

**National Assembly for Wales**  
Constitutional Affairs Committee

Proposed Domestic Fire Safety  
(Wales) Measure

November 2010



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## **Constitutional Affairs Committee**

The Constitutional Affairs Committee must consider and report on any of the matters set out in Standing Order 15.2 and may consider and report on any of the matters set out in Standing Orders 15.3, and 15.6.

### **Powers**

The Constitutional Affairs Committee was established in June 2007 (as the Subordinate Legislation Committee). Its powers are set out in the National Assembly for Wales' Standing Orders, particularly SO 15. These are available at [www.assemblywales.org](http://www.assemblywales.org)

### **Committee membership**

<i>Committee Member</i>	<i>Party</i>	<i>Constituency or Region</i>
Janet Ryder (Chair)	Plaid Cymru	North Wales
Alun Davies	Labour	Mid and West Wales
Kirsty Williams	Welsh Liberal Democrats	Brecon and Radnorshire
William Graham	Welsh Conservatives Party	South Wales East
Rhodri Morgan	Labour	Cardiff West

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## **The Committee's Role**

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1. The Constitutional Affairs Committee may consider and report on the following matters under the National Assembly's Standing Orders:

- Standing Order 15.6 (ii) states that the Constitutional Affairs Committee may consider and report on 'the appropriateness of provisions in proposed Assembly Measures .....that grant powers to make subordinate legislation to the Welsh Ministers'
- Whilst it is not part of the Committee's remit to comment in the merits of the proposal which the proposed Measure is intended to implement, Standing Order 15.6(v) states that the Committee may consider and report on 'any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers' Consideration:

## **The Proposed Measure**

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2. The proposed Measure was introduced by Ann Jones AM on 8 July 2010 as a Member Proposed Measure. It was referred to Legislation Committee 1 to report by 12 November 2010.

### **Scope and Intent**

3. The broad purpose of the Proposed Measure is to introduce a requirement for the provision of automatic fire suppression systems in new residential premises in Wales.

4. The Proposed Measure contains powers for Welsh Ministers to make regulations and orders in order to implement and set out the detail required to support the principles contained in the Proposed Measure.

### **Powers to make Subordinate legislation**

#### ***Section 1***

5. Section 1(1) establishes a duty to provide an automatic fire suppression system in new residential premises in Wales which operates effectively and complies with such requirements as may be prescribed by Welsh Ministers in regulations.

6. **Section 1(4)(c)** provides for Welsh Ministers to make regulations to prescribe the requirements of the automatic fire suppression systems that must be provided. Such provisions would specify the technical standards of such a system.

7. **Procedure:** Regulations made under section 1(4)(c) will be subject to the **negative** procedure. It is intended that regulations made under this section will be of a technical nature and may relate to the relevant applicable British or European standard. Amendment by such regulations may be required at relatively short notice in order to ensure continuing compliance with safety legislation. It is therefore appropriate that such regulations be subject to the negative procedure.

8. It is worth noting that any regulations made under this section will have been made after a period of consultation as required by section 6(1)(d) of the Proposed Measure.

### ***Section 3***

9. **Section 3(2)(b)** provides for Welsh Ministers to make regulations to prescribe the information that must be provided to the local authority to demonstrate that the work to be carried out in the building or buildings will comply with the requirements of section 1(4).

10. **Procedure:** Powers to make these regulations will be subject to the **negative** procedure. The technical nature of the information to be supplied in accordance with the requirements of these regulations renders them appropriate to be subject to the annulment procedure.

11. By virtue of section 6(1)(d) of the Proposed Measure, there is a requirement for the Welsh Ministers to consult prior to making such regulations.

### ***Section 4***

12. This sets out the meanings of words and phrases used in the Measure. In particular it defines the term “residence.”

13. **Section 4(2)** provides for the Welsh Ministers to amend the definition of what a “residence” means in section 4(1) of the Proposed Measure. Any change to the definition could remove or add other



types of “residence” that are not currently subject to the new duty provided for in the Proposed Measure.

14. **Procedure:** Any order made under section 4(2) will be subject to the **affirmative** procedure.

### ***Section 5***

15. **Section 5(1)** allows the Welsh Ministers, by order, to amend, repeal or otherwise modify enactments and to make such transitional, transitory, consequential, saving, incidental, supplementary or other provision as is necessary or appropriate to give full effect to the Measure. Enactments can include Acts of Parliament, Measures or regulations.

16. **Procedure:** Any order under section 5 will be subject to the affirmative procedure. This is in accordance with established convention.

### ***Section 7***

17. This section sets out the commencement provisions. Unless provided for in section 7(1) and (2), the provisions of the proposed Measure come into force on such day as the Welsh Ministers may, by order, appoint.

18. It is worth noting that the duty set out by section 1(1) to provide automatic fire suppression systems will not come into effect until the Welsh Ministers make subsequent Regulations under section 1(4)(c) and 3(2)(b).

19. **Procedure:** In accordance with established convention, no procedure applies to the making of a commencement order.

## **Issues arising from evidence and view of the Committee**

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### **General**

20. The Committee received a written submission from the Member in charge of the proposed Measure, Ann Jones AM, which we considered at our meeting on 6 October. A copy of the submission is attached as an Annex to this report. In the light of this we agreed not to take oral evidence from the Member in Charge.

## **Consideration of Subordinate Legislation Powers**

21. Having considered the proposed Measure, and the Member in charge's written submission to the Committee, we are satisfied that the Measure strikes the correct balance between powers on its face and the subordinate legislation powers given to Welsh Ministers.

22. We are also satisfied that there do not appear to be any unusual provisions for delegated powers in the proposed Measure all of which are to be made using appropriate procedures and are proportionate and reasonable uses for the powers envisaged. There also appears to be sufficient requirement for consultation where appropriate with those affected.

## **Conclusion**

23. From the perspective of the subordinate legislation provisions it contains, the Committee sees no reason why the National Assembly should not agree to the general principles of the proposed Measure.

## **Annexe – Written Submission from the Member in Charge**

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### **Invitation to the Member in Charge of the proposed Measure to provide written evidence to the Committee**

Ann Jones AM  
Member in charge of the proposed Domestic Fire Safety (Wales) Measure

22 September 2010

Dear Ann

### **Proposed Domestic Fire Safety (Wales) Measure**

### **Invitation to give evidence to Constitutional Affairs Committee – 6 October 2010**

Under Standing Order 15.6 the Constitutional Affairs Committee ‘may consider and report on the appropriateness of provisions in proposed Assembly Measures... that grant powers to make subordinate legislation to the Welsh Minister, the First Minister or the Counsel General’. In accordance with this the Committee has commenced scrutiny of the Proposed Domestic Fire Safety (Wales) Measure.

The proposed Measure contains powers for subordinate legislation to be made by Welsh Ministers. Therefore, the Committee wishes to invite you, as Member in charge of the proposed Domestic Fire Safety (Wales) Measure, to attend the Committee meeting on Wednesday 6th September 2010 to provide further information on the proposed Measure.

In advance of the meeting, the Committee would be grateful if you could provide it with a written briefing on the proposed Measure, addressing in particular:

1. What impact the proposed Measure will have?

2. What powers are contained in the proposed Measure allowing Welsh Ministers to make subordinate legislation?
3. Why are those matters being dealt with by enabling powers rather than on the face of the proposed Measure?
4. Why have affirmative or negative resolution powers been chosen in each case?
5. How will the powers contained in the proposed Measure affect the powers currently held by Welsh Ministers in this area?
6. How does the Government intend to implement these powers?

I should be grateful for a response on these issues by 27 September 2010.

I would be grateful if your officials could liaise with the Deputy Clerk of the Committee Olga Lewis (tel.: 02920 898154) with regards to the practical arrangements.

I look forward to hearing from you.

Yours sincerely,

**Janet Ryder AM**

**Chair, Constitutional Affairs Committee**

### **Member in Charge's written Submission**

#### **1. What impact will the proposed Measure have?**

The proposed Domestic Fire Safety (Wales) Measure introduces a new duty that when building work in Wales to which the Measure applies is carried out, each new residence created must be provided with an automatic fire suppression system that operates effectively and complies with regulations to be made by the Welsh Ministers. A failure to meet this new duty would be treated as equivalent to a breach of building regulations and subject to the same enforcement action as would apply to such a breach under the Building Act 1984.

The Measure only applies to the construction of new residences, the conversion of an existing building to create one or more new residences, or the subdivision or amalgamation of existing residences.

It does not require the retro fitting of automatic fire suppression systems in existing properties. The definition of a residence includes dwelling houses, flats, residential care homes, boarding schools, residential colleges and student halls of residence. The Measure also applies to the creation of new houses in multiple occupation and common areas such as stairways in buildings containing more than one new residence.

## **2. What powers are contained in the proposed Measure allowing Welsh Ministers to make subordinate legislation?**

The Measure contains powers for Welsh Ministers to:

- a) make regulations prescribing the requirements with which the automatic fire suppression system to be provided in each residence must comply (section 1(4)(c));
- b) make regulations prescribing information (demonstrating that proposed building work is capable, when the work is complete, of complying with the Measure) that must accompany plans deposited with, or notice of proposed works given to, a local authority (in accordance with building regulations) (section 3(2)(b));
- c) amend the definition of “residence” in the Measure, by order (section 4(2));
- d) make, by order, such transitional, transitory, consequential, saving, incidental and other provision as they think necessary or appropriate in connection with or to give full effect to the Measure (section 5(2));
- e) commence the substantive provisions of the Measure by order (section 7(3)).

## **3. Why are those matters being dealt with by enabling powers rather than on the face of the proposed Measure?**

### Regulations prescribing requirements for systems

The effect of the Measure will be to require automatic fire suppression systems to be provided in new residential premises in Wales.

Automatic fire suppression systems can take a number of forms and the types available for installation are likely to evolve over time. At any given time there will be current industry-approved standards providing an appropriate yard-stick by which the suitability of a proposed installation can be judged. If the current standard were to appear on the face of the Measure this would be superseded in due course by a revised standard or standards and ensuring that systems installed under the Measure complied with the most up-to-date standard would require an amending Measure.

The inclusion of technical requirements on the face of the Measure would also give rise to practical difficulties arising out of the Technical Standards and Regulations Directive (98/34/EC) which lays down a procedure for notifying the European Commission of proposed legislation which imposes technical regulations imposes a three-month standstill on bringing such standards into force, so as to enable the Commission to satisfy itself that the proposed standard does not create a technical barrier to trade.

The Directive means that, for practical reasons, legislation which imposes (or amends) technical standards has to do so by delegating the fixing of those standards to Ministers, who are can then draft regulations, notify the Commission formally (through the UK government), deal with any issues which the Commission raises and bring the regulations into force at the completion of the process.

### Regulations prescribing information demonstrating that proposed building work is capable, when complete, of complying with the Measure

Section 3 of the Measure is intended to ensure that the local authority is provided, before building work begins, with enough information to enable it to judge whether, when the work is completed, it will be able to comply with the requirements of the Measure. The precise form which that information should take (e.g. the form of any drawings or certificates) is a detailed technical matter which will call for consultation with local authorities, architects, suppliers of automatic

fire suppression systems and builders and what is needed is also likely to change over time as systems evolve.

Prescribing the information which will have to be provided is something which can only be achieved flexibly and effectively by delegating the power to Ministers to be exercised by regulations.

#### Orders amending the definition of “residence”.

Providing a power for the definition of “residence” to be amended by order (which would have to be approved by the Assembly and which could only extend the definition within the bounds of the Assembly’s legislative competence) addresses two needs.

The first is the possibility that applying, under this ground-breaking legislation, the current definition of residence will reveal unforeseen ambiguities or difficulties. The power will enable these to be addressed without the need for an amending Measure.

The second is in order to provide the option, with the approval of the Assembly, of extending the definition of residence to include additional categories of new residential premises.

#### Orders making transitional, consequential, etc. provision

Bringing the Measure into force in an effective way may require, for example, temporary adaptations to the operation of existing statutory provisions or even minor amendments to such provisions. The extent to which such adjustments may be needed is impossible to judge in advance and so, in accordance with normal practice, it is sensible to provide Ministers with the power to do so flexibly, by Order.

#### Commencement orders

The Measure cannot come into force effectively until the necessary technical standards have been set (see above) and so it is necessary for the power to bring its substantive provisions into force to be delegated to Ministers.

#### **4. Why have affirmative or negative resolution powers been chosen in each case?**

The principle according to which the applicable procedures has been selected follows normal practice.

Regulations dealing with the technical issues of requirements which are to apply to fire suppression systems and information to be provided to local authorities give rise to no issues of principle and the negative procedure is to apply.

The same is the case in relation to transitional and consequential (etc.) orders (other than those referred to below) which, again, deal with the practical and legal aspects of bringing the Measure into force.

The exception in relation to such orders is that if they amend primary legislation they will be subject to affirmative procedure, since it is right to reserve this power to the Assembly itself.

Similarly, the power to amend the definition of “residence” is subject to affirmative procedure so that the Assembly retains control over the provisions of the Measure itself.

Finally commencement orders are not subject to Assembly procedures since they merely bring into force legislation which the Assembly will already have approved.

#### **5. How will the powers contained in the proposed Measure affect the powers currently held by Welsh Ministers in this area?**

Welsh Ministers currently have no powers in this area although powers in relation to building regulations (which are closely related to the subject matter of the Measure) are in the course of being transferred to them under the Welsh Ministers (Transfer of Functions) (No. 2) Order 2009. That Order does not, however, come into force until 31 December 2011.

The possibility that at some future date (after the transfer of building regulation powers to the Welsh Ministers) such regulations may



impose equivalent requirements is catered for by section 1(3) of the Measure, the effect of which is to avoid any duplication.

## **6. How does the Government intend to implement these powers?**

The Minister's written response on the proposed Measure to Legislation Committee 1, dated 8 September 2010, states:

The Measure, as currently drafted, confers a range of delegated powers on the Welsh Ministers. These powers include a power to prescribe the requirements for automatic fire suppression systems (section 1(4)(c); a power to make transitional and consequential provisions in connection with, or to give full effect to, the Measure (section 5) and some commencement powers (section 7). The exercise of these powers would need to be exercised reasonably following consideration of the latest available evidence as to costs and benefits.

## List of written evidence

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24. The Committee considered the following written evidence. All written evidence can be viewed in full at [www.assemblywales.org](http://www.assemblywales.org)

<i>Organisation</i>	<i>Reference</i>
Proposed Domestic Fire Safety (Wales) Measure	CA(3)-22-10(p4)
Explanatory Memorandum	CA(3)-22-10(p5)
Legal Advisers' Report	CA(3)-22-10(p6)
Letter from the Chair to Ann Jones AM, Member in Charge of the proposed Measure	CA(3)-22-10(p7)
Ann Jones AM's response	CA(3)-22-10(p8)