

**THE SCOTTISH FIRE AND
RESCUE SERVICE: PROPOSALS
FOR AN ADDITIONAL
FUNCTIONS ORDER**

**CONSULTATION ANALYSIS
REPORT**

EXECUTIVE SUMMARY

1 On 14 December 2004, the Scottish Executive launched consultation papers on three key aspects of Scotland's Fire and Rescue Service. The consultations covered arrangements for providing strategic policy advice to Ministers, when and for which tasks fire authorities should be allowed to levy charges, and what additional functions, on top of their functions as defined in sections 8, 9, 10 and 61 of the Fire (Scotland) Act 2005, fire and rescue authorities should be required to undertake. This paper reports on responses to the paper on **Additional Functions**. We invited views on the scope and content of the draft order.

2 Generally, respondents considered that the proposals in the draft order were reasonable and workable. A number of suggestions were put forward for emergencies that could be added to the list. Having carefully considered these we are of the view that these areas are covered either in the order as drafted or elsewhere in the legislation. The purpose of the order is to clarify areas of activity in generic terms to ensure that all the appropriate activities of the Fire and Rescue Services are covered.

INTRODUCTION

Background

4 The Fire (Scotland) Bill was introduced in Parliament on 28 June 2004. The Bill was passed by Parliament on 23 February 2005 and received Royal Assent on 1 April 2005. Sections 8 to 10 of the Act describe the core functions for which Fire and Rescue Authorities must make provision. Section 11 empowers the Scottish Ministers, to confer on relevant authorities by Order (an "additional function order"), a function relating to an emergency not specified in sections 8 to 10.

5 On 14 December 2004, the Scottish Executive launched a consultation paper inviting views on a draft order on "additional functions" for the Fire and Rescue Services in Scotland. 8 categories of interest groups were identified as key stakeholders which formed the basis for the distribution of the consultation paper:

- ❖ Local government
- ❖ Scottish Parliament
- ❖ Government depts/organisations
- ❖ Trade unions and staff associations
- ❖ Professional bodies/trade associations
- ❖ Business sector
- ❖ Equality and diversity groups
- ❖ Others

6 The consultation paper can be accessed on the Scottish Executive website at <http://www.scotland.gov.uk/consultations/justice/sfrsc-02.asp>. It sought views on the scope and content of the proposed Order. We envisaged that the Order would:

- Specify the emergencies for which fire and rescue authorities must make provision.
- Stipulate the provision that fire and rescue authorities must make for the specified emergencies

- Describe the circumstances when a fire and rescue authority must respond to emergencies outwith its area.

7 The consultation period ended on 8 March 2005 and responses were received from 28 organisations and individuals. Generally, the responses were very positive with a considerable degree of support for the proposals.

Consultation methods

8 As well as being available on the Scottish Executive's website, 147 hard copies of the paper were distributed to key stakeholders including the 32 local authorities, 8 Fire Authorities, 8 Firemasters, the Convention of Scottish Local Authorities (COSLA), the Society of Local Authority Chief Executives and Senior Managers (SOLACE), the Chief Fire Officers' Association (Scotland) (CFOA), the Fire Brigades Union (FBU) and 6 other trade unions/staff associations. A copy was sent to the Scottish Parliament's Justice 2 Committee, each of the political parties represented in the Scottish Parliament and a further 10 copies were placed in the Scottish Parliament Information Centre.

9 Copies were also sent to the Office of the Deputy Prime Minister (ODPM), the Scotland Office, the National Assembly for Wales, the Northern Ireland Executive, the Health and Safety Executive (HSE), the Scottish Environment Protection Agency (SEPA), the Scottish Civic Forum, the Scottish Youth Parliament, the Commission for Racial Equality, the Fire Industry Confederation, the Association of Chief Police Officers in Scotland (ACPOS) and the Equal Opportunities Commission. A full list of those consulted is at Annex A.

10 A questionnaire was provided that covered all three consultations and consultees were offered the opportunity to complete it online or submit a paper copy. The majority of responses were received in the form of a completed questionnaire with 5 submitted using the online facility.

RESPONSES

Responses received

11 By the end of the consultation period on 8 March 2005, 21 responses had been received and an extended deadline had been agreed with a number of stakeholders to allow their comments to be submitted for consideration. A further 7 responses were received giving a total of 28 responses received .

12 Responses were received from:

- 7 fire and rescue authorities
- CFOA
- 13 representatives from local authorities
- COSLA
- The Fire Brigades Union (FBU Scotland)
- the Health and Safety Executive
- Scottish Environment Protection Agency (SEPA)

- Association of Chief Police Officers (Scotland) (ACPOS)
- Mr IMC Scade (Fire Investigation and Risk Management)
- Chivas Brothers Limited

Publication of responses

13 All 28 responses were non-confidential and a list of the respondents is at Annex B. The text of the responses is available from the Scottish Executive Information & Library Service, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD and on the 'Consultations' page of the Scottish Executive website at <http://www.scotland.gov.uk/consultations/>.

14 Table 1 provides a breakdown of the number of responses received by interest group.

Table 1: Respondents by interest group

Interest Group	Number of responses received	As %age of total responses received
Local Government	23	81
Scottish Parliament	0	0
Government Depts/organisations	2	7
Trade unions and staff associations	1	4
Professional bodies/trade associations	0	0
Business sector	1	4
Equality and diversity groups	0	0
Others	1	4

15 Table 2 provides a more detailed analysis of respondents [including responses received from respondents who had not been specifically targeted.]

Table 2: Details of respondents by interest group

Interest Group	Invited	Responded
<i>Local Government</i>		
Fire & Rescue Authorities	8	7
Fire & Rescue Services representatives	9	2
Local authority representatives	34	13
Individual Councillors	-	0
Police Service	1	1
<i>Scottish Parliament</i>		
Committees	2	0
Political Parties/Independent MSPs	10	0
Individual MSPs	-	0
Scottish Youth Parliament	1	0
<i>Other Government Depts/organisations</i>		
Scotland	5	2
Elsewhere	5	0
<i>Trade unions/staff associations</i>	6	1

<i>Professional bodies/trade associations</i>		
Fire	1	0
Non Fire	2	0
<i>Business sector</i>		
Umbrella organisations	7	0
Individual companies – fire industry	1	0
- non fire industry	-	1
<i>Equality and Diversity Groups</i>	6	0
<i>Others</i>		
Voluntary sector	1	0
Civic groups	1	0
Health sector	1	0
Charities	3	0
Specialist organisations	2	0
Individuals	-	1
Community Planning Partnership	-	0

FINDINGS

16 Respondents were invited to respond to a questionnaire covering all three consultation papers. Questions 9 to 15 of the questionnaire covered the draft **Additional Functions Order** and a summary of the issues raised in response to each question is provided below.

Additional Functions (Questions 9 – 15)

Section 11 of the Act allows the Scottish Ministers to confer on a fire and rescue authority (FRA) specified functions by order (an “additional function order”). This would relate to matters such as flooding, chemical spills and terrorist incidents. The consultation paper sought views from respondents on the scope and content of a draft Order.

Q9. Are there emergencies not already listed which should be specified?

17 21 respondents offered suggestions for adding to the list of emergencies in the Order. 6 respondents were content with the list as it stood. Suggested additions were:

- Urban Search and Rescue;
- Marine-type/firefighting at sea incidents (consideration of ‘Sea of Change’ project);
- Persons trapped (e.g. silo, tank rescue, machinery);
- Rescuing persons from water/inland waterways (broader definition than ‘major flooding’);
- Mitigating Environmental impact of the spillage or release of hazardous materials (broader than ‘decontamination impact’);
- Replacing the terminology of RTA with “Transportation Accident”;
- Replacing the term flooding with a term to allow for a response to any widespread emergency resulting from adverse weather;
- That the paper was dominated too much by terrorist type incidents and not enough on traditional civilian rescue incidents which Brigades have attended for decades;

- Oil spills from either land based pipeline or sea going tanker;
- Rescuing people contaminated with CBRN before mass decontamination;
- Rescuing people trapped in buildings and tunnels etc other than by collapse e.g. gas, CBRN or water etc.
- Incidents where person or persons have suffered cardiac arrest;
- The inclusion of some reference to Civil Contingencies Act and “definitions” incorporated within the Act;
- Large scale public health related emergencies e.g. foot and mouth;
- First and Co-responder schemes in partnership with the Scottish Ambulance Service (SAS).

Q10. Should any of the current proposed emergencies be excluded from the Order?

18 All respondents (26) to this question were content that all the proposed emergencies should be included. One respondent commented that offshore firefighting must not be added and another suggested that it would be useful to more clearly define the role of the FRAs in a biological incident.

19 Two respondents suggested the following amendments or clarifications (paragraph numbers refer to paragraphs in the consultation document):

- Para 13(a): given the ‘emergency’ nature of incidents involving spillage or release of hazardous materials, the term ‘wherever reasonably practicable’ be added to capturing such water etc.
- Paragraph 17(a) (third point) which refers to making reasonable arrangements for subsequent disposal. The respondents believe this is a duty for other agencies and as such should not be made a duty for FRAs.
- The duty for mass public decontamination should refer to the current National Strategic Guidance for mass decontamination, which defines the role of the Fire Service in such events.
- Paragraph 17(b) refers to circumstances where Fire Authorities should make provision for rescuing and protecting individuals. The respondents believe this definition is too narrow in relation to current roles carried out by Fire Authorities. The definition should include rescue from confined spaces and machinery.
- Paragraph 13(d) refers to provision for dealing with incidents where there is serious threat to human health or welfare. Fire Authorities currently respond to protect property, the environment and rescue animals from the effects of flooding. The respondents believe the order should reflect these wider roles.

Q11. Is the provision and nature of the provision that FRAs must make for the specified emergencies in the draft Order sufficient?

20 Of the 26 responses to this question, 17 indicated that the provision was not sufficient. And the additional provisions suggested were:

- FRAs should give due regard to IRMPS and specific generic risk assessments;
- Sharing information on management of incident with other agencies and warning/informing the public;
- Removing contaminants from buildings;
- Capturing any material suspected/known to be contaminated. Interface between the FRA, Local Authority and Scottish Water for disposal of contaminated material needs to be defined and agreed by all parties;
- Paper dominated too much by terrorist type incidents and not enough on traditional civilian rescue incidents which the Fire & Rescue Service has attended for decades;
- Rescue of people contaminated with CBRN before mass decontamination;
- Rescue of people trapped in buildings and tunnels etc other than by collapse e.g. gas, CBRN or water etc.
- Define what is meant by CBRN and include ‘suspected’ in the wording to cover hoax incidents.

Q12. Are there any circumstances not already listed when a FRA should respond to an emergency outside its area?

21 Of the 23 responses to this question, 6 suggested circumstances that were not already listed:

- Order should allow for pre-planned deployment of resources to another area in anticipation of a predicted emergency e.g. weather related;
- ‘Sea of Change’ type incidents;
- Rescue of people contaminated with CBRN before mass decontamination;
- Rescue of people trapped in buildings and tunnels etc other than by collapse e.g. gas, CBRN or water etc.
- New Dimension incidents.

Q13. Are there any circumstances when it would be inappropriate for a FRA to respond to an emergency outside its area?

22 Of the 26 responses to this question, 21 indicated that there were circumstances when it would be inappropriate. It was suggested however that it all very much depended on what “where reasonable” actually means. Suggested inappropriate circumstances were:

- Where a FRA lacked capacity/resources to offer assistance and where assistance would compromise resilience to provide an adequate service in home area;
- During widespread and developing situation affecting FRAs home area e.g. severe weather incident;
- Where intelligence indicates that simultaneous terrorist incidents are possible;
- One respondent commented that it should only be at request of the FRA needing assistance and they don’t see any circumstances where it would be appropriate for a Minister to initiate such a request.

Q14. How reasonable and workable in practice do you think the draft proposals would be should they form part of the Order?

23 In the main, respondents considered the draft proposals to be reasonable and workable. There were however comments that the Order needed to be flexible to allow ‘professional judgements’ and that there was potential conflict in prescriptive direction. The Order should be in line with the principles to be set out in the forthcoming Fire and Rescue Framework for Scotland and the introduction timed to allow Integrated Risk Management Plans (IRMPs) plans to be made prior to the duty coming into force. There was concern expressed that the Order imposed additional costs on fire authorities over and above the assumptions made for New Dimension functions.

24 One respondent believed that there was an urgent need to establish a corporate advisory and enforcement approach to Fire Service Operations with the Health and Safety Executive (HSE). They stressed that failure to do this may prove to be a serious impediment to Ministers’ strategic intention to enhance the role of FRAs in terms of resilience and improved public safety standards.

25 One respondent particularly wanted to direct the Fire and Rescue Service to the fact that there were nature sites that were recognised to be of particular value which have explicit statutory protection. These included:

Special Areas of Conservation (SACs)
Special Protected Areas (SPA's) and
Sites of Specific Interest (SSSIs)

26 That respondent also stressed that, similarly, effects on European protected species should also be considered a priority and are listed in Schedule 2 (Animals) and Schedule 4 (Plants) of the Conservation (Natural Habitats Scotland) Regulations 1994.

27 Furthermore the same respondent raised a potential concern with regard to the terminology used in the consultation paper. In particular, the use of the term “adequate” which they considered was not proactive enough. They suggested that “Reasonable and Practicable” was a better fit with existing environmental legislation and emergency provisions.

28 Another respondent viewed CBRN functions as unworkable in their geographical situation i.e. lack of resources.

Q15. Do you have any other comments or observations concerning the draft Order?

30 Other comments were:

- Use of the term 'Major' in relation to incidents had tended to inhibit the best use of resources with a reluctance to escalate to Major Incident status. Some other form of words that allowed flexibility and professional judgement should be used;
- In para 18 the wording of sub para a) I and II should be merged and be replaced with the words 'civil emergency';

- The Order must be set against the Framework principles;
- One respondent commented that, at Paragraph 17(a) 2nd bullet "and containing" should be added after 'capturing'. At Paragraph 18, add '(f) Secure the provision of equipment to protect the environment from harm resulting from Fire & Rescue services activities'. It was also stated that there is a need to recognise that within the draft order the definition of environment is very wide and includes topics which fall within the remit of other specific Agencies.

CONCLUSIONS

31 The broad consensus supported the draft order and considered that the proposals were reasonable and workable.

CONSULTATION EXERCISE: FINAL REPORT

32 All responses received will be considered and will help inform decisions on the preparation of the Order. The Executive's comments on the suggestions put forward are outlined below:

Emergencies not already listed which should be specified

33 There were a number of suggestions for emergencies that could be added to the draft Order (see bullet list at paragraph 17). Having considered these carefully, we consider that these are already covered either in the wording of the draft Order or elsewhere in the Fire (Scotland) Act 2005.

34 The purpose of the Order is to clarify the existing role and functions of fire and rescue authorities which have developed piecemeal over a number of years. If we were to try and list definitively all emergencies to which fire and rescue authorities had a duty to respond, we would run the real risk of not covering all possible threats. We cannot foresee every type of emergency that the Service will need to have a key role in responding to in the future. A failing of the existing legislation was that it was too rigid in setting out responsibilities. We believe the generic wording in the draft Order provides flexibility and through the facility to amend the Order it will continue to be responsive to changing risks and roles. It is important to remember that whilst a particular function may not be listed as a 'duty' within the Order that fire and rescue authorities will have the power to respond to other eventualities and provide other services through sections 13 and 14 of the Act.

Emergencies to be excluded from the proposed draft Order

35 Respondents were content that all the emergencies proposed in the draft Order should be included. However, some amendments or clarifications were suggested with regard to dealing with incidents involving spillages and hazardous materials (see paragraph 19 above). It was suggested that reference should be made to the current National Strategic Guidance for mass decontamination, which defines the role of the Fire and Rescue Service in such events. We do not believe it would be appropriate to make reference in the Order to non-statutory guidance that is open to change.

Provision and nature of the provision that FRAs must make for the specified emergencies

36 A number of respondents suggested that the provision and nature of the provision was not sufficient (see bullet list at paragraph 20). We have considered these comments and, once again, we believe that these issues are already covered in the generic wording of the draft Order.

37 It was also suggested that the Order should define what is meant by CBRN and include 'suspected' in the wording to cover hoax incidents. The Fire Service responds to all reported incidents and some may well be hoax incidents. It would not be possible to differentiate these prior to attendance at the incident so we believe that it is not appropriate to include this wording in the Order. This maintains a consistent approach with the language used in the Bill.

Circumstances when a FRA should respond to an emergency outside its area

38 There were suggestions for some further instances (see paragraph 21) but, once again, we believe these are already provided for in the wording of the draft Order or in the Act.

Circumstances when it would be inappropriate for a FRA to respond to an emergency outside its area

39 A number of respondents suggested circumstances when it would be inappropriate to respond (see paragraph 22). However, we believe that the wording ‘where reasonable to do so’ in paragraph 15 of the consultation paper should cover all eventualities. This is a form of wording widely used in Scottish legislation to cover similar circumstances.

How reasonable and workable in practice would the draft proposals be should they form part of the Order?

40 Generally, the draft proposals were viewed as reasonable and workable. It was suggested that the Order imposed additional costs on fire authorities over and above New Dimension assumptions but we do not accept that this is the case.

42 It was also suggested that there was an urgent need to establish a corporate enforcement approach with HSE. We believe that this is already covered through a sub-committee of the Practitioners Forum that CFOA(UK) chairs with HSE as a member.

43 Circulars are issued to the Fire and Rescue Service to provide instruction and guidance on the issues raised with regard to nature sites.

44 We accept the point raised with regard to the use of the term “adequate” and will include in the Order the suggested wording of “reasonable and practicable”.

Other comments or observations

42 A few additional issues were raised under ‘other comments’ (see paragraph 30).

43 It was suggested that the term ‘Major’ in relation to incidents inhibited the best use of resources. We believe that the proposed change would conflict with other guidance on dealing with Major Incidents.

44 The suggestion to merge the incidents referred to in paragraph 18 to replace with the words ‘civil emergency’ would give a different meaning that would not be helpful in defining the fire service role.

LIST OF KEY STAKEHOLDERS FOR CONSULTATION

Local Government

Convenors of fire boards
Firemasters
Chief Fire Officers Association (CFOA)
Chief Executives of local authorities
Convention of Scottish Local Authorities (CoSLA)
Society of Local Authority Chief Executives and Senior Manager (SOLACE)
Association of Chief Police Officers (Scotland) (ACPOS)

Scottish Parliament

Justice 2 Committee
Scottish Labour Party
Scottish Liberal Democrats
Scottish Conservative and Unionist Party
Scottish Nationalist Party
Scottish Socialist Party
Scottish Green Party
Scottish Senior Citizens' Unity Party
Dennis Canavan, MSP
Ms Jean Turner, MSP
Ms Margo MacDonald, MSP
Scottish Youth Parliament
Scottish Parliament's Information Centre

Other Government Departments/Organisations

Scottish Fire Services College
Health and Safety Executive
Scottish Environment Protection Agency (SEPA)
Maritime and Coastguard Agency
Scotland Office
National Assembly for Wales
Northern Ireland Executive
Office of the Deputy Prime Minister (ODPM)
Audit Scotland
Cairngorms National Park Authority

Trade Unions/Staff Associations

Fire Brigades Union (FBU)
Scottish Trades Union Congress (STUC)
Retained Firefighters Union (RFU)
Fire Officers' Association
Association of Principal Fire Officers
UNISON

Professional Bodies/Trade Associations

Institution of Fire Engineers
Association of British Insurers
Emergency Planning Society
Forestry and Timber Association
World Fire Statistics Centre
Royal Institution of Chartered Surveyors (RICS) in Scotland Building Control Forum
Scottish Association of Building Standards Managers

Equality and Diversity Groups

Positive Action in Housing
Commission for Racial Equality
Equal Opportunities Commission
Action of Churches Together in Scotland
Scottish Interfaith Council
Scottish Human Rights Centre
African and Caribbean Network
West of Scotland Racial Equality Council
Grampian Racial Equality Council
Tayside Racial Equality Council
Central Scotland Racial Equality Council
Edinburgh and Lothians Racial Equality Council
Scottish Gypsy/Traveller Association
Scottish Refugee Council
Black Community Development Project
BEMIS
Inclusion Scotland
Scottish Disability Equality Forum
Disability Rights Commission
Enable
SENSE Scotland
Capability Scotland
Royal National Institute for the Blind (RNIB)
Royal National Institute for Deaf People (RNID)
Scottish Association for Mental Health
Scottish Council on Deafness
Glasgow Women's Library
Engender

Scottish Council of Jewish Communities
Equality Network
Lesbian, Gay, Bisexual and Transgender (LGBT) Youth
Age Concern Scotland
Help the Aged
OUTRIGHT Scotland

Business Sector

Confederation of British Industry (CBI)
Federation of Small Businesses
Forum of Private Businesses
Institute of Directors
Scottish Chambers of Commerce
Scottish Retail Consortium
Scottish Food and Drink Federation
Fire Industry Confederation
Mason Communications Ltd
Avecia
Firebreak Services Ltd
British Automatic Sprinkler Association Ltd
Chubb Fire Scotland
Gent Ltd
Kidde plc
Fire Investigation and Risk Management
Scotch Whisky Association
Emergi-Lite Safety Systems

Others

Scottish Council for Voluntary Organisations (SCVO)
Volunteer Development Scotland
Scottish Civic Forum
Scottish Ambulance Service
Fire Protection Association
Fire Service Research and Training Trust
Fire Services National Benevolent Fund
Building Research Establishment
Arson Prevention Bureau
Mountain Rescue Committee of Scotland

LIST OF RESPONDENTS

Local Government

- East Ayrshire Council
- Central Scotland Fire and Rescue Service
- Lothian and Borders Fire Board
- Scottish Borders Council
- North Lanarkshire Council
- Grampian Fire Board
- Dumfries & Galloway Fire Authority
- Strathclyde Fire Board
- Association of Chief Police Officers (Scotland) (ACPOS)
- Aberdeen City Council
- South Lanarkshire Council
- Angus Council
- East Renfrewshire Council
- East Dunbartonshire Council
- West Lothian Council
- Tayside Fire Board
- Renfrewshire Council
- Chief Fire Officers Association (Scotland)
- Orkney Islands Council
- Highland and Islands Fire Board
- Convention of Scottish Local Authorities (CoSLA)
- Fife Fire Authority
- Stirling Council

Other Government Depts/Organisations

- Health and Safety Executive
- Scottish Environment Protection Agency

Trade Unions and Staff Associations

- Fire Brigades Union Scotland

Business Sector

- Chivas Brothers Limited

Others

- Mr IMC Scade (Fire Investigation & Risk Management)