



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC PETITION NO.

PE01767

Name of petitioner

Stewart Munro

Petition title

Scottish fire and rescue legislation and human rights

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to conduct a review of the Fire (Scotland) Act 2005 and the Fire (Additional Function) (Scotland) Order 2005 to ensure full compliance with Article 2 of the European Convention on Human Rights, the Human Rights Act 1998 and the Scotland Act 1998.

Action taken to resolve issues of concern before submitting the petition

I wrote to the Convener of the Scottish Parliament Justice Committee in 2018 to make her aware of this issue.

Petition background information

Currently, the statutory emergency response duties and obligations of the Scottish Fire and Rescue Service (SFRS) are primarily detailed in the Fire (Scotland) Act 2005, (the Act); and the Fire (Additional Function) (Scotland) Order 2005, (the Order).

The 2005 legislation confirms that the SFRS has a statutory duty to rescue persons and to protect persons at risk in road traffic accidents, landslides, the collapse of a building, tunnel or other structure, serious flooding and serious transport incidents. It should be noted that the legislation makes a clear and repeated distinction between “rescuing persons” and “protecting persons”, and these two responsibilities should not be conflated.

Most people will be at a complete loss to understand why a firefighter in the Scottish Fire and Rescue Service has a statutory duty to rescue persons from road traffic accidents, landslides, the collapse of a building, tunnel or other structure, serious flooding and serious transport incidents, but does not have an explicit statutory duty to rescue persons from fires. They are merely obliged in law to protect them.

Article 2 of the European Convention on Human Rights requires that everyone’s right to life shall be protected by law. It obliges the Scottish Government to take appropriate steps to protect and safeguard those within its jurisdiction and stipulates that the measures implemented must be both practical and effective

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That being the case, this unconscionable omission in the 2005 legislation to “rescue persons from fires” suggests that Section 9(1) (b) of the Act is non-compliant with Article 2 of the ECHR since, it would appear, no organisation has been allocated with a statutory duty to rescue persons from fires in Scotland and therefore those persons right to life is not effectively protected in law.

Section 13 of the Act also allocates the SFRS a power (but not a duty) to take appropriate action in response to any event or situation that causes or might cause a person to die, be injured or become ill... or harm the environment. This provision is referred to in law as a discretionary power. Discretionary powers are permissive and not binding. They do not impose a legal obligation on the SFRS to exercise them in a particular manner or, indeed, to exercise them at all. Because there can be no derogation from Article 2 of the European Convention on Human Rights, it would appear that Section 13 of the Act is non-compliant with ECHR obligations to protect the right of life in law.

By virtue of Section 3 of the Additional Function Order, the SFRS also has a statutory duty to respond to chemical, biological, radiological and nuclear incidents. In Chapter 6 of the Fire and Rescue Framework for Scotland 2005, the Minister stated that

“The Scottish Executive has funded the purchase of equipment and specialist vehicles to provide the Fire and Rescue Service with an enhanced operational capability and a greater level of resilience to safely rescue persons exposed to chemical, biological or radiological materials.”

When the Order was enacted, however, the fire and rescue service was only allocated statutory responsibility for the decontamination of persons and the capture of contaminants, with no explicit rescue responsibility at all. By not allocating statutory responsibility for the rescue of persons from such incidents, the Scottish Government would again appear to be in breach of its obligations under Article 2 of the ECHR.

The SFRS is also duty bound within the legislation to rescue and protect persons trapped in a landslide or the collapse of a building, tunnel or other structure. Quite remarkably, Section 4(2) of the Order goes on to detail how the fire and rescue service can circumvent its statutory lifesaving responsibilities by effectively ceding these tasks to a third-party individual. The rationale behind allocating a statutory life-saving obligation to an organisation which is not in a position to carry it out is difficult to fathom but because Article 2 is non-derogable, this highly contentious option to sub-contract would again appear to be a clear breach of Article 2 of the ECHR.

The Additional Function Order does not provide an exhaustive list of all of the non-fire emergencies to which the SFRS responds and it should be noted that the original Order has never been updated since 2005, although the Scottish Executive at the time promised to do so on a regular basis as necessary. In the 2005 Fire and Rescue Framework for Scotland the Minister states other types of life threatening non-fire emergencies that the fire and rescue service have historically responded to could continue to be responded to in the future using Section 13 of the Act. As detailed previously in this petition, I opine that Section 13 is non-compliant with Article 2 of the ECHR.

The European Court of Human Rights has highlighted the particular weight that must be placed on the public’s right to be given information concerning the risks within their communities and the SFRS (and other organisations) risk management arrangements to address these risks. Within the SFRS Response and Resilience Strategy 2013-2016, they identify that response planning involves constantly assessing Scotland’s risk profile to meet the local needs of our communities, ensuring that the right resources are in the right place at the right time. This is achieved using the process of Integrated Risk Management Planning (IRMP) and is a key element in delivering an efficient and effective response to the communities of Scotland. In the almost 7 years since the establishment of the SFRS, they have never published their Integrated Risk Management Plan contrary to their obligations to comply with ECHR guidance and also a strategic priority issued to them by the Scottish Government in the 2013 Fire and Rescue Framework for Scotland to “clarify and communicate the parameters of their

operational functions.”

For the reasons detailed in this petition, it is my hypothesis that certain emergency response provisions detailed in current Scottish fire and rescue legislation do not fully comply with the requirements of Article 2 of the European Convention on Human Rights. Within the Scottish Government policy document on human rights they make clear that the Scotland Act 1998 ensures that laws passed by the Scottish Parliament can be challenged and overturned by the courts if they are not compatible with rights identified in the ECHR and that Scottish Government Ministers have no power to act in a way that breaches these ECHR rights.

Unique web address

<https://www.parliament.scot/GettingInvolved/Petitions/PE01767>

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