

Briefing for the Public Petitions Committee**Petition Number:** [PE1767](#)**Main Petitioner:** Stewart Munro**Subject:** Scottish fire and rescue legislation and human rights

Calls on the 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.

Background

The petitioner is concerned that legislation pertaining to the principal functions of the Scottish Fire and Rescue Service is not compliant with Article 2 of the European Convention on Human Rights (ECHR) – the right to life.

Article 2

Article 2 of the ECHR concerns the right to life:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Legislation

The main piece of legislation setting out the principal fire and rescue functions of the Scottish Fire and Rescue Service (SFRS) is the Fire (Scotland) Act 2005 (the 2005 Act).

The 2005 Act sets out the functions of the SFRS with regard to fire-fighting and road traffic emergencies. The Police and Fire Reform (Scotland) Act 2012 (the 2012 Act) did not amend any of the principal functions set out in the 2005 Act.

The 2005 Act also allows Scottish Ministers to confer on the SFRS specified functions by order (an additional function order). The Fire (Additional Function) (Scotland) Order 2005 sets out the SFRS's functions with regard to chemical, biological or nuclear incidents; search and rescue in relation to landslides or the collapse of buildings, tunnels or other structures; and serious flooding.

With regard to fire-fighting, the 2005 Act provides that the SFRS must make provision to extinguish fires and protect life and property in the event of fires. The SFRS's principal function to protect life and property in the event of fires would include the rescue of individuals from fires, but only on the basis that to effect such a rescue would not endanger the lives of others or firefighters themselves.

With regard to road traffic emergencies, the 2005 Act sets out that the SFRS must make provision for the purpose of rescuing persons in the event of road traffic accidents and, to the extent that it considers it reasonable to do so, protect persons from serious harm in the event of road traffic accidents in its area.

When the Bill which preceded the 2005 Act was introduced in the Parliament, the [Policy Memorandum](#) set out a number of areas where Scottish Ministers considered that rights under the ECHR may be engaged.

The Scottish Ministers considered that it could be argued that Article 2 was engaged in relation to Section 15 of the Bill¹ which allows the Scottish Ministers to set out by order, and following consultation, the services for which a relevant fire authority may charge and the persons who may be subject to the charge for services provided. Those services included extinguishing fires; protecting life; and protecting property in the event of fires. The Policy Memorandum stated:

“Article 2 (right to life). The power in section 15 in respect of charging may be argued as contrary to the positive obligation of the State to protect life. To the extent that this might be argued, the power is in any event subject to a number of safeguards in that section and any order will itself have to comply with the provisions of the Convention”.

The Scottish Ministers did not consider that Article 2 was otherwise engaged.

¹ Which became section 16 of the 2005 Act.

With regard to the charging provision in the 2005 Act, section 110 of the Police and Fire Reform (Scotland) Act 2012 simply substitutes the words “a relevant authority” and “the authority” with “SFRS”.

Scottish Government Action

The Scottish Government has not taken any action pertinent to the petition.

Scottish Parliament Action

The Scottish Parliament has not taken any action pertinent to the petition.

Graham Ross
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12 December 2019

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