

National Assembly for Wales
Legislation Committee No. 1

Proposed Domestic Fire Safety
(Wales) Measure

Stage 1 Committee Report
November 2010



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(Wales) Measure**

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Legislation Committee No. 1

Legislation Committee No. 1 was established by the National Assembly for Wales to consider and report on legislation introduced to the Assembly primarily by individual Assembly Members, committees and the Assembly Commission. The Committee is also able to consider and report on government legislation, as appropriate.

Powers

The Committee was established on 26 November 2008 as one of the Assembly's legislation committees. Its powers are set out in the National Assembly for Wales' Standing Orders, particularly Standing Order 10, 22 and 23. These are available at www.assemblywales.org

Committee membership

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Rosemary Butler (Chair)	Labour	Newport West
Eleanor Burnham	Welsh Liberal Democrats	North Wales
Chris Franks	Plaid Cymru	South Wales Central
Ann Jones *	Labour	Vale of Clwyd
Val Lloyd	Labour	Swansea East
Rhodri Morgan	Labour	Cardiff West
Nick Ramsay	Welsh Conservative Party	Monmouth

* As the Member in charge of the proposed Domestic Fire Safety (Wales) Measure, Ann Jones AM absented herself from meetings at which the proposed Domestic Fire Safety (Wales) Measure was discussed. Rhodri Morgan AM, Labour was the permanent substitute for the duration of the Committee's Stage 1 consideration of the proposed Measure.

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Committee's conclusions and recommendations

The Committee's recommendations to the member in charge of the proposed measure are listed below, in the order that they appear in this Report. Please refer to the relevant paragraphs of the report to see the supporting evidence and conclusions:

General principles and need for legislation

We support the general principles of the proposed Measure. [Paragraph 65]

We are content that the proposed Measure is an appropriate legislative vehicle and provides an effective and timely way forward. [Paragraph 71]

We recommend the Assembly supports the general principles of the proposed Measure. [Paragraph 72]

Practical implications

We remain concerned that the practical implications in relation to the provision and maintenance of a water supply have yet to be fully resolved. We note the Minister's intention to undertake further work prior to making regulation to give effect to the policy intention of the proposed Measure. As part of this, we urge her to examine the practical implications associated with the section 1 duty to provide suppression systems, taking account of the evidence we have received in relation to this. [Paragraph 99]

Financial implications

We believe it is likely that the total installation costs for the home building industry and social housing sector will be higher than the estimate provided in the Explanatory Memorandum. [Paragraph 125]

We note the Minister's intention to undertake further work prior to making regulations to give effect to the policy intention of the proposed Measure. As part of this, we urge her to re-examine the cost implications associated with the proposed Measure, taking account of the evidence we have received in relation to this. [Paragraph 128]

Section 1

We acknowledge that the duty to provide suppression systems is limited to newly created residences, and we are content that this approach is both proportionate and practicable. [Paragraph 140]

We accept it is appropriate that the requirements with which automatic fire suppression systems must comply are a matter for the Welsh Minister to prescribe by regulations, as set out in section 1(4)(c). However, given that the policy intention of the proposed Measure will not be brought into effect until such time as these regulations are made, we urge the Minister to undertake, as soon as reasonably practicable, the further consideration of the issues outlined in her evidence, with a view to bringing forward regulations once this work has been completed. [Paragraph 142]

We believe it is reasonable for any on-going maintenance requirement to be addressed by reference to the British Standard for suppression systems, as is currently the case. In view of this, we are content that the proposed Measure makes no provision for on-going maintenance of suppression systems. [Paragraph 163]

We urge the Minister to re-examine the cost implications associated with the proposed Measure, taking account of the evidence we have received. [Paragraph 164]

Section 2 - Enforcement

We acknowledge the concerns raised by the Minister in relation to the commencement of section 33 of the Building Act 1984 and any subsequent implications for the enforcement of the section 1 duty. We believe this issue should be resolved in order to ensure that the enforcement regime provided for in the proposed Measure is workable and effective. As such, we recommend that the Member in charge brings

forward the necessary amendments at Stage 2 to address this issue, as outlined by the Minister in evidence. [Paragraph 173]

Section 3 – Provision of information

We recommend that the Member in charge brings forward the necessary amendments at Stage 2 to make clear her intention that section 3 applies equally to Local Authority Building Control and private sector Approved Inspector Building Control. We further recommend that the timescales for non-compliance provided for in section 3 reflect those currently used in the case of the Building Regulations 2000. [Paragraph 179]

Section 4 – Interpretation

We are content with the definition of ‘residence’ provided for in section 4. [Paragraph 188]

We recommend that the Member in charge considers amending the short title to include a reference to automatic fire suppression systems, for the sake of clarity. [Paragraph 189]

Section 6 – Regulations and orders

We are content with the consultation requirement provided in section 6(1)(d). [Paragraph 193]

Cumulative impact of regulation

In considering the impact of the proposed Measure purely on the basis of the cost estimates provided in the Explanatory Memorandum, we believe it is unlikely that the proposed Measure will adversely affect development viability in Wales. [Paragraph 203]

We believe it would be prudent for the Minister to give further consideration to this issue prior to making regulations to give effect to the policy intention of the legislation. [Paragraph 203]

Potential impact on the affordable housing agenda

We are satisfied that the proposed Measure is unlikely to have an adverse impact on the deliverability of the affordable housing agenda in Wales.

[Paragraph 210]

1. Introduction

Background

1. On 8 July 2010, Ann Jones AM, Member in charge, laid before the Assembly the proposed Domestic Fire Safety (Wales) Measure¹ ('the proposed Measure') and accompanying Explanatory Memorandum.²
2. At its meeting on 6 July 2010, the Business Committee agreed to refer the proposed Measure to Legislation Committee No. 1 ('the Committee') for consideration of the general principles (Stage 1), in accordance with Standing Order 23.21.³ The Business Committee agreed that the Committee must report on the proposed Measure no later than 12 November 2010.⁴

Terms of scrutiny

3. At our meeting on 14 July 2010, we agreed the following framework within which to work in scrutinising the proposed Measure:

To consider -

- (i) the need for a proposed Measure to introduce a requirement for the provision of automatic fire suppression systems in newly created residences in Wales;
- (ii) whether the proposed Measure achieves its aim of reducing the incidence of death and injury from fires in newly created residences in Wales;
- (iii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its aim;
- (iv) the practical and financial implications of the proposed Measure; and

¹ Proposed Domestic Fire Safety (Wales) Measure, MPM-20-S1.

² Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1.

³ National Assembly for Wales, Business Committee, BC(3)21-10: Minutes, 6 July 2010.

⁴ Ibid.

- (v) the views of stakeholders who will have to work within the new arrangements.⁵

Committee's approach

4. We issued a general 'call for evidence' and invited written submissions from interested parties to inform our work. A list of consultation responses is available at the end of this report.
5. We also took oral evidence from a number of witnesses. A list of these is available at the end of this report.
6. The following report and recommendations represent the conclusions we have reached based on the evidence received during the course of our work. We would like to thank all those who contributed to the report.

⁵ National Assembly for Wales, Legislation Committee No.1, LC1(3)08-10: Minutes.

2. Background

Legislative framework

7. The power enabling the Assembly to make the proposed Measure is contained in Matter 11.1 of Schedule 5 to the *Government of Wales Act 2006*.

Matter 11.1

The provision of automatic fire suppression systems in new residential premises.

In this matter “new residential premises” means—

- (a) premises newly constructed for residential use;*
- (b) premises newly converted to residential use;*
- (c) premises converted to use as one or more new residences by subdivision of one or more existing residences; and*
- (d) premises converted to use as one or more new residences by amalgamation of one or more existing residences.*

8. The Explanatory Memorandum accompanying the proposed Measure states:

“The primary purpose of the proposed Measure is to introduce a requirement for the provision of automatic fire suppression systems in new residential premises in Wales.”⁶

9. It goes on to explain that the aim of the proposed Measure is “to reduce the incidence of death and injury from fire in newly created residences in Wales.”⁷

⁶ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 1.2.

⁷ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 3.7.

3. General principles and need for legislation

Overview

10. In considering the general principles of the proposed Measure, we sought to identify whether there was a definite and identified need for the legislation before us. In doing so, we looked at powers of the Welsh Ministers (to be transferred by the Welsh Ministers Transfer of Functions (No.2) Order 2009); existing arrangements in relation to fire safety in the home; the incidence of death and injury from fire in new homes; alternative means to reduce the incidence of death and injury from fires in the home; and existing cost-benefit analysis.

11. We also considered the practical and financial implications of the proposed Measure, and looked briefly at its potential impact on housing in Wales.

12. Of the 27 respondents, 8 supported the general principles of the proposed Measure without reservation for the following reasons – the proposed Measure would:

- help reduce or possibly eradicate fire deaths in Wales;
- help reduce fire injuries in Wales;
- improve the safety of fire-fighters;
- provide much needed additional protection against the effects of fire, particularly for vulnerable groups;
- support sustainability in the home and in the community;
- support Welsh Government environmental policies and practices; and
- result in substantial economic savings.

13. In addition, those representing the Fire and Rescue Service and the National Fire Sprinkler Network (NFSN) explained that, in other parts of the world, the mandatory installation of automatic fire suppression systems in residential properties is well-established and proving effective.

14. While the majority of the remaining respondents either welcomed or did not directly oppose the proposed Measure, they were concerned that

the evidence provided in the Explanatory Memorandum did not conclusively demonstrate the need for the legislation. Specific concerns were raised in relation to the following:

- insufficient consideration had been given to the effectiveness of existing legislation in relation to fire safety in newly built homes;
- the lack of statistical data about the incidence of death and injury from fire in new homes;
- the aim of the proposed Measure could be met by alternative means, e.g. concentrating efforts on improving fire safety in existing housing stock;
- the practical barriers to implementation of the proposed Measure have been underestimated;
- the cost of meeting the requirements of the proposed Measure has been underestimated; and
- further consideration is needed of the potential impact of the proposed Measure on the wider economy.

15. In considering whether we were able to support the general principles of the proposed Measure, we took account of a number of key issues, which are detailed below.

The Welsh Ministers (Transfer of Functions) (No.2) Order 2009

Background

16. The functions of making and amending the Building Regulations are to be transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 ('the Transfer of Functions Order'), which will take effect on 31 December 2011. This will provide the Welsh Ministers with the power to strengthen the Building Regulations in respect of fire safety.

Evidence from the Minister

17. In evidence, the Minister for Environment, Sustainability and Housing ('the Minister') confirmed that the Transfer of Functions Order would provide the Welsh Ministers with the necessary power to require the installation of automatic fire suppression systems in newly created

residences.⁸ Notwithstanding this, she acknowledged that the acquisition of legislative competence in relation to domestic fire safety, which provides the Assembly with the power to pass the proposed Measure, had been “a long, complex process.”⁹ In addition, the Minister had no objection to the proposed Measure because she recognised the length of time it would take before the Transfer of Functions Order would take effect.¹⁰

Evidence from the Member in charge

18. In emphasising the need for the proposed Measure, the Member in charge stated:

“The reason that I am trying to take this proposed Measure through is because it will become an Assembly Measure, so the Assembly will have control over it.”¹¹

19. She explained that the Transfer of Functions Order contained a sunrise clause¹² that would prevent the Welsh Ministers from amending the Building Regulations for “a considerable time” other than in relation to energy efficiency.¹³

20. The Member in charge went on to suggest that the proposed Measure would “operate alongside” and “complement” the Building Regulations in relation to fire safety.¹⁴

Existing arrangements in relation to fire safety in the home

Evidence from consultees

21. We received evidence, mainly from the house building industry, to suggest that new houses have more rigorous fire safety measures than older housing stock and, as such, are less likely to be involved in deaths and injuries from fire. A number of respondents pointed out that the

⁸ RoP, para 165, Legislation Committee No.1, 23 September 2010.

⁹ Ibid.

¹⁰ Ibid.

¹¹ RoP, para 10, Legislation Committee No.1, 23 September 2010.

¹² A sunrise clause prohibits a statutory clause from coming into force until a later date.

¹³ RoP, para 10, Legislation Committee No.1, 23 September 2010.

¹⁴ RoP, para 10, Legislation Committee No.1, 23 September 2010; and RoP, para 7, Legislation Committee No.1, 14 October 2010.

Building Regulations 2000 require all new build houses to have hard-wired smoke detectors. This requirement has been in place since 1992.

22. In evidence, Home Builders Federation (HBF) stated its members are “satisfied that provisions within the [Building Regulations] are robust in terms of being an effective deterrent from fire in new homes.”¹⁵

23. HBF went on to state:

“...discussions with industry experts also suggest that new homes are far safer from the risks of fire compared to the existing stock and we believe that the instances of deaths and injuries from newly built homes across Wales are much lower when compared to those that occur within older stock, particularly in homes built after 1992 when hard wired smoke detectors became mandatory.”¹⁶

24. These views were shared by Llanmoor Homes and Anwyl Construction Co Ltd,¹⁷ Similar points were made by Bovis Homes Group PLC, Persimmon Homes West Wales and Redrow Homes Ltd.¹⁸

25. Linked to the above, Bovis Homes Group PLC raised concern that no examination of the effectiveness of existing requirements (provided in Part B of the Building Regulations) had been undertaken, and that the proposed Measure and Explanatory Memorandum imply that the requirements are ineffective.¹⁹ On a similar note, the Royal Institute of Chartered Surveyors Wales suggested that “a review of existing home safety measures and their efficiency would be very welcome.”²⁰

26. National House-Building Council (NHBC) believed that a more reasonable approach would be to await the outcome of the UK Parliament’s consideration of the Building Regulations (Review) Bill and

¹⁵ Written evidence, DFS23.

¹⁶ Ibid.

¹⁷ Written evidence, DFS23a, DFS23b.

¹⁸ Written evidence, DFS15, DFS18, DFS19.

¹⁹ Written evidence, DFS15.

²⁰ Written evidence, DFS24.

the result of any subsequent work before progressing the proposed Measure further.²¹

27. In contrast, NFSN explained that recent statistical data has shown that improvements in the incidence of death and injury from fire had plateaued in recent years.²² It argued strongly that additional action was required in the form of the proposed Measure. Furthermore, the Chief Fire Officers Association Wales (CFOA Wales) outlined the benefits of automatic fire suppression systems above those of smoke detectors. It stated:

“Whilst smoke alarms are essential in providing early warning from fire, they alone cannot ensure safe egress from the building. Sprinklers however, contain the fire within the room of origin and extinguish in most circumstances or check the fire development until the arrival of the fire and rescue service.”²³

28. CFOA Wales went on to argue that the only way to prevent fire deaths in the home amongst the most vulnerable groups is through the installation of automatic fire suppression systems.²⁴

29. Similar views were raised by the NFSN.²⁵

Evidence from the Minister

30. In evidence, the Minister outlined recent Welsh Government initiatives aimed at improving fire safety in both the home and schools. These included a multimillion pound programme to ensure all social housing was fitted with hard-wired smoke detectors; funding to support Home Fire Safety Checks; funding to support fire safety information; a programme to install sprinkler systems in certain schools; and funding to provide educational material as part of the Fire and Rescue Authorities’ school visits.²⁶

²¹ Written evidence, DFS17.

²² RoP, para 159, Legislation Committee No.1, 7 October 2010.

²³ Written evidence, DFS12.

²⁴ Ibid.

²⁵ Written evidence, DFS16.

²⁶ Written evidence, DFS25.

31. In commenting on whether the Building Regulations 2000 afforded sufficient protection against fire in the home, the Minister stated:

“The current Building Regulations were last reviewed in 2006, and the most current assessment of the case for sprinklers was the 2004 study [by the Building Research Establishment]. We are awaiting the result of the new [BRE] study as to whether the situation has changed, while retaining our support for the general principles.”²⁷

Evidence from the Member in charge

32. In evidence, the Member in charge explained that, while the Building Regulations 2000 require hard wired smoke detectors to be fitted in newly built homes, there was currently no statutory requirement to provide automatic fire suppression systems other than in new high rise domestic buildings over 30 metres high.²⁸

33. Like CFOA Wales and NFSN, she outlined the benefits of automatic fire suppression systems beyond those of smoke detectors and stated:

“...smoke alarms just alert you to the fact that there is a fire, the difference being that sprinklers will extinguish a fire. So, if you have a smoke alarm, it activates when there is a fire in your premises. You have to remember that if you are able to get out—that is, if you are fully mobile—you can do so and call the fire service, and then wait while the fire takes hold, but at least you will not, hopefully, have been injured. A sprinkler, however, will detect a fire, activate itself and douse the fire...it is also a safety mechanism for firefighters.”²⁹

Incidence of death and injury from fires in newly built homes

Evidence from consultees

34. A number of respondents, including Redrow Homes Ltd, Community Housing Cymru (CHC), Bovis Homes Group PLC, Persimmon Homes West Wales, HBF, Llanmoor Homes and Anwyl Construction Co Ltd, questioned

²⁷ RoP, para 161, Legislation Committee No.1, 23 September 2010.

²⁸ RoP, para 7-8, Legislation Committee No.1, 23 September 2010.

²⁹ RoP, para 7, Legislation Committee No.1, 23 September 2010.

whether the statistical data provided in the Explanatory Memorandum, which relates to deaths and injuries from fire in *all* dwellings in Wales, could be used to support the proposed Measure.³⁰

35. Some went on to argue that further work would need to be undertaken to identify whether deaths and injuries from fire are occurring in newly built homes in order to determine whether the proposed Measure will be effective. In particular, it was felt that an analysis of the age and type of property involved in deaths and injuries from fire in homes would be required and that this could helpfully be used to categorise properties according to risk.

36. In evidence, CFOA Wales explained that 80 per cent of deaths and injuries from fires occurred in the home.³¹ When questioned about the number of deaths and injuries that occurred in newly built houses, CFOA Wales advised that the Fire and Rescue Service did not collect data on age of property.³²

Evidence from the Member in charge

37. Like CFOA Wales, the Member in charge explained that the Fire and Rescue Service did not collect data on the age and type of property involved in deaths and injuries from fire.³³ She went on to assert that fires are caused by “men, woman and children”, as opposed to the age of the buildings within which they live.³⁴

Alternative ways to reduce incidence of death and injury from fire in homes

Evidence from consultees

38. A number of those giving evidence questioned whether the proposed Measure targeted efforts in the right area. Those representing the house building industry suggested that a more appropriate and cost effective approach to reducing the incidence of death and injury from fire would be to seek ways to improve fire safety in older housing stock, e.g. through community education and the promotion of battery operated

³⁰ Written evidence, DFS19, DFS22, DFS15, DFS18, DFS23, DFS23a, DFS23b.

³¹ Written evidence, DFS12.

³² RoP, para 105, Legislation Committee No.1, 30 September 2010.

³³ RoP, para 9, Legislation Committee No.1, 14 October 2010.

³⁴ RoP, para 10, Legislation Committee No.1, 14 October 2010.

smoke alarms. This is largely based on the belief that newly built homes are less at risk of fire than older housing stock.

39. HBF highlighted the effectiveness of smoke detectors as a fire safety measure and suggested further work should be undertaken to explore “the possibility of requiring smoke detectors into the existing homes in Wales that do not currently benefit from them.”³⁵ This view was shared by Llanmoor Homes and Anwyl Construction Co Ltd.³⁶

40. Although the Royal Institute of Chartered Surveyors Wales supported the general principles of the proposed Measure, it also believed there was a need to review “home safety to promote and support the improvement of our existing housing stock.”³⁷

41. CFOA Wales argued strongly that targeting existing housing stock alone would mean “focusing on the wrong issue.”³⁸ It acknowledged that older properties provided “particular challenges”, but went on to explain “it is the people who occupy the building and their lifestyles who cause the fires.”³⁹ Similar views were shared by NFSN.⁴⁰

42. An alternative suggestion to improving fire safety in existing housing stock was to take a risk-based approach targeting socio-economic groups who were more at risk of fire than the general population.

43. Notwithstanding its support for the proposed Measure, Firebrake Wales stated:

“We know that the risk of fire is not evenly distributed throughout Wales and that some people are more vulnerable to a fire in their home due to their circumstances, conditions or behaviours. Ideally we would suggest that the installation of automated suppression

³⁵ Written evidence, DFS23.

³⁶ Written evidence, DFS23a, DFS23b.

³⁷ Written evidence, DFS24.

³⁸ RoP, para 21, Legislation Committee No.1, 30 September 2010.

³⁹ Ibid.

⁴⁰ Ibid.

systems (as well as other fire safety measures) be targeted according to these known risk factors.”⁴¹

44. Redrow Homes Ltd pointed out that “the more socially vulnerable groups” were least likely to purchase new homes from the private house market.⁴² It went on to suggest that “a more targeted approach based on more defined statistics may be necessary to achieve the stated aims of the Measure.”⁴³ Similar views were expressed by HBF, Llanmoor Homes and Anwyl Construction Co Ltd.⁴⁴

45. CFOA Wales advised that the Welsh Fire and Rescue Service was already taking “a risk-related” approach to its fire safety activities.⁴⁵ It would continue to target high risk groups through community safety activities.⁴⁶

46. In addition, CFOA Wales stated:

“We think that this twin-track approach of legislating for new properties and targeting our community fire safety activities at vulnerable groups...means that the whole spectrum of fire safety in the home will be covered.”⁴⁷

47. Similarly, NFSN emphasised the need for the proposed Measure to “move forward in tandem” with the on-going work of the Fire and Rescue Service to improve fire safety in existing properties, which largely involved targeting relevant socio-economic groups who are most at risk.⁴⁸

Evidence from the Member in charge

48. In commenting on the suggestion that a more effective approach to reducing the incidence of death and injury from fires in the home would

⁴¹ Written evidence, DFS13.

⁴² Written evidence, DFS19.

⁴³ Ibid.

⁴⁴ Written evidence, DFS23, DFS23a, DFS23b.

⁴⁵ RoP, para 19, Legislation Committee No.1, 30 September 2010.

⁴⁶ RoP, para 30, Legislation Committee No.1, 30 September 2010.

⁴⁷ RoP, para 16, Legislation Committee No.1, 30 September 2010.

⁴⁸ RoP, para 209, Legislation Committee No.1, 7 October 2010.

be to seek ways to improve existing housing stock, the Member in charge asserted this would be done “alongside the proposed Measure.”⁴⁹

49. In relation to targeting those socio-economic groups most at risk of fire, the Member in charge stated:

“If we target safety measures at everyone it will make it equal for everyone. A good proportion of the new build that I hope will come after we have passed this proposed Measure will be for registered social landlords...They accommodate those who are vulnerable and most at risk.”⁵⁰

50. The Member in charge went on to explain that improvements in fire deaths had plateaued and that an additional safeguard in the form of the proposed Measure was required to address this.⁵¹

Existing cost-benefit analysis

Evidence from consultees

51. There was extensive reference made in evidence received to the Building Research Establishment (BRE) report, *Effectiveness of Sprinklers in Residential Premises*, which informed the review of Part B of the Building Regulations in 2004, and the 2010 Department of Communities and Local Government (CLG) report, *A Cost Benefit Analysis of Options to Reduce the Risk of Fire and Rescue in Areas of New Build Homes*, into the possible use of automatic fire suppression systems in Thames Gateway.

52. Those representing the house building industry, Association for Specialist Fire Protection (ASFP) and the Minister pointed out that neither the BRE review nor the CLG report supported the case for the installation of automatic fire suppression systems in all newly created residences.

53. Concern was raised in evidence that the findings of the BRE and CLG reports had not been taken into account by the Member in charge in working up her proposals.

54. In evidence, HBF stated:

⁴⁹ RoP, para 43, Legislation Committee No.1, 23 September 2010.

⁵⁰ RoP, para 45, Legislation Committee No.1, 23 September 2010.

⁵¹ RoP, para 47, Legislation Committee No.1, 23 September 2010.

"It is clear from the [BRE and CLG reports] that the installation of fire sprinklers in all new homes would not be a cost effective course of action to take..."

[...]

"In light of this, despite the Explanatory Memorandum estimating what the proposal might cost in Wales, there is still no evidence that these assumed costs would outweigh the benefits of the proposed Measure if it were introduced...given the level of detail within the [BRE and CLG] reports, which has not been replicated for the proposed Measure, and the conclusions reached by the reports, we believe that a similar exercise must be undertaken for the current proposed Measure, in order to ensure the costs of the proposal do not outweigh the benefits."⁵²

55. This view was shared by Llanmoor Homes and Anwyl Construction Co Ltd.⁵³

56. In commenting on the 2004 BRE report, NFSN advised that it "failed to take account of some very important data and relied heavily on very old data."⁵⁴ It went on to explain that, as such, the NFSN, CFOA and others had commissioned a second review, which was "more comprehensive and up-to-date." The review would take account of all relevant factors, including evidence from the United States, demographic data, and advances in building materials and methods of construction.⁵⁵ NFSN advised it was "confident" that the findings of the review would be more favourable than the 2004 report and that sprinklers would be deemed cost-effective.⁵⁶ Similar points were made by CFOA Wales.⁵⁷

Evidence from the Minister

57. Notwithstanding the Minister's support for the general principles of the proposed Measure, she asserted that "the case for a requirement for fire suppression systems in new and converted residential

⁵² Written evidence, DFS23.

⁵³ Written evidence, DFS23a, DFS23b.

⁵⁴ RoP, para 244, Legislation Committee No.1, 7 October 2010.

⁵⁵ RoP, para 245, Legislation Committee No.1, 7 October 2010.

⁵⁶ Ibid.

⁵⁷ RoP, para 43-44, Legislation Committee No.1, 30 September 2010.

accommodation has yet to be made."⁵⁸ She highlighted a number of weaknesses in the Regulatory Impact Assessment within the Explanatory Memorandum, which she believed "does not currently provide a basis for judging the likely costs and benefits of the proposed Measure."⁵⁹

58. The Minister made clear that, in the event that proposed Measure was passed by the Assembly, "further consideration of available information on the costs and benefits will be required as part of future proposals to introduce regulations to give effect to the intent of the Measure."⁶⁰ She also reported that the BRE was reviewing its 2004 report on the effectiveness of automatic fire suppression systems, and advised that the results of this would be available in 2011. The Minister explained that these results would need to be considered before a decision to bring forward draft regulations was made.⁶¹

Evidence from the Member in charge

59. On behalf of the Member in charge, Chris Enness, Deputy Chief Fire Officer, Staffordshire Fire and Rescue Service explained:

"The BRE report requires updating. Although it was published in 2004, much of the information was taken from way back before we were installing sprinklers; therefore we did not have the empirical evidence to include in the report to make it more robust."⁶²

60. He confirmed that the 2004 BRE report was currently being reviewed and subsequently advised that initial findings had revealed it was likely that the statistics relating to the effectiveness of automatic fire suppression systems would improve dramatically.⁶³

61. When questioned as to whether it would be reasonable to await the outcome of the BRE review before progressing the proposed Measure, the Member in charge explained she was subject to specific time constraints

⁵⁸ Written evidence, DFS25.

⁵⁹ RoP, para 153, Legislation Committee No.1, 23 September 2010.

⁶⁰ Written evidence, DFS25.

⁶¹ Written evidence, DFS25; and RoP, para 157, Legislation Committee No.1, 23 September 2010.

⁶² RoP, para 50, Legislation Committee No.1, 23 September 2010.

⁶³ RoP, para 50, Legislation Committee No.1, 23 September 2010; Letter from Chris Enness to Rosemary Butler AM, Chair, Legislation Committee No.1, 4 October 2010.

because the proposed Measure needed to complete its passage through the Assembly before dissolution. In view of this she "could not afford to wait any longer."⁶⁴

Our view

62. We acknowledge the varying levels of support in evidence for the general principles of the proposed Measure; from representatives of the Fire and Rescue Service and former fire officers who fully endorse the proposed Measure and argue strongly that a legislative approach is the only way to reduce the incidence of death and injury from fire in the home, to representatives of the house building industry who raise concern that the legislation may be misguided, and suggest that further work should be undertaken in a number of key areas before it progresses.

63. It is clear that the motivation behind the proposed Measure is the desire to help save lives and protect those who are most at risk of death and injury from fire. We accept that fire safety in the home has improved over the years and that homes built today are likely to be better protected against the effects of fire than older housing. However, we cannot ignore the evidence presented to us - that 80 per cent of deaths and injuries from fire in Wales occur in the home. This suggests that additional action in this area is required. While individuals and families are suffering as a result of fire, and the effects of fire continue to place a burden on the Welsh economy in terms of cost, we believe that more could and should be done to address this issue.

64. We acknowledge the concerns raised in evidence about the practical and financial implications of the proposed Measure. However, we recognise that the legislation, as drafted, provides enabling powers to the Welsh Ministers to make regulations to give effect to the policy intention of the proposed Measure, and places a duty on them to consult before doing so. The Minister has made clear that further work will need to be undertaken in a number of areas before bringing forward regulations. As such, we are satisfied that this will provide an opportunity to explore in more detail the concerns raised in evidence with a view to identifying an acceptable way forward for stakeholders.

⁶⁴ RoP, para 52, Legislation Committee No.1, 23 September 2010.

65. In view of the above, **we support the general principles of the proposed Measure.** Further detail about how we came to this conclusion is set out below.

66. Central to the argument put forward by representatives of the house building industry is the assertion that existing legislative arrangements in relation to domestic fire safety, namely the Building Regulations 2000, provide newly built homes with sufficient protection from fire. As mentioned above, we acknowledge there have been improvements in fire safety in the home over the years. We accept it could reasonably be argued that homes built since 1992, when the requirement to install hard wired smoke detectors into newly built homes was introduced, are comparatively better protected than older housing stock. Notwithstanding this, it is clear that deaths and injuries from fire in the home are still occurring in Wales. As such, we believe there is room for further improvement.

67. We have received compelling evidence that automatic fire suppression systems provide benefits over and above existing fire safety measures, including smoke detectors. While smoke detectors may be enough to save the lives of some, they may not necessarily save the lives of all, particularly the most vulnerable. Linked to this, we are conscious of the ageing demographic in Wales and of current policy to ensure that individuals remain in their home for as long as they are able. As such, we believe it is both sensible and timely to seek ways to further improve domestic fire safety and we think the proposed Measure provides an opportunity to do this.

68. A fundamental challenge to the proposed Measure provided by representatives of the house building industry was the lack of empirical evidence on the incidence of death and injury from fire in newly built homes. We accept that evidence of this kind is not collected by the Fire and Rescue Service. However, we do not believe this provides sufficient justification to delay legislating, particularly in view of other evidence received about the potential benefits of the proposed Measure.

69. We note the suggestion by some respondents that a more effective way to reduce the incidence of death and injury from fire would be to target fire safety measures at older housing stock, or at high-risk groups.

However, it is clear from the evidence of the Fire and Rescue Service and others that targeting along similar lines is already well-established in Wales. We recognise that community education and other initiatives such as the promotion of battery operated smoke alarms have produced positive results. Notwithstanding this, we believe a more comprehensive approach is required, and that the proposed Measure provides this. While we accept that the installation of automatic fire suppression systems will be limited to newly built homes, we recognise that over time, as older housing stock is replaced, the same protection will be afforded to all, regardless of the age and type of property they live in, or which socio-economic group they are from.

70. We acknowledge the concerns raised in evidence that existing cost-benefit analyses undertaken in the UK in relation to the effectiveness of automatic fire suppression systems fail to support the installation of these systems in all newly built homes. However, it is important to recognise that mandatory installation is already operating successfully in other parts of the world, e.g. Vancouver and Scottsdale Arizona in the United States, and is regarded as good sense in economic terms. We note that work is currently being undertaken by the Building Research Establishment (BRE) to update its original analysis to take account of international experiences such as those in the United States and we understand that the outcome of this work will be available shortly. We are mindful that the Minister has particular reservations about the duty to install automatic fire suppression systems in *all* newly created residences and that her reservations appear to be based partly on the existing cost-benefit analysis. We welcome her intention to give due consideration to the BRE's latest findings and we are confident that she will take account of these when making regulations.

71. In considering whether the proposed Measure is necessary, we sought to identify whether its aim could be met without the need for additional legislation. In doing so we looked briefly at the powers to be transferred by the Welsh Ministers (Transfer of Functions)(No.2) Order 2009 ('the Transfer of Functions Order'). It is clear that the Transfer of Functions Order would provide the Welsh Ministers with the necessary power to amend the Building Regulations to give effect to the policy intention of the proposed Measure. However, it is also clear that such

amendment would be unlikely to be made in the immediate future, partly due to the inclusion of a ‘sunrise clause’ (to prohibit the introduction of a statutory provision until a later date), and partly because the impetus to do so would need to come from a future Welsh Government. In view of this, **we are content that the proposed Measure is an appropriate legislative vehicle and provides an effective and timely way forward.**

72. For the reasons outlined above, **we recommend the Assembly supports the general principles of the proposed Measure.**

4. Practical implications

Background

73. According to the *Guidelines for the Supply of Water to Fire Sprinkler Systems*⁶⁵, which was published by the Fire Protection Association, the most common form of water supply used for water-based automatic fire suppression systems are as follows:

- a direct connection to a water supplier's main;
- a stored and pumped water supply;
- large storage cisterns, with sufficient capacity to supply design flow of the specified time;
- small cisterns, with reduced capacity and dependent on the inflow from a water service pipe to make up the design capacity;
- a gravity supply from a storage cistern;
- a pressurised vessel; and
- acceptable recycled water, e.g. rainwater recovery systems.

74. In the Explanatory Memorandum, the Member in charge asserts that Wales benefits from one of the best water supplies in the UK. She goes on to suggest that, because the supply of water for domestic use is a requirement under the *Water Industry Act 1991*, the cost of providing water of the necessary flow and pressure for the purpose of automatic fire suppression systems is "not assumed to have a significant impact in Wales."⁶⁶

75. In addition, in estimating the costs of the installation of automatic fire suppression systems, the Member in charge assumes "that dwellings in Wales will not need an additional tank or pump to augment the water supply" to ensure that systems operate effectively.⁶⁷

⁶⁵ *Guidelines for the supply of Water to Fire Sprinkler Systems*, May 2004.

⁶⁶ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.16.

⁶⁷ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.20.

Evidence from consultees

76. The Committee received conflicting evidence in relation to the potential practical barriers to the implementation of the proposed Measure. Those representing the water industry and house building industry suggested that the Member in charge had underestimated the practical difficulties associated with the provision and maintenance of a water supply of sufficient pressure to ensure the effective operation of an automatic fire suppression system.

77. The information set out in the Explanatory Memorandum was challenged by representatives of the water and house building industries who expressed concerns with regard to the related issues of water supply, water pressure and cost.

78. In commenting on the assumption in the Explanatory Memorandum that an additional tank or pump will not be needed to augment the water supply to ensure that systems operate effectively, Dee Valley Water stated:

“We believe this to be an incorrect assumption and believe the additional tank to be necessary, as it would provide mitigation against the loss of supply.”⁶⁸

79. This issue was explored at length with Dŵr Cymru who explained that its "preferred option" would be for a sprinkler system to be supplied by a storage tank and pump.⁶⁹

80. Representatives of the house building industry also raised concern about the assumption made in the Explanatory Memorandum that systems can be connected directly to the mains supply. In commenting on this, Bovis Homes Group PLC stated:

"Our research reveals this to be simplistic and overly optimistic. In discussions with members belonging to the Fire Sprinkler Association, it is evident that to be effective, the system relies on a known pressure and guaranteed flow rate. We are rarely able to rely upon the Utility providers guaranteeing pressure, as such, we

⁶⁸ Written evidence, DFS6.

⁶⁹ Written evidence, DFS20.

are recommended to allow for storage tanks and pumps.”

"As well as the additional costs associated with these facilities, there is the additional cost of providing space to house these requirements, together with strengthening floors and roof trusses to house tanks."⁷⁰

81. In addition, the NHBC stated:

"Technically water supplies need to be reliable and of adequate pressure and it is likely that residential sprinklers would not operate effectively in a significant proportion of households, due to insufficient water pressure. This will result in greater expense, as pumps and storage tanks will need to be introduced to achieve the required sprinkler coverage in the event of a fire occurring. This will require investigation to ensure that a practical solution is forthcoming that can be applied to the vast majority of new homes."⁷¹

82. Similarly, the HBF raised concern that the assumption that a pump and storage tank would not be required "has not been thoroughly tested" and that, as such, further work needs to be done. In addition, it believed additional work is also required "to establish the practicalities and costs associated with connecting the systems to the water mains."⁷² These views were shared by Llanmoor Homes and Anwyl Construction Co Ltd.⁷³

83. Likewise, Redrow Homes Ltd raised concern that "the views of Dwr Cymru regarding the potential difficulties in providing adequate water supplies have been dismissed", and that this "needs further investigation."⁷⁴

84. In evidence, Dŵr Cymru explained the technical requirements that are involved in supplying sprinklers directly from the mains, namely "a communication pipe larger than currently laid plus other extra fittings in

⁷⁰ Written evidence, DFS15.

⁷¹ Written evidence, DFS17.

⁷² Written evidence, DFS23.

⁷³ Written evidence, DFS23a, DFS23b.

⁷⁴ Written evidence, DFS19.

the pavement to allow a sprinkler supply to be given as well as a domestic supply."⁷⁵

85. With regard to the availability of sufficient pressure in the water mains to connect and operate an automatic water suppression system Dŵr Cymru stated:

“The Water Industry Act 1991 requires that water supplied for domestic purposes should merely have sufficient pressure to reach the top storey of the premise. The Regulator (Ofwat) additionally requires that water undertakers report the number of properties that are likely to receive pressures below 1 bar (10 metres) with a flow of 9 litres/min. This is the pressure most water undertakers aim for in order to maximize efficiency and this will govern the pressure at the non-domestic (sprinkler system) supply point. It will be noted that this is well below the 2.5 bar (25m) that Dwr Cymru Welsh Water considers will be necessary to operate a sprinkler system to a two storey dwelling without a pressure boosting pump and a meter.”⁷⁶

86. However, Dŵr Cymru acknowledged that there would be areas of Wales where the water pressure would always be greater than that required for the effective operation of an automatic fire suppression system and that connection to the mains would be possible, for example, in hilly areas.⁷⁷ Dŵr Cymru also explained that water companies use pressure management to reduce leakages, as a higher pressure will result in a greater frequency of bursts and greater loss of water through leaks and burst pipes. In order to make the supply of water more efficient by reducing leakage and general consumption, pressure management is extensively applied across the distribution systems in Wales.⁷⁸

87. Whilst Dŵr Cymru highlighted a number of areas of concern with regard to the practical implications of the proposed Measure it noted a number of ways in which it could support the implementation of the proposed Measure. For instance, Dŵr Cymru noted that a sprinkler supply

⁷⁵ Written evidence, DFS20.

⁷⁶ Written evidence, DFS20.

⁷⁷ Ibid.

⁷⁸ Ibid.

meter would result in undesirable costs and significant pressure losses. For this reason, and in order to encourage the installation of sprinkler systems Dŵr Cymru explained that it currently plans not to require a meter unless the supply is misused.⁷⁹

88. Dŵr Cymru also stated that while it “remains convinced that the extra costs of providing a water supply without the installer providing a tank and a pump will be significant it will make every effort to ensure that costs are minimised.”⁸⁰

89. In commenting on the practical implications in relation to the supply of water, NFSN advised that other water companies with whom it had discussed this issue did not necessarily share the view of Dŵr Cymru.⁸¹

90. It went on to suggest that certain water companies may be reluctant to supply suppression systems directly from the mains water supply through fear of legal liability in case of an interruption in supply, which could mean suppression systems were ineffective when needed.⁸²

Evidence from the Minister

91. In commenting on the practical implications of the proposed Measure, the Minister noted the assumptions made in relation to the supply of water in the Explanatory Memorandum, and suggested:

"Advice from Dŵr Cymru should be sought as to whether these assumptions are reasonable."⁸³

92. Further to this, she noted the views expressed by Dŵr Cymru and Dee Valley Water on the cost assumptions in the Explanatory Memorandum.⁸⁴

Evidence from the Member in charge

93. On behalf of the Member in charge, Chris Enness, Deputy Chief Fire Officer, Staffordshire Fire and Rescue Service refuted the suggestion in

⁷⁹ Written evidence, DFS20.

⁸⁰ Ibid.

⁸¹ RoP, para 187, para 265-266, Legislation Committee No.1, 7 October 2010.

⁸² RoP, para 272, Legislation Committee No.1, 7 October 2010.

⁸³ Written evidence, DFS25.

⁸⁴ RoP, para 157, Legislation Committee No.1, 23 September 2010.

evidence that the Member in charge had underestimated the practical difficulties associated with the provision of a water supply of sufficient pressure to ensure effective operation of automatic fire suppression systems. He stated:

“I do not think that there is any underestimation going on. The fact is that every premise has a water supply – if you can run a shower, you can run a sprinkler system. It is no more technical than that. There are five different sources in the current British Standard 9251:2005 by which you can draw water to make it easy and accessible for all.”⁸⁵

94. Mr Enness acknowledged that, contrary to the Explanatory Memorandum, there may be “odd occasions” where water pressure is insufficient for the purpose of installing an effective automatic fire suppression system.⁸⁶ In these instances, he explained that water could be supplied to systems through a storage tank and pump, which would “cost slightly more.”⁸⁷

95. Notwithstanding this, Mr Enness stated:

“...I maintain that it would be the exception to need a pump. I would say that we are supported by the evidence when there have been mass installations of sprinklers at new properties. The majority have not required a pump. That evidence is not available in the UK, because we do not do it, but if you go back to Studley Green and Warrington, you will see that the premises in question did not all require pumps and tanks.”⁸⁸

96. In commenting on Dŵr Cymru’s estimate of costs of supplying water through the mains (i.e. £695 to £976 per property), Mr Enness stated he was “surprised” at the estimate and suggested they were more in line with the cost associated with retro-fitting. He went on to suggest that the only

⁸⁵ RoP, para 127, Legislation Committee No.1, 23 September 2010.

⁸⁶ RoP, para 141, Legislation Committee No.1, 23 September 2010.

⁸⁷ Ibid.

⁸⁸ RoP, para 127, Legislation Committee No.1, 14 October 2010.

additional cost in relation to the supply of water would be for the different size of pipe required.⁸⁹

97. However, Dŵr Cymru has subsequently confirmed that the figures provided relate to newly built homes.

Our view

98. We note the conflicting evidence in relation to the practical implications of providing and maintaining a water supply of sufficient pressure to ensure the effective operation of an automatic fire suppression system. We acknowledge the concerns raised by representatives of the house building and water industry with regard to the assumptions made in the Explanatory Memorandum about securing an adequate water supply to operate an automatic fire suppression system. We note the Member in charge has conceded that, in practice, there may be occasional circumstances when an additional storage tank and pump will be required, and that this could have cost implications for the house building industry.

99. We remain concerned that the practical implications in relation to the provision and maintenance of a water supply have yet to be fully resolved. We note the Minister's intention to undertake further work prior to making regulation to give effect to the policy intention of the proposed Measure. As part of this, we urge her to examine the practical implications associated with the section 1 duty to provide suppression systems, taking account of the evidence we have received in relation to this.

⁸⁹ RoP, para 111, Legislation Committee No.1, 14 October 2010.

5. Financial implications

Cost of installation

Background

100. The Explanatory Memorandum states:

“...the average costs of installation per dwelling would be £1,223, with a low estimate of £978 and the high estimate £1,719...the total cost of installing automatic fire suppression systems in 10,000 residences a year could be in the region of £10 million to £17 million per annum.”⁹⁰

101. It goes on:

“...the estimated potential costs for RSLs will be between £0.5 million and £3.3 million, depending on the numbers of new build and conversions undertaken.”⁹¹

[...]

“Based on the estimated costs of £978 to £1,719 for the installation of an automatic fire suppression system and building of 6,500 to 9,000 dwellings by private enterprise in a year, installation costs would be between £6.4 million and £15.5 million...”⁹²

Evidence from consultees

102. Representatives from the house building industry and social housing sector expressed concern that the cost of installing automatic fire suppression systems provided in the Explanatory Memorandum has been underestimated. Reasons for this were as follows:

⁹⁰ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.21.

⁹¹ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.35.

⁹² Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.41.

- the only actual installations costs provided have not been taken into account, i.e. £5,100 per dwelling provided by Community Housing Cymru from the Aberafon pilot scheme;
- it has been assumed in the Explanatory Memorandum that the cost of supplying water to systems will be insignificant,
- it has been assumed that storage tanks and pumps will not be required.

103. CHC, Bovis Homes Group PLC and the HBF provided quotations for the installation of suppression systems that exceeded, and in some cases doubled those provided in the Explanatory Memorandum.⁹³ HBF went on to raise concern that the estimated cost of installation was "not sufficiently evidence-based" and made clear that further work would be needed in this regard.⁹⁴

104. In contrast to the Member in charge, Dŵr Cymru asserted that the cost of connecting to the mains water supply would be "significant." It provided preliminary calculations of £695 to £976.⁹⁵ Similarly, HBF explained that, using figures from the BRE report, connection costs varied between areas, and based on actual projects, ranged from £600 to £1500.⁹⁶

105. As previously explained, representatives of the water and house building industries dispute the Member in charge's assumption that a storage tank and pump will not be required for the purpose of supplying water to suppression systems. Evidence from CHC and Bovis Homes Group PLC suggests that the provision of this equipment may add a minimum of £1,000 to the estimated cost of installation.⁹⁷

106. Representatives of the Fire and Rescue Service and NFSN believed strongly that the benefits brought about as a result of the proposed Measure would outweigh all associated costs.⁹⁸ In addition, it was suggested that economies of scale and advances in technology would

⁹³ Written evidence, DFS22, DFS23.

⁹⁴ Written evidence, DFS23.

⁹⁵ Written evidence, DFS20.

⁹⁶ Written evidence, DFS23.

⁹⁷ Written evidence, DFS22, DFS15.

⁹⁸ Written evidence, DFS8, DFS12, DFS16.

result in a reduction of costs.⁹⁹

Evidence from the Minister

107. On the estimated cost of installation provided for in the Explanatory Memorandum, the Minister stated:

“In view of the potential sensitivity of costs to regional circumstances, and the critical importance of costs to any case for mandatory sprinklers, more evidence may be needed to establish Welsh estimates.”¹⁰⁰

108. In commenting more generally on the financial implications of the proposed Measure, the Minister stated:

"If the proposed Measure is approved by the National Assembly, in making the decision to bring forward regulations to give effect to the Measure, the incoming Assembly Government will want to consider its implications for house purchasers, the construction and house building industry, social landlords and others against a backdrop of Assembly Government plans and policies, both existing and proposed as well as other factors including the state of the Welsh economy."¹⁰¹

Evidence from the Member in charge

109. In commenting on installation costs, the Member in charge stated:

“We gathered our information...from Vancouver, from Scottsdale, Arizona and from New Zealand. We also took in the one or two examples from the UK. It would have been great if we could have had all the financial implications and costings based on evidence from the UK, but that is sadly not the case.”¹⁰²

110. She went on to argue:

⁹⁹ Written evidence, DFS9, DFS12; and RoP, para 280, Legislation Committee No.1, 7 October 2010.

¹⁰⁰ Written evidence, DFS25.

¹⁰¹ Ibid.

¹⁰² RoP, para 94, Legislation Committee No.1, 14 October 2010.

“Our costs are realistic, given the evidence on which we have based them...”¹⁰³

111. The Member in charge also suggested that installation costs would fall over time with the implementation of the proposed Measure as economies of scale are realised.¹⁰⁴

112. Like the Fire and Rescue Service, the Member in charge argued strongly that the benefits to be realised from the proposed Measure outweighed all associated costs.

Potential for developers to off-set costs

Trade-offs

Evidence from consultees

113. In the Explanatory Memorandum, the Member in charge suggests it may be possible for developers to use trade-offs in building design and passive fire protection measures to help address the cost implications of the proposed Measure.¹⁰⁵ Of those respondents who commented on this issue, there were mixed views.

114. In evidence, the ASFP stated:

“...the ASFP is totally opposed if the measure is introduced on the basis of trade-offs against passive fire protection than cannot be justified either morally or financially.”¹⁰⁶

115. It emphasised the need to consider automatic fire suppression systems “as part of the holistic process that goes to make up an effective fire protection regime, i.e. an appropriate balance of passive and active measures...”¹⁰⁷

116. In commenting on this issue, HBF pointed out that the CLG report found that “the cost reductions in terms of design freedoms from the

¹⁰³ RoP, para 109, Legislation Committee No.1, 14 October 2010.

¹⁰⁴ RoP, para 178-179, Legislation Committee No.1, 14 October 2010.

¹⁰⁵ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.14.

¹⁰⁶ Written evidence, DFS14.

¹⁰⁷ Written evidence, DFS14.

installation of sprinklers are unlikely to be significant.” As such, HBF went on to suggest that further work needs to be undertaken before the use of trade-offs can be used to justify the introduction of the proposed Measure.¹⁰⁸

117. CFOA Wales outlined some of the design freedoms that could be brought about by trade-offs.¹⁰⁹ It suggested that “further work in exploring potential trade-offs in building design may realise further building cost savings.”¹¹⁰

Value of house

Evidence from consultees

118. The Committee has received evidence from the house building industry to dispute the Member in charge’s assumption that the cost of installing and maintaining automatic fire suppression systems could be reflected in the value of the house.

119. Some respondents advised that, valuers would not recognise any premium attached to a house with an automatic fire suppression system.¹¹¹ By way of example, HBF explained that comparable sustainable building improvements at a Barratt’s development at Hanham Hall have had “absolutely no bearing on the final valuations.”¹¹²

Land values

Evidence from consultees

120. As with house values, representatives of the house building industry disputed the Member in charge’s assumption that installation and maintenance costs could be reflected in lower land values.¹¹³

121. In evidence, HBF raised concern that Wales was already experiencing problems with low land values in certain areas. As such, it asserted that the given assumption was “a very dangerous assumption to make.”¹¹⁴

¹⁰⁸ Written evidence, DFS23.

¹⁰⁹ RoP, para 90-91, Legislation Committee No.1, 30 September 2010.

¹¹⁰ Written evidence, DFS12.

¹¹¹ Written evidence, DFS15, , DFS19, DFS23, DFS23a, DFS23b.

¹¹² Written evidence, DFS23.

¹¹³ Written evidence, DFS19, DFS23, DFS23a, DFS23b.

Evidence from the Member in charge

122. In commenting on the use of trade-offs, the Member in charge stated:

“I think that we were right to point out that there could be some [design] freedoms. I am not talking about a situation where you install a sprinkler so you do not need anything else.”¹¹⁵

123. On the potential increase in value of homes with automatic fire suppression systems, the Member in charge outlined the results of a survey undertaken by Wiltshire and Swindon Fire Authority, and suggested it provided “compelling evidence” that residents understood the benefits of automatic fire suppression systems and, as such attached an increased value to homes where these systems were installed.¹¹⁶

124. The Member in charge remained of the view that suppression systems added value to a property and suggested that, once the proposed Measure was in force, valuers would take account of this.¹¹⁷

Our view

125. We are conscious of the conflicting evidence received in relation to the financial implications of the proposed Measure. We acknowledge that the Member in charge has provided detailed evidence in relation to costs and we welcome this. However, we note that the estimated cost of installing automatic fire suppression systems provided by the Member in charge is lower than that provided by all other respondents. In view of this, **we believe it is likely that the total installation costs for the home building industry and social housing sector will be higher than the estimate provided in the Explanatory Memorandum.**

126. Related to the above, we note the Member in charge’s view that there is potential for developers to off-set the cost of the proposed Measure through trade-offs in building design and passive fire protection measures, or by passing on costs to home-buyers or land owners in the form of higher house prices or lower land values. However, in view of the

¹¹⁴ Written evidence, DFS23.

¹¹⁵ RoP, para 142, Legislation Committee No.1, 14 October 2010.

¹¹⁶ RoP, para 95, para 152, Legislation Committee No.1, 14 October 2010.

¹¹⁷ RoP, para 157-158, Legislation Committee No.1, 14 October 2010.

evidence to the contrary received from the house building industry, we remain unconvinced by this argument.

127. We do, however, agree with the Member in charge that a duty to install automatic fire suppression systems in all newly built homes as standard could reduce installation costs in the longer term as a result of economies of scale both in relation to the costs of production and installation.

128. We note the Minister's intention to undertake further work prior to making regulations to give effect to the policy intention of the proposed Measure. As part of this, we urge her to re-examine the cost implications associated with the proposed Measure, taking account of the evidence we have received in relation to this.

6. Specific comments on sections of the proposed Measure

Section 1 – Duty to install automatic fire suppression systems

Background

129. Section 1 of the proposed Measure establishes a duty to provide automatic fire suppression systems in new residential premises in Wales. The duty will apply when building work is undertaken to construct a building or convert a building (or part thereof) for use as a residence. It will also apply to creation of new residences by way of sub-dividing one or more existing residences or by amalgamating existing residences so as to create a new residence or residences.

Extent of the duty

Evidence from consultees

130. Those who supported the proposed Measure were content that the duty to provide automatic fire suppression systems was limited to newly built homes.

131. In evidence, CFOA Wales asserted it was “sensible, proportional and, given the nation’s wealth, economically viable to target new properties.”¹¹⁸ It went on to clarify:

“We are not suggesting that the proposed Measure seek to retrofit existing housing stock...it will take 10 years to cover 10 to 15 per cent of the housing stock, but we have to start somewhere. If, in 10 years’ time, 15 per cent of the Welsh housing stock is fitted with sprinklers, that will be a significant achievement.”¹¹⁹

132. Similarly, NFSN acknowledged the cost of retrofitting could be prohibitive and accepted that the duty was limited to newly created residences.¹²⁰

¹¹⁸ RoP, para 37, Legislation Committee No.1, 30 September 2010.

¹¹⁹ RoP, para 37, Legislation Committee No.1, 30 September 2010.

¹²⁰ RoP, para 209, Legislation Committee No.1, 7 October 2010.

133. A few respondents raised specific concern that the duty to provide automatic fire suppression systems when converting a building for use as a residence, or creating new residences by way of sub-division or amalgamation would be particularly difficult and costly to meet. In effect, the application of the duty to these types of buildings would be the same as retro-fitting.

134. Section 1(4)(1) provides for the Welsh Ministers to prescribe by regulations the specific requirements with which an automatic fire suppression systems must comply. Those who commented on this were content that the specifications and standards in relation to suppression systems were left to regulations.

Evidence from the Minister

135. As mentioned previously, the Minister believed that "the case for a requirement for fire suppression systems in new and converted residential accommodation has yet to be made."¹²¹ She made clear that consideration of the latest cost benefit analysis would be needed before bringing forward regulations to give effect to the policy intention of the proposed Measure.¹²²

Evidence from the Member in charge

136. The Member in charge explained that, while ideally she would have liked the duty to apply to both newly built homes and existing housing stock, there was a need to take a "pragmatic approach."¹²³ She believed that "resistance to retrospective fitting of sprinkler systems would be enormous, and the cost would be tremendous."¹²⁴

137. The Member in charge advised that the duty to install automatic fire suppression systems extended beyond newly constructed buildings for use as a residence because she wanted to ensure that residences being converted into houses of multiple-occupation, which often house high-risk groups, would also have adequate fire protection.¹²⁵

¹²¹ Written evidence, DFS25.

¹²² Ibid.

¹²³ RoP, para 32, Legislation Committee No.1, 23 September 2010.

¹²⁴ Ibid.

¹²⁵ RoP, para 44, Legislation Committee No.1, 14 October 2010.

138. On the issue of regulations, on behalf of the Member in charge, Keith Bush, Director of Legal Services explained:

“...it is usual to delegate to regulations the provision of a certain technical standard to be complied with by a specific system, because if you put that on the face of the proposed Measure and the industry standards change, you would have to change the Measure, which is completely impractical...”¹²⁶

139. And:

“...there are rules under European law that mean that technical standards have to be shown to the European Commission beforehand, so that it has enough time to decide whether they interfere in any way with free trade within the European Union. That means that there is a process and a discussion has to be held and so on. So, in practical terms that cannot be done by having the technical details on the face of a proposed Measure such as this.”¹²⁷

Our view

140. We note the Assembly’s legislative competence does not extend to the provision of automatic fire suppression systems in existing housing stock. As such, **we acknowledge that the duty to provide suppression systems is limited to newly created residences, and we are content that this approach is both proportionate and practicable.**

141. We note the concerns raised in evidence about the practical and financial implications for those converting a building for use as a residence, or creating a new residence or residences by way of sub-division or amalgamation of complying with the duty. We acknowledge that the rationale for applying the duty in these instances stems mainly from the wish to ensure that properties being converted into houses of multiple-occupation are afforded the necessary protection from fire. As such, we are content that the duty would apply to these other types of building work.

¹²⁶ RoP, para 60, Legislation Committee No.1, 23 September 2010.

¹²⁷ RoP, para 61, Legislation Committee No.1, 23 September 2010.

142. We accept it is appropriate that the requirements with which automatic fire suppression systems must comply are a matter for the Welsh Minister to prescribe by regulations, as set out in section 1(4)(c). However, given that the policy intention of the proposed Measure will not be brought into effect until such time as these regulations are made, we urge the Minister to undertake, as soon as reasonably practicable, the further consideration of the issues outlined in her evidence, with a view to bringing forward regulations once this work has been completed.

Maintenance

Background

143. The proposed Measure, as drafted, makes no provision for on-going maintenance of automatic fire suppression systems. The duty provided in section 1 requires that "the system is operating effectively" at the point of completion of building work.

Evidence from consultees

144. The Committee has received conflicting evidence about the on-going maintenance requirements of automatic fire suppression systems. While some respondents suggested that maintaining systems would be a straightforward process, others were concerned it would have significant practical and financial implications. Similarly, views varied on how important on-going maintenance was for the effective operation of systems.

145. A number of those giving evidence raised concern that insufficient consideration had been given to maintenance and that the practical and financial implications had been underestimated.

146. Representatives of the house building industry pointed out that, despite the recommended annual check, gas boilers and fires often go un-maintained.¹²⁸ They suggested it could reasonably be assumed that the

¹²⁸ Written evidence, DFS15, DFS18, DFS23, DFS23a, DFS23b.

same would apply to automatic fire suppression systems and that this could give rise to malfunctions or “a failure to operate when needed.”¹²⁹

147. Several respondents, including representatives of the house building industry, Firebrake Wales and CHC pointed out that only correctly functioning systems had the potential to save lives, and as such on-going maintenance was an important consideration.¹³⁰

148. CHC stated:

“...any initiative to provide fire suppression systems in new homes will only be as good as the number of households who maintain them...”¹³¹

149. Some respondents went on to question whether the lack of a requirement for on-going maintenance could undermine the effectiveness of the proposed Measure in achieving its aim. The Welsh Local Government Association (WLGA) stated:

“...ensuring appropriate and ongoing maintenance of the sprinkler system will be important and without this the aim of the Measure would be undermined. Further clarity on this point would be helpful and the intention of the Assembly regarding responsibility for inspection and maintenance needs to be clearly set out.”¹³²

150. While CFOA Wales agreed there was a need for automatic fire suppression systems to be maintained, it argued that the maintenance requirement had been “overstated.”¹³³ CFOA Wales made clear it would be content for maintenance to be provided for in regulations made under the proposed Measure.¹³⁴ Similarly, NFSN advised that “the maintenance requirement is very simple.” It explained that the maintenance of suppression systems is addressed in the British Standard BS:9251.¹³⁵

151. A number of respondents suggested further work should be carried out to establish the exact cost of maintaining automatic fire suppression

¹²⁹ Written evidence, DFS15.

¹³⁰ Written evidence, DFS13, DFS22, DFS15, DFS23, DFS23a, DFS23b.

¹³¹ Written evidence, DFS22.

¹³² Written evidence, DFS10.

¹³³ RoP, para 55, Legislation Committee No.1, 30 September 2010.

¹³⁴ RoP, para 58, Legislation Committee No.1, 30 September 2010.

¹³⁵ RoP, para 219, para 226-227, Legislation Committee No.1, 7 October 2010.

systems.¹³⁶ Bovis Homes Group PLC argued that the Member in charge's estimate of £20 to £100 per annum was a low estimate and advised it had been quoted a minimum charge of £110 plus VAT per visit.¹³⁷

152. CHC provided examples of actual maintenance costs that were significantly higher than the estimates in the Explanatory Memorandum.¹³⁸ It raised concern about how the annual cost of maintenance would be met by housing associations.¹³⁹ CHC disputed the assumption made by the Member in charge that housing association staff "would be able to schedule maintenance along with other visits to rented properties."¹⁴⁰

153. In relation to the maintenance of water apparatus, Dŵr Cymru advised it would be important for regular checks to be carried out on the backflow prevention valve to prevent contamination of the domestic water supply by stagnant water in the sprinkler supply pipe.¹⁴¹ It explained that stagnant water could give rise to "serious ill health."¹⁴² Dŵr Cymru later stated that, in its view, E-coli presented a greater risk than legionella bacteria.¹⁴³ The potential risk of legionella bacteria, which gives rise to Legionnaire's disease, was also raised by representatives of the house building industry and CHC.¹⁴⁴

154. In addressing the concerns about a perceived increase risk of Legionnaire's disease, CFOA Wales explained that extensive research carried out by both the Fire Sprinkler Association and the Loss Prevention Council had found "there is no realistic chance of a member of the public contracting legionella from a sprinkler system...there are no published records of any instances of outbreaks of legionella or any other

¹³⁶ Written evidence, DFS15, DFS22, DFS23, DFS23a, DFS23b.

¹³⁷ Written evidence, DFS15.

¹³⁸ Written evidence, DFS22.

¹³⁹ Ibid.

¹⁴⁰ Proposed Domestic Fire Safety (Wales) Measure, Explanatory Memorandum, MPM-20-EM-S1, para 8.38.

¹⁴¹ Written evidence, DFS20.

¹⁴² Ibid.

¹⁴³ RoP, para 138, Legislation Committee No.1, 7 October 2010.

¹⁴⁴ Written evidence, DFS11, DFS22.

waterborne disease attributed to sprinklers among engineering staff or the public."¹⁴⁵

155. Similarly, NFSN advised that the report by Loss Prevention Council "shows categorically that legionella is not a problem for a sprinkler system."¹⁴⁶

156. Linked to maintenance, some concern was raised that automatic fire suppression systems could malfunction and falsely activate, or that water leakages could increase where systems were installed, which may lead to an increase in insurance claims.¹⁴⁷

157. CFOA Wales explained that "a sprinkler does not 'false alarm'; they will only operate if there is an actual fire."¹⁴⁸ It later advised that "the odds of the system failing is one in 16 million."¹⁴⁹

Evidence from the Minister

158. In commenting on this issue, the Minister stated:

"...if failure to maintain or replace components results in a system that does not work, that would negate the objective and value of the initial investment."¹⁵⁰

Evidence from the Member in charge

159. On behalf of the Member in charge, Chris Enness, Deputy Chief Fire Officer, Staffordshire Fire and Rescue Service stated:

"We over-mystify the maintenance of a sprinkler system...The maintenance of it involves a quick visual inspection and a run-through – it is like flushing the toilet. So, we over-mystify the maintenance of a sprinkler system. It is like any water-serviced appliance; provided that the water is on, the system will work."¹⁵¹

¹⁴⁵ RoP, para 87, Legislation Committee No.1, 30 September 2010.

¹⁴⁶ RoP, para 230, Legislation Committee No.1, 7 October 2010.

¹⁴⁷ Written evidence, DFS7, DFS15, DFS18, DFS22, DFS23, DFS23a, DFS23b.

¹⁴⁸ Written evidence, DFS12.

¹⁴⁹ RoP, para 60, Legislation Committee No.1, 30 September 2010.

¹⁵⁰ RoP, para 189, Legislation Committee No.1, 23 September 2010.

¹⁵¹ RoP, para 71, Legislation Committee No.1, 23 September 2010.

160. In addition, on behalf of the Member in charge, Keith Bush, Director of Legal Services stated:

“...the proposed Measure as it stands does not impose a continuing maintenance obligation on the owners or occupiers of properties. It ensures that a proper system is installed and it can go no further than that, as the regulations made by the Ministers could make it a condition that a suitable maintenance agreement be offered to the purchaser. However, at the moment, it does not provide that the purchaser has a positive duty to maintain the system. The Assembly’s legislative competence could extend to that, but there are major implications about the kind of obligation, which would have been impossible to deal with in the limited time Ann has had to bring this proposed Measure before the Assembly.”¹⁵²

161. When questioned about whether the lack of provision for on-going maintenance could undermine the effectiveness of the proposed Measure, the Member in charge stated:

“No. I would say that the sprinkler system being installed is an advantage in itself. The maintenance requirement is minimal and I do not think that it affects the proposed Measure at all.”¹⁵³

Our view

162. We note the conflicting evidence about on-going maintenance requirements for automatic fire suppression systems. Some respondents expressed concern that having to maintain such systems would have significant practical and financial implications for homeowners and the social housing sector, and that a lack of routine maintenance could affect the functionality of suppression systems and compromise their effectiveness. In contrast, others suggested that maintaining suppression systems was straightforward and pointed out that provisions for on-going maintenance were set out in the British Standard Code of Practice for Sprinkler systems for residential and domestic occupancies (BS:9251 2005), which is the approved standard for suppression systems. It would

¹⁵² RoP, para 78, Legislation Committee No.1, 23 September 2010.

¹⁵³ RoP, para 95, Legislation Committee No.1, 23 September 2010.

seem from BS:9251 2005 that the maintenance of suppression systems would be a reasonably simple process involving an annual inspection and test by a suitably qualified sprinkler contractor, akin to that for a gas boiler. This was supported by evidence from the Fire and Rescue Service and National Fire Sprinkler Network (NSFN). As such, we are satisfied that the on-going maintenance of suppression systems would not prove to be a significant burden on house owners.

163. While we do not wish to understate the importance of on-going maintenance of automatic fire suppression systems, we received compelling evidence from the Fire and Rescue Service and NSFN to suggest that suppression systems are both robust and reliable, even when left unmaintained. In addition, we recognise the complexities involved in including a requirement in the proposed Measure for owners of newly built residences, particularly private home owners, to maintain suppression systems. As such, **we believe it is reasonable for any on-going maintenance requirement to be addressed by reference to the British Standard for suppression systems, as is currently the case. In view of this, we are content that the proposed Measure makes no provision for on-going maintenance of suppression systems.**

164. We acknowledge the concerns raised by representatives of the social housing sector about the cost of maintenance. As previously stated, **we urge the Minister to re-examine the cost implications associated with the proposed Measure, taking account of the evidence we have received.** While we accept that maintenance is not provided for in the proposed Measure, we believe it would be helpful if consideration could be given to how the social housing sector would meet the associated costs.

Section 2 – Enforcement

Background

165. Section 2 applies sections 33 and 35 to 38 of the Building Act 1984 in relation to enforcement.

Evidence from consultees

166. Few respondents commented on the enforcement provision. Of those that did comment, the majority were content with the approach taken.

167. While the WLGA accepted that the cost to local authorities of enforcing the section 1 duty "would not be significant", it stated:

"...it is important to point out the potential cost implications particularly during the current economic climate when local authorities are facing significant budgetary cuts over a sustained period."¹⁵⁴

168. NHBC raised concern that the Member in charge had underestimated the level of training and resources required to ensure that building control bodies are able effectively to meet their responsibilities under section 2. It went on to emphasise the need to ensure that "systems are correct at the time of installation rather than waiting until the time of completion."¹⁵⁵

Evidence from the Minister

169. In evidence, the Minister raised concern about the enforcement provision on legal, technical grounds. She stated:

"While the enforcement provisions have been related to those under the Building Act 1984, section 33 (Tests for conformity) of the Act has not yet been commenced. The Welsh Minister's (Transfer of Functions) (No.2) Order 2009 does not transfer to Welsh Ministers the ability to commence this section."

"Current requirements for testing are dealt with under Regulation 18 of the Building Regulations 2000 and Regulation 11 of the Building (Approved Inspector) Regulations 2000. We question how the Measure addresses the issue of testing."¹⁵⁶

¹⁵⁴ Written evidence, DFS10.

¹⁵⁵ Written evidence, DFS17.

¹⁵⁶ Written evidence, DFS25.

Evidence from the Member in charge

170. On behalf of the Member in charge, Keith Bush, Director of Legal Services explained:

“The proposed Measure tries to align very closely the enforcement of obligations under the proposed Measure with those under building regulations.”¹⁵⁷

171. He accepted the points raised by the Minister and acknowledged that further detailed work was needed in relation to Approved Inspectors. He clarified:

“The intention is that it should be possible to enforce this proposed Measure in that way, in the same way as through the more usual local authority inspector route. That and a number of other similar issues are technical in nature and can be dealt with by Stage 2 amendments.”¹⁵⁸

172. The Member in charge argued that the potential cost to building control bodies were “minimal compared with the savings to be made at the other end, to the economy and to homeowners.”¹⁵⁹

Our view

173. We note that the majority of respondents who commented on the provisions contained in section 2 were content with the approach to enforcement provided in that section. We accept it is intended that the enforcement provision set out in the proposed Measure reflects that used for the purpose of enforcing the Building Regulations 2000, and we consider this to be a sensible approach. Notwithstanding this, **we acknowledge the concerns raised by the Minister in relation to the commencement of section 33 of the Building Act 1984 and any subsequent implications for the enforcement of the section 1 duty. We believe this issue should be resolved in order to ensure that the enforcement regime provided for in the proposed Measure is workable and effective. As such, we recommend that the Member in**

¹⁵⁷ RoP para 100, Legislation Committee No.1, 23 September 2010.

¹⁵⁸ Ibid.

¹⁵⁹ RoP para 97, Legislation Committee No.1, 23 September 2010.

charge brings forward the necessary amendments at Stage 2 to address this issue, as outlined by the Minister in evidence.

Section 3 – Provision of information

Background

174. Section 3 relates to information that must be submitted when building work, which comes under the proposed Measure, is to be undertaken.

Evidence from consultees

175. Few respondents commented on the provision of information.

176. NHBC sought clarification on whether information required under section 3 would need to be included in an ‘Initial Notice’ in instances where an Approved Inspector was used for building control purposes. NHBC went on to raise concern that section 3 “appears to fundamentally alter existing primary legislation in terms of the information required on an Initial Notice” and “alters the grounds for rejection of an Initial Notice and the relevant time period of 5 days currently prescribed.”¹⁶⁰

Evidence from the Minister

177. The Minister questioned whether section 3, as drafted, takes account of both routes to securing compliance with the Building Regulations 2000, i.e. local authority building control services and private sector Approved Inspectors. In addition, she questioned “the logic in treating non-compliance timescales differently to the provision of section 16 of the Building Act.”¹⁶¹ Finally, the Minister advised:

“It would appear to be more appropriate, from a practical point of view, if section 3 of the Measure was integrated within the equivalent provisions of the Building Regulations. Provision of information could be addressed as part of further regulation under section 6(1) of the Measure.”¹⁶²

¹⁶⁰ Written evidence, DFS17.

¹⁶¹ Written evidence, DFS25.

¹⁶² Written evidence, DFS25.

Evidence from the Member in charge

178. On behalf of the Member in charge, Keith Bush, Director of Legal Services advised that the issues raised by the NHBC and the Minister in relation to section 3 raised similar technical issues as those raised in relation to enforcement (see section 2 above). He explained that “there was no pre-legislative consultation in the case of this proposed Measure, so a number of technical issues about the drafting of it were not identified before it was introduced.” Mr Bush further explained it was the Member in charge’s intention to address these issues by amendment at Stage 2.¹⁶³

Our view

179. We understand and accept the rationale behind the section 3 provision. However, we share the concern raised in evidence that section 3, as drafted, does not accurately reflect current arrangements in relation to building control as it does not take account of private sector Approved Inspector Building Control or applications for ‘regularisation’. In view of this, **we recommend that the Member in charge brings forward the necessary amendments at Stage 2 to make clear her intention that section 3 applies equally to Local Authority Building Control and private sector Approved Inspector Building Control. We further recommend that the timescales for non-compliance provided for in section 3 reflect those currently used in the case of the Building Regulations 2000.**

Section 4 – Interpretation

Residence

Evidence from consultees

180. The Committee has received evidence to suggest there may be some confusion about the meaning of the term ‘residence’. More specifically, clarification was sought about whether the term ‘dwelling house’ included “caravans, houseboats and other non-building structures used solely as a permanent dwelling” and “a holiday dwelling/cottage.”¹⁶⁴

¹⁶³ RoP, para 100, Legislation Committee No.1, 23 September 2010.

¹⁶⁴ Written evidence, DFS20.

181. NFSN and Mid and West Wales Fire and Rescue Service emphasised the need for consistency in terminology to avoid confusion. They pointed out that the term ‘domestic occupancy’ was a more widely accepted term throughout the fire industry than ‘residence’.¹⁶⁵

Evidence from the Minister

182. The Minister suggested that the term ‘residential care home’ may need “further amplification” and felt that Table D1 (of Approved Document Part B of the Building Regulation) could usefully provide a basis for this.¹⁶⁶

Automatic fire suppression system

Evidence from consultees

183. There is no definition of ‘automatic fire suppression system’ provided for in the proposed Measure. Most respondents who had considered defining suppression systems did so in the context of the standards that these should meet, namely the current British Standard BS:9251.

Evidence from the Member in charge

184. On behalf of the Member in charge, Keith Bush, Director of Legal Services advised that mobile caravans or houseboats would not be covered by the proposed Measure “because the Assembly cannot legislate in relation to standards relating to vehicles or vessels.” While holiday chalets would be included “static caravans are a little bit of a grey area.”¹⁶⁷ He explained:

“The range of different kinds of structures that could or could not be regarded as being a dwelling house may be difficult to define definitely on the face of the proposed Measure.”¹⁶⁸

185. Mr Bush went on to advise that the proposed Measure provides a power for the Minister to amend the definition of ‘residence’ by Order.

¹⁶⁵ Written evidence, DFS16, DFS8.

¹⁶⁶ Written evidence, DFS25.

¹⁶⁷ RoP, para 117, Legislation Committee No.1, 23 September 2010.

¹⁶⁸ RoP, para 117, Legislation Committee No.1, 23 September 2010.

186. The Member in charge explained that it was not appropriate to include a definition of ‘automatic fire suppression system’ in the proposed Measure because it would be “too prescriptive” and “we would have to keep coming back to amend it, because standards change.”

Our view

187. We welcome the clarification provided by the Member in charge in relation to the term ‘dwelling house’.

188. We note the views of the Minister in relation to the term ‘residential care home’. We further note there is some uncertainty over whether ‘static caravans’ would be subject to the section 1 duty. However, we recognise that the proposed Measure, as drafted, provides for the Welsh Ministers to amend the definition of ‘residence’ by Order should it prove necessary. As such, **we are content with the definition of ‘residence’ provided for in section 4.**

189. We accept that regulations made under section 1(4)(c) will provide the basis for the meaning of automatic fire suppression system in so far as they will specify the requirements that suppression systems must comply with. As such, we are content that the term automatic fire suppression system is not defined on the face of the proposed Measure. However, we question why the Member in charge has chosen not to use this term in the short title of the proposed Measure. **We recommend that the Member in charge considers amending the short title to include a reference to automatic fire suppression systems, for the sake of clarity.**

Section 6 – Regulations and orders

Background

190. Section 6(1)(d) places a general duty on the Welsh Ministers to consult before making regulations to give effect to the policy intention of the proposed Measure.

Evidence from consultees

191. Those who commented on the consultation requirement were satisfied with it. Dŵr Cymru specifically expressed a wish to be consulted on matters relating to sections 1(4)(c) and 3(2)(b), i.e. requirements that

systems must comply with and information for the purpose of demonstrating that building work is capable of meeting those requirements.¹⁶⁹

Evidence from Member in charge

192. On behalf of the Member in charge, Joanest Jackson, Legal Adviser stated:

“The proposed Measure, as drafted, contains a specific requirement to consult prior to making regulations. It confers a fairly generous discretion on the Ministers as to who is consulted...should the committee’s view be that specific stakeholders should be identified on the face of the proposed Measure, Ann will give consideration to that and it can be easily dealt with at Stage 2.”¹⁷⁰

Our view

193. We note that those who commented were satisfied with the requirement on the Welsh Ministers to consult prior to making regulations to give effect to the policy intention of the proposed Measure. As such, **we are content with the consultation requirement provided in section 6(1)(d).**

¹⁶⁹ Written evidence, DFS20.

¹⁷⁰ RoP, para 92, Legislation Committee No.1, 14 October 2010.

7. Other issues

Cumulative impact of regulation

Evidence from consultees

194. Concern was raised by the house building industry about the potential adverse impact of the proposed Measure on development viability. It was suggested that the proposed Measure, coupled with the existing regulatory requirements in relation to planning, affordable housing and sustainable development may compromise the viability of housing development in Wales.

195. NHBC suggested that, if the regulatory burden in Wales is greater than other part of the UK, there was “a very real risk” that developers were less likely to continue to develop housing in Wales.¹⁷¹

196. On a similar point, Redrow Homes Ltd stated:

“...the cost of introducing the Measure has been considered in isolation from other growing regulatory demands and is reliant on estimates and assumed, but un-defined trade-offs. This lack of real cost data and resulting uncertainties raise further concerns over the future viability of development against a background of cumulative regulatory impact, and this in turn may impact upon volume delivery of new homes in Wales and the associated privately funded contributions through the planning process.”¹⁷²

197. Likewise, Bovis Homes Group PLC asserted:

“As an industry, we are facing unprecedented demands and impacts on viability from a range of regulatory requirements. This measure will further add to such regulatory burden and this is likely to limit the supply of new sites coming forward and thus the delivery of affordable homes, given the significant policy and legislative requirements already in place.”¹⁷³

¹⁷¹ Written evidence, DFS17.

¹⁷² Written evidence, DFS19.

¹⁷³ Written evidence, DFS15.

198. Similar points were raised by HBF, Llanmoor Homes and Anwyl Construction Co Ltd.¹⁷⁴

Evidence from the Minister

199. The Minister suggested it was clear “that those whose interests operate in a lowest-common denominator threshold will always want the least amount of regulation and the greatest parity of intention across the United Kingdom.”¹⁷⁵

200. She went on to state:

“...it is difficult to generalise in this context, because the housing markets respond to a range of factors, of which the cost of provision is only one; those factors are normally a combination of land availability and value, construction costs, the availability of planning permission and individual cash flow requirements.”¹⁷⁶

Evidence from the Member in charge

201. The Member in charge emphasised that devolution enabled Wales to make different policy decisions to other parts of the UK. She argued strongly that the intention of the proposed Measure was to make houses in Wales “more attractive and safer.”¹⁷⁷

202. On behalf of the Member in charge, Chris Enness, Deputy Chief Fire Officer, Staffordshire Fire and Rescue Service stated:

“...there is no evidence to suggest that [the requirement to install automatic for suppression systems] slows down the building [of new houses] and that people do not build as a result. In fact, evidence is to the contrary. International evidence supports that it has not slowed down development.”¹⁷⁸

¹⁷⁴ Written evidence, DFS23, DFS23a, DFS23b.

¹⁷⁵ RoP, para 210, Legislation Committee No.1, 23 September 2010.

¹⁷⁶ Ibid.

¹⁷⁷ RoP, para 167, Legislation Committee No.1, 14 October 2010.

¹⁷⁸ RoP, para 172, Legislation Committee No.1, 14 October 2010.

Our view

203. We note the concern raised by the house building industry and others about the potential adverse impact of the proposed Measure on the viability of housing development. However, we recognise that, in broad terms, housing development is driven by market conditions. **In considering the impact of the proposed Measure purely on the basis of the cost estimates provided in the Explanatory Memorandum, we believe it is unlikely that the proposed Measure will adversely affect development viability in Wales.** Notwithstanding this, and in view of our findings that the costs associated with the proposed Measure are likely to have been underestimated, **we believe it would be prudent for the Minister to give further consideration to this issue prior to making regulations to give effect to the policy intention of the legislation.**

Potential impact on the affordable housing agenda

Evidence from consultees

204. Linked to the cumulative impact of regulation, several respondents including representatives of the house building industry, the WLGA and CHC raised concern that the proposed Measure may have a negative effect on the affordable housing agenda.¹⁷⁹

205. Both CHC and Wales and West Housing Association suggested that the Welsh Government would need to give consideration to adjusting the Acceptable Cost Guidance to take account of the extra costs associated with meeting the section 1 duty.¹⁸⁰ In addition, CHC stated:

“This measure will essentially result in extra costs at construction for housing associations, as well as the pressure on being able to charge affordable rents (due to additional servicing) and several other considerations. Therefore, it is important that the Assembly Government is flexible in its approach towards affordable housing in these circumstances. Savings may have to be made elsewhere so that the overall approach could in the end be cost neutral.”¹⁸¹

¹⁷⁹ Written evidence, DFS10, DFS22, DFS11, DFS15, DFS23, DFS23a, DFS23b.

¹⁸⁰ Written evidence, DFS22, DFS11.

¹⁸¹ Written evidence, DFS22.

Evidence from the Minister

206. The Minister acknowledged that the proposed Measure “will mean that slightly fewer homes will, perhaps, be built for the same amount of money.”¹⁸² She went on to suggest that this would be an important consideration “in regulatory impact assessments for affordable housing.”¹⁸³

207. Notwithstanding this, the Minister went on to explain she did not believe that the potential impact of the proposed Measure on the affordable housing agenda was an area of concern.¹⁸⁴

Evidence from the Member in charge

208. The Member in charge reiterated the Minister’s evidence and stated she was “pleased that the Minister did not think that the proposed Measure would, in any way, affect affordable housing numbers.”¹⁸⁵

209. She went on explain that she was “fairly relaxed” that the proposed Measure “would not have a negative effect on the building of social housing, but it will lead to benefits and many more positives.”¹⁸⁶

Our view

210. We note the concerns raised in evidence about the potential impact of the proposed Measure on the affordable housing agenda. However, we recognise that, in broad terms, the development of affordable housing in Wales is dependent partly on local need and partly on the priority it is afforded by the Welsh Government. In view of this, **we are satisfied that the proposed Measure is unlikely to have an adverse impact on the deliverability of the affordable housing agenda in Wales.**

¹⁸² RoP, para 212, Legislation Committee No.1, 23 September 2010.

¹⁸³ Ibid.

¹⁸⁴ RoP, para 214, Legislation Committee No.1, 23 September 2010.

¹⁸⁵ RoP, para 178, Legislation Committee No.1, 14 October 2010.

¹⁸⁶ RoP, para 179, Legislation Committee No.1, 14 October 2010.

8. Other Committee reports

Subordinate Legislation

211. The Constitutional Affairs Committee considered the proposed Measure at its meeting on 6 October 2010 when it considered written evidence from the Member in charge. The Committee published its report on 3 November, a copy of which can be found on

http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-legislation-dissolved/bus-committees-third-sleg-home/bus-committees-third-sleg-current_inquiries.htm

Finance / Resource Issues

212. The Finance Committee took evidence on 14 October 2010 from the Member in charge on the financial information contained in the Explanatory Memorandum. The Finance Committee is expected to report on the proposed Measure shortly. When published, a copy of the report will be available on

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-fin-home.htm>

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc1-agendas.htm>

23 September 2010

Ann Jones AM	Member in charge of the proposed Measure
Chris Enness	Deputy Chief Fire Officer, Staffordshire Fire & Rescue (Technical Adviser to the Member in charge)
Jane Davidson AM	Minister for Environment, Sustainability and Housing
David Hedges	Community Housing Cymru

30 September 2010

Colin Hanks	Assistant Chief Fire Officer, North Wales Fire and Rescue Service
Paul Bates	Assistant Chief Fire Officer, Mid and West Wales Fire and Rescue Service
Andy Marles	Chief Fire Officer, South Wales Fire and Rescue Service
Richard Price	Home Builders Federation Ltd - Wales

7 October 2010

Keith Pratley	Consultant to Dwr Cymru
Mike Davis	Dwr Cymru
Ronnie King OBE	National Fire Sprinkler Network
Sir George Pigot	National Fire Sprinkler Network

14 October 2010

Ann Jones AM	Member in charge of the proposed Measure
Chris Enness	Deputy Chief Fire Officer, Staffordshire Fire & Rescue (Technical Adviser to the Member in charge)

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-domfiresafety/lc1-domesticfiresafety-consultationresponses.htm>

<i>Name</i>	<i>Organisation</i>	<i>Reference</i>
Mary Sinclair		DFS1
Mike Brain		DFS2
John E Jones		DFS3
	SOVA (Supporting Others through Volunteer Action)	DFS4
Celia Lewis		DFS5
	Dee Valley Water	DFS6
Cyril Highman		DFS7
	Mid and West Wales Fire and Rescue Service	DFS8
	Chief Fire Officers Association	DFS9
	Welsh Local Government Association (WLGA)	DFS10
	Wales and West Housing Association Staff	DFS11
	Chief Fire Officers Association (Wales)	DFS12
	Firebrake Wales	DFS13

	Association for Specialist Fire Protection (ASFP)	DFS14
	Bovis Homes Group PLC	DFS15
	National Fire Sprinkler Network	DFS16
	National House-Building Council (NHBC)	DFS17
	Persimmon Homes West Wales	DFS18
	Redrow Homes Ltd	DFS19
	Welsh Water	DFS20
	Association of British Insurers (ABI)	DFS21
	Community Housing Cymru (CHC)	DFS22
	Home Builders Federation Ltd	DFS23
	Llanmoor Homes	DFS23A
	Anwyl Construction Co Ltd	DFS23B
	Royal Institution of Chartered Surveyors Wales	DFS24
Jane Davidson AM	Minister for the Environment, Sustainability and Housing	DFS25