

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Domestic Fire Safety (Wales) Measure 2011, SCHEDULE 1. (See end of Document for details)

PROSPECTIVE

SCHEDULE 1

(as introduced by section 2)

ENFORCEMENT

Penalty for contravening section 1(1)

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

Time limit for prosecution

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

Alteration of offending work

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

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

- (3) If a person to whom a notice has been given under sub-paragraph (1) or (2) above fails to comply with the notice before the expiration of 28 days, or such longer period as a magistrates' court may, on an appeal by that person under paragraph 5, allow, the local authority may effect such alterations to the work as it deems necessary to ensure that it complies with the requirements of section 1(4) and may recover from that person the expenses reasonably incurred by the authority in doing so.
- (4) A notice under sub-paragraph (1) or (2) above (called a “paragraph 3 notice”)—
- (a) must be in such form, and must contain such information, as may be prescribed,
 - (b) must state that the person to whom it is given may, within the time fixed by paragraph 9, appeal against the notice to the magistrates' court under paragraph 5, and
 - (c) may not be given after the expiration of 12 months from the date of the completion of the work in question.
- (5) A paragraph 3 notice may not be given, in a case where the information required by section 3(1) was given to the authority and the work was carried out in accordance with that information, on the ground that the work contravenes the requirements of section 1(4), unless the authority gave notice under section 3(3) within the relevant period.
- (6) This paragraph does not affect the right of a local authority, the Welsh Ministers or any other person to apply for an injunction for the alteration of any work on the ground that it fails to comply with the requirements of section 1(4), but if—
- (a) information in respect of the work was provided to the local authority in accordance with section 3(1),
 - (b) the authority did not give notice under section 3(3) within the relevant period, and
 - (c) the work has been carried out in accordance with that information,
- the court on granting an injunction has power to order the local authority to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court must in accordance with rules of court cause the local authority, if not a party to the proceedings, to be joined as a party to them.

Obtaining of report where paragraph 3 notice given

- 4 (1) In a case where—
- (a) a person to whom a paragraph 3 notice has been given gives to the local authority by whom the notice was given notice of intention to obtain from a suitably qualified person a written report concerning work to which the paragraph 3 notice relates, and
 - (b) such a report is obtained and submitted to the local authority and, as a result of its consideration of it, the local authority withdraws the paragraph 3 notice, the local authority may pay to the person to whom the paragraph 3 notice was given such amount as appears to the authority to represent the expenses reasonably incurred by the person in consequence of the authority

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

- (2) Subject to sub-paragraph (3) below, if a person to whom a paragraph 3 notice has been given gives notice under sub-paragraph (1)(a) above, then, so far as regards the matters to which the paragraph 3 notice relates, the reference to 28 days in paragraph 3(3) above is to be construed as a reference to 70 days.
- (3) Notice under sub-paragraph (1)(a) above must be given before the expiry of the period of 28 days referred to in paragraph 3(3) above, or, as the case may be, within such longer period as a court allows under paragraph 3(3); and, where such a longer period has been so allowed before notice is given under sub-paragraph (1)(a) above, sub-paragraph (2) above does not apply.

Appeal against a paragraph 3 notice

- 5 (1) A person who is given a paragraph 3 notice may appeal to a magistrates' court on any of the following grounds that are appropriate in the circumstances of the particular case—
 - (a) that the notice or a requirement that it imposes is not justified by the terms of paragraph 3,
 - (b) that there has been some informality, defect or error in, or in connection with, the notice,
 - (c) that the authority has refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
 - (d) that the time within which the works are to be executed is not reasonably sufficient for the purpose.
- (2) If and in so far as an appeal under this section is based on the ground of some informality, defect or error in or in connection with the notice, the court must dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

Power to enter premises

- 6 (1) Subject to this paragraph an authorised officer of a local authority, on producing, if so required, some duly authenticated document showing his authority, has a right to enter any premises at all reasonable hours—
 - (a) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises, a failure to comply with the requirements of this Measure that it is the duty of the local authority to enforce,
 - (b) for the purpose of ascertaining whether or not circumstances exist that would authorise or require the local authority to take any action, or execute any work, under this Measure,
 - (c) for the purpose of taking any action, or executing any work, authorised or required by this Measure, or by an order made under this Measure, to be taken, or executed, by the local authority, or
 - (d) generally for the purpose of the performance by the local authority of its functions under this Measure.
- (2) Admission to premises may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

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- (3) If it is shown to the satisfaction of a justice of the peace on sworn information in writing that—
- (a) admission to any premises has been refused or refusal is apprehended, or the premises are unoccupied, or the occupier is temporarily absent, or the case is one of urgency, or an application for admission would defeat the object of the entry, and
 - (b) there is reasonable ground for entry into the premises for any of the purposes mentioned in sub-paragraph (1) above,
- the justice may by warrant under the hand of the justice authorise the local authority by any authorised officer to enter the premises, if need be by force.
- (4) A warrant may not be issued under sub-paragraph (3) above unless the justice is satisfied that—
- (a) notice of the intention to apply for a warrant has been given to the occupier, or
 - (b) the premises are unoccupied, or the occupier is temporarily absent, or the case is one of urgency, or the giving of the notice would defeat the object of the entry.
- (5) An authorised officer entering premises by virtue of this paragraph, or of a warrant issued under it, may take with the officer such other persons as may be necessary, and on leaving unoccupied premises that the officer has entered by virtue of such a warrant the officer must leave them as effectually secured against trespassers as the officer found them.
- (6) A warrant issued under this paragraph continues in force until the purpose for which the entry is necessary has been satisfied.

Tests for conformity with the requirements of this Measure

- 7 (1) This paragraph has effect for the purpose of enabling a local authority to ascertain, as regards any building work or proposed building work to which this Measure applies, whether any requirement of this Measure that it is the duty of the authority to enforce has been or will be complied with.
- (2) The local authority has power for that purpose—
- (a) to require a person by whom or on whose behalf the work was, is being, or is proposed to be done to carry out such reasonable tests of or in connection with the work as may be specified in the requirement, or
 - (b) itself to carry out reasonable tests of or in connection with the work.
- (3) Without prejudice to the generality of sub-paragraph (2) above, the matters with respect to which tests may be required or carried out under that sub-paragraph include tests of any material, component or combination of components that has been or is being proposed to be used in carrying out the work and tests of any service, fitting or equipment that has been, is being or is proposed to be provided in connection with that work.
- (4) The expense of carrying out any tests that a person is required to carry out under this paragraph are to be met by that person, except that the local authority, on an application made to the authority, may, if it thinks it reasonable to do so, direct that the expense of carrying out any such tests, or such part of that expense as may be specified in the direction, is to be met by the local authority.

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- (5) Any question arising under this paragraph between a local authority and a person as to the reasonableness of—
- (a) a test specified in a requirement imposed on that person by the authority under this paragraph,
 - (b) a refusal by the authority to give a direction under sub-paragraph (4) on an application made by that person, or
 - (c) a direction under that sub-paragraph given on such an application,
- may on the application of that person be determined by a magistrates' court, and in a case falling within sub-paragraph (b) or (c) the court may order the expense to which the application relates to be met by the local authority to such extent as the court thinks just.

Compensation for damage

- 8 (1) A local authority must make full compensation to a person who has sustained damage by reason of the exercise by a local authority, in relation to a matter as to which that person has not been in default, of any of its powers under this Measure.
- (2) Any dispute arising under this paragraph as to the fact of damage or as to the amount of compensation is to be determined by arbitration by a single arbitrator appointed by agreement between the parties, or in default of agreement by the Welsh Ministers.

Procedure on appeal or application

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

Obstruction

- 10 A person who wilfully obstructs a person acting in the execution of this Measure, or of a warrant issued under it, commits an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

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