

MEMORANDUM FROM ANN JONES AM

CONSTITUTIONAL LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010

Draft Legislative Competence Order Relating to Domestic Fire Safety

Introduction

1. This Memorandum sets out the background to the provisions in the Member Draft Legislative Competence Order: the National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010 (“the Draft LCO”) which confers additional legislative competence upon the National Assembly for Wales and which has been laid in accordance with Standing Order 22.31. The Memorandum is laid in accordance with Standing Order 22.32 and explains the scope of the power requested.
2. The constitutional context to the Draft LCO is set out by the Government of Wales Act (“the 2006 Act”) and the UK Government’s policy, contained in the White Paper “*Better Government for Wales*”. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. Matters may be added to the fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament in relation to matters, subject to the limitations provided for in the 2006 Act. An Order in Council under section 95 of the 2006 Act is referred to as a Legislative Competence Order or LCO in this memorandum.
3. The Draft LCO confers further legislative competence on the National Assembly for Wales in the field of Housing (field 11 within Schedule 5 to the 2006 Act). New legislative competence in respect of the specified “Matter” will enable the Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the Assembly.
4. On 26 June 2007 Ann Jones won the ballot to bring forward a proposed Legislative Competence Order (“the proposed Order”). On 10 October 2007 the National Assembly for Wales agreed that Ann Jones may lay a proposed Order, to give effect to the outline proposed Order provided on 26 June 2007¹. Following pre-legislative scrutiny by the National Assembly for Wales and the Houses of Parliament, some wording

¹ [RoP Plenary p79-100, 10 October 2007](#)

changes have been made to the proposed Order (see paragraphs 32 to 44 below).

Context

Fire Deaths in Wales

5. Across Wales an average of 20 people lose their lives to fire each year. About 80% of fire related deaths and injuries occur in the home.
6. In the year to March 2009, there were 12 deaths in accidental fires and 442 fire related injuries in dwellings in Wales. In addition there were 2 deaths and 98 fire related injuries from deliberate fires in dwellings in Wales².

Current Legislative framework

7. The current legislative framework for fire safety in new residential premises in Wales is provided by the *Building Regulations 2000* (as amended) made under the *Buildings Act 1984* together with volume 1 of the associated Approved Document B (Fire Safety)³. There is no current requirement in the Building Regulations to provide automatic fire suppression systems in new residential premises.
8. The National Assembly for Wales does not currently have the legislative competence to require or encourage the use of automatic fire suppression systems. The making and amending of Building Regulations are currently functions of a Minister of the Crown, and are to be transferred to the Welsh Ministers at the end of 2011.

Rationale

9. The purpose of providing automatic fire suppression systems in new residential premises is to reduce the incidence of death and injury from fires in new build housing in Wales. A requirement to fit such systems in all new residential premises would be a preventative measure, so that people could get out of their homes in the event of a fire occurring. It would also reduce the risk to fire fighters who are called to deal with domestic fires.
10. Evidence suggests that certain population groups are more at risk from domestic fires. Research carried out by the Department of Communities and Local Government has identified groups who are more at risk of fire than the general population⁴. According to this research, the vulnerable

² Welsh Assembly Government, Statistical Directorate, [Fire Statistics Monitor](#), Quarter 1 2009:

³ *Building Regulations 2000* Approved Document B (Fire Safety) – Vol.1 Dwelling Houses (2006 Edition)

⁴ Department of Communities & Local Government, [Research Bulletin No 9 - Learning Lessons from Real Fires: Findings from Fatal Fire Investigation Reports](#), July 2006

groups tend towards lower income/deprived demographic groups, specifically:

- Single middle aged people, who drink and smoke at home (aged 40-59 male bias)
- Female single parents
- Very elderly
- Disabled/impaired
- Young people (16-24) – including students

11. The Welsh Assembly Government of the First Assembly established a Community Fire Safety Working Group. The remit of the Group was to examine the scope for widespread adoption in Wales of Hard Wired Smoke Detectors in Social Housing; the installation of domestic sprinkler systems and their extension to other multiple occupational public buildings and to examine options for managing and controlling the incidence of arson. The Group's report *Wired for Safety*⁵ was published in October 2001 and recommended that the National Assembly should amend its Development Quality Requirements so that all new social housing in Wales should have domestic sprinkler systems installed during construction. It also recommended that the Assembly should look to enforce a requirement for sprinklers in new schools, student halls of residence, nurses homes and residential homes.

Costs associated with domestic fires

12. In 2004, the total economic cost of fire in the UK was estimated at £7.03bn, equivalent to approximately 0.78% of the gross value added of the economy⁶.
13. Based on the Welsh share of the total number of fires in England and Wales for the twelve months ending 30 September 2006, the total economic cost of fires in Wales can be estimated to be about £408 million per annum.
14. The cost of fire in domestic buildings remains one of the largest contributors to the total economic cost of fire, accounting for 28% of the overall cost.
15. The average cost of a domestic fire is estimated at £24,900, of which approximately £14,600 is accounted for by the economic cost of injuries and fatalities and £7,300 is due to property damage.
16. The estimates include healthcare costs as a direct consequence of fires (but not emotional suffering and health care costs related to fire-fighter injuries incurred during training).

⁵ Community Fire Safety Working Group, [Wired for Safety](#), October 2001

⁶ Department of Communities & Local Government, [The Economic Cost of Fire: Estimates for 2004](#), April 2006

17. The ubiquitous nature of the threat from fire is often overlooked as deaths and injuries occur sporadically and therefore do not have the same impact as a collective tragedy. This also affects people's views on the economic consequences of fire which are not viewed collectively.

The benefits of fitting fire sprinkler systems in domestic properties

18. Sprinklers have been incorporated in buildings for some considerable time and were originally seen and developed as a means of reducing fire losses to property and contents. Over recent years there has been a growing recognition of their use as a means to contributing to life safety which is now recognised in current UK guidance to the Building Regulations⁷.
19. Evidence gathered worldwide shows that while sprinklers are primarily intended to contain or control fires in a number of cases people in the room of origin of a fire have survived as a result of the effectiveness of the sprinkler system. There are no cases on record where multiple fire deaths have occurred in buildings with working sprinkler systems.
20. A report⁸ published in the USA in 2009 by the National Fire Protection Association concluded that in residential properties where wet pipe sprinklers are fitted:
 - The death rate per fire is lower by an estimated 76 per cent;
 - The cost of direct property damage is 63 per cent lower
 - 96 per cent of reported structure fires have flame damage confined to the room of origin (all types of sprinklers) compared to 76 per cent when no automatic extinguishing system is present.
21. A recent study⁹ by the US National Institute of Standards and Technology concludes that sprinklers in single family residential units make very good economic sense in terms of the return on investment.
22. In other parts of the world where the fitting of fire sprinkler systems has become a statutory requirement there have been dramatic reductions in the number of deaths caused by domestic fires. For example in the city of Vancouver where byelaws have been introduced, in 1972-1974 the number of deaths per 100,000 population was just under 7 per year. By

⁷ Department of Communities & Local Government, [Approved Document B \(Fire safety\) – Volume 1: Dwelling houses](#) (2006 Edition)

⁸ National Fire Protection Association, [U.S. experience with sprinklers and other automatic fire extinguishing equipment](#), January 2009

⁹ U.S. Department of Commerce, National Institute of Standards and Technology (NIST), [Benefit-Cost Analysis of Residential Fire Sprinkler System](#), September 2007

the period 1992-1998 the number of deaths per 100,000 population had fallen to 0.6, as a result of the mandatory sprinkler regulations¹⁰.

23. The most comprehensive study into the effectiveness of residential fire sprinklers to date was carried out by the Rural/Metro Fire Department, Scottsdale, Arizona. In June 1985, the City of Scottsdale passed an 'Ordinance' that required all new flatted and commercial structures built after 5 July 1985 to be fitted with a fire sprinkler system and all new single family residences built after 1 January 1986 to be able to accommodate fire sprinklers.
24. In 1997 the Rural/Metro Fire Department, Scottsdale published *Saving Lives, Saving Money: Automatic Fire Sprinklers: A 10 Year Study* which analysed the impact of the Ordinance¹¹.
25. The Scottsdale study included a review of 109 fires that occurred in sprinklered structures, 44 of those being residential structures. In more than 90 percent of these incidents, one or two sprinkler heads controlled the fires, and the average amount of water used to suppress each fire was 209 gallons compared to 3,290 gallons estimated for manual suppression in residential properties. It was considered that 8 lives were saved over the period as a direct result of the installation of fire sprinkler systems, 4 of these in residential properties, and that up to \$25.4m was saved based on the total potential loss due to fire in sprinklered residential properties.
26. Fire sprinklers are only activated when the temperature in the room in which a fire is burning exceeds the preset temperature of the sprinkler head - normally 68 degrees centigrade. Sprinklers operate as individual heat sensors - meaning that water is only released in the area where there is a fire. Often, in a room with two sprinkler heads only one actually operates. The amount of water used by a sprinkler system is far less than that used by the fire service because the fire is tackled at a very early stage. Fire fighters are on average likely to arrive at least 10 minutes after a fire has started meaning that more water is required and the risk to a fire fighter's life is much greater. Data collected over 30 years suggest that the chances of a sprinkler head malfunctioning are estimated to be extremely remote, perhaps no more than 1 in 16 million.

Costs of domestic fire sprinkler systems

27. The main cost associated with fire sprinkler systems is the capital cost of installation. There are also on-going maintenance costs.
28. The cost for most new homes is estimated to be about 1% to 2% of the total cost of construction¹². Annual maintenance costs are between £75

¹⁰ [Building Research Establishment, Effectiveness of sprinklers in residential premises](#), February 2004

¹¹ [Saving Lives, Saving Money Automatic Fire Sprinklers A 10 Year Study, Scottsdale, Arizona](#), 1997

and £150 per annum¹³. The installation of fire sprinklers will usually permit the introduction of design freedoms that can reduce building costs and allow innovative designs such as open plan homes. Other benefits might include reduced constructions costs where sprinklers permit the elimination of costly fire rated doors or other structural elements.

Scope

29. The Draft LCO would confer legislative competence on the National Assembly for Wales to enable the Assembly to legislate about the provision of automatic fire suppression systems in new residential premises. This could include a requirement that such systems are fitted in all of the following:
- Newly built residential premises including flats/apartments.
 - Existing residential premises that are either subdivided or amalgamated so as to convert them to use as one or more new residences. For example the conversion of single dwellings to Houses in Multiple Occupation, the conversion of single premises into flats or the conversion of two adjoining premises into a single residence. The definition includes any existing or newly created common areas that may be in these premises, such as stairways.
 - Existing buildings that are converted from a non-residential use to a residential use (eg: office space converted to flats).
30. A Measure could more particularly specify the premises to which the Measure would apply. It could also specify in more detail the type of equipment to be installed, the standards to be met by any equipment, arrangements for maintenance and any system for enforcement. Alternatively, a Measure could confer power on the Welsh Ministers to specify the types or standards of equipment, the arrangements for maintenance or the nature of any enforcement regime. But it could not require retrospective fitting of automatic fire suppression systems to existing residential premises.

Exceptions

31. There are no specific exceptions to this Matter, but the general exceptions to the National Assembly's competence set out in Part 2 of Schedule 5 to the Government of Wales Act 2006 would apply.

¹² Building Research Establishment, *Effectiveness of sprinklers in residential premises*, February 2004

¹³ British Automatic Sprinkler Association, *Use and Benefits of Incorporating Sprinklers in Buildings and Structures*, January 2006

Changes to the LCO following pre-legislative scrutiny

32. The proposed Order was laid in the National Assembly on 20 February 2008 and an Assembly Committee, the Proposed Domestic Fire Safety LCO Committee ('the LCO Committee') was established to scrutinise it. On 11 June 2008 the LCO Committee report was laid¹⁴.

33. The Committee concluded :

We recommend that the proposed Order be amended to remove the interpretation provisions for the terms 'new residential premises' and 'sprinkler system', and that appropriate interpretation provisions should be considered as part of any future Measure(s).

However, if the Member in charge is not minded to agree with this recommendation, our views on the individual interpretation provisions are as follows:

In relation to the term 'new residential premises', we consider the term as currently provided for in the proposed Order is sufficiently clearly drawn and we are therefore content with this term and its interpretation.

In relation to the term 'sprinkler system', we are persuaded by the evidence we have received that this term should be amended and consider that 'automatic fire suppression system' would be a more appropriate term, and we so recommend.

In relation to the inclusion of a reference to the British Standard (BS) 9251:2005 on the face of the proposed Order, we accept the Member in charge's argument that including such a reference could adversely affect the Assembly's future ability to legislate in this area should that standard be amended and, as such, we consider a reference to the relevant British Standard would be more appropriately dealt with in legislation arising out of the Proposed Order. We are therefore content that the proposed Order makes no reference to BS 9251:2005¹⁵.

34. Ann Jones decided to retain the interpretation provisions for the term "new residential premises". This interpretation is necessary to make it clear that "new residential premises" means not only new build housing, but also premises that are converted to residential use and existing residential premises that are subdivided or amalgamated into one or more new residences. Parts (c) and (d) of the interpretation were reworded so that it was clear that the competence applies to all parts of existing residential premises that are converted, including any common areas.

¹⁴ Proposed Domestic Fire Safety LCO Committee, [National Assembly for Wales \(Legislative Competence\) \(No. 7\) Order 2008, Committee Report](#), June 2008

¹⁵ Proposed Domestic Fire Safety LCO Committee, [National Assembly for Wales \(Legislative Competence\) \(No. 7\) Order 2008, Committee Report](#), June 2008

35. Ann Jones accepted all the Committee's other recommendations in full, including that "automatic fire suppression system" is a more appropriate term than "sprinkler system" and that no further interpretation of this revised term is necessary in the Order.
36. At present an "automatic fire suppression system" is most likely to be a water-based fire sprinkler system, but the term "automatic fire suppression system" is used to ensure that the competence of the Assembly and a subsequent Measure could permit other types of system which may be just as effective. The LCO Committee heard evidence that in future some medium other than water, such as gas or foam may be technically feasible for the suppression of fire in a domestic setting¹⁶.
37. The key characteristics of an automatic fire suppression system are:
- it must be automatic and not require people to initiate its activation,
 - it must be designed primarily to protect lives, rather than property, this means it will normally be fitted with quick response sprinkler heads,
 - it must be a fire suppression system, one designed specifically to deal with fires rather than other hazards.
38. The current British Standard for residential fire sprinklers referred to in the Building Regulations is BS 9251:2005.
39. The proposed Order was amended accordingly and presented for pre-legislative scrutiny to the House of Commons Welsh Affairs Select Committee and the House of Lords Constitution Select Committee by the Secretary of State for Wales in October 2009.
40. The House of Lords Constitution Select Committee wrote to the Secretary of State about the proposed Order on 5 November 2009¹⁷ and the Welsh Affairs Select Committee reported on the proposed Order on 15 December 2009¹⁸.
41. The Welsh Affairs Select Committee concluded that the purpose of the proposed Order is clear, is consistent with the existing powers of the National Assembly for Wales and that the use of the Legislative Competence Order procedure is the best available route in this instance.

¹⁶ RoP p28, Proposed Domestic Fire Safety LCO Committee, 22 April 2008

¹⁷ <http://www.parliament.uk/documents/upload/LettertoHainMP051109.doc>

¹⁸ House of Commons Welsh Affairs Committee [Proposed National Assembly for Wales \(Legislative Competence\) \(Housing\) Order 2009, relating to Domestic Fire Safety](#), Second Report of Session 2009–10, 15 December 2009

42. Both Committees recommended that the term “new” or “newly” should be included in all definitions of “new residential premises” in the LCO. Ann Jones accepted this recommendation which is reflected in the wording of the Matter set out in the Draft LCO. This change does not affect the original scope or purpose of the Order.
43. The House of Lords Constitution Select Committee also suggested that although inclusion of the Matter in Field 11 (Housing) is possible, it could be more appropriate to move the Matter to Field 7 (Fire and Rescue Services and the promotion of fire safety). This issue was also discussed by the Welsh Affairs Select Committee. Having considered the issue carefully, Ann Jones decided to retain the Matter in Field 11. Whilst there is a case in favour of inserting the Matter in Field 7, it is considered that Field 11 is more appropriate because the scope of the Matter applies solely to new residential premises. The title of the Draft LCO has however been revised in accordance with the views of the Welsh Affairs Committee that a reference to “Fire Safety” would improve public understanding of the effect of the LCO.
44. Other minor modifications have been made to the Draft LCO to clarify its meaning and achieve greater consistency with the evolving approach to the drafting of Schedule 5. In particular, the opening words of Matter 11.1 now refer to the “provision of automatic fire suppression systems” rather than to “provision for and in connection with a requirement” that such systems be installed. This is slightly broader than the proposed Order, since it does not limit the Assembly to requiring that automatic fire suppression systems are provided, but remains consistent with the objectives identified by Ann Jones. The redundant word “physical” has also been removed from sub-paragraphs (c) and (d) of the definition of “new residential premises”. The word “converted” already makes it clear (in those sub-paragraphs and also in sub-paragraph (b)) that some degree of physical adaptation must be involved in creating the new residential premises before a Measure can impose duties under the new Matter.

Geographical limits of any Assembly Measure

45. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is outside the Assembly’s legislative competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the Measure effective, provision enabling the provisions of the Measure to be enforced and to make consequential amendments to other legislation.
46. The limitation relating to functions other than in relation to Wales means that the Assembly would not be able by Measure to confer on the

Welsh Ministers, Welsh local authorities or any other public authority functions which did not relate to Wales.

Minister of the Crown functions

47. This Draft LCO in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Parts 2 and 3 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions the appropriate UK Government Department will be consulted and agreement sought to any proposals to change or modify these functions. The making and amending of the Building Regulations are functions of a Minister of the Crown that are derived from the *Building Act 1984* and are not affected by the Draft LCO. The functions of making and amending of Building Regulations are to be transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No 2) Order 2009 from 31 December 2011.

Conclusion

48. For the reasons outlined in this Explanatory Memorandum, it is proposed that legislative competence of the National Assembly for Wales should be extended in accordance with the provisions of the Draft National Assembly for Wales (Legislative Competence) (Housing) (Fire Safety) Order 2010.

January 2010