

## **PE1767/B**

Scottish Fire and Rescue Service (SFRS) submission of 18 February 2020 updated 29 May 2020

Thank you for your letter dated 23 January 2020 seeking the views of the Scottish Fire and Rescue Service (SFRS) in relation to the above Petition. We enclose our response to the Petition. We have addressed each paragraph of the Petition in turn.

As an overview, the SFRS is committed to ensuring the safety and wellbeing of the people of Scotland by providing the most effective operational response possible, whilst maintaining firefighter safety. When emergencies occur, our staff are ready and equipped to respond.

As a summary to the Petition, we respectfully disagree with the Petitioner that the current legislation is in breach of Article 2 of the European Convention on Human Rights or that the legislation is in any way deficient to allow SFRS to rescue persons. In our view the legislative framework in place is practical and efficient to safeguard life and to provide for preventative measures, as required by Article 2.

We would respectfully disagree with the Petitioner's suggestion that due to the way in which current legislation is worded, our firefighters may be less likely to attempt a rescue of someone in a fire than in other emergency situations.

There is a balance between ensuring firefighter safety and carrying out the role of the fire and rescue service. This is known as the Firefighter Safety Maxim, which is summarised below: "At every incident the greater the potential benefit of fire and rescue actions, the greater the risk that is accepted by commanders and firefighters. Activities that present a high risk to safety are limited to those that have the potential to save life or to prevent rapid and significant escalation of the incident."

This Firefighter Safety Maxim will apply at every incident. It describes how an incident commander will consider the benefits of our activities and the risks to those involved. This should not necessarily be seen as a balance of one against the other, but more as an assessment of whether the benefit is worth the risk; for example, where lives are in danger, the benefit of saving life is high, then a higher risk to firefighters may be accepted. (National Operational Guidance for the UK fire and rescue service)

It would also be worth noting that the current legislation for England and Wales (Fire and Rescue Services Act 2004) includes the same wording as the Fire (Scotland) Act 2005 when discussing the core functions of their fire and rescue services in sections 7 and 8.

### **Petition Paragraph 1:**

*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).*

### **SFRS Response:**

We agree this is correct.

### **Petition Paragraph 2:**

*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.*

**SFRS Response:**

The Fire (Scotland) Act 2005 (“the 2005 Act”) and the Fire (Additional Functions) (Scotland) Order 2005 (“the 2005 Order”) refer both to *‘rescuing persons’* and *‘protecting persons from serious harm’* in the context of the following sections:

- (i) a road traffic accident [section 10 of the 2005 Act];
- (ii) a landslide; the collapse of a building, tunnel or other structure [Article 4 of the 2005 Order];
- (iii) serious flooding [Article 5 of the 2005 Order]; and
- (iv) serious transport incidents [Article 6 of the 2005 Order].

In respect of the above sections and articles, the SFRS’s duty is *‘to make provision for the purpose of rescuing persons [from the specific event, e.g. a serious flood] and protecting them from serious harm’* in case of that event.

In relation to fire-fighting [Section 9 of the 2005 Act], the Act refers to *‘protecting life and property’*. The SFRS’s duty is *‘to make provision for the purpose of extinguishing fires in its area; and protecting life and property in the event of fires in its area’*.

In our view, the rescuing and protecting persons are interlinked and not completely separate. The reference to protecting life in Section 9 of the 2005 Act, in our interpretation, is wider and includes rescuing people, saving life and other prevention and protection activities.

**Petition Paragraph 3:**

*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.*

**SFRS Response:**

As noted above, our interpretation of the wider duty to protect life includes the rescue of persons.

**Petition Paragraph 4:**

*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.*

**SFRS Response:**

We agree this is correct.

**Petition Paragraph 5:**

*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.*

**SFRS Response:**

We would respectfully disagree with the Petitioner's view that the wording of the 2005 Act is in breach of Article 2 of the European Convention of Human Rights (ECHR). In our view, the protection of life is a wider term that includes rescuing people. Moreover, the European Court of Human Rights has underlined that Article 2 cannot be interpreted as guaranteeing to every individual an absolute level of security in any activity in which the right to life may be at stake.

There are two aspects of the positive obligation placed on the member states by Article 2 of ECHR in relation to safeguarding the lives of those within their jurisdiction. These aspects are: (i) an obligation to provide a regulatory framework and (ii) an obligation to take preventative operational measures. The object and purpose of Article 2 of ECHR is that the safeguards are practical and effective.

The interpretation of the positive obligation to safeguard life under Article 2 as it relates to emergency services has been considered by the European Court of Human Rights in the case of *Furdík v Slovakia* (Application no. 42994/05). The Court's view was that in this context, the positive obligation involved the setting up of an appropriate regulatory framework for rescuing persons in distress and ensuring the effective functioning of such a framework. However, the Court was clear that *"the positive obligation is to be interpreted in a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources. The choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights ... The Court does not consider that the positive obligations under Article 2 stretch as far as to require the incorporation in the relevant regulations of an obligation of result ..."*

It would be our view that the legislation currently in place continues to provide an effective regulatory framework for (i) response to incidents and (ii) taking preventative measures to safeguard communities in Scotland, including the saving and rescuing of persons from fires. The effectiveness of the safeguards can be supported by our records and statistics. As noted above, Article 2 of ECHR does not require an imposition of specific means of fulfilling the obligations.

**Petition Paragraph 6:**

*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.*

**SFRS Response:**

We agree that Section 13 of the 2005 Act provides the SFRS with discretionary powers to take any action SFRS considers appropriate *'in an event or situation that causes or is likely to cause a person to die, be injured or become ill; or harm to the environment'*.

The positive obligation under Article 2 of ECHR does not require specific means or a specific duty to be placed on an organisation in order to satisfy the requirements to implement an effective regulatory framework to safeguard the right to life in the member state's jurisdiction. It does not prevent a discretionary power to be used to create such an effective system.

It is our opinion that the discretionary powers placed on SFRS by the current legislation are effective, allowing us to respond to a non-exhaustive list of situations to protect and rescue persons.

**Petition Paragraphs 7, 8 and 9:**

*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.*

**SFRS Response:**

It is correct that Article 3 of the 2005 Order places a duty on the SFRS *'to make provision for the removal of chemical, biological or radio-active contaminants from people; and the capture of any water used to remove such contaminants'*.

It is our view that, in order to decontaminate a person, we may also have to rescue them.

As noted above, Article 2 does not require an imposition of a specific method to achieve the safeguards. It simply requires for the regulatory framework in place and the preventative measures to be effective. Accordingly, it is our view that there are no breaches of Article 2 of ECHR by the current legislation.

**Petition Paragraph 10:**

*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.*

**SFRS Response:**

We would respectfully disagree that a delegation of the functions under Article 4(2) of the 2005 Order is a circumvention of the SFRS's duties or a breach of Article 2 of ECHR. Article 4(2) of the 2005 Order allows the delegation of search and rescue duties (in relation to a landslide or a collapse of a building, tunnel or other structure) in the situations '*where it is reasonable for SFRS to conclude that another person (which may include a legal person, i.e. an organisation) with search and rescue functions or specialist search and rescue capabilities can make a satisfactory provision*', for instance summoning assistance of a Mountain Rescue team in the event of a landslide.

It is our view that Article 4(2) of the 2005 Order allows for an effective system to be in place to safeguard the right to life, as required by Article 2 of ECHR, whereby an equally or more suitable resource can be used to effect the rescue and protection of persons.

**Petition Paragraph 11:**

*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.*

**SFRS Response:**

We would respectfully disagree. Article 2 of ECHR does not require the inclusion of a prescriptive non-exhaustive list of the types of emergency situations that SFRS would have a duty to attend, in order for the system for safeguarding of life to be effective.

As noted above, Section 13 of the 2005 Act has been effective in allowing SFRS to attend to a variety of incidents to protect and rescue people.

**Petition Paragraph 12:**

*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".*

**SFRS Response:**

In our view there is no obligation under Article 2 of ECHR to implement a specific means of achieving the safeguarding of life and there is no requirement to publish specific documentation.

Chapter 8A of the 2005 Act places duties on SFRS to prepare a strategic plan and local fire and rescue plans. SFRS does not carry out Integrated Risk Management Plans (IRMPs), as there is no statutory requirement, and the means of providing information as required under Article 2 of ECHR is achieved by other mechanisms that are in place.

We would accordingly respectfully disagree with the Petitioner's suggestion that SFRS has failed to provide information to the communities. The SFRS's website publishes a breadth of information relating to various fire-related risks within communities and preventative measures in place. The website is continually updated. SFRS further regularly publishes community safety leaflets and strategic plans including documents such as Scottish Fire and Rescue Strategic Plan and Local Fire and Rescue Plans, which are aligned to the Local Outcome Improvement Plans (LOIPS), in compliance with the SFRS statutory duties and in accordance with the Scottish Government Fire and Rescue Framework. These documents are comprehensive and informative.

We would further comment that the documents and information published through our community activities, on our website and through our social media accounts do also clarify and communicate the parameters of our operational functions, the evolving role of Scottish fire-fighters and our future vision for the Service.

**Petition Paragraph 13:**

*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.*

**SFRS Response:**

We respectfully disagree that the provisions of the 2005 Act and the 2005 Order are incompatible with Article 2 of the European Convention of Human Rights. As discussed above, the positive obligation to safeguard life imposed on the member states by Article 2 does not require the states to specify the means of achieving the same. In our view, the provisions of the 2005 Act and the 2005 Order have continued to be effective, which can be evidenced by the large number of incidents attended and lives protected by rescue or preventative measures by SFRS every year.