

I refer to your letter of 23 January, addressed to the Chief Officer of the Scottish Fire and Rescue Service (SFRS), regarding the Committee's consideration of the above petition. The letter states that the Committee is also seeking the Scottish Government's views on the petition in general terms as well as:

- whether any variance in the wording of current legislation governing the Scottish Fire and Rescue Service contravenes the European Convention on Human Rights, specifically in relation to Article 2 – the right to life.
- whether there are any plans to review the Fire (Scotland) Act 2005 in light of the concerns raised by the petitioner.

The petitioner raises concerns about the adequacy of several provisions in fire legislation and argues that those provisions are incompatible with the European Convention on Human Rights (ECHR). The Scottish Government's position is that none of the provisions the petitioner refers to are incompatible with Article 2 of the ECHR.

The petitioner is of the view that SFRS does not have the function of rescuing people from fires. The Scottish Government rejects that view. Section 9 of the Fire (Scotland) Act 2005 ("the 2005 Act") provides that SFRS is under a duty to make provision for the purpose of "protecting life and property in the event of fires". In order to protect life it is clear that SFRS must make provision for the purpose of rescuing people from fire. The reference to "protecting life" takes into account the nature of fire – that it can spread quickly and unpredictably to its surroundings. The duty to make provision for the purpose of protecting life includes not only a duty to make provision for rescuing those trapped by fire, but also a duty to make provision for identifying others who may be at risk from fire, in an adjoining building, for example, and getting them out of harm's way. In that context, it would not make sense to restrict SFRS's function to 'rescuing' people when there is also a need to protect those who are not in immediate need of rescue.

The petitioner criticises section 13 of the 2005 Act which gives SFRS the power to respond to any incident that causes or is likely to cause (i) a person to die, be injured or become ill; or (ii) harm to the environment (including the life and health of plants and animals and the fabric of buildings). Section 13 is designed to give SFRS the power to respond to a wide range of unforeseeable emergencies. It would not be appropriate to turn this power into a duty to respond to any incident that causes or is likely to cause a person to die, be injured or become ill, which is what the petitioner appears to be calling for. To do so would mean obliging firefighters to intervene in situations where it would not be appropriate for them to do so and which would be best dealt with by other emergency services, such as the police or ambulance service.

Connected to the petitioner's concerns about the inadequacy of section 13 is a concern about there being no "exhaustive list of all of the non-fire emergencies" to which SFRS should respond. Although the Scottish Government is not privy to the kind of emergencies the petitioner has in mind, section 13 gives SFRS the power to respond to a wide range of emergencies as explained in the paragraph above. The Scottish Government believes it would be counter-productive to set out an exhaustive list of incidents to which SFRS should respond, because it would limit the powers of SFRS to emergencies contained in the list and leave it unable to respond to unforeseeable incidents not included in the 'exhaustive' list.

The petitioner is of the view that article 3 of the Fire (Additional Function) (Scotland) Order 2005 (“the 2005 Order”) confers no responsibility on SFRS to rescue people from chemical, biological, radiological or nuclear incidents. The Scottish Government’s position is that such a view is not correct. Article 3 clearly states that “for the purpose of enabling action to be taken in the event of a chemical, biological, radiological or nuclear incident in its area, the SFRS shall make provision for the removal of chemical, biological or radioactive contaminants from people”. Removing contaminants from people is the practical way of ‘rescuing’ someone from such an incident. It is therefore correct that the Order specifically provides that SFRS should be able to remove contaminants from people, rather than make reference to the vaguer concept of ‘rescue’ in such a scenario.

The Scottish Government disagrees with the petitioner’s claim that article 4(2) of the 2005 Order allows SFRS to “circumvent its statutory lifesaving responsibilities”. Article 4(1) of the Order requires the SFRS to make provision for the purpose of rescuing persons who may be trapped in the event of a landslide or the collapse of a building, tunnel or other structure. Article 4(2) provides that the function conferred on SFRS to make provision for rescuing trapped persons need not apply only where “it is reasonable for SFRS to conclude that another person with search and rescue functions or specialist search and rescue capabilities can make satisfactory provision for the emergency in connection with which the function is conferred.” If there is no other organisation that is able and willing to rescue people from an emergency described in article 4(1) then the duty remains with SFRS.

The petitioner repeatedly makes the point in his petition that the legislative provisions referred to above are incompatible with Article 2 of the ECHR. The essence of ‘incompatibility’ is that there is an inconsistency between one thing and another. It is the Scottish Government’s position that there is nothing in any of the legislative provisions discussed above that is inconsistent with a person’s right to life under Article 2. It is clear that the primary purpose of those provisions is to protect people’s lives in the event of an emergency.

The Scottish Government does not intend to review the 2005 Act in light of the concerns raised by the petitioner. Part 2 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) amended the 2005 Act relating to Scottish Fire and Rescue Services and provides the basis for:

- the establishment of the SFRS responsible for the governance, oversight and administration of fire and rescue services in Scotland;
- ensuring that the functions of the SFRS set out in the 2005 Act apply to the new single service including the promotion of fire safety;
- restating of powers to obtain assistance in carrying out fire and rescue service functions;
- statutory Best Value duties for the SFRS;
- statutory planning and reporting requirements including providing statistics, production of a strategic plan for the approval of Scottish Ministers, and an annual report and accounts;
- new arrangements for strengthening local engagement and partnership working including the establishment of local senior officers and development of local fire and rescue plans, along with powers for local authorities in relation to the provision of fire and rescue services in their area; and
- abolishing the post of Chief Inspector of Fire and Rescue Authorities and replacing it with a Chief Inspector, Inspectors and Assistant Inspectors (Inspectors of the SFRS).

Between April 2018 and March 2019, the Justice Committee undertook a substantive [post-legislative review](#) of the 2012 Act. During its scrutiny, the Committee undertook to examine whether:

- the policy intentions of the 2012 Act have been realised and are being delivered in relation to the police service and the fire and rescue service; and whether
- any further policy or legislative changes are required to improve the effectiveness of the Act.

The post-legislative review considered whether parts of the 2012 Act could be improved, what is working well, and whether the original aims of the 2012 Act have been met. The Justice Committee's [final report](#) covered the background to the 2012 Act, the case for reform, the issues raised during the passage of legislation and evaluation of the Act so far. The report provides conclusions (which were largely positive regarding fire and rescue) and recommendations against the evidence it received (both written and at Committee) during the course of its scrutiny of the 2012 Act. The Committee did not make any recommendations for legislative change in relation to fire and rescue services.