minister is aware of the question of charging and of the conflicting views that have been given by the Chief Fire Officers Association Scotland and the Fire Brigades Union, and I am sure that the committee welcomes the comments that were made by Ian Snedden in his letter. When are we likely to get the greater detail that is referred to in that letter? There is also some concern about limits and when fire brigades can charge. Will you also comment on whether or not the £100 figure will be the same?

Hugh Henry: One of the things that we are quite clear about is that there should be no charging for the core functions of the fire service when it responds to emergency calls in relation to threats to life and putting out fires. If other ancillary activities were to be carried out—such as services to businesses—or in cases in which businesses may currently pay for some aspects of the service, it will be a matter for local organisations to determine exactly how much should be charged. I imagine that brigades would want to look at recovery of their costs, but I am not sure that I, as a minister, would necessarily want to say that a certain charge could be made for giving advice about a major economic or property development, for example. The market in Edinburgh may well be able to sustain a lot more than the market in Oban or in Arbroath, so that matter would be for local service providers to determine.

As far as income generation and means testing are concerned, I know that we have some politicians in the Parliament who want to encourage blue-sky thinking. Mr MacAskill is already on record as suggesting some of that, but to suggest that we should charge for going out to fires might be to go a bit too far, even for Kenny MacAskill. However, he makes a legitimate contribution to the political debate. I think that there are circumstances in which charging would be appropriate, but it would be for local people to determine that. As to when changes will take place, it will be fairly soon. We shall have further consultation on exactly how the change will operate and under exactly what circumstances.

Mike Pringle: I move on to the prohibition on the employment of police, which is covered in section 47. Some witnesses said that they are happy for that section to be retained, but the CFOA and, today, the FOA said that it is unnecessary and that in some areas it would be useful for serving police officers to be used as retained firefighters, perhaps in their spare time. Do you have a view on that?

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Hugh Henry: We have not reached a conclusion, but to the best of my recollection the Association of Chief Police Officers in Scotland came out to oppose that and said that it is concerned about the consequences of serving police officers acting in that capacity. Obviously, we will try to balance the views that we are starting to hear from the police and the fire service. I have no wish to introduce to smaller and more rural communities rigidity that would affect individuals' ability to play a wider role. Equally, it would be wise to reflect on the advice about the consequences that has been given by senior practitioners in the

relevant services. We have not come to a conclusion, but we are aware of the different views that have been expressed.

Maureen Macmillan: We heard in evidence that part 3 of the bill will need to be accompanied by a raft of regulations and guidance. The FOA talked about the need to have regulations written over from England to Scotland. When will those regulations will be available for inspection? Will we have the secondary legislation to examine before stage 3?

Hugh Henry: We anticipate that the regulations will be available by the end of the year, given that stages 1 and 2 will be fairly close together.

Maureen Macmillan: That is helpful, because we do not want to pass the bill without knowing exactly what we are letting ourselves in for. My other question was answered in Mr Snedden's letter, but perhaps you will elaborate. Do the bill's definitions of employer, employee, landlord and tenant simplify matters in relation to who is responsible for fire safety in premises? Mr Snedden's letter says that the formula that is used in the bill complies with European Community law, but others have said that the bill is too vague and that other terms should be used to cover the different types of relationship that exist, including franchisees and people who work in a building but who are all self-employed.

Hugh Henry: On you go.

Maureen Macmillan: I think that that covers it. It is the duty of an employer to make sure that premises comply with fire safety regulations.

Hugh Henry: I do not have Ian Snedden's letter to hand.

Maureen Macmillan: May I read out what it says?

Hugh Henry: Yes.

Maureen Macmillan: It says:

"The FBU comment on the definition of 'employee' in section 73(1). They suggest that the sections do not take into account the nature of modern working relationships. This formulation of the duty on employers reflects that in the Health and Safety at Work etc. Act 1974, which the

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United Kingdom regards as implementing the Framework Directive. We are satisfied that our approach complies with European Community law in this regard, and with its implementation in domestic law."

Hugh Henry: We remain satisfied that our approach complies with European Community law and we do not anticipate any problems, but it would be wise for us to go away, have another look at that and then come back to the committee. I understand what has been said, but I believe that there is nothing to cause concern. However, it is worth our having another look.

Karen Whitefield: I ask for some clarification on how the fire safety enforcement regime will operate, particularly for houses in multiple occupation, residential care homes and nursing homes, and on the interaction between the fire service and other agencies such as the care commission. The committee has had evidence that suggests that there will be duplication, and it would be helpful for us to have a clear indication from you of how you envisage the regime working.

Hugh Henry: It is important that we have a degree of consistency, because we want to ensure consistent application across all relevant premises. Whether someone is in an HMO or a care home, they will want to have the same degree of assurance about safety as they would have in their own home. It would be invidious if other bodies that license premises, such as local authorities, were to take on the responsibility for ensuring fire safety; it is right that that responsibility should lie with the fire authorities.

Concerns have been raised about duplication, but that will not happen. In many instances, someone from the fire service is part of the team that does the initial inspection of an HMO, so they will be responsible and will make the decision during that inspection. If we took the responsibility away from the fire service and gave it to another agency, it could cause problems. Consistency is important, as is the understanding of who exactly is responsible for fire safety.

Karen Whitefield: I will give the minister an example of something that happened recently in my constituency, which raised my concerns about the difficulties that exist and which could continue to exist.

An out-of-school club has operated in one of the towns in my constituency but, in order to operate, it needs to register with the care commission. It wanted to operate out of a local primary school, but the school does not have a sprinkler system. The local authority's building control service says that the school does not require to have sprinklers and that the building is compliant. The fire authority believes that there is no need for there to be sprinklers in the school and that there are no fire safety issues, so it agrees with the local

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authority. However, the care commission says that it will not allow the out-of-school club to register because there are no sprinklers in the building.

We have conflicting evidence. Who will have overall control of the system and who will ensure that the system is enforced, is workable and does not give rise to

duplication? Somebody must be right in the example that I gave, which is an example of the system not working particularly effectively.

Hugh Henry: That is a good example of exactly why we have concluded that one agency should be responsible and that it should be the fire service. If such an example were to arise in future, the fire service would determine whether or not the building was fit for purpose. You have given a very good example of different agencies having different standards and requirements, which is not in anyone's interest.

16:00

Jackie Baillie: I will posit a slightly different example—it is important that we get to the bottom of this.

It is not the case that fire brigades will have something removed from them; currently, the responsibility for HMOs is with local government. I would have thought that the Executive would be interested in promoting joined-up working across a variety of agencies, so that there would be something quite useful in having one inspection regime, with the fire authority co-operating with local government. However, I see some difficulties with the proposals. I understand the attractiveness of concentrating all the powers but, although that might work in theory, there might be a very contrary result in practice. There are genuine concerns about how the arrangements will play out.

Hugh Henry: I understand what Jackie Baillie is saying. She made a point about different people working together for a particular purpose, which is exactly how we anticipate that things will develop. We want to address the detail of the working relationship among the various authorities through guidance, which will be produced in partnership. I reiterate the point that it is best if we know exactly who has responsibility for fire issues, and we believe that that should be the fire service, although the regulatory work that needs to be carried out should be done in partnership, and there should be a joint understanding at local level of how it is done.

I remain to be convinced that the proposals could cause the problems that Jackie Baillie perhaps anticipates in her question. I would hope that some of the concerns will be addressed when we discuss the guidance. If problems remain, we

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will be able to reflect on the matter further. However, I would be concerned about those who are not responsible for fire safety having responsibility for fire-related matters.

Karen Whitefield: I refer to matters that I raised with your officials when they came to the committee. In a letter, Mr Snedden has responded to a point that I raised about there not being anything in the bill that will make it an offence for somebody to masquerade as a firefighter. His response was helpful, and addresses points that were raised by Strathclyde fire brigade. However, Strathclyde fire brigade also felt that the provisions for overseas fire and rescue authorities and charitable bodies do not allow acceptably for the disposal of equipment that brigades no longer require. Officials said that they would respond to the committee on those points, but there was no mention of that in the letter that we received, so I wonder whether you can give the committee further information on that.

Hugh Henry: That requires further discussion. I know that a degree of confusion has been caused in some communities by the disposal of pieces of equipment that people think still pertain to fire services. There are different issues here. One is about the disposal of equipment; the other is about those who deliberately impersonate someone in the course of their duty. We will be having further discussions on those points.

Jackie Baillie: I think that this is almost your final question, minister, if not the final question. You would expect me to mention the fact that the bill abolishes the Scottish Central Fire Brigades Advisory Council. If I picked you up correctly earlier, you made some welcome comments about the need for ministers to have advice and for a forum where such advice can be put. What alternative models are you considering? When will they see the light? Will they be consulted on before stage 3? Do you intend to make the arrangements for advice to ministers statutory, by including them in the bill?

Hugh Henry: To answer your last question first, no, we do not intend to make that statutory. You asked about whether there would be consultation on alternative models before stage 3, and the answer is yes.

Your first question was about the type of model. We still have a relatively open mind on that. We are examining experience from elsewhere in the United Kingdom to see how other models are developing. We want to ensure that the process is not cumbersome or bureaucratic, that it is well focused and that it encourages the discussion of relevant issues in an appropriate manner and forum. It should engage with and not exclude all those with a legitimate interest in fire services.

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There have been suggestions about different layers. I do not know whether different layers are needed for different types of activity. We should remember that relatively small groups of people who are burdened with other responsibilities are involved. I do not want to create a professional circuit in which the same people meet in different bodies in an almost perpetual round of meeting

activity. The arrangement needs a proper focus. Last but not least, we should question what the relevant contact is. One of my concerns is the fact that, through the current body, ministers have been inappropriately engaged in various issues in a way that did not make a great deal of sense. We want the widest possible discussion with all stakeholders so that the end-product improves fire safety in this country.

Jackie Baillie: There is genuine concern about this. Some people want statutory underpinning for the arrangements, but I understand that we want flexibility, so I suspect that ministers will prefer to go down the route of not specifying the exact form of the body in legislation. That said, could a duty be placed on ministers to have an advisory forum? Would such a generic duty fit with the broad direction of travel that you appear to be outlining?

Hugh Henry: We would be required to consult on orders or regulations made under the powers in the bill. In respect of the national framework, the bill expressly states who would be consulted. It is not clear that going in the direction that you suggest would be helpful—I do not see the value of that, although I see the value in having the widest possible consultation. As I said, we will reflect on experience elsewhere. We are already building in a significant degree of consultation and discussion at all levels, which is appropriate.

Mr MacAskill: I think that it has been suggested by the fire service inspectorate that response time to a fire can be slower if the fire is not likely to result in death. Do you accept that, or do you disagree?

Hugh Henry: It is appropriate for such suggestions and for decisions to be made by the experts. Clearly, the fire service inspectorate has a wealth of experience in that regard. In other words, I suspect that it is being suggested that, where there is a threat to life, that should be a priority. If the suggestion is that threats to life should take priority over other incidents, I would agree: threats to life should always have a higher priority.

Colin Fox: I have a brief question about the advisory council, to follow up on Jackie Baillie's line of inquiry. I found the evidence on the SCFBAC curious. It seems that the body has been universally held in low esteem for a long time. Last week, I asked the chief inspector of fire services whether he could point to anything that the

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advisory body has done well or to any of its successes. I understand that there is a fairness and diversity forum, a retained and rural firefighters research group, a fire safety forum and a wilful fire raising forum. I take it that such forums and opportunities to do good work will be continued in whatever proposals you produce.

Hugh Henry: The intention is to draw on the widest possible range of experience, including trade unions, employers, local government, private business and people who receive the service, in order to, I hope, come up with suggestions for improvement. The suggestions might relate to how the fire service operates as an equal opportunities employer, how to provide an effective service in a fast-changing world or how to improve public consciousness of fire safety so that fire prevention becomes more of an issue than it is at present. I hope that, whatever shape the advisory body takes, it will continue that type of work.

The Convener: Do you or your advisers have any final points to make, minister?

Hugh Henry: No, we are fine, thank you.

The Convener: In that case, I thank the minister, Mr Snedden and Mr Marshall for appearing before us. The meeting has been extremely helpful.