



PUBLIC PETITION NO.

PE01254

Name of petitioner

Mark Laidlaw

Petition title

Amendment to Section 51 of the Fire (Scotland) Act 2005

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend section 51 of the Fire (Scotland) Act 2005 to allow flexibility in order that an employee of a fire and rescue authority can also be employed as a special constable.

Action taken to resolve issues of concern before submitting the petition

I contacted Christine Grahame MSP to enquire if she could provide assistance with this issue. She contacted the Minister for Community Safety to ascertain the reasons why this section (51) was included in the Fire (Scotland) Act 2005 (Prohibition on employment of police) “ A relevant authority may not employ a Constable for the purpose of carrying out any of the functions conferred on the authority by virtue of this Act.”. The Minister in his response said—

‘The rationale came about because firefighters and constables have different roles and responsibilities (some of which are statutory). From a legal perspective, there is no such thing as an off-duty constable - they hold their office 24/7. There is also no difference between specials and regulars in this context - both take the same oath to the same office and the powers and responsibilities associated with their roles are the same. With this in mind, it was acknowledged during the development of the Bill that if an individual shared obligations towards roles as a firefighter and the office of constable, they could find themselves in conflict when dealing with incidents (especially those involving criminality). It should be noted that the ban already existed from the 1947 Act - the Bill simply proposed a continuation.’

Mr Ewing was forwarded my response to the areas which I highlighted as being inaccurate. Mr Ewing then stated that he wished to make no further comment on this issue and suggested that I take the matter up with my employer (Lothian & Borders Fire & Rescue) and Lothian & Borders Police. When the Head of Personnel at Lothian & Borders Fire & Rescue was made aware of this issue in Oct. 2008 he could not find any guidance relating to s51 which actually stated that a wholetime firefighter could not undertake the role of a special constable. Himself and my group manager decided that as I had been undertaking both roles for 18 months and there had been no conflict of interest during this period, they saw no reason why I should not continue.

They then received clarification from Neil Maclennan, who stated that this restriction also applied to wholetime firefighters and special constables. as a result I was required to resign my role as a special constable as if my employer had allowed me to continue

they would have been in breach of legislation. L&B Police were also unaware that this restriction existed hence why I served as a special constable for 18 months.

Petition background information

I Mark Laidlaw am employed by Lothian and Borders Fire and Rescue Service as an Operational Firefighter. In 2006 I enquired to Lothian and Borders Police about applying to join as a special constable. Asking specifically whether a firefighter came under the classification of a restricted occupation which would prevent me applying to join. I was informed that this was not classed as a restricted occupation, however it would be at the discretion of the Chief Constable whether or not he would deem there to be a potential conflict of interest between the two roles.

I applied to join and my Group Manager at the time (Line Manager Fire and Rescue Service) provided a reference as my employer to the Human Resource Recruitment Department of L&B Police. I was successful in the recruitment process and served as a Special Constable with them from 9 April 2007 until 4 November 2008. During this time I volunteered 880 hours of my personal time serving as a special constable. On not one occasion during this time was there a conflict of interest with me being employed as a firefighter and serving as a special constable.

In October 2008 I was informed by L&B Fire and Rescue Service that s51 of the Fire Scotland Act 2005 prevented a fire and rescue authority from employing a constable therefore I was required to resign my position with L&B Police.

I contacted the Fire and Rescue Services Unit within the Scottish Government to ascertain if this restriction applied to special constables as the wording of s51 does not actually state this. The supplementary guidance attached to this section only refers to Retained Firefighters (Part Time) and not Full Time Firefighters.

Fire Scotland Bill Explanatory Notes (Section 70) Page 12—

'This section re-enacts section 32 of the Fire Services Act 1947 and provides that no member of a police force may be employed as a firefighter. If an off-duty police officer were employed by a relevant authority, for example as a firefighter on the retained duty system and available for response by pager call, difficulties may arise at the scene of a fire or other emergency due to confusion over which employer has the primary claim on the officer's services.'

I was informed that this restriction does indeed apply to whole time firefighters. E-Mail from Scottish Government Fire and Rescue Services Unit—

'Subject: RE: Fire Scotland Act Interpretation

I've subsequently received further professional advice on this issue, which states that part S.51 of the Fire (Scotland) Act does indeed apply to Special Constables, as well as Regular Constables and the Chief. The role of Special Constable therefore falls under the prohibition contained in the Fire (Scotland) Act. I have been advised that a Firefighter wishing to undertake the role of a Special Constable would, in effect, need to resign his appointment.'

I then investigated whether this restriction applies also in England and Wales. This restriction applies only to "Warranted" officers in E&W therefore an employee of a fire and rescue authority (firefighter) can indeed serve as a special constable as they are not classed as "Warranted Officers".

Fire and Rescue Services Circular 38-2004, Section 6.8—

'Section 37 maintains the longstanding prohibition on the employment by a FRA of a member of a police force. However, this prohibition applies only to warranted officers (eg Constables) and therefore does not extend to special constables, community support officers or other support staff.'

There is also a National Policing Improvement Agency Circular which gives further

clarification on the appointment of a Firefighter as a Special Constable—

(ii) The fire service

“Section 37 of the Fire and Rescue Services Act 2004 prohibits the employment of members of a police force by a fire and rescue authority for the purpose of discharging any of the authority’s functions under the Act”. This is because off duty police constables are expected to assume police duties in the event of witnessing the commission of a crime or a threat to public order and, therefore, there always remains a risk of conflict between the two roles of police constable and retained firefighters being appointed as special constables.

If Chief Officers are satisfied that employees of fire and rescue authorities could make a positive contribution despite their obligations to the fire service and rescue service, there is no reason why either regular (whole or part-time) or retained firefighters should not join the Special Constabulary. This is a matter, which needs to be agreed locally between the Chief Constable and the Chief Fire Officer.

. fFire service personnel are eligible to be appointed as special constables.

Before this Act was passed each Fire and Rescue Authority was issued with the proposals for inclusion in this Act. L&B Fire and Rescue Board questioned the necessity of this restriction to be included in the Act, and suggested that it be removed.

Lothian and Borders Fire Board Response to the Justice 2 Committee, Section 47, Page 12—

‘Whilst this provision is contained in existing legislation we question its necessity, given the working frameworks within which we now operate. This could cause particular difficulties in remote areas where Special Constables may also operate as volunteer or retained Firefighters. We suggest that this be removed from the Bill.’

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01254>

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