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Proposed Domestic Fire Safety (Wales) Measure

[AS AMENDED AT STAGE 2]

CONTENTS

1. Duty to provide automatic fire suppression systems
2. Enforcement
3. Provision of information
- 3A. Authentication and service of documents
4. Interpretation
5. Transitional and consequential provision etc
6. Regulations and orders
7. Short title and commencement

Schedule 1 - Enforcement

Schedule 2 - Building work supervised otherwise than by local authorities

Proposed Domestic Fire Safety (Wales) Measure

[AS AMENDED AT STAGE 2]

A Measure of the National Assembly for Wales to require the provision of automatic fire suppression systems in new residential premises in Wales.

1 Duty to provide automatic fire suppression systems

5 (1) Building work to which this Measure applies must, in respect of each residence to which it relates, comply with the requirements of subsection (4), when—

- (a) that work is completed, or
- (b) the residence is occupied as a residence,

whichever is the earlier.

10 (2) Subject to subsection (3), this Measure applies to building work in Wales which comprises or includes—

- (a) constructing a building for use as a residence,
- (b) converting a building, or part of a building, to use as a residence, or a number of residences,
- 15 (c) subdividing one or more existing residences so as to create one or more new residences, or
- (d) amalgamating existing residences so as to create a new residence or new residences.

(3) This Measure does not apply to building work—

- 20 (a) carried out for the purpose of discharging any function of a Minister of the Crown, or
- (b) if building regulations imposing requirements as to the provision of automatic fire suppression systems apply to that work, or would apply but for a direction under section 8 of the 1984 Act dispensing with such requirements.

(4) The requirements of this subsection are that—

- 25 (a) each residence must be provided with an automatic fire suppression system,
- (b) the system is operating effectively, and
- (c) the system complies with such requirements as may be prescribed.

30 (5) References in subsection (4) to an automatic fire suppression system also include any supply of energy, water, or other substance, necessary for the effective functioning of the system.

2 Enforcement

- (1) Except as provided in subsection (3), it is the duty of a local authority to enforce the provisions of this Measure in relation to its area.
- (2) Schedule 1 makes provision in relation to enforcement by local authorities.
- 5 (3) Subsection (1) has effect subject to the provisions of Schedule 2 (Building work supervised otherwise than by local authorities).

3 Provision of information

- (1) Where, in accordance with building regulations, –
 - 10 (a) notice is given to a local authority of a proposal to carry out building work to which this Measure applies, or
 - (b) full plans of such work are deposited with a local authority,such notice or plans must include or be accompanied by such information as is required by subsection (2) and be accompanied by such fee as may be prescribed.
- (2) The information required by this subsection is such information –
 - 15 (a) for the purpose of demonstrating that the work is capable, when completed, of complying with the requirements of section 1(4),
 - (b) as is, whether in relation to form or to content, prescribed.
- (3) If, upon the giving of such notice or the deposit of such plans, information required by subsection (2) –
 - 20 (a) is, in the opinion of the local authority, incomplete, or
 - (b) does not, in the opinion of the local authority, demonstrate that the work is capable, when completed, of complying with the requirements of section 1(4),the authority must, within the relevant period, give notice in writing of that opinion to the person who gave that notice or, as the case may be, deposited those plans, setting out the reasons for that opinion.
- 25 (4) For the purposes of this Measure, “the relevant period” (“*y cyfnod perthnasol*”), means five weeks or such extended period (expiring not later than two months from the giving of such notice or the deposit of such plans) as may before the expiration of the five weeks, be agreed in writing between the local authority and the person giving such notice or depositing such plans.
- 30 (5) In any case where a question arises as to the correctness of the opinion of a local authority on which notice given under subsection (3) was based, the person to whom such notice was given may refer the question to the Welsh Ministers for determination and the Welsh Ministers may quash, vary or confirm that notice.
- 35 (6) A reference to the Welsh Ministers under subsection (5) must be accompanied by such fee as may be prescribed.

3A Authentication and service of documents

The provisions of the following sections of the 1984 Act apply in relation to documents authorised or required to be given, made, issued or served by or under this Measure, as they apply in relation to those given, made, issued or served under that Act—

- (a) section 93 (authentication of documents),
- (b) section 94 (service of documents), and
- (c) section 94A (electronic service of documents).

4 Interpretation

(1) In this Measure—

“the 1984 Act” (*“Deddf 1994”*) means the Building Act 1984 (c.55),

“the Assembly” (*“y Cynulliad”*) means the National Assembly for Wales,

“approved inspector” (*“arolygydd cymeradwy”*) has the same meaning as in Part 2 of the 1984 Act,

“authorised officer” (*“swyddog awdurdodedig”*) means an officer of a local authority authorised in writing by that authority, either generally or specially, to act in matters of a specified kind or in a specified matter,

“building regulations” (*“rheoliadau adeiladu”*) means regulations made under section 1 of the 1984 Act,

“building work” (*“gwaith adeiladu”*) means the erection, extension or alteration of a building,

“final certificate” (*“tystysgrif derfynol”*) has the same meaning as in Part 2 of the 1984 Act,

“initial notice” (*“hysbysiad cychwynnol”*) has the same meanings as in Part 2 of the 1984 Act,

“local authority” (*“awdurdod lleol”*) means a county council or county borough council in Wales,

“owner” (“*perchennog*”) has the same meaning as in the 1984 Act,

“prescribed” (“*rhagnodwyd*”) means prescribed by regulations made by the Welsh Ministers,

“proper officer” (“*swyddog priodol*”), in relation to a purpose and to a local authority, means an officer appointed for that purpose by that authority,

“public body’s notice” (“*hysbysiad corff cyhoeddus*”) has the same meaning as in Part 2 of the 1984 Act, and

“residence” (“*preswylfa*”) means any –

(a) dwelling-house,

(b) flat,

(c) care home (where “care home” (“*cartref gofal*”) has the same meaning as in the Care Standards Act 2000 (c.14)),

(d) residential accommodation for pupils or students of a school, college, university or other educational institution, or

(e) room or group of rooms within a building if that room or those rooms are intended to be used for living and sleeping by a person or persons other than as part of a single household which occupies the whole of that building, and

where a building contains one or more residences, includes any part of that building intended to be used by those occupying that residence or those residences for purposes ancillary to that occupation in common with one another or with other users of the building.

(2) Subject to subsection (3), the Welsh Ministers may, by order, amend the definition of “residence” in subsection (1) by –

(a) adding a class of residential premises, or

(b) amending the description of an existing class of residential premises.

(3) In subsection (2), “residential premises” has the same meaning as in –

(a) paragraph 7 of Part 1 of Schedule 7 to the Government of Wales Act 2006 (c.32), when in force, or,

(b) until then, Matter 11.1 in Part 1 of Schedule 5 to that Act.

5 Transitional and consequential provision etc

(1) The Welsh Ministers may, by order, make such transitional, transitory, consequential, saving, incidental, supplementary and other provision as they think necessary or appropriate in connection with, or to give full effect to, this Measure.

(2) Provision that may be made under this section includes, but is not limited to, provision that amends, repeals or otherwise modifies an enactment.

6 Regulations and orders

(1) Regulations or orders made by the Welsh Ministers under this Measure –

(a) are to be made by statutory instrument,

- (b) may make different provision for different cases,
- (c) may make such incidental, supplementary, saving or transitional provision as the Welsh Ministers think fit,
- 5 (d) may, in the case of regulations prescribing matters for the purposes of sections 1(4)(c), 3(1) or 3(2)(b), only be made after the Welsh Ministers have undertaken such consultation as they consider appropriate,
- (e) may only, in the case of –
- 10 (i) orders made under section 4(2), and
- (ii) orders made under section 5(1) which amend, repeal or otherwise modify any Assembly Measure, Act of the Assembly or Act of Parliament,
- be made if a draft of the order has been laid before, and approved by resolution of, the Assembly, and
- (f) with the exception of –
- 15 (i) those referred to in paragraph (e), and
- (ii) those made under section 7(3),
- are subject to annulment in pursuance of a resolution of the Assembly.

7 Short title and commencement

- (1) This Measure may be referred to as the Domestic Fire Safety (Wales) Measure 201-.
- 20 (2) The following provisions of this Measure come into force on the day after Royal Approval –
- (a) sections 1(4), 3(1) and 3(2), but only for the purpose of enabling matters to be prescribed under sections 1(4)(c), 3(1) and 3(2)(b), respectively,
- (b) sections 4, 5 and 6, and
- 25 (c) this section.
- (3) The remaining provisions of this Measure come into force on such day or days as the Welsh Ministers by order appoint.

SCHEDULE 1
(as introduced by section 2)

ENFORCEMENT

Penalty for contravening section 1(1)

- 5 1 A person who carries out building work which fails, at the time specified by section 1(1), to comply with the requirements of section 1(4), is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Time limit for prosecution

- 10 2 (1) Despite anything in section 127(1) of the Magistrates Court Act 1980 (c.43), an information relating to an offence under paragraph 1 may be tried by a magistrates' court if it is laid at any time—
- (a) within the period of two years beginning with the day on which the offence is committed, and
 - (b) within the period of six months beginning with the relevant date.
- 15 (2) In subparagraph (1)(b), "the relevant date" means the date on which evidence sufficient to justify the proceedings comes to the knowledge of the person commencing the proceedings.
- (3) In the case of proceedings commenced by a local authority—
- 20 (a) evidence is to be regarded for the purpose of subparagraph (2) above as sufficient to justify the proceedings if in the opinion of the proper officer or an authorised officer it is sufficient to justify the proceedings, and
 - (b) a certificate of the proper officer or, as the case may be, that authorised officer as to the date on which evidence which, in the opinion of that officer, was sufficient to justify the proceedings came to the knowledge of the person
- 25 commencing the proceedings is to be conclusive evidence of that fact.

Alteration of offending work

- 30 3 (1) If any building work to which this Measure applies fails, at the time specified by section 1(1), to comply with the requirements of section 1(4), the local authority, without prejudice to its right to take proceedings for a fine in respect of the contravention, may, if the failure to comply with those requirements continues, by notice require the owner to effect such alterations to the work as may be necessary to make it comply with those requirements.
- (2) If any building work to which this Measure applies is carried out—
- 35 (a) without the information required by section 3(1) having been given, or
 - (b) notwithstanding the fact that the local authority has given notice under section 3(3),

the authority may by notice to the owner require the owner to comply with any requirements specified in the notice, being requirements necessary to ensure that the work complies with the requirements of section 1(4).

5 (3) If a person to whom a notice has been given under subparagraph (1) or (2) above fails to comply with the notice before the expiration of 28 days, or such longer period as a magistrates' court may, on an appeal by that person under paragraph 5, allow, the local authority may effect such alterations to the work as it deems necessary to ensure that it complies with the requirements of section 1(4) and may recover from that person the expenses reasonably incurred by the authority in doing so.

10 (4) A notice under subparagraph (1) or (2) above (called a "paragraph 3 notice") –

(a) must state that the person to whom it is given may, within the time fixed by paragraph 8, appeal against the notice to the magistrates' court under paragraph 5, and

15 (b) may not be given after the expiration of 12 months from the date of the completion of the work in question.

(5) A paragraph 3 notice may not be given, in a case where the information required by section 3(1) was given to the authority and the work was carried out in accordance with that information, on the ground that the work contravenes the requirements of section 1(4), unless the authority gave notice under section 3(3) within the relevant period.

20 (6) This paragraph does not affect the right of a local authority, the Welsh Ministers or any other person to apply for an injunction for the alteration of any work on the ground that it fails to comply with the requirements of section 1(4); but if –

25 (a) information in respect of the work was provided to the local authority in accordance with section 3(1),

(b) the authority did not give notice under section 3(3) within the relevant period, and

(c) the work has been carried out in accordance with that information,

30 the court on granting an injunction has power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court must in accordance with rules of court cause the local authority, if not a party to the proceedings, to be joined as a party to them.

Obtaining of report where paragraph 3 notice given

4 (1) In a case where –

35 (a) a person to whom a paragraph 3 notice has been given gives to the local authority by whom the notice was given notice of intention to obtain from a suitably qualified person a written report concerning work to which the paragraph 3 notice relates, and

40 (b) such a report is obtained and submitted to the local authority and, as a result of its consideration of it, the local authority withdraws the paragraph 3 notice, the local authority may pay to the person to whom the paragraph 3 notice was given such amount as appears to the authority to represent the expenses reasonably incurred by the person in consequence of the authority having

given that notice including, among other things, the expenses in obtaining the report.

5 (2) Subject to subparagraph (3) below, if a person to whom a paragraph 3 notice has been given gives notice under subparagraph (1)(a) above, then, so far as regards the matters to which the paragraph 3 notice relates, the reference to 28 days in paragraph 3(3) above is to be construed as a reference to 70 days.

10 (3) Notice under subparagraph (1)(a) above must be given before the expiry of the period of 28 days referred to in paragraph 3(3) above, or, as the case may be, within such longer period as a court allows under paragraph 3(3); and, where such a longer period has been so allowed before notice is given under subparagraph (1)(a) above, subparagraph (2) above does not apply.

Appeal against a paragraph 3 notice

15 (1) A person who is given a paragraph 3 notice may appeal to a magistrates' court on any of the following grounds that are appropriate in the circumstances of the particular case –

(a) that the notice or a requirement that it imposes is not justified by the terms of paragraph 3,

(b) that there has been some informality, defect or error in, or in connection with, the notice,

20 (c) that the authority has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary,

(d) that the time within which the works are to be executed is not reasonably sufficient for the purpose.

25 (2) If and in so far as an appeal under this section is based on the ground of some informality, defect or error in or in connection with the notice, the court must dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

Power to enter premises

30 (1) Subject to this paragraph an authorised officer of a local authority, on producing, if so required, some duly authenticated document showing his authority, has a right to enter any premises at all reasonable hours –

(a) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, a failure to comply with the requirements of this Measure that it is the duty of the local authority to enforce,

35 (b) for the purpose of ascertaining whether or not circumstances exist that would authorise or require the local authority to take any action, or execute any work, under this Measure,

(c) for the purpose of taking any action, or executing any work, authorised or required by this Measure, or by an order made under this Measure, to be taken, or executed, by the local authority, or

(d) generally for the purpose of the performance by the local authority of its functions under this Measure.

(2) Admission to premises may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of a justice of the peace on sworn information in writing that –

(a) admission to any premises has been refused or refusal is apprehended, or the premises are unoccupied, or the occupier is temporarily absent, or the case is one of urgency, or an application for admission would defeat the object of the entry, and

(b) there is reasonable ground for entry into the premises for any of the purposes mentioned in subparagraph (1) above,

the justice may by warrant under the hand of the justice authorise the local authority by any authorised officer to enter the premises, if need be by force.

(4) A warrant may not be issued under subparagraph (3) above unless the justice is satisfied that –

(a) notice of the intention to apply for a warrant has been given to the occupier, or

(b) the premises are unoccupied, or the occupier is temporarily absent, or the case is one of urgency, or the giving of the notice would defeat the object of the entry.

(5) An authorised officer entering premises by virtue of this paragraph, or of a warrant issued under it, may take with the officer such other persons as may be necessary, and on leaving unoccupied premises that the officer has entered by virtue of such a warrant the officer must leave them as effectually secured against trespassers as the officer found them.

(6) A warrant issued under this paragraph continues in force until the purpose for which the entry is necessary has been satisfied.

Tests for conformity with the requirements of this Measure

(1) This paragraph has effect for the purpose of enabling a local authority to ascertain, as regards any building work or proposed building work to which this Measure applies, whether any requirement of this Measure that it is the duty of the authority to enforce has been or will be complied with.

(2) The local authority has power for that purpose –

- (a) to require a person by whom or on whose behalf the work was, is being, or is proposed to be done to carry out such reasonable tests of or in connection with the work as may be specified in the requirement, or
- (b) itself to carry out reasonable tests of or in connection with the work.
- 5 (3) Without prejudice to the generality of subparagraph (2) above, the matters with respect to which tests may be required or carried out under that subparagraph include tests of any material, component or combination of components that has been or is being proposed to be used in carrying out the work and tests of any service, fitting or equipment that has been, is being or is proposed to be provided in
10 connection with that work.
- (4) The expense of carrying out any tests that a person is required to carry out under this paragraph are to be met by that person, except that the local authority, on an application made to the authority, may, if it thinks it reasonable to do so, direct that the expense of carrying out any such tests, or such part of that expense as may be
15 specified in the direction, is to be met by the local authority.
- (5) Any question arising under this paragraph between a local authority and a person as to the reasonableness of –
- (a) a test specified in a requirement imposed on that person by the authority under this paragraph,
- 20 (b) a refusal by the authority to give a direction under subparagraph (4) on an application made by that person, or
- (c) a direction under that subparagraph given on such an application,
- may on the application of that person be determined by a magistrates' court, and in a case falling within subparagraph (b) or (c) the court may order the expense to which
25 the application relates to be met by the local authority to such extent as the court thinks just.

Procedure on appeal or application

- 8 (1) This paragraph applies to –
- (a) an appeal to the magistrates' court under paragraph 5, or
- 30 (b) an application to the magistrates' court under paragraph 7(5).
- (2) Where this paragraph applies, the procedure is to be by way of complaint for an order.
- (3) The time within which an appeal under paragraph 5 may be brought is 21 days from the date on which the paragraph 3 notice was given.
- 35 (4) The time within which an application under paragraph 7(5) may be made is 21 days from the date on which –
- (a) in the case of an application relating to the reasonableness of a test specified in a requirement imposed by a local authority, the date on which the authority gave notice of that requirement to the applicant,
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- (b) in the case of an application relating to a refusal by the local authority to give a direction under paragraph 7(4), the date on which the authority gave notice of that refusal to the applicant, and
- (c) in the case of an application relating to a direction given by a local authority under paragraph 7(4), the date on which the authority gave notice of that direction to the applicant.

SCHEDULE 2
(as introduced by section 2)

BUILDING WORK SUPERVISED OTHERWISE THAN BY LOCAL AUTHORITIES

Effect of initial notice under Part 2 of the 1984 Act

- 5 1 (1) This paragraph applies where an initial notice is in force and any work specified in the notice includes building work to which this Measure applies (whether such work forms the whole or part of the work so specified).
- (2) So long as the initial notice continues in force –
- 10 (a) section 3 does not apply in relation to any work specified in that notice, and
- (b) the function of enforcing the provisions of this Measure conferred on a local authority by section 2(1) is not exercisable in relation to that work and accordingly a local authority may not, in relation to that work –
- 15 (i) take proceedings in respect of an offence committed under paragraph 1 of Schedule 1, or
- (ii) take any other action to enforce this Measure or any requirement imposed by it.
- (3) Where, in respect of any work, an approved inspector is under a duty to give a final certificate to any person by virtue of section 51(1) of the 1984 Act (certificate of completion of work and discharge of functions), the approved inspector may not give the certificate unless the inspector has taken such steps as are reasonable to enable the inspector to determine whether or not the requirements of section 1(4) have been complied with in relation to that work.
- 20 (4) If the approved inspector is satisfied that those requirements have been complied with in relation to the work –
- 25 (a) the inspector must issue a certificate to that effect, and
- (b) when the inspector gives to any person the final certificate relating to the work the inspector must at the same time give to that person the certificate issued under this subparagraph.
- (5) Where –
- 30 (a) an initial notice ceases by virtue of section 51(3) of the 1984 Act to apply in respect of any work (acceptance by local authority of final certificate), and
- (b) the approved inspector has issued and given a certificate in accordance with subparagraph (4) above in respect of that work,
- subparagraph (2) above continues to apply, by virtue of this subparagraph, in relation to that work as if the initial notice continued in force.
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(6) A person who –

(a) gives a certificate which purports to comply with subparagraph (4)(a) above and which contains a statement which that person knows to be false or misleading in a material particular, or

(b) recklessly gives a certificate which purports to comply with that subparagraph and which contains a statement that is false or misleading in a material particular,

is guilty of an offence.

(7) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) An approved inspector may make such charges in respect of the carrying out of any functions arising under this paragraph as may in any particular case be agreed between that inspector and the person who intends to carry out the work in question or, as the case may be, by whom that work is being or has been carried out.

Effect of public body's notice under Part 2 of the 1984 Act

2 (1) Where a public body's notice is in force and any work specified in the notice includes building work to which this Measure applies (whether such work forms the whole or part of the work so specified) –

(a) section 3 does not apply in relation to any work specified in that notice, and

(b) the function of enforcing the provisions of this Measure conferred on a local authority by section 2(1) is not exercisable in relation to that work and accordingly a local authority may not, in relation to that work –

(i) take proceedings in respect of an offence committed under paragraph 1 of Schedule 1, or

(ii) take any other action to enforce this Measure or any requirement imposed by it.