

DOMESTIC FIRE SAFETY (WALES) MEASURE 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1- Duty to provide fire suppression system

3. In respect of building work comprising the construction of a building for use as a residence, converting a building or part thereof for use as one or more residences, subdividing one or more existing residences to create one or more new residences or amalgamating existing residences so as to create a new residence or residences, there is a duty to provide each residence with an effectively operating fire suppression system which complies with such requirements as may be prescribed by Welsh Ministers in regulations.
4. This duty will not apply to building work carried out for the purpose of discharging any function of a Minister of the Crown or where building regulations impose requirements relating to the provision of fire suppression systems or would so apply but for a direction under section 8 of the Building Act dispensing with such requirements.

Section 2 – Enforcement

5. Save where building work is supervised by authorised inspectors, this Measure is to be enforced by local authorities.

Section 3 – Provision of information

6. Where, in accordance with building regulations, notice is given to a local authority of a proposal to carry out building work or full plans of such work are deposited with a local authority, such notice or plans must be accompanied by information provided for the purpose of demonstrating that the building work is capable of satisfying the requirements prescribed in regulations made under section 1. Information is to be provided in such form as may be prescribed in regulations made by Welsh Ministers.
7. Where a local authority is of the opinion that the information provided is incomplete or does not demonstrate that the work, when completed, is capable of complying with the requirements of section, it may give written notice of its opinion to the person giving notice or depositing plans and such notice must be given within the “relevant period” being five weeks (or if agreed up to two months), from receipt of the information. A person so notified may revise the information provided and submit the revised information to the local authority whereupon the relevant period begins to run on receipt of the revised information. Any question arising as to the correctness of the opinion may be referred to the Welsh Ministers for determination and must be accompanied by such fee as may be prescribed in regulations.

Section 4 – Authentication and service of documents

8. The provisions of sections 93 (authentication of documents), 94 (service of documents) and section 94A (electronic service of documents) of the Building Act 1984 are to apply

in relation to documents authorised or required to be given, made, issued or served under the Measure.

Section 5 – Prosecution of offences

9. Proceedings under the Measure may only be instituted by a local authority or the Welsh Ministers.

Section 6 – Interpretation

10. **Section 6** interprets expressions used in the Measure. The section also provides that the definition of “residence” may be amended by order made by the Welsh Ministers where such amendment relates to the adding a class of residential premises or amending the description of an existing class of residential premises.

Section 7 – Transitional and consequential provisions

11. A power is conferred on Welsh Ministers to make, by order, transitional, transitory, consequential, saving, incidental, supplementary and other provision, including provision that amends, repeals or otherwise modifies an enactment, as necessary or appropriate in connection with or to give full effect to the Measure.

Section 8 – Regulations and orders

12. This section provides that regulations or orders made under the Measure are to be made by statutory instrument and provides for the procedure to be followed including any requirement to consult prior to the making of regulations.

Section 9 – Short title and commencement

13. **Section 9** sets out the short title of the Measure together with commencement provisions.

Schedule 1 – Enforcement

14. Save as provided by Schedule 2, the Measure is to be enforced by local authorities.
15. A person carrying out building work which fails to comply with the requirements of section 1 is guilty of an offence triable summarily and liable to a fine not exceeding level 5 on the standard scale.
16. Without prejudice to its right to take proceedings in respect of offending building work, a local authority may serve notice – known as a “paragraph 3 notice” - requiring the owner to effect such alterations as may be specified in the notice. Where the notice is not complied with a local authority may effect works to ensure compliance with the notice and recover from the person on whom the notice had been served the expenses incurred by the local authority in so doing. A paragraph 3 notice must set out the grounds upon which the notice may be appealed against. Appeal is to the Magistrates’ Court by way of complaint.
17. Where work has been undertaken in accordance with information provided to a local authority in accordance with the provisions of section 3, a local authority may not issue a paragraph 3 notice unless it had given notice under section 3 that in its opinion the information does not demonstrate that the work will comply with the requirements of section 1.
18. Where a paragraph 3 notice has been issued, the recipient of the notice may notify the local authority that he or she intends to obtain from a suitably qualified person a report concerning the work to which the paragraph 3 notice relates and, where the report results in the local authority withdrawing the paragraph 3 notice, the local authority may pay to the recipient of the paragraph 3 notice the expenses incurred in obtaining the report.

These notes refer to the Domestic Fire Safety (Wales) Measure 2011 (c.3)

19. Authorised officers of the local authority have a right of entry to any premises for the purposes of enforcing the provisions of the Measure.
20. A local authority has the power to require or itself undertake testing to ascertain whether or not building work complies with any requirement of the Measure.

Schedule 2 – Building work supervised otherwise than by local authorities

21. This Schedule has effect where an initial notice under Part 2 of the Building Act 1984 is in force in relation to building work (whether such building work forms the whole or part of the work so specified) to which this Measure applies. Whilst the notice is in place the function of enforcing the Measure conferred on a local authority is not exercisable in relation to the building work and the Measure is to be enforced by an approved inspector.