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The Fire Services Bill

Bill 81 of 2002/03

This Bill would allow the Secretary of State, by statutory instrument, to impose conditions of service on fire brigade members and give general directions to fire authorities. Thus, it would allow an imposed solution to the continuing fire dispute. The Bill would apply only to England, Wales and Northern Ireland.

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Summary of main points

- The paper explains the organisation of the fire service and summarises the recommendations of the Bain Review, the independent review of the fire service;
- There is a chronology of the dispute, including those strikes that took place and those that were cancelled;
- The Bill is placed in the context of the dispute and its relation to the *Fire Services Act 1947* explained;
- The main effect of the Bill would be to allow the Secretary of State, by order, to impose conditions of service upon firefighters;
- The question of whether this Bill could ban strikes is discussed.

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I Introduction

The *Fire Services Bill 2002/03* would allow the Secretary of State, by Order and after consultation, to impose conditions on members of fire brigades. The relevant Secretary of State at the moment is the Deputy Prime Minister. The Bill would therefore allow him to use legislation to attempt to end the fire dispute. However, the Bill goes beyond that, in allowing him to give directions to fire authorities about the use or disposal of property. It is one part of the legislation that would be needed to implement the recommendations of the Independent Review of the Fire Service (The Bain review) in December 2002. Another part is contained in an amendment to the *Local Government Bill*, currently before the House of Lords. There will also be a White Paper on the Fire Service, probably followed by further legislation in the 2003/4 parliamentary session.

II Fire Service Organisation in England and Wales

The Secretary of State

He is responsible for: Government policy and strategic direction for the fire service; fire service funding; the terms and conditions of the firefighters' pension scheme. His approval is required for any reduction in operational capacity.

Fire Authorities

There are 47 fire authorities in England and 3 in Wales. They are responsible to the Secretary of State. They are the formal employers of the fire brigades. They are responsible for: funding; budget setting; staffing; policy; direction on initiatives; decisions on the standard of the cover.

Fire Brigades

There are 50 fire brigades responsible for organising and overseeing the delivery of the service.

Fire Stations

There are 595 wholetime fire stations; 874 retained stations (i.e based on a part-time force); 115 day manning; and 49 control rooms. Their role is to deliver the service.

HM Fire Service Inspectorate

Its role is to provide advice to Ministers, fire brigades, local authorities, and business. It inspects the activities of fire brigades.

Central Fire Brigades Advisory Council

This is a forum for the fire service stakeholders to reach consensus on major policy issues and to provide advice to the Secretary of State. It is chaired by the Minister. Its members are: The Office of the Deputy Prime Minister; HM Fire Service inspectorate; Local Government Association; Fire Brigades Union; Retained Firefighters Union; Chief and Assistant Chief Fire Officers' Association; Institution of Fire Engineers; Chief Fire Officer London; Chairs of Advisory Boards.

Central Fire Brigades Advisory Council Advisory Boards

(Fire safety; integrated personal development; fire risk management; equality and cultural change; health and safety; related bodies.)

Their role is to provide advice to the Central Fire Brigades Advisory Council and take forward work programmes approved by Ministers and the Central Fire Brigades Advisory Council.

National Joint Council

Its role is to negotiate pay and conditions of the service, excluding pensions, on behalf of the fire authorities in the UK. It contains a disputes machinery. Trade unions, fire authorities and the local government association are members of the Council.

Fire Service College

Its role is to provide management and specialist training courses for the service. Its status is an agency and trading fund, self-funding on income from the courses.

III The Bain Review of the Fire Service

On 5 September 2002, the Fire Services Minister, Nick Raynsford, announced that the Government was launching an independent review of the fire service, to be conducted by Professor George Bain, previously chairman of the Low Pay Commission.

The review's terms of reference were:

Having regard to the changing and developing role of the fire service in the United Kingdom, to inquire into and make recommendations on the future organisation and management of the fire service to:

- enable it to undertake the full range of responsibilities that are appropriate to it;
- enable it to respond effectively to all the operational demands which may be placed upon it; and
- enable the responsibilities of the fire service to be delivered with optimum efficiency and effectiveness.

In the context of the above, such recommendations should include considerations as to:

- the pay levels and conditions of service that are appropriate taking full account of the wider context of pay arrangements, levels and their affordability across the economy; and
- the most appropriate arrangements for determining future pay and conditions of service of wholtime firefighters, retained firefighters, voluntary firefighters and fire control room staff.¹

When the review was established, the Fire Brigades Union (FBU) said that it does "not support and will therefore not get involved in an independent review of the fire service". General Secretary Andy Gilchrist said:

¹ Office of the Deputy Prime Minister Press Notice, *Fire service minister announces independent review of the fire service*, 5 September 2002

This is not an independent pay review as has been widely reported in the press. It is a complete review of all aspects of the UK Fire Service, including the Conditions of Service for Firefighters and Emergency Fire Control staff. It is a completely unnecessary review. The Fire Service is continually regarded as one of the top performing public services. There is no mention in this review of how any recommended changes (including any proposed increases in Fire Service pay) would be funded.

The Fire Brigades Union has spent the last 25 years modernising the UK Fire Service, all we are demanding is that Professional firefighters and Emergency Fire Control staff are paid the going rate for the job, which is £30,000. We do not need a so-called independent review to tell us that Professional Firefighters work 42 hours a week risking their lives to save the public and then have to claim state benefits to make ends meet.²

The Report, *The Future of the Fire service: Reducing Risk, Saving Lives* was presented to the Deputy Prime Minister on 16 December 2002. It had the following Executive Summary:

The Fire Service is a professional body deserving much credit for its performance. It has a well-deserved place in the nation's esteem. Localised responses to emergencies are working well, but it is a sad fact that too many people in this country die in fires and the number of fires is currently increasing each year. This cannot be right. Urgent action is required to make things better. We were aware when we began our work that there had been a number of reviews of the fire service over recent years. Most of the recommendations of these reviews have centred around the need for modernisation and flexibility. So we were not surprised to find that, in the discussions that we had with fire authorities, fire brigade staff, local authorities, government and all levels of stake-holders, the same message came through. What is required is a new approach to protecting people from the incidence of fire.

Earlier studies

2. Notwithstanding the clear recipes for change which came from earlier studies, it was equally clear that progress had been disappointingly small. There are many reasons for this, but most important is that there has been a lack of leadership throughout the service at the political, institutional and operational levels. This problem has persisted for many years.

Setting the policy for the United Kingdom

3. We therefore conclude that a fresh approach is required. This must start with a lead from the Government. There needs to be a new policy-making body, led by Ministers in the Office of the Deputy Prime Minister. This needs to set a framework, making clear what the Government requires from the Fire Service;

² Fire Brigades Union Press Release, *Fire Brigades Union will not get involved in review of the fire service*, 5 September 2002

the ways in which the Service should be modernised; and, critically, the way in which the Service has to reposition itself so that it concentrates its efforts on reducing and managing the risk of fire rather than responding to incidents.

New approach: community fire safety

4. A radically different approach is required. The focus at present is on fire authorities and brigades being able to react quickly to fires when they occur. And this has achieved some success, although the number of fires is still increasing. What is needed now is a system to tackle the problem before fire starts. The new emphasis must be on the prevention of fire, rather than the methods of dealing with fire after it has started. The approach should be grounded in community fire safety; the Fire Service has to engage more with the community to prevent fire.

Current arrangements out of date

5. The system for deploying the people and resources of the Fire Service was put in place decades ago; it was designed to meet different threats in different circumstances. The emphasis was on putting out fires in buildings. What is needed now is a system which deploys the resources of people and equipment so they are prepared to deal with the most likely risks of fire in the most cost-effective way, using an approach based on the management of risk which recognises that people move around. Local fire authorities must determine the most appropriate ways of managing the risks. This new approach should enable resources – people, machines and, in some cases, fire stations – to be re-deployed to best effect. And it should be possible to move more resources into fire prevention – community fire safety and fire safety enforcement. In turn, this should help reduce the existing level of fires. This new approach can be put in place immediately. But new primary legislation is also needed to put the Fire Service on a proper, modern basis.

6. There are cogent arguments in favour of moving the Fire Service onto a regional structure. New responsibilities are emerging, such as the need to deal with major terrorist incidents. These are best handled above brigade level. We do not, however, favour a major re-organisation at the moment; the Fire Service will already have a major programme of change to handle. But brigades should increasingly work together where it is clear that increased efficiencies and economies could result. Brigades should also work more closely with others in their community, for example, to provide ‘co-responder’ assistance to medical emergencies. The Service must increasingly recognise that the people and other resources are there to serve the community across a wide range of activities.

Devolved administrations

7. We have been briefed by the Fire Services in Scotland, Wales and Northern Ireland. And we have discussed with them the changes we are proposing. The three devolved administrations agree with the thrust of our proposals, although each has, understandably, its own concerns as to the pace of change and potential costs.

New institutions

8. The new structure for making policy needs to be complemented by new institutions within the Fire Service. There needs to be clarity of purpose and a culture which fosters organic change. The Fire Service College is already engaged in a major programme of reform. This must be seen through. The College should also become the focus for developing the new thinking required by the Service. The Fire Service Inspectorate should become a major engine for change, and play a critical part in driving through the reforms we propose. It will

need to keep in close contact with brigades. In order that it can take on this work, it should cease the routine work of inspection. Given the pivotal role played by the Audit Commission in England and Wales (and comparable organisations in the devolved administrations) in Best Value and other work with local authorities, we believe that these bodies will be well placed to take on the work.

Chief officers

9. Individual chief officers will have weightier responsibilities under a risk-management approach to fire cover. They will need to engage closely with their fire authorities in taking the work forward. The authorities themselves will need to be prepared to give a greater degree of political support. At the strategic level, there is a need for a new forum to be engaged in policy development, bringing together chief fire officers and central and local government. Taken together, these bodies should create a powerful engine for change.

Human resource problems

10. Personnel policy, procedures and practices in the Fire Service give cause for concern. Despite clear policies from management and the FBU in favour of diversity, in practice only lip-service is paid to it. Harassment and bullying are still too prevalent. The leadership must recognise that urgent action is required. An improved programme of HR management must be put in place as a matter of priority. The work on the introduction of the new Integrated Personal Development System (IPDS) gives a framework for this improvement programme. But the programme itself will not be a substitute for real effort by management at all levels to tackle the problems. There is much that is good and commendable about the Fire Service; it now needs to meet new challenges in how it organises and manages itself.

Pay

11. We have considered the pay of the Fire Service. Chapter 8 sets out the detail of our findings. We engaged the services of consultants experienced in dealing with these matters. Comparing pay with people doing jobs with similar sorts of weight in the public and private sectors, and taking into account evidence of market rates, we did not find a case for an increase in pay for firefighters and control room staff. But on the basis of large-scale changes along the lines we recommend, where new career paths are opened up and new skills are displayed, there is a case for the introduction of a new reward structure.

12. Under the new structure, average levels of pay should be higher when the programme of reform has been delivered. When substantial negotiations on reform begin, we propose a first payment of 4 per cent, backdated to November 2002; and a paybill increase of 7 per cent could be made from November 2003 provided that the total reform programme has been agreed by that date and implementation is on track as verified by an independent audit process. We believe that the cost will be more than outweighed by the savings which will result from the reforms we have proposed.

13. There needs to be a new pay structure based around IPDS to encourage and enable mobility and flexibility as key features. The system should be competence-based. As for the future, we believe it would be in the interests of all to negotiate a multi-year settlement. We recognise that employers and union may wish to agree a formal uprating mechanism based on a formula, once the reform package has been agreed and implementation is on track.

Senior staff

14. There needs to be change in the arrangements for senior staff. Officers will have increased responsibility to shoulder. They need more training in general and personnel management. They need to broaden their expertise and there should be increased use of external training. A proportion of officers should come from outside the Service.

Pensions

15. The Firefighters' Pension Scheme is inflexible. It does not accommodate a diverse workforce or working patterns. As presently managed, it encourages too many staff to leave early on medical grounds. The scheme is costly, both to employers and employees, and is poor value for money for the taxpayers. Although some short-term changes can be made, a comprehensive modernisation is required.

Conditions of service

16. Changes are also required to crewing, shift patterns and other aspects of day to day working. The 'Grey Book' which sets out conditions of service needs to be amended to contain only core conditions which must be laid down centrally. Managers should be free to manage other conditions, locally, such as flexible shift patterns, part-time working, and different crewing trends at different time of day. The Appointments and Promotion Regulations should similarly be reduced to a set of core national requirements. Discipline regulations should be replaced with a system based on the Arbitration, Conciliation and Advisory Service (ACAS) Code of Practice. The current national negotiating arrangements should be replaced.

Retained firefighters

17. The relationship between retained firefighters and their whole-time counterparts must be modernised to remove the implication of a separate second-class and to allow retained firefighters to play their full part in protecting the local community. They should be paid the same hourly rate as their whole-time colleagues and have the same medical and training standards so that they can be fully interchangeable. Whole-time firefighters should be able to undertake retained roles if they wish.

Implementing reform

18. Modernisation is long overdue. The challenge is great. Action is required to legislate for the changes; to negotiate alterations in terms and conditions of service; and to plan detailed local implementation plans and a new audit regime. The key to change will be the move to a risk-based approach to the provision of fire cover. A new body will be required to draw up a business plan to take this work forward. It will need to allocate tasks, responsibilities and timescales.

19. Taken together, the proposals for risk-based fire cover, better management of human resources, better co-operation between brigades and other economies should allow the pay award being recommended to be self-financing.

20. The programme of reform will require increased flexibility from all involved, particularly all levels of management. From the information available and discussion with chief fire officers, we believe that the changes we are recommending can be accomplished without the need for compulsory redundancies.

21. With clear vision, commitment and leadership, the programme of reform is achievable. The prizes are considerable, including a better service for the public

and a more rewarding career for the men and women in the Service. Most of all, the package of reforms should **save lives**.³

IV The Dispute

The firefighters' original claim was for a 40% increase in pay. This decision followed a resolution at the 2002 FBU Annual Conference in May to "pursue an increase in wages to take the pay of Professional Firefighters and Emergency Fire Control Staff to £30,000 with a formula to maintain this rate for the future".⁴ During negotiations on 21 November 2002, the Fire Brigades Union (FBU) indicated that 16% was an "acceptable starting point". The employers, (the local authorities) offered an 11.3% pay increase linked to modernisation reforms as set out in the Bain review. For the employers, this meant amongst other things, more flexible working patterns, including a change to more flexible shift patterns, an end to the ban on voluntary overtime, permitting whole-time firefighters to undertake a retained role on their days off, the use of joint control rooms with the other emergency services and allowing fire staff to act as paramedics. Bain recommended 4% in November 2002 and, provided there was adequate progress on modernisation, an average 7% in November 2003.

Another important feature of the employers' offer was that it was conditional on additional Government funding. The employers' offer noted:

We have said all along that local employers could not fund an offer of more than 4% and were unlikely to do so unless significant changes were implemented to the service. The offer made today, along the lines of the Bain recommendations of 11.3%, could only be delivered with the financial underwriting by government. Government has not indicated that it is prepared to fund any negotiated increase at this time. We urge government to respond to this matter.⁵

On 6 March 2003, the employers offered a cumulative 16% pay increase over three years, linked to modernisation, but the FBU Executive Council immediately decided to recommend rejection to the Recall Conference due to meet on 19 March 2003. On 12 March 2003, the Executive Council set a new strike date of 20 March. However, on 18 March, when it was clear that military action in Iraq was imminent, the Executive agreed to some changes to the deal with employers, called off the 20 March strike and recommended the recall conference to accept the offer. Despite this, the conference overwhelmingly rejected the deal, fearing that it gave too much power to management to determine local duty systems.

³ Independent Review of the Fire Service, The Future of the Fire Service: taking risks saving lives, December 2002 : <http://www.irfs.org.uk/docs/future/index.htm>

⁴ FBU Press Notice, 15 May 2002

⁵ <http://www.lg-employers.gov.uk/documents/fire/emp31-2002.pdf>:

This rejection persuaded John Prescott to introduce the *Fire Services Bill 2002-03* which would give him the power to impose a settlement. In a statement to the House of Commons on 20 March 2003, he gave two main reasons for the bill. First, he emphasised the generosity and the finality of the current offer:

It would mean that every qualified fire-fighter would earn at least £25,000 a year compared with the present level of £21,500. That is a far more generous deal than most other workers in both the public and private sectors have settled for. It is double what their old pay formula would have given them, more than double what other local government employees have settled for, and compares with public sector pay settlements running at about 3 per cent. a year.⁶

Then, crucially, he announced that:

As I have said before, the employers' revised pay offer is partly financed by transitional funding from the Government. I want to make it absolutely clear that no more transitional funding will be forthcoming from the Government. Fire-fighters should be in no doubt that what the employers are offering is both generous and at the absolute limit of what they can afford. With that in mind, the executive council of the FBU concluded that this deal should be accepted by its members and that the strikes should be brought to an end. That was its recommendation to the conference. Clearly, in the view of the FBU negotiators, that was an acceptable offer. The employers agreed to that, as did the Government. Yesterday, however, the recalled conference decided to ignore the recommendation of the union's executive. Instead, it rejected the deal and reverted to the original claim of 40 per cent. for fire-fighters and 50 per cent. for control room staff.⁷

The second factor was the impact of potential strikes at a time of military conflict.

For now, however, we are left in a position in which, although no new strike dates have been set, we have no guarantee that further strikes will not be called, the union has repeatedly made it clear that it can call fresh strikes at any time with just seven days' notice, and unofficial action could put the public at risk during a period of heightened terrorist threat.....

In the interest of public safety, 19,000 members of the armed forces are tied down to cover the possibility that the union may strike again. That is unacceptable in the difficult situation that we face today. People will rightly find it hard to believe that the fire-fighters would go on strike while the country is engaged in military action. I do not believe for one moment that individual fire-fighters would want

⁶ HC Deb 20 March 2003 c 1101

⁷ *ibid* c 1102

19,000 members of the armed forces to be held in reserve for fire fighting duties at a time when their comrades are risking their lives in the Gulf.⁸

In fact the FBU suspended further strike action until after the next recall conference on 15 April 2003. This allowed the armed forces personnel deployed on fire fighting duties to be stood down.

Before the Recall Conference, Professor Burchill, the independent chair of the Fire Service National Joint Council, (appointed with the agreement of the employers' side and the FBU), tabled another amended agreement. This was rejected by the employers as too expensive. The FBU recall conference on 15 April 2003 overwhelmingly rejected the employers' offer of 18 March (already agreed to by the FBU executive), but agreed not to go on strike as long as the hostilities in Iraq continued.

There has been no official reason given for proceeding with the Bill now. The Bill, which was published on 21 March 2003, could have been given a second reading any time from 31 March if the rough rule of 'two weekends' minimum delay between first and second reading had been strictly observed. The government would presumably argue that the financial aspects of the dispute had not changed (for example, there was no special allocation in the Budget for increased money specifically for the dispute). What may have changed is the fact that with hostilities in Iraq either now over or at least winding down, the FBU's agreement not to strike during the duration of the conflict might be coming to an end. Therefore the government might see this as an opportunity to settle the issue ahead of further industrial action.

According to the *Financial Times*, the current Government pressure for a quick end to the strike, including the timing of the second reading debate for the *Fire Service Bill*, may be connected with the announcement on 30 April, that the 19th Mechanised Brigade, previously providing cover in case of a fire strike, is being prepared for service in Iraq.⁹

V Strike Action

Strikes had taken place on the following dates:

- 1800 Wednesday 13th to 1800 Friday 15th November 2002 (48 hours)
- 0900 Friday 22nd November to 0900 Saturday 30th November 2002 (8 days)
- 09.00 21st January to 09.00 22nd January 2003 (24 hours)
- 09.00 28th January to 09.00 30th January 2003 (48 hours)
- 09.00 1st February to 09.00 3rd February 2003 (48 hours)

⁸ *ibid* c 1102

⁹ "Firefighters may face legal ban on strikes", *Financial Times*, 25 April 2003

Strikes called for the following dates were postponed:

- 0900 Tuesday 29th October to 0900 Thursday 31st October 2002 (48 hours)
- 0900 Saturday 2nd November to 0900 Monday 4th November 2002 (48 hours)
- 0900 Wednesday 6th November to 0900 Thursday 14th November 2002 (8 days)
- 0900 Wednesday 4th December to 0900 Thursday 12th December 2002 (8 days)
- 0900 Monday 16th December to 0900 Tuesday 24th December 2002 (8 days)
- 1800 Thursday 20th March to 1800 Friday 21st March 2003 (24 hours)

VI The Bill and the Fire Dispute

A. Why the Government wanted the legislation

The idea of the Bill was first mentioned by the Deputy Prime Minister on 28 January 2003. He expressed his frustrations over the strike and his desire to press on with the reforms of the fire service proposed by the Bain Commission. That would need, he said, a repeal of s.19 of the *Fire Services Act 1947*, explained below on p.18. In addition:

As a matter of priority, I will introduce legislation in the public interest to take new powers of direction over the fire service. Those powers will hopefully bring a new and much needed sense of reality into future negotiations. I will discuss, through the usual channels, including the devolved Administrations, the best way to introduce the legislation. I will draw on the provisions in the *Fire Services Act 1947* which were repealed in 1959. Those provisions allowed a Secretary of State to specify the pay, terms and conditions of the fire service. In addition, we will propose powers to direct the fire service on its objectives and the use of facilities and assets. Legislation itself will not end the dispute, but it is prudent to take those powers to use, if necessary, to help to reach an agreement.¹⁰

The legislation is being carried out in two parts. The Government put down an amendment to the *Local Government Bill 2002/3* to repeal s.19 of the *Fire Services Act 1947*. That Bill is currently in the House of Lords. The Government then delayed introducing legislation to impose conditions of service on fire brigade members, in the hope that the dispute would be resolved without it.

On 20 March 2003 the Deputy Prime Minister made a statement to the House on the fire dispute just after the country became involved in armed conflict with Iraq on 19 March 2003. He pointed out that the continuing dispute meant that 19,000 members of the armed forces were engaged in providing emergency fire cover at home. He also regretted that the Fire Brigades Union conference had rejected a revised pay offer, supported by its executive, of 16% to July 2004, linked to changes in working practices. He noted that,

¹⁰ HC Deb 28 January 2003 cc 720-1

although no new dates for strikes had been set, the FBU could call further strikes at seven days notice. He continued:

The House will recall that on 28 January I announced that if it proved impossible to reach a satisfactory negotiated agreement I would introduce legislation to impose a pay settlement. Now that the FBU conference has overturned its executive, I have concluded that the time has come for legislation, particularly given the conflict in the Gulf and the heightened threat of terrorism. I am therefore giving notice today that I will introduce and publish a new two-clause Fire Services Bill tomorrow. The Bill will give me the power to impose terms and conditions within the fire service and direct the use of fire service assets and facilities. I will start immediate discussions through the usual channels about how quickly we can make progress on this Bill. In setting the level for a settlement, I would take into account the pay rise that would have been forthcoming under the FBU's existing formula, the pay review bodies' recommendations for other key public sector workers and the Government's overall approach to public sector pay.

New terms and conditions, however, are only part of what is required for a modernised fire service. As the House is aware, we are repealing section 19 of the Fire Services Act 1947 and we are consulting on the related guidance to get the right people in the right place at the right time in order to reduce the risk of fire. I am also pressing ahead with a White Paper on a modernised fire service and legislation to achieve that objective. That will ensure that we have the legal framework in place to provide a modern, safe, efficient and effective fire service for the public and the firefighters. The choice for firefighters is simple: accepting a generous deal that has been approved by the FBU executive, or continuing a dispute that has been running for 12 months, is going nowhere and will require me to act. I believe that the common sense of individual firefighters will prevail in the end. Individual firefighters, however, must be given the chance to vote in a secret ballot, as they did on the original 4 per cent. offer in September last year.¹¹

The Fire Services Bill (Bill 81 2002/03) was introduced and received its formal first reading on Friday 21st March 2003.

B. The Fire Services Act 1947

The *Fire Services Act 1947* was the original legislation establishing the fire service basically as it is today. It has been amended, notably by Fire Services Acts in 1951 and 1959. It transferred fire-fighting functions from the National Fire Service to fire brigades maintained by the councils of counties and county boroughs. It also provided for the combination of areas for fire service purposes; and made further provision for pensions and other awards in respect of persons employed in connection with the provision of fire services.¹²

¹¹ HC Deb 20 March 2003 cc 1101-2

¹² *Fire Services Act 1947* <http://www.fire.org.uk/fsact/intro.htm>

Under section 1 of the *Fire Services Act 1947*, a fire authority has a duty to make provision for firefighting purposes, and in particular to secure the services of a fire brigade and equipment in order to meet efficiently all normal requirements. Section 3(1) (e) of the 1947 Act gives a fire authority supplementary powers to employ its brigade for purposes other than firefighting.

The Government has tabled an amendment to the *Local Government Bill 2002/03* to repeal s.19 of the 1947 Act following the publication of the Bain Review of the Fire Service in December 2002. A press notice gives the details:

For the first time in over 50 years local fire brigade officers will be given the power to move resources and equipment to fire “hot-spot” areas that need them most as the Government took the first step in reforming the fire service.

The Office of the Deputy Prime Minister announced plans to repeal Section 19 of the 1947 Fire Brigades Act, which had previously required local fire officers to seek official approval to move any such equipment outside of the fire station it was based in. This will allow local officers to deploy their resources quickly and efficiently without any of the previous time constraints.

The repeal of this legislation, which was recommended in Sir George Bain’s review of the fire service as means of developing a modernised fire service, will be done by placing an amendment in the Local Government Bill which is currently making its way through Parliament.¹³

Paradoxically, the proposed repeal of s.19 of the *Fire Services Act 1947* would remove central control over some aspects of the fire service, at a time when the *Fire Services Bill* would increase it. Section 17 of the *Fire Services Act 1947* gave the Secretary of State power to make regulations as to the conditions of service of persons employed as members of fire brigades, and in particular (a) as to ranks, pay and allowances; (b) as to hours of duty and leave. However, the *Fire Services Act 1959* amended the 1947 Act and omitted that power. The *Fire Services Bill* would return closer to the position in the 1947 Act, although it is not worded in exactly the same way.

C. The Fire Services Bill

The Bill provides for the Secretary of State by Statutory Instrument to fix or modify the conditions of service of fire brigade members, and give directions to fire authorities as to the use or disposal of property or facilities.

¹³ ODPM News Release 164, *Fire service reform starts here*, 19 December 2002
<http://www.odpm.gov.uk/news/0212/0164.htm>

The Bill has two clauses. It applies to England, Wales and Northern Ireland only. It was confirmed to the House that the Bill will have no application to Scotland.¹⁴

Clause One sets out the powers of the Secretary of State. Largely, these confer, by Order, the power to fix or modify conditions of service, including pay, of members of a fire brigade. The clause gives the Secretary of State the flexibility to specify different conditions of service for different types of member. The power is exercisable through Statutory Instrument, subject to the negative resolution procedure, and could be applied to make different provision for different classes of fire brigade members.

It gives power to make retrospective provision, but not powers to retrospectively reduce the pay and allowances of members of the fire brigades.

Before making an Order about conditions of service, the proposals must be submitted to a 'negotiating body', if there appears to be such a body. This is presently the National Joint Council, a non-statutory body made up of local fire authority employers and representatives of the FBU. At least twenty one days must be allowed for consideration of the submission, and the Secretary of State must consider any report made.

The clause also allows the Secretary of State power to direct a fire authority how to use or dispose of property of facilities belonging to it, or another authority. Property or facilities include land and equipment or other assets and facilities as set out in clause 2 (3). This might include the provision of joint control rooms, which already exist in some fire authorities, or the directing of equipment on a risk assessment basis. The Secretary of State must consult relevant persons likely to be affected by his proposals before doing so. This power is also exercisable by statutory instrument, but not subject to any parliamentary procedure. This Order could apply to individual, groups of or all fire authorities.

Clause Two sets out supplemental provisions, defining 'fire authority' and 'fire brigade' by reference to other legislation.

D. Would the Bill make the strike illegal?

In reply to questions on the statement of 20 March, the Deputy Prime Minister answered the question of whether the Bill (which at that stage had not yet been published) would contain anti-strike legislation:

The right hon. Gentleman asked whether I would want to use the proposed Bill to impose a deal. The Bill is modelled, to an extent, on the Fire Services Act 1947, although the right hon. Gentleman will see when we consider it that it is not exactly the same. The Government at that time decided to introduce legislation to

¹⁴ HC Deb 20 March 2003 c1111

allow them to impose a deal. In these circumstances, I will take powers to fix or modify the fire brigades' conditions of service after making a judgment about whether to impose a deal, and I have outlined how that would be done and the factors that I would take into account. I give notice, however, that I cannot do that until the House agrees to those powers, and I am grateful for the right hon. Gentleman's support on that. Time and accountability will be discussed by the relevant people.

We shall consider the Bill in due course, although I do not agree that it should contain anti-strike legislation. *[Interruption.]* Well, I am only giving my judgment. The right hon. Gentleman can disagree, but he will see what is in the Bill after I produce it and we can discuss it then. After all, I need the co-operation of Opposition parties in order to take such a Bill through the House. I cannot just announce it because the Bill must go through the proper democratic procedures, and I assure him that that will happen. The Bill will be published tomorrow and it will help matters.¹⁵

Although the reply is formally correct, it does not cover the question of whether the Bill could be used to make an Order to impose terms and conditions that would make striking illegal. If the Bill had restored the original parts of s.17 of the *Fire Services Act 1947*, as repealed in 1959, it would restore the ability of the Secretary of State to make regulations on conditions of service in the fire service relating to “ranks, pay and allowances” and “hours of duty and leave”. The Government has avoided that wording, in favour of a more general wording. The Secretary of State will have the power to “fix or modify the conditions of service of fire brigade members”. The wording might allow change to be imposed on other aspects of the conditions of service. The Bill states that the power to make an Order includes the power to do certain things, none of which would make strikes illegal. However, that does not necessarily exclude the possibility that the power could extend further.

E. Comments on the Fire Services Bill

Replying to the statement announcing the Bill, David Davis, the Conservative front-bench spokesman said that they would support the legislation, subject to seeing the details. However, he insisted that the Bill be time limited “either until the cessation of hostilities or certainly within a year of its being passed”, so that the House could debate the matter after hostilities have ceased.¹⁶

¹⁵ HC Deb 20 March 2003 cc 1105-6

¹⁶ HC Deb 20 March 2003 c1104

Liberal Democrat spokesman, Edward Davey urged the Deputy Prime Minister to insist that the Fire Brigades Union consult its members on the current offer by a secret ballot as a democratic end to the dispute rather than imposing a settlement.¹⁷

However, both those reactions were made very much in the context of the Iraq War. It is unclear whether those spokesmen would have the same reaction now that the actual fighting in Iraq has finished, although the need for troops in Iraq remains high.

Reacting to the statement announcing the introduction of the Bill, John McGhee, Fire Brigades Union (FBU) National Officer posted his reaction on the FBU website:

“You cannot impose agreement. You need people to sign up for agreed change or it will not happen.

“We need a bit of stability and calm in the coming period. We are still working towards a negotiated agreement which is the only way forward for this service.

“We do not think imposition is the real way forward. We have cancelled more strike action than we have taken. We have talked more than we have walked. And we are willing to talk some more in the weeks ahead.¹⁸

¹⁷ HC Deb 20 March 2003 c 1106

¹⁸ FBU website at <http://www.fbu.org.uk/news/news%202003/n200303reaction.html>