

SCOTTISH FIRE AND RESCUE LEGISLATION AND HUMAN RIGHTS

The Fire (Scotland) Act 2005, together with its' Additional Function Order, detail the emergency response duties of the SFRS. The legislation is an esoteric hotchpotch, difficult to access, navigate and understand, and is required to comply in full with the European Convention on Human Rights. For the reasons detailed in my petition, I believe it does not comply with Articles 2 and 14 of the ECHR and is therefore incompetent in law.

In December 2008, the European Court of Human Rights determined that, within Article 2, the State has a duty to set up an appropriate framework for rescuing persons in distress and ensuring its effective functioning. Of the 13 categories of incidents which the SFRS has a duty in law to respond to, in only 7 of them do they have a statutory duty to rescue, effectively rendering the 2005 legislation non-compliant with the ECHR.

In 2013, following an investigation, the Crown Office determined that where a duty to rescue is not explicitly enshrined in statute, the SFRS has no obligation in common law to rescue victims, a determination which, again, renders the 2005 legislation non-compliant with the ECHR. With reference to Section 13 of the 2005 Act, it is pushing the bounds of credibility to suggest that a life-saving provision which does not oblige an emergency service to respond at all to an emergency nor to perform rescue if they do get there can, in any way, be considered fit for purpose.

Further undermining the integrity of the current provision, in January 2016 an appeal hearing was held in the Court of Session in Edinburgh in the case of AJ Allan (Blairnyle) Limited and Another against Strathclyde Fire Board. The case concerned alleged negligence at a fire, on the part of Strathclyde Fire Brigade. The Court concluded that there is no statutory duty owed to victims of a fire by the fire and rescue service such as might give rise to a private claim for damages. Lady Paton, Lady Dorrian and Lord Drummond Young unanimously agreed that the only duty of care of the fire and rescue service at a fire is "to take care not negligently to add to the damage which a party would have suffered if the fire and rescue service had done nothing; in other words not negligently to inflict a fresh injury." A profoundly significant decision in which the legal experts effectively determined that the fire and rescue service does not have a statutory duty in common law to rescue victims from fires.

Being fully aware of the significance of the Court's decision, and associated factors, in Paragraphs 95 and 96 of his written conclusions, Lord Drummond Young stated "Nevertheless this result troubles me. In my opinion a distinction might properly be drawn between injury to the person and damage to property." He went on to identify

how the penal and criminal codes in France and Germany made it an offence to not come to the aid of a victim, giving rise to civil liability in delict, and went on to opine that “If our law of delict were to develop in that direction, there would obviously have to be an imminent danger to a person (victim) and rescue would have to be possible without serious risk to the rescuer, but a rule could be developed around those limitations. **Justice in my opinion requires nothing less.**

Despite these three landmark legal determinations, the Fire and Rescue Division of the Scottish Government continue to state in PE1767C that none of the (current) provisions are incompatible with the ECHR, and have not amended the 2005 legislation in any way, leaving the right to life often unprotected in law contrary to obligations under Article 2 of the ECHR. Also necessitating the SFRS to have to rescue victims out of moral obligation rather than legal duty.

To make the 2005 legislation fully compliant with the ECHR, all that is required is for the SFRS to be given an explicit statutory duty to rescue at every category of life-threatening emergency which they attend. It is not an unreasonable, nor even radical suggestion to propose that an organisation which was established and exists to save life and rescue victims must be given a full remit to do so. It would put firefighters in Scotland on a par with their counterparts in Germany, France, Netherlands, Spain, Italy, and many other countries throughout Europe, all of whom have a statutory duty in law to rescue at every type of incident they attend across the spectrum of incident types where life is imperilled, subject, of course, to having first conducted a dynamic risk assessment. Why can't citizens and communities in Scotland not be entitled to the same level of protection?