



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

*Report, together with formal minutes, oral and
written evidence*

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Summary

This Report deals with the Committee's scrutiny of the draft Legislative Competence Order which would give the National Assembly for Wales power to legislate to require the installation of an automatic fire suppression system in all new residential premises in Wales. This Committee has previously recommended that the name given to any draft Order should refer clearly to the contents. In this case, calling it the 'proposed National Assembly for Wales (Legislative Competence) (Housing) Order' is not only clumsy and opaque but highly misleading, since there is another Order directly relating to housing issues being considered within the LCO system. We recommend that when the Order is brought forward for approval it should be given a simple name such as 'The Fire Safety Order.'

We conclude that the purpose of the proposed Order is clear. It is consistent with the existing powers of the National Assembly for Wales. We conclude that the use of the Legislative Competence Order procedure is the best available route in this instance.

It is disappointing that this Legislative Competence Order, being the first to be proposed by an Assembly Member as a result of a ballot, has taken over two years to reach the House. It appears that the Welsh Assembly Government had hoped to use the devolution of building regulations to legislate for the installation of an automatic fire suppression system. It now appears that power over building regulations will not be devolved before 31 December 2011. Negotiations between the Welsh Assembly Government and the UK Government on this LCO appear to have been suspended for the period during which building regulations were under discussion. We consider that this approach was unsatisfactory and that it was clear that a Legislative Competence Order would achieve the desired outcome much earlier than any amendment to building regulations, once devolved.

The Committee hopes that lessons can be learned from the unnecessary delays caused in bringing this proposed Order forward.

1 Introduction

Introduction of this proposed Order

1. This is the eleventh proposed Legislative Competence Order (LCO) on which the Welsh Affairs Committee has reported. The full background to the LCO process in general and the specific details regarding this particular Order are contained in an Annex to this Report.

2. If granted, the proposed Order would add a single Matter to Field 11 (Housing) of Part 1 of Schedule 5 of the Government of Wales Act 2006, empowering the National Assembly for Wales to legislate to require all new-build housing in Wales to be fitted with an automatic fire suppression system.

The LCO process in this instance

3. This Order was the first to be proposed by a backbench Assembly Member rather than a Minister of the Welsh Assembly Government. On 26 June 2007, Ann Jones, the Labour Assembly Member for the Vale of Clwyd, was successful in the ballot to introduce a proposal, and on 10 October 2007 the National Assembly for Wales granted permission for her to introduce a proposed Order and an Explanatory Memorandum.

4. In our oral evidence session, we asked Ann Jones to reflect upon her experience of the LCO process. Ms Jones told us that

I am a huge supporter of the LCO process; I think it is the way forward, it is the way we have to look at the devolution settlement. I am quite happy with the way in which this has progressed... I am thankful for the Welsh Affairs Select Committee taking this interest in this LCO and together we will progress it, we will move forward and we will see homes in Wales safer.¹

5. We also asked about the timeframe of the proposed Order. Ann Jones won the ballot to bring forward a proposed LCO on 26 June 2007. The second member to win a ballot, Jonathan Morgan AM, did so on 3 October 2007. His proposed LCO relating to provision of mental health services was laid before the Assembly on 18 February 2007, two days before that of Ann Jones. The Assembly established a committee on 26 February 2008 to undertake scrutiny of Jonathan Morgan's proposed Order. Its report was published in June 2008, and a revised Order was subsequently laid before Parliament on 21 May 2009 and referred to us for pre-legislative scrutiny by the Secretary of State. Evidence sessions were held in July 2009 and our Report was published on 30 October 2009.

6. We asked our witnesses why Ms Jones had been overtaken in this process, and why her proposal had incurred such a delay, given that the proposed Order is simple and straightforward. Orders proposed by backbench Assembly Members have so far been scrutinised by an Assembly committee before they reach us. At the time of Ann Jones's

¹ Q 37

proposal, there were no committees dedicated solely to backbenchers' legislation, and so an *ad hoc* committee was set up.

7. Mr Wayne David MP, Parliamentary Under-Secretary of State for Wales, added that “there has been an ongoing discussion within the Welsh Assembly about whether or not the best way to facilitate this proposal has been to have a freestanding LCO or to wait for the [devolution of] building regulations. That decision is very much the Welsh Assembly Government’s call”² and that the Wales Office “simply respond to the decision that is taken.”³

8. In written evidence to the Committee, the Chief Fire Officers’ Association stated that “building regulations are only guidance and are better supported by specific pieces of legislation to ensure that adequate safety standards are always put into place [...] this LCO can be achieved far sooner than any amendment to Building Regulations once devolved.”⁴ The North Wales Fire and Rescue Service stated in its submission that, in relation to the devolution of building regulations, “it would [...] be more expedient for dedicated legislation to be applied with respect to Domestic Fire Safety.”⁵

9. Jane Davidson AM, Welsh Assembly Government Minister for Environment, Sustainability and Housing, stated that “what we had hoped to do originally was to use the transfer of building regulations”.⁶ Indeed, although the proposed Order is “a fairly straightforward order” and “did not really take long in terms of providing comments”,⁷ Francois Samuel, Head of Construction within the Housing Directorate of the Welsh Assembly Government, told the Committee that the LCO “was caught up [...] in what we saw as the bigger picture of the building regulations and our discussions with government”.⁸

10. It is disappointing that there has been such a long and avoidable delay as a result of not pursuing the process of agreeing the draft LCO, while discussions went on about the planned transfer of building regulations. A Legislative Competence Order appears to be the simplest and quickest route to achieve Ann Jones’s aims, regardless of whether building regulations were to be devolved. We hope that all parties will have learned from this experience and ensure that such delays do not happen again.

Our inquiry

11. Our task was to examine the scope and appropriateness of the Order under the terms of the Government of Wales Act 2006. We considered whether the proposed Order is in the spirit and within the scope of the devolution settlement; the extent to which there is a demand for legislation which might follow the adoption of the proposed Order; and

² Q 95

³ Q 95

⁴ Ev 27

⁵ Ev 30

⁶ Q 48

⁷ Q 52

⁸ Q 53

whether the use of the Legislative Competence Order procedure is more appropriate in this instance than, for example, the use of framework powers in a Westminster Bill.

12. In the course of the inquiry, we received a number of written submissions, which are published with this Report. We held an oral evidence session with Ann Jones AM, the Member in charge of the proposed Order, Mr Wayne David MP, Parliamentary Under-Secretary of State for Wales and Jane Davidson AM, Welsh Assembly Government Minister for Environment, Sustainability and Housing. We are grateful for the co-operation of all our witnesses and for the assistance of our Specialist Advisor, Professor Keith Patchett, Emeritus Professor of Law, University of Wales.⁹

2 Purpose of the proposed Order

Purpose

13. The full background to the proposed Order is set out in the Explanatory Memorandum accompanying the proposed Order, and reproduced at the end of this Report. In outline, the Order would allow the National Assembly for Wales to legislate so that an automatic fire suppression system must be installed in all new-build residential premises in Wales. The Explanatory Memorandum describes the objective of the proposed Order as being:

...to reduce the incidence of death and injury from fires in new build housing in Wales. This is to be achieved through a requirement for automatic fire suppression systems to be fitted in all new residential premises. This is seen as a preventative measure so that people can get out of their homes in the event of a fire occurring. It will also reduce the risk to fire fighters who are called to deal with domestic fires.¹⁰

14. Across Wales an average of 20 people lose their lives in fires each year, and approximately 80% of fire related deaths and injuries occur in the home.¹¹ In 2008–09, 12 people died in fires in Wales, a drop from the 31 who lost their lives in 2007–08. The majority of these deaths resulted from accidental fires.¹²

15. In oral evidence to the Committee, Chris Enness, Deputy Chief Fire Officer, Staffordshire Fire and Rescue Service, stated that

...what we are experiencing in the Fire Service is an increase in fire death and that is because it is in the room of origin where we are having people who are at home, staying at home longer, with more disability and more impairment [...] by putting a sprinkler into a house, that would give protection to our fire fighters who would not have to go into a burning building if the sprinkler was operated, they would be going

⁹ Welsh Affairs Committee Formal Minutes, Tuesday 28 November 2006, <http://www.parliament.uk/documents/upload/final%20FORMAL%20MINUTES%202006%2007.pdf>

¹⁰ Ev 20

¹¹ Ev 21

¹² 'Big fall in number of fire deaths', BBC News Online, 16 October 2009, news.bbc.co.uk

in purely as a check and for damping down. Therefore the risk to them is very much reduced.¹³

16. Although sprinklers were originally developed as a means of reducing damage to property and contents, there is growing recognition of their use in saving lives. The National Fire Protection Association in the USA published a report in 2007 showing that in properties where sprinklers are fitted, the death rate per fire is lower by at least 57%, and for most property users, damage per fire is lower by one-third to two-thirds. In the UK, no lives have ever been lost due to fire in buildings fitted with domestic sprinkler systems.

17. The average cost of a domestic fire is estimated to be just under £25,000. This does not include costs such as medical treatment, the loss to the economy when people are off work and the additional cost of re-housing. In oral evidence to the Committee, Ann Jones stated that “a simple sprinkler system in a new home building would actually eradicate most of those costs”.¹⁴

18. The evidence received by both ourselves and the Assembly committee was supportive of the Assembly gaining legislative competence over this policy area. For example, the written submission from the National Fire Sprinkler Network, set up in 1998 by Tess Kingham MP, Bernadette Hartley, a political researcher, and the Chief Fire Officers of Gloucestershire and Lancashire and free from commercial interest, noted that “accidental fire deaths are in the upper quartile of fire death statistics per 100,000 population” in Wales, and “those dying [...] are from a narrow age band and well defined socio-economic group, where smoke alarms and community education has failed to impact [...] automatic fire sprinkler protection is the only way to reduce further the rate of fire deaths”.¹⁵

19. We note the high levels of expert and professional support for the extension of legislative competence in this area. There is clear support for the proposed Order.

Existing policy

20. There is currently no UK-wide legal requirement to install fire sprinklers in dwelling houses or other premises used for residential purposes. The current building regulations, as revised in 2006, prescribe the maximum size for certain types of new building above which a sprinkler system has to be installed. These would include places of assembly and recreation, shops and commercial premises, industrial and storage properties and multi-storey/high-rise buildings. New blocks of flats with a floor over 30 metres above ground level come under this requirement.

Need for further legislation

21. When asked whether a code of practice or other regulation could be used rather than legislation to achieve her aims, Ann Jones AM explained that “a code of practice would be voluntary”¹⁶ and so could not be enforced. The Chief Fire Officers Association gave

¹³ Qq 5 and 7

¹⁴ Q 3

¹⁵ Ev 29

¹⁶ Q 4

evidence in support of this view, referring to the UK Government's 2007 policy guidance to ensure that all new schools are constructed with sprinklers. They claimed that "evidence shows failing to make this a mandatory requirement has resulted in almost half of new schools being constructed without sprinkler systems installed".¹⁷

22. A code of practice or guidance in relation to automatic fire suppression systems would not be guaranteed to achieve the aims proposed by the Member in charge of the Order. We therefore consider that the proposal to use a legislative route is appropriate.

3 Scope of the proposed Order

23. The proposed Order would add Matter 11.1 to Field 11 of Schedule 5 to the Government of Wales Act 2006. This would allow the National Assembly for Wales to legislate to require an automatic fire suppression system to be installed in all new residential premises. A Measure flowing from this would therefore be capable of affecting anyone building or converting a premises for residential use.

24. Evidence shows that certain population groups are more at risk from domestic fires. The Department of Communities and Local Government (DCLG) identified the vulnerable groups, who tend towards lower income/deprived economic groups.¹⁸ These are:

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

25. In 2006, *The effectiveness of sprinklers in residential premises*, a project commissioned by the Buildings Division of the Office of the Deputy Prime Minister (now DCLG) to determine the benefits and effectiveness of sprinklers in residential accommodation found that sprinkler protection is not a panacea against fire damage and death, and that whilst residential sprinklers are probably cost-effective for residential care homes and tall blocks of flats, they are not cost-effective for other dwellings. We asked Ann Jones why the proposed Order extends to all new residential premises and does not target those who are "vulnerable", for example the elderly and incapacitated. She replied "I could not do retrospective fitting in all residential properties and so I chose to draw a line in the sand if you like and move forward [...] I have kept it narrow and I have kept it confined and I hope we can move forward and see the change."¹⁹

¹⁷ Ev 27

¹⁸ Ev 21

¹⁹ Q 8

26. We also inquired as to why the legislation would only cover an automatic fire suppression system and not other fire safety equipment such as fire alarms and carbon monoxide detectors. Ms Jones answered that “sprinklers are the absolute ultimate that can actually affect and save lives.”²⁰ She went on to say that “carbon monoxide alarms are just alarms [...] fire blankets are great in their own way, extinguishers are great in their own way, but for me the sprinkler system fitted into a new home build will actually increase the possibility of you actually surviving a fire within your own premises.”²¹

27. The Committee is satisfied that the scope of the Order will allow the National Assembly for Wales to legislate to achieve the aims of the Member in charge of the LCO.

Cost and maintenance

28. The Committee received evidence concerning the proposed cost of the installation of an automatic fire suppression system, the cost of maintenance, and how to enforce maintenance.

29. The main cost with fire sprinkler systems is the capital cost. The Explanatory Memorandum accompanying the proposed Order estimates the cost of installing a sprinkler system to be approximately 1-2% of the total cost of construction. However, an Assembly Government-funded pilot scheme in Aberafon researching the technical difficulties and cost of domestic sprinkler installation found the total cost of installation in nine bungalows to be £46,000. This amounts to over £5,100 per property. The Welsh Local Government Association also expressed concerns about the cost of installation.²²

30. In oral evidence to the Committee, Ann Jones explained that “the costs will probably end up being borne by the house purchaser” but that “by doing it at building stage we are actually reducing costs [...] if you were to retrospectively fit a sprinkler system you are talking about quite a few thousand pounds”.²³

31. Annual maintenance costs of fire sprinklers are estimated to be between £75 and £150 per annum. The European Fire Sprinkler Network stated that if the recommended programme of maintenance is followed, “you will get reliability in the very high 90s in terms of percentage.”²⁴ There were no statistics for cases in which no maintenance was carried out, but they believed these systems would be less reliable. In their written evidence to the Proposed Domestic Fire Safety LCO Committee, Dŵr Cymru Welsh Water stated that “serious consideration needs to be given as to how to ensure that this maintenance will be carried out regularly by householders who cannot afford or understand the importance of maintenance.”²⁵

²⁰ Q 13

²¹ Q 13

²² National Assembly for Wales, Proposed Domestic Fire Safety LCO Committee Report, June 2008, p35

²³ Q 31

²⁴ National Assembly for Wales, Proposed Domestic Fire Safety LCO Committee Report, June 2008, p29

²⁵ National Assembly for Wales, Proposed Domestic Fire Safety LCO Committee Report, June 2008, p28

32. Ann Jones concurred that “it is an issue that we need to be aware of, it is no good having a system if it is not maintained” and explained that “we can legislate in a Measure for a system once it has been fitted and installed to be maintained.”²⁶ She said that “we could include powers for local authorities or fire and rescue services to serve notices on people requiring specified maintenance works to be carried out.”²⁷

33. We note the concerns expressed in evidence regarding the costs of installation and maintenance of sprinklers. The cost benefit analysis of the proposed legislation is a matter for the Assembly to consider at Measure stage.

Cross-border issues

34. During the inquiry, questions were raised about potential cross-border issues, such as increased cost becoming a deterrent for builders looking to construct premises in Wales. The Chief Fire Officers Association stated in its written evidence that “the LCO will only support cross-border issues by requiring, over time, less cross-border responses due to a decreasing need of major Fire and Rescue involvement at house fires.”²⁸ Chris Enness, Deputy Chief Fire Officer of Staffordshire Fire and Rescue Service, said he thought the mandatory installation of an automatic fire suppression system would “be a selling point rather than a negative. You do get freedoms and flexibilities granted by fitting a sprinkler system whereby you may not require certain passive things such as fire doors *et cetera*. You do therefore get granted some freedom and flexibility in the design.”²⁹

35. Mr Wayne David MP, Parliamentary Under-Secretary of State for Wales, concurred that “devolution allows Wales to [...] do things somewhat differently and more appropriately” and stated that one “consequence of devolution is that one part of the United Kingdom might learn from another part of the United Kingdom.”³⁰

36. We note the concerns of the Welsh Local Government Association but consider that this is a matter for the Assembly to consider at Measure stage. The Order itself raises no cross-border issues.

4 Drafting of the proposed Order

Title of the proposed Order

37. The LCO was laid before Parliament as the proposed National Assembly for Wales (Legislative Competence) (Housing) Order, although in most instances has been referred to either with the subtitle *relating to Domestic Fire Safety* or simply as the *fire sprinkler LCO*. The Committee questioned the title of the proposed Order, and whether it might have been more appropriate to refer to fire safety in the title itself. Ann Jones said that “the

²⁶ Q 34

²⁷ Q 34

²⁸ Ev 27

²⁹ Q 31

³⁰ Q 91

naming follows the convention that has been used by the Welsh Assembly Government in naming LCOs”.³¹ The House of Lords Constitution Committee, as a result of its pre-legislative scrutiny, wrote to the Secretary of State for Wales to suggest that it might be more appropriate “for presentational reasons to include the Matter in Field 7 (fire and rescue services and promotion of fire safety)”³² rather than in Field 11 (housing).

38. The title of the LCO arises from the fact that it inserts a Matter in Field 11 (housing) but that is no reason to give it a title that is opaque and potentially misleading. One option would be to insert the Matter in Field 7 (fire and rescue services and promotion of fire safety), as suggested by the House of Lords Constitution Committee. However, we do not consider that the name of the LCO should be dictated by where it is placed in legislation. Instead the name should reflect and communicate the contents of the LCO. We certainly do not consider that this matter is of sufficient significance to cause any further delay to the LCO.

Use of definitions

New residential premises

39. The Order states that an automatic fire suppression system may be installed in new residential premises.

“New residential premises” means—

- a) premises constructed for residential use;
- b) premises converted for residential use;
- c) premises converted to use as one or more new residences by physical subdivision of one or more existing residences; and
- d) premises converted to use as one or more new residences by physical incorporation of one or more existing residences

40. The first two paragraphs of the interpretation provision define the term “new residential premises” to mean:

- “a) premises constructed for residential use; and
- b) premises converted for residential use”

However, neither of these meanings includes a reference to “new” or “newly”. In standard drafting practice, a defined term bears the precise meaning assigned by the definitions. To operate as part of the definitions, an adjective in the defined term must be explicitly repeated or defined in the definition itself. As there is no mention of “new” or “newly” in paragraphs a) or b), it could be argued that the term “new residential premises”, as defined for the purposes of this Matter, could be treated as extending to all or any constructed or

³¹ Q 11

³² <http://www.parliament.uk/documents/upload/LettertoHainMP051109.doc>

converted premises, whether existing or new. That position might be strengthened by the fact that “new” is specifically used to refer to “residences” in the subsequent definitions in paragraphs c) and d) of the interpretation.

41. The House of Lords Constitution Committee also raised this matter. Its recommendation was to insert the word “newly” into the interpretation provisions (a) and (b).

42. When we asked witnesses about this ambiguity, Ann Jones replied that “that is a drafting point that needs tidying up and it is a valid one. I am happy to do that.”³³ Mr Wayne David MP, Parliamentary Under-Secretary of State for Wales, agreed; “that is one area where there might be need for further absolute clarification so that there is no doubt whatsoever about what the intention is.”³⁴

43. We recommend the proposed Order be amended so that the term “new” or “newly” appears in all definitions of “new residential premises.”

Automatic fire suppression systems

44. We inquired into whether the proposed Order would allow for selected types or standards of automatic fire suppression systems to be determined. Joanest Jackson, Legal Adviser, National Assembly for Wales, told us that a Measure “could provide for a specific standard to be met.”³⁵ Additionally, a possibility would be to give “Welsh ministers the power to make regulations relating to the standard”.³⁶

45. We also asked if the LCO would allow the National Assembly for Wales to legislate for the number of fire sprinklers that would be required per property. We were informed that this would be possible via a “Measure or delegated to ministers by way of regulations to specify in which rooms or type of rooms that they need to be.”³⁷

46. We are satisfied that the term “automatic fire suppression system” covers fire sprinkler systems and could cover possible improvements in the field of fire safety. The National Assembly for Wales will be able to pass Measures to determine the number and location of fire sprinklers to be installed, and which standard of automatic fire suppression system be used, and to update these as necessary by further legislation.

‘Residential’ premises

47. A further issue we examined related to the term *residential*, and whether this covers premises used for temporary or short-term residence, such as hotels, guest houses, holiday chalets, youth hostels, hospitals, nursing and convalescent homes and boarding schools and colleges. Joanest Jackson confirmed that the proposed Order would cover such

³³ Q 23

³⁴ Q 82

³⁵ Q 15

³⁶ Q 15

³⁷ Q 20

premises. She elaborated that “I do not think the length of time somebody stays somewhere should be the issue. You only need one night to lose your life.”³⁸

48. As part of the Government of Wales Act 2006, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State for Wales. Legislation affecting new residential premises built for armed service personnel or penal institutions would fall under this category. It was confirmed in evidence that the Assembly would need to seek the agreement of the appropriate government department in these cases. Mr Wayne David MP, Parliamentary Under-Secretary of State for Wales, confirmed that “the Government would want to have a discussion with the Welsh Assembly Government so that there is a practical uniformity of standards as far as all similar sorts of premises are concerned in Wales.”³⁹

49. All residential premises are potentially covered by legislation flowing from the proposed Order. We note the restrictions on Crown bodies as part of the Government of Wales Act 2006. We welcome the Minister’s assurance that efforts will be made to achieve consistency by agreement.

Exceptions to Matters

50. We considered whether the proposed Order would allow the National Assembly for Wales to legislate for the installation of sprinklers in houseboats, caravans and mobile homes; constructions that could be argued are not “premises” but are used for residential purposes. Mr Wayne David MP, Parliamentary Under-Secretary of State for Wales, said in evidence that houseboats and mobile caravans would not be covered but static caravans would. This is due to the ‘floating exceptions’ which apply across all 20 Fields of the Government of Wales Act 2006 and include:

(2) Regulation of the use of motor vehicles on roads, their construction and equipment and conditions under which they may be so used (apart from regulation relating to matter 10.1).

(17) Technical and safety standards of vessels.

51. Ann Jones AM told us that her intention “was to see that any new home that was built or anybody who takes a new home in Wales—whatever the new home is—would be covered by a sprinkler system.”⁴⁰ In relation to houseboats and caravans, she said “that is something we could look at in the Measure quite clearly”⁴¹ but our evidence suggests that the scope of competence would not, in fact, extend to these.

52. It would be possible to redraft the proposed Order to allow for the inclusion of houseboats and mobile homes, but as it stands, houseboats and moveable caravans are not included in the draft Order, whereas static caravans are. If houseboats and mobile homes are to be included, amendments to the proposed Order will be needed.

³⁸ Q 25

³⁹ Q 84

⁴⁰ Q 24

⁴¹ Q 24

5 Conclusion

53. We conclude that the use of the Legislative Competence Order procedure is an appropriate route in this instance. We commend Ann Jones AM on her enthusiasm and tenacity in pursuing negotiations on this Order and succeeding in having it laid before Parliament for scrutiny. It is disappointing that this LCO has been dogged by so many delays, many of them apparently avoidable, and we recommend that the Welsh Assembly Government considers how to streamline the process in future to make the most of the LCO process. We are of the view that only minor technical amendments are needed for this Order to proceed to its final stage.

Annex

The Government of Wales Act 2006 introduced a procedure whereby the National Assembly for Wales can bring forward proposals which would extend the Assembly's lawmaking powers by way of Legislative Competence Orders. The Orders do not themselves change the general law for Wales- they pave the way to subsequent changes in the law applying to Wales within the devolved areas of legislative competence. They do this by adding new "Matters" to the "Fields" of legislative competence set out in Schedule 5 to the Government of Wales Act 2006.

These proposals for draft Orders may be introduced by the Welsh Assembly Government, by committees of the National Assembly, or by individual Assembly Members (chosen by ballot). They are subject to pre-legislative scrutiny by committees of the Assembly appointed for this purpose and, potentially, by committees of the House of Commons and the House of Lords. Whitehall agreement ("clearance") is a necessary prerequisite before a proposed Order is referred by the Secretary of State for Wales to each House at this pre-legislative scrutiny stage.

Following the pre-legislative scrutiny stage, the National Assembly may agree an actual draft Order. This may take account of committee recommendations (from either its own committees or Westminster) following pre-legislative scrutiny. The draft Order must then be laid before Parliament by the Secretary of State for Wales—and he or she may still decline to do so at this stage. If the draft Order is laid, it is considered by both Houses of Parliament, and may be debated by them. Draft Orders at this stage are not amendable and can only be approved or rejected. If approved by both Houses, and once it is given the Royal Assent in the Privy Council, direct law-making powers are devolved to the Assembly within the scope of the Order in Council. The Assembly then makes those laws in the form of Assembly Measures, which must be passed by the National Assembly but which require no further approval by either Whitehall or the UK Parliament.

The proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009 relating to Domestic Fire Safety was laid before the Assembly on 20 February 2008. An Assembly Committee (the Proposed Domestic Fire Safety Committee) was established to scrutinise the proposed Order and the LCO Committee Report was laid on 11 June 2008. The Committee recommended that several changes be made, and the revised Order

was subsequently laid before Parliament on 13 October 2009 and referred to the Welsh Affairs Committee for pre-legislative scrutiny by the Secretary of State.

Conclusions and recommendations

The LCO process in this instance

1. It is disappointing that there has been such a long and avoidable delay as a result of not pursuing the process of agreeing the draft LCO, while discussions went on about the planned transfer of building regulations. A Legislative Competence Order appears to be the simplest and quickest route to achieve Ann Jones's aims, regardless of whether building regulations were to be devolved. We hope that all parties will have learned from this experience and ensure that such delays do not happen again. (Paragraph 10)

Purpose

2. We note the high levels of expert and professional support for the extension of legislative competence in this area. There is clear support for the proposed Order. (Paragraph 19)

Need for further legislation

3. A code of practice or guidance in relation to automatic fire suppression systems would not be guaranteed to achieve the aims proposed by the Member in charge of the Order. We therefore consider that the proposal to use a legislative route is appropriate. (Paragraph 22)

Scope of the proposed Order

4. The Committee is satisfied that the scope of the Order will allow the National Assembly for Wales to legislate to achieve the aims of the Member in charge of the LCO. (Paragraph 27)

Cost and maintenance

5. We note the concerns expressed in evidence regarding the costs of installation and maintenance of sprinklers. The cost benefit analysis of the proposed legislation is a matter for the Assembly to consider at Measure stage. (Paragraph 33)

Cross-border issues

6. We note the concerns of the Welsh Local Government Association but consider that this is a matter for the Assembly to consider at Measure stage. The Order itself raises no cross-border issues. (Paragraph 36)

Title of the proposed Order

7. The title of the LCO arises from the fact that it inserts a Matter in Field 11 (housing) but that is no reason to give it a title that is opaque and potentially misleading. One option would be to insert the Matter in Field 7 (fire and rescue services and promotion of fire safety), as suggested by the House of Lords Constitution Committee. However, we do not consider that the name of the LCO should be dictated by where it is placed in legislation. Instead the name should reflect and communicate the contents of the LCO. We certainly do not consider that this matter is of sufficient significance to cause any further delay to the LCO. (Paragraph 38)

Use of definitions

8. We recommend the proposed Order be amended so that the term “new” or “newly” appears in all definitions of “new residential premises.” (Paragraph 43)
9. We are satisfied that the term “automatic fire suppression system” covers fire sprinkler systems and could cover possible improvements in the field of fire safety. The National Assembly for Wales will be able to pass Measures to determine the number and location of fire sprinklers to be installed, and which standard of automatic fire suppression system be used, and to update these as necessary by further legislation. (Paragraph 46)
10. All residential premises are potentially covered by legislation flowing from the proposed Order. We note the restrictions on Crown bodies as part of the Government of Wales Act 2006. We welcome the Minister’s assurance that efforts will be made to achieve consistency by agreement. (Paragraph 49)

Exceptions to Matters

11. It would be possible to redraft the proposed Order to allow for the inclusion of houseboats and mobile homes, but as it stands, houseboats and moveable caravans are not included in the draft Order, whereas static caravans are. If houseboats and mobile homes are to be included, amendments to the proposed Order will be needed. (Paragraph 52)

Conclusion

12. We conclude that the use of the Legislative Competence Order procedure is an appropriate route in this instance. We commend Ann Jones AM on her enthusiasm and tenacity in pursuing negotiations on this Order and succeeding in having it laid before Parliament for scrutiny. It is disappointing that this LCO has been dogged by so many delays, many of them apparently avoidable, and we recommend that the Welsh Assembly Government considers how to streamline the process in future to make the most of the LCO process. We are of the view that only minor technical amendments are needed for this Order to proceed to its final stage. (Paragraph 53)

Formal Minutes

Tuesday 15 December 2009

Members present:

Dr Hywel Francis, in the Chair

Nia Griffith
David Jones
Mr Martyn Jones
Alun Michael

Albert Owen
Hywel Williams
Mark Williams

Draft Report (*Proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009 relating to Domestic Fire Safety*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 53 read and agreed to.

Annex and Summary agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 24 November.

[Adjourned till Tuesday 15 December at 2.00 pm]

Witnesses

Tuesday 10 November 2009

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Ms Ann Jones, Assembly Member, **Ms Joanest Jackson**, Lawyer, National Assembly for Wales, and **Mr Chris Enness**, Deputy Chief Fire Officer, Staffordshire Fire & Rescue Service Ev 1

Ms Jane Davidson, Assembly Member, Minister for Housing, Sustainability and the Environment, and **Mr Francois Samuel**, Department for Housing, Sustainability and the Environment, Welsh Assembly Government Ev 8

Mr Wayne David MP, Parliamentary Under-Secretary of State, **Ms Sue Perry**, and **Mr James George**, Wales Office Ev 12

List of written evidence

- 1 Letter from Rt Hon Peter Hain MP, Secretary of State for Wales, Wales Office to the Chairman Ev 14
- 2 Welsh Affairs Committee Press Notice Ev 15
- 3 The National Assembly for Wales (Legislative Competence) (Housing) Order 2009 Ev 16
- 4 Explanatory memorandum by Ann Jones AM Ev 18
- 5 Written evidence from the Chief Fire Officers Association Ev 27
- 6 Written evidence from the National Fire Sprinkler Network Ev 29
- 7 Written evidence from the North Wales Fire and Rescue Service Ev 30

List of Reports from the Committee during the current Parliament

Session 2009-10

First Report	The Proposed National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009	HC 40
Second Report	Proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009 relating to Domestic Fire Safety	HC 142

Session 2008-09

First Report	Cross-border provision of public services for Wales: Further and higher education	HC 57
Second Report	Globalisation and its impact on Wales	HC 184 –I, II
Third Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008	HC 5
Fourth Report	Work of the Committee 2007-08	HC 252
Fifth Report	The provision of cross-border health services for Wales	HC 56
Sixth Report	Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009	HC 306
Seventh Report	Legal Services Commission Cardiff Office	HC 374
Eighth Report	Potential Benefits of the 2012 Olympics and Paralympics for Wales	HC 162
Ninth Report	The proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009	HC 348
Tenth Report	Cross-border provision of public services for Wales: Transport	HC 58
Eleventh Report	English Language Television Broadcasting in Wales	HC 502
Twelfth Report	Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009	HC 678
Thirteenth Report	Digital Inclusion in Wales	HC 305
Fourteenth Report	Proposed National Assembly for Wales (Legislative Competence) (Health And Health Services And Social Welfare) Order 2009	HC 778
Fifteenth Report	Ports in Wales	HC 601
First Special Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008: Government Response to the Committee's Seventh Report of Session 2007–08	HC 200
Second Special Report	Cross-border provision of public services for Wales: further and higher education: Government	HC 378

	Response to the Committee's First Report of Session 2008-09	
Third Special Report	Proposed National Assembly for Wales (Legislative Competence) (Agriculture and Rural Development) Order 2008: Government Response to the Committee's Third Report of Session 2008-09	HC 410
Fourth Special Report	Globalisation and its impact on Wales: Government Response to the Committee's Second Report of Session 2008-09	HC 538
Fifth Special Report	The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009: Government Response to the Committee's Sixth Report of Session 2008-09	HC 605
Sixth Special Report	Legal Services Commission Cardiff Office: Government Response to the Committee's Seventh Report of Session 2008-09	HC 825
Seventh Special Report	Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009: Government Response to the Committee's Ninth Report of Session 2008-09	HC 1024
Eighth Special Report	Digital Inclusion in Wales: Government Response to the Committee's Thirteenth Report of Session 2008-09	HC 1050
Session 2007-08		
First Report	Energy in Wales: follow up inquiry	HC 177
Second Report	The proposed Legislative Competence Order in Council on additional learning needs	HC 44
Third Report	Work of the Committee in 2007	HC 325
Fourth Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008	HC 257
Fifth Report	The proposed draft National Assembly for Wales (Legislative Competence) (social welfare and other fields) Order 2008	HC 576
Sixth Report	The provision of cross-border health services for Wales: Interim Report	HC 870
Seventh Report	The proposed draft National Assembly for Wales (Legislative Competence) (Housing) Order 2008	HC 812
First Special Report	The proposed Legislative Competence Order in Council on additional learning needs: Government response to the Committee's Second Report of Session 2007-08	HC 377
Second Special Report	Energy in Wales – follow-up inquiry: Government Response to the Committee's First Report of Session 2007-08	HC 435
Third Special Report	The proposed National Assembly for Wales (Legislative Competence) Order in the field of social welfare 2008: Government Response to the Committee's Fourth Report of Session 2007-08	HC 715

Session 2006-07

First Report	Work of the Committee in 2005-06	HC 291
Second Report	Legislative Competence Orders in Council	HC 175
Third Report	Welsh Prisoners in the Prison Estate	HC 74
First Special Report	Government Response to the Committee's Second Report of Session 2006-07, Legislative Competence Orders in Council	HC 986

Session 2005-06

First Report	Government White Paper: Better Governance for Wales	HC 551
Second Report	Proposed Restructuring of the Police Forces in Wales	HC 751
Third Report	Energy in Wales	HC 876-I
Oral and written Evidence	Energy in Wales	HC 876-II
Fourth Report	Future of RAF St Athan	HC 1129
Fifth Report	Current Restructuring of the Police Forces in Wales	HC 1418
Oral and written Evidence	NHS Dentistry in Wales	HC 771-i
First Special Report	Government Response to the Committee's Second and Third Reports of Session 2004-05, Manufacturing and Trade in Wales and Public Services Ombudsman (Wales) Bill	HC 433
Second Special Report	Government Response to the Committee's Fourth Report of Session 2004-05, Police Service, Crime and Anti-Social Behaviour in Wales	HC 514
Third Special Report	Government Response to the Committee's First Report of Session 2005-06, Government White Paper: Better Governance for Wales	HC 839
Fourth Special Report	Government Response to the Committee's Second Report of Session 2005-06, Proposed Restructuring of the Police Forces in Wales	HC 1431
Fifth Special Report	Government Response to the Committee's Third Report of Session 2005-06, Energy in Wales	HC 1656
Sixth Special Report	Government Response to the Committee's Fourth Report of Session 2005-06, Future of RAF St Athan	HC 1657
Seventh Special Report	Government Response to the Committee's Fifth Report of Session 2005-06, Current Restructuring of the Police Forces in Wales	HC 1695

Oral evidence

Taken before the Welsh Affairs Committee on Tuesday 10 November 2009

Members present

Dr Hywel Francis, in the Chair

Nia Griffith
Mrs Siân C James
Mr Martyn Jones
Alun Michael

Albert Owen
Hywel Williams
Mark Williams

Witnesses: **Ms Ann Jones**, AM, **Ms Joanest Jackson**, Lawyer, National Assembly for Wales, and **Mr Chris Enness**, Deputy Chief Fire Officer, Staffordshire Fire & Rescue Service, gave evidence.

Q1 Chairman: Good morning, welcome to this single session of the Welsh Affairs Committee on the Housing LCO relating to Domestic Fire Safety. For the record could you introduce yourself and your colleagues, please?

Ms Jones: I am Ann Jones, I am the Labour Assembly Member for the Vale of Clwyd, I am the Member in charge of the proposed LCO. To my left is Chris Enness, the Deputy Chief Fire Officer of Stafford Fire and Rescue Service, who is my technical adviser, and to my right is Joanest Jackson who is my legal adviser in relation to the LCO.

Q2 Chairman: Thank you for that. First of all could I put on record our collective appreciation of the hard work that you have put in, Ann, to this very important LCO. I know it has been a long time in the making but that I am sure is not your fault and is a mark of your thoroughness and dedication.

Ms Jones: Thank you.

Q3 Chairman: Could I begin by asking the very straightforward question: what do you hope to achieve by this particular Order?

Ms Jones: What I want to achieve is a safe Wales. I want to see fire deaths lessened, I want to see fire deaths almost eradicated, and by having sprinkler systems or automatic water suppression systems (commonly known as sprinklers) put in that would be a major step forward to making sure that our families and our homes are safe in Wales. This is an opportunity given to us by devolution, to look at putting sprinklers into all new home building and residential premises and a way in which we can take forward a good, positive message from devolution and hopefully then, if we are successful with this, England can follow on. We have seen fire deaths in Wales cumulatively cost hundreds of millions of pounds—£128 million is lost due to fire deaths. It is the loss of people's homes but it is also the other losses in terms of the increase on the health budget when people have to go to special burns units, it is the loss to the economy when people are off work and it is also the additional burdens on social services if they have to be re-housed. A simple

sprinkler system in a new home building would actually eradicate most of those costs and that would be of benefit to Wales as well.

Q4 Chairman: Why have you brought forward this particular Order rather than doing what you want to achieve through building regulations or a code of practice?

Ms Jones: A code of practice would be voluntary and whilst there are some housing associations now which are looking to put sprinklers into some of the areas, that is just on a voluntary basis and one housing association, whilst looking to put sprinklers into housing, built a new headquarters for their staff and failed to put sprinklers in, so the voluntary code is there but sometimes they choose not to use that. A code of practice, as I say, would not actually take those builders and those people with us; we have to have legislation to do that. In terms of waiting for building regulations when I proposed this LCO we were seeking from Parliament the building regulations and the Minister herself said in evidence to the Committee that looked at the LCO in the Assembly that the building regulations would be down in the Assembly by 2008; it is now 2009 and I believe we are still negotiating the Transfer of Function Order. I believe that this LCO is a simple breakthrough, it is a way through housing that we can do it and we can move forward. Those of you who know me know that if I can find a way to achieve the aim I will do so but I think in this instance the LCO is probably the best way forward at this time.

Q5 Albert Owen: Good morning and welcome. How will this new LCO affect fire safety laws that already exist in Wales?

Ms Jones: The fire safety laws that exist in Wales are part of the Fire Services Act and the Fire Precautions Act of 1971.

Mr Enness: Were repealed with the Regulatory Reform Order of 2000.

Ms Jones: I do not think there are any regulations there that say that we should have sprinkler systems in any premises. By putting a sprinkler into a house, that would give protection to our fire fighters who would not have to go into a burning building if the

sprinkler was operated, they would be going in purely as a check and for damping down. Therefore the risk to them is very much reduced and as a former Fire Brigade Union official I believe something that the Fire Brigade Union is very keen to see is that we eliminate potential risks in fire fighters' duties.

Q6 Albert Owen: You do not think there would be any need to tidy up the law once this is brought in, you think it could be just an addition and it could be implemented efficiently.

Ms Jones: It can; if we have the powers under the LCO down to the Assembly to look for the Measures, by the time the building regulations do come down there may be an opportunity to amend the building regulations and go in there. The Minister has quite clearly said that the first amendment of the building regulations that she will be looking at is energy efficiency and I do not believe that we can afford to wait on the matter of fire safety until we have done all those amendments. Amendments to building regulations can take an enormous amount of time; this LCO can purely cut through some of the red tape and get the sprinklers into all the new home build that we are going to be having. That, as I say, will preserve lives in Wales and that will make me very proud, that we have done something in Wales that we can be proud of as part of the devolution settlement.

Q7 Albert Owen: Does anybody else want to add anything on the existing laws and how this might affect them?

Mr Enness: If I may, there is actually very little that covers a single private dwelling, someone's home, with regards to safety. You have got issues that require some passive protection, but what we are experiencing in the Fire Service is an increase in fire death and that is because it is in the room of origin where we are having people who are at home, staying at home longer, with more disability and more impairment. We have got a change in demography which means that we have got more of these people, so no longer is fitting a smoke detector appropriate, to say when you hear the smoke detector get out, because we have got people who are going to be unable to get out and they are growing in numbers. What is happening is that we are not doing anything about it. It will not frustrate any of the current legislation, it will only complement it, and indeed when building regulations are devolved to Wales it will be very complementary to the building regulations.

Q8 Albert Owen: Thank you. If I could just move on, the LCO covers all new residential properties; would it not be better to phase it in and start off with maybe multiple occupancy properties, flats or indeed residential homes?

Ms Jones: That would be nice, but what I had to do was look at something that we could take forward. I could not do retrospective fitting in all residential properties and so I chose to draw a line in the sand if you like and move forward. I take the point about

residential homes, but of course if we build new residential homes they will be included if we get the powers, if we build student accommodation it will be included if we get the powers and any sizeable conversion or a change of use of premises into, for example, a nursing home, will then under this if we get the Measures and the power to do it be included in that. It is a matter of trying to draw a line in the sand, start somewhere and then move forward, and I think the benefits will be there. What I do not want to do is make it so broad and so encompassing that we actually never achieve anything out of the LCO. I have kept it narrow and I have kept it confined and I hope we can move forward and see the change. I am hoping that from that then we will be able to build on those issues.

Q9 Albert Owen: If there was a new build, a block of flats for instance, you would expect all the communal areas to be fitted as well.

Ms Jones: Yes.

Q10 Albert Owen: Not just the individual dwellings.

Ms Jones: No, no, on a new build.

Q11 Alun Michael: What is in a name? A name can cause confusion and a number of us had been looking forward to what seems a very simple and straightforward Order and we were slightly puzzled when it looked as if we had got another housing order. Is there a reason why it was not named the sprinkler LCO or something that would have identified the contents more simply?

Ms Jones: It became known as the BS9251 Committee when we were looking at it in the Assembly because everybody kept referring to BS9251 and I actually remembered that one. The naming follows the convention that has been used by the Welsh Assembly Government in naming LCOs, I took advice and I just laid it by that. I am happy to revisit if the Welsh Affairs Select Committee feel it should be revisited.

Q12 Alun Michael: You might agree with me that it would be good for the name of any LCO to reflect what is inside the bottle.

Ms Jones: Yes, I am happy to accept that.

Q13 Mr Martyn Jones: Can I add my congratulations first of all in supporting this LCO—I know it is very dear to your heart being an ex-fire-fighter. Can I just ask why was the scope of the LCO limited to an automatic fire suppression system when smoke alarms, carbon monoxide monitors and fire blankets may also have been included?

Ms Jones: I took the decision to go for sprinklers given that sprinklers are the absolute ultimate that can actually affect and save lives. We have smoke alarms in and you will be aware of the success that the Welsh Assembly Government has had with its Wired for Safety campaign where we insisted that all smoke alarms were hard wired. We can refer to some awful tragedies in your own constituency on a Boxing Day where seven children lost their lives because the smoke alarm did not go off because they

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had taken the batteries from the smoke alarm to feed the children's toys on Christmas Day. As a consequence of that we went for hard wired smoke alarms. We have gone for sprinklers in schools and we have seen some success with sprinklers in schools. Carbon monoxide alarms are just alarms, they alert you to that, but a sprinkler system will activate when the fire gets to 68 degrees, so it is not going to activate as you see in a James Bond film where they press a button and it all floods. That is just not true. There is an alarm so a smoke alarm will alert you and give you time perhaps to shut the door and get out. A sprinkler will operate and will suppress the fire and keep the fire really suppressed so that you get out without any carbon monoxide poisoning, without inhalation of smoke. As for a fire blanket—of course you have to be there to throw a fire blanket over a fire. Fires start when you least expect them and if you are not there to throw the fire blanket over then that is not really a very effective form of fire safety. Fire blankets are great in their own way, extinguishers are great in their own way, but for me the sprinkler system fitted into a new home build will actually increase the possibility of you actually surviving a fire within your own premises.

Q14 Mr Martyn Jones: Mr Enness made the point as well that there are a lot of elderly people who might hear the alarm go off but may not be able to get out in time.

Ms Jones: Yes, that is true.

Q15 Mr Martyn Jones: Does the LCO give the Assembly power to decide specifically which automatic fire suppression system is used or would the installer select the model?

Ms Jones: That would have to come in under the Measures should we get the powers from the LCO. I do not think that we should be specifying a particular system; I have mentioned British Standard 9251 and the reason we have not included that inside the LCO or in fact in looking for powers is that if that changes it is very difficult if you have a piece of law that mentions BS9251 then to move forward. I would like to see something that is set to a British standard but I do not think that we should be prescriptive because they need to be up to date and the systems are changing all the time. That is something that we would need to discuss and look at in the Measure and I am happy to go out and consult on that.

Ms Jackson: Additionally, as Ann has said, the Measure could provide for a specific standard to be met. Another way would be to give Welsh ministers the power to make regulations relating to the standard which would give a very flexible mechanism to amend the standards if those were the recommendations of the industry.

Q16 Mr Martyn Jones: To ensure obviously that it is going to meet the requirements.

Ms Jones: Yes. I do not want to go through all of this, get the LCO and then get the Measure through and find that somebody can bypass it and put half a

system in. We have seen the horrors that fire can do so I would want it and I would be happy to go out and consult.

Q17 Nia Griffith: Would the LCO enable the Assembly to legislate as to exactly how many sprinklers there would be in each property and on each floor?

Ms Jones: No, it would not. If we were going to delegate to ministers we would delegate that to ministers who, by regulations, could then specify, but the way that the system works—perhaps Chris would answer on the technical side of it because as far as I know it just sprinkles water out but Chris can tell you exactly how that works I am sure.

Mr Enness: Thank you. The sprinkler system is actually a very, very simple system comprised of a network of piping and some sprinkler heads. What would happen is that you would have a coverage from the sprinkler head that would overlap slightly with the next sprinkler head so it depends on the size of the room how many sprinkler heads you would want in any room but you would certainly want all your habitable areas with sprinklers.

Q18 Albert Owen: Can I just take that a little further? That means basically in every room in a house—the bedroom, the kitchen, the hall and various things. In a domestic house, therefore, a normal three-bedroom house, it would be every room.

Mr Enness: It would be every habitable room. There would be one or two rooms—say a lavatory and perhaps a small bathroom—where you may not require a sprinkler but I would suggest that the bedroom and the lounge are absolutely 100% definite because that is where most fire deaths occur.

Q19 Albert Owen: When you are tightening up this Measure—going back to the previous question Mr Jones asked about the standard of them—I imagine it would be pointless not having them in certain rooms and pointless having them if they were not up to a certain standard.

Mr Enness: Absolutely.

Q20 Albert Owen: Once this LCO is passed you envisage that the Measure would deal with those specifically.

Ms Jones: Yes.

Ms Jackson: The Measure or delegated to ministers by way of regulations to specify in which rooms or type of rooms that they need to be.

Q21 Albert Owen: I am not trying to be difficult but it is pointless putting them in if they are no good.

Ms Jones: Absolutely. That is the whole point, is it not, and we have seen some very good legislation go by and people manage to bypass it, so I do not want to see that happen. The sprinkler head as well is roughly the size of what?

Mr Enness: It is a small frame about that big.

Ms Jones: It sits on the ceiling.

Mr Enness: Underneath it has got a diffuser plate and in the middle of it you have got what is called a bauxite bowl which contains a liquid which will fracture at 68 degrees centigrade.

Ms Jones: It is aesthetically pleasing to the home, you cannot see it. People think there are going to be cumbersome pieces hanging out of the ceiling, and pipework, but there is not. That is the added benefit of doing it when it is new build, so you do all of that while you are putting the central heating system in as well.

Chairman: Nia Griffith wants to ask a supplementary and then Hywel Williams.

Q22 Nia Griffith: I want to ask about maintenance of that sort of structure. You talk about it being new build and it is all going to be absolutely fantastic and great when it is there, but what happens after ten or twenty years? Is it easy to replace bits or whatever?

Ms Jones: In paragraphs 36 and 37 of the Explanatory Memorandum I did attempt to put some maintenance costs and some installation costs in there just to be quite open and hopefully transparent. Apparently I did not have to submit costs under the LCO process but I wanted to try and do it just so that everybody has got a full understanding of where we are going. The maintenance can be a yearly maintenance such as the service to your central heating boiler and you can have that written in. The costs are pretty general in terms of maintaining the system. It is not likely to go off if it is not maintained, it is not likely just to go off and cause a false activation. It is about £75 at the bottom end to £150 top end for a maintenance contract and they last somewhere in the region of 50 years.

Chairman: We will be asking questions on maintenance a little bit later on. Siân James has that question. Mr Hywel Williams.

Q23 Hywel Williams: Can I ask you a question about what might be drafting issues? When you look at the definition in the Order of what a residential property or new residential premises are there are four conditions there applying to fully reconstructed premises which actually say “new” and two which actually do not say “new”; is this just a drafting matter?

Ms Jones: Yes, that is a drafting point that needs tidying up and it is a valid one. I am happy to do that.

Q24 Hywel Williams: My second question is about caravans and mobile homes, house boats *et cetera*. I should say that I have got a factory where mobile homes are constructed in my constituency. I have not been told that there are any particular concerns but there is a question as to whether these will be included and how will they be defined? In fact, how is it foreseen that a caravan or a large caravan which might be used just for holiday purposes or actually for residential purposes will be defined?

Ms Jones: When I set about this my intention was to see that any new home that was built or anybody who takes a new home in Wales—whatever the new home is—would be covered by a sprinkler system. Since then we have given evidence to the Assembly’s Committee whereby we were looking at what BS9251 was saying and it talks about 40 square metres as a dwelling. I did say that we would go back and look at that but that is something we could look at in the Measure quite clearly. My aim is to get the powers from Westminster down to the Assembly so that we can then go and have a meaningful discussion and consultation and talk about the Measures. I just want to see everybody who lives in Wales protected from fire. I know the horrors of fire and I have seen the horrors of fire. Because people die singly in fires unfortunately and there are never huge deaths, often the community is left to pick the tragedy up and the costs up and we move on without learning lessons. This is one way where we can learn the lesson and try and protect people who die singly. I am not advocating that people should die in multiples before we do anything. I am happy to look at the issue of mobile homes because I know increasingly along the North Wales coast, as you will know, more and more people are living in mobile park homes and caravans which are licensed for ten and a half months of the year. They do need to be protected as well so I am happy to look at that. I started off as all new home build because we can put some regulation on social housing and that is great. I went to see a scheme in Warrington which was shared accommodation, shared estates, where we had home buyers and we had social housing. The social housing had sprinklers in and the private homebuyer did not have sprinklers in because the builder did not think it was necessary or he was not going to put them in. The social housing had them in and within six weeks of that estate going up the people who had bought their own homes under a mortgage were saying “Why have we not got the same as those people in the social housing?” They had recognised and yet the builder himself had said there was no need for it because it was only for social housing and he was building these for homebuyers. That is what I want to do, I want to protect everybody who lives in a home in Wales; they will have that protection. I am happy to take that back under the Measure and go out to further consultation on that.

Q25 Hywel Williams: Just a couple of small points about temporary use, when I was building an extension to a terraced house years and years ago we lived for a while in an extremely large caravan. I do not know if it was 40 square metres but it was enormous. I just draw your attention to that, that might be one additional case that you want to look at. Can I just ask you, therefore, does the Order cover hotels and hostels which are not for permanent residential use but for short term if sequential use?

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Ms Jackson: Yes, it would do. They would be covered anyway under the term “residential use” and I do not think the length of time somebody stays somewhere should be the issue. You only need one night to lose your life.

Q26 Mrs James: Could the Order be extended to premises that are provided by Crown bodies—I am particularly concerned about prisons, Armed Forces accommodation *et cetera*.

Ms Jones: There is nothing in the proposed LCO to exclude the Assembly from legislation in a Measure in that way but I would want to have open discussion about that with the Crown and ministers from the MoD if necessary but I would seriously hope that no person would want to come into Wales and build new service accommodation or new prison accommodation without seriously thinking about the risks of fire, about fire safety, and I am sure that the underpinning issue of fire safety will impinge on all departments, both in Cardiff and up here in London. That is the hope there—I might be naïve and it does not work that way, but I would hope that that would do that. We will open that out to consultation if and when we are at Measure stage.

Ms Jackson: Of course we would obviously be mindful of the general restrictions in Schedule 5 of the Government of Wales Act regarding consent of ministers of the Crown where appropriate.

Q27 Mrs James: Would that mean that the National Assembly for Wales would need to seek the agreement of the appropriate government department?

Ms Jones: Yes, but as I say I would hope that on the issue of fire safety we would not start arguing about whose department it was and for whose benefit. We are all grown-up politicians and that would be accommodated.

Q28 Mark Williams: Turning now to the cost, I just want to focus on the cost to the construction industry. It struck me as a very modest cost given what you are trying to achieve, approximately 1.2% of cost of construction.

Ms Jones: Yes.

Q29 Mark Williams: Does the LCO give the power to legislate on who pays for installation?

Ms Jones: No, it only gives the Assembly the power to prohibit the construction of any new build properties or substantial conversions or even a change of use. It only gives us the power to say you cannot build unless you put a fire suppression system in, it does not say who has to pay for it.

Q30 Mark Williams: That is an important principle to obviously establish from the start.

Ms Jones: Yes.

Q31 Mark Williams: There was a memorandum from the Welsh Local Government Association that expressed some concerns about costs.¹ Do you

anticipate this in any way placing a burden on the building sector and in particular as a cross-border issue is there an issue about builders choosing to build across the border because of what they might see as a prohibitive mistake?

Ms Jones: The WLGA always complain about costs, they are noted for it, and any time they are asked to consult they always put in that there is a cost element in this. The costs will probably end up being borne by the house purchaser; I have never yet known a builder who has done anything without the cost being partly recovered from themselves. By doing it at building stage we are actually reducing costs; if you were to retrospectively fit a sprinkler system you are talking about quite a few thousand pounds but by doing it at that level—that is why I went straightaway for new home build because you cannot legislate and tell everybody they have got to have them. On the cross-border issue what I am hoping is that if we get the LCO and the subsequent Measure and then we get the first housing estate that has sprinklers in all the premises, the builders will see this is a good idea because they can trade off onto the building regulations some of the fire safety requirements. Chris will tell you what it is, but the hour and a half door or the hour fire door which are costly. If the sprinkler is there and will do it then that is an issue that they get. In terms of cross-border I am hoping that we will lead the way in Wales and I am sure that as politicians in Wales we would want to do that. That would actually then help England move forward as well in terms of getting sprinklers, but Chris will tell you about the building regulations and the reasons why I am sure.

Mr Enness: Before we go on to building regulations I remember a similar discussion about cost of air bags in car and yet you would not dream of buying a new car without an air bag now because it becomes a selling point. The safety of the vehicle is a selling point and as you talk about sustainable housing for the future, you talk about environmentally friendly policies for the future, then what better selling point is there than you have got something in the building that supports sustainability, actually supports the occupant rather than just the building and goes a long way to support the environment. I actually think it will be a selling point rather than a negative. You do get freedoms and flexibilities granted by fitting a sprinkler system whereby you may not require certain passive things such as fire doors *et cetera*. You do therefore get granted some freedom and flexibility in the design.

Q32 Mark Williams: As a broader point as well there are economic opportunities in that we are creating something that is going to be advanced much more positively.

Ms Jones: Absolutely. Could I just mention as well that the devolution of building regulations which is taking its passage through now will obviously mean a difference in building regulations between England and Wales as well. That is part of devolution so house builders are already going to have to look at those issues as well.

¹ www.assemblywales.org/bus-home/bus-committees.htm

Chairman: Mr Alun Michael wishes to ask a supplementary and then Mrs Siân James.

Q33 Alun Michael: I wonder whether you have any information about the sort of advice that the Association of British Insurers is offering, one of the savings, being as we are talking about additional costs, might well be the guidance to insurers in terms of the cost. Would you, Mr Enness, be able to advise on that?

Mr Enness: Yes. I work with the Association of British Insurers in a wider sprinkler sense—they are very pro-sprinklers now and they have experienced that due to the economic recession there is more arson and more deliberate fire-setting there has been an increase in claims. However, for the private household the element of fire protection in your home insurance is so small that it is probably not worth passing on to the home owner.

Ms Jones: I will go and speak to them because I am sure I could persuade them nicely that they might look at doing some sort of deal with us.

Q34 Mrs James: You have mentioned already the on-going costs and I just want to tease out a little bit more about that. Would the LCO enable the Assembly to legislate regarding the maintenance of sprinklers and would the Assembly then consider imposing a penalty on those who do not maintain their sprinklers?

Ms Jones: We can legislate in a Measure for a system once it has been fitted and installed to be maintained. We would have to go out and talk to people about how that is going to be done but we could include powers for local authorities or fire and rescue services to serve notices on people requiring specified maintenance works to be carried out. Again, these are issues that we will need to be discussing in the Measure and we will need to go out to full consultation on these discussions, which we have not done because we are looking to seek the powers to come down. It is an issue that we need to be aware of, it is no good having a system if it is not maintained and we need to move forward and obviously talk to those who would be doing the maintenance of those systems. We do have to look at the way in which we would police that very sensibly.

Q35 Mrs James: Dwr Cymru in their submission² actually state that they have got some concerns that people might not understand how the maintenance works or not be able to do the maintenance.

Ms Jones: It is the same with central heating, people may have a boiler maintenance contract and the boiler is serviced once a year. We have looked at that and that might be the way in which the Measure will seek maintenance. We can legislate but we would not want to be totally prescriptive with legislation; if you have got a system in your home then it is to your own advantage and your benefit to actually keep it maintained in the same way as it is your central heating boiler.

Q36 Hywel Williams: Lastly, can we just reflect on the process as you were the first Member to win the opportunity two years and four months ago, and Jonathan Morgan was the second.

Ms Jones: Yes.

Q37 Hywel Williams: But he seems to have overtaken you. Do you have any particular reflections on the process and perhaps on the time it has taken?

Ms Jones: I was going to say I was a bright youngster when I first won the ballot and look at me and it is not over. I am a huge supporter of the LCO process; I think it is the way forward, it is the way we have to look at the devolution settlement. I am quite happy with the way in which this has progressed; I hope I have kept Members informed, both of the Assembly, the Government and up here as well at Westminster, about my intention to see this go through but go through with cross-party support which I am grateful that we have got in the Assembly, and to see it going through with very little opposition outside as well when we took evidence. The LCO process is fine; yes, I have been frustrated at times and that is notwithstanding the fact that most of my working life, the nearly 30 years I worked in the Fire Service, my job was to answer a fire call within 60 seconds and despatch a fire engine out to help somebody within two minutes, so I have always had to respond quick, quick, quick. It does not happen like that in politics; I thought I was going to come into politics and it was going to happen like that, quick, quick, quick, but it does not and I have had to learn that. Along the way you do get frustration, but I am happy I am here today and I am thankful for the Welsh Affairs Select Committee taking this interest in this LCO and together we will progress it, we will move forward and we will see homes in Wales safer.

Q38 Hywel Williams: Do you have any idea when a Measure will be brought before the Assembly and how long that will take?

Ms Jones: If the LCO is granted and if then it goes to Privy Council and it is signed off by decree I have to bring a Measure down to the National Assembly within six months of the date of it receiving Royal Assent. It is dependent on when it goes to Privy Council as to when I bring the Measure. I have to tell you I am already working on the Measure; I do not want to let the grass grow under my feet and I have already started working on the Measure along with having stakeholder meetings around the table, including everybody that we can think of who should have a say in that. I am very hopeful that I will see sprinkler systems fitted in all new homes in Wales.

Q39 Hywel Williams: This may be a slightly pointed question but perhaps yourself or Mr Enness could answer it: do we know how many fire deaths or fire injuries might be avoided in the future by bringing this Measure in?

Ms Jones: In Wales last year we had 20 fire deaths. In North Wales alone three years ago we had 11 fire deaths. How long is a piece of string? You cannot say

² www.assemblywales.org/bus-home/bus-committees

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that every fire death would not have occurred with a sprinkler system but where a sprinkler system has been fitted nobody has lost a life through fire. The evidence is there—Vancouver saw a huge drop in fire deaths when they fitted sprinklers and New Zealand are doing the same now. In America certain states are balloting now to put sprinklers in their homes so as far as I can go without being legally challenged I would say that sprinklers will reduce the number of deaths and the number of injuries from fire. As I said in my opening comments it will, I think, help the Welsh economy: we will not be seeing fire-fighters injured, we will not be seeing fire-fighters off work with the loss of their jobs, there will be huge benefits to the economy that we will gain from that. As I said £128 million alone is the result from fires and hopefully we will be reducing that as well, and that can only be good. Of course it is good for the environment because, with all due respect to my colleagues in the Fire Service—and I was one for ages—when they go to a fire they tend to throw fire hoses and water at fires so an amount enormous of water is used at a fire. For our carbon footprint and for our environment sprinklers will actually not necessitate the amount of water that a fire-fighter would have to spray into a residential home.

Q40 Hywel Williams: The point of this series of questions is to get back to the time it has taken. I appreciate your efforts and that the wheels do grind slowly, but in the three years that it might take from you winning the ballot to the actual Measure being passed, therefore, 25 deaths per year might have occurred and £128 million worth of damage might have occurred which might have been avoided. That is 75 people and £384 million worth.

Ms Jones: Yes.

Q41 Hywel Williams: That is the extent of the three years that it has taken.

Ms Jones: Yes.

Q42 Hywel Williams: I am not making the point in a challenging way, it is so that we as a Committee realise the importance of getting this through.

Ms Jones: We have to have it properly legislated for as well and so I am happy to take that time; to have that time there to make sure that it is there properly as well.

Q43 Hywel Williams: I take your point entirely. Can we therefore, lastly, ask you how much support on legal and drafting issues did you receive?

Ms Jones: I have to say I have to thank the legal team from the Assembly Parliamentary Services because they have actually got it to this level. The way I was writing it you might have appreciated it but you would not probably have thought it was going to go through the books, and they have offered me an enormous amount of support. I am grateful to the Fire Service and to the Fire Brigades Union who have stood by me throughout all of this; they have offered me all the opportunities they can to spread the word about what fire sprinklers will do and we have even had a demonstration of how the sprinklers

will work down at the Assembly building. I knew it would not let them down but I was just frightened that on the one occasion it would not work, the building would have gone up in flames and I would have been remembered for that. Some might say not a bad thing, but others not. In a way I have had an awful amount of support, I have had a lot of support from the water companies and, as I say, when we first started this process Chris Enness was the Deputy Chief Fire Officer in North Wales and moved to Staffordshire. He is now the lead member of the Chief Fire Officers Association on sprinklers and I am grateful to his Chief Officer in Staffordshire for allowing him to stay so closely involved with this Welsh legislation. I have had tremendous support from members of the public and from other organisations who have said at least they understand what this process is about. The final thing that I will say to you is my main aim and my main mission is to make life in Wales safer for people. We can do that by this LCO and I hope you will join me in supporting this.

Q44 Albert Owen: Can I just ask a supplementary about what Mr Williams was asking with regard to the process? Yours was the first LCO to go through and you have mentioned that you had external support. What you did not mention—or I may have missed it—is the support you got from Government and whether you think that is adequate. I am not just talking about the Welsh Assembly Government, I am talking about here in Westminster and the very fact that ministers have bilateral meetings with each other and they have additional resources that make their process perhaps easier. We are looking at it from a perspective of how we can improve the system and make resources available to you at an earlier stage.

Ms Jones: I worked with the Government all along the line and if you look back at the timeline you will see there was a gap where I was working with government officials, with government special advisers, because they were looking at a Transfer of Functions Order on the building regulations. When it became clear that that was not going to come down as soon as we thought I then decided that the LCO process was the way to go. I am happy to go back if building regulations come down and we can make regulations, but my ultimate aim is doing that. On the point about resources there is an issue because there is an issue for the Assembly Parliamentary Service on resources. Joanest does all the backbench members' LCOs and some of the Measures and there is a cost. I have had to go and ask the Fire Service to support me, the Fire Brigades Union, and they have willingly done that but there is a cost to having Chris alongside me today. There is a cost to Staffordshire, there is a cost to all of us and sometimes that is not reflected in the costings. I have had support but there needs to be perhaps a team there as well that will give you that additional support in terms of secretarial, which you are not always able to rely on. In the Explanatory Memorandum some of it has been my words, but I am not very good at drafting—I tend to say it as it is and get on with it. There is a cost and I

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think that is something that needs to be looked at. I also think that the frequency with which the ballot is conducted at the Assembly is somewhat over-zealous. Mine was the very first one as you say and we are here now, Jonathan Morgan's is just a couple of months ahead, but the others are slowly progressing their way through. To have one every term in the Assembly is a little bit too over-ambitious for the process to come through and that is something that we have to address down at the Assembly.

Q45 Alun Michael: What are the actual obstacles to proceeding more quickly because, as has been indicated, this is relatively straightforward? Obviously there are evidential complexities but it is relatively straightforward in legislative terms.

Ms Jones: If I am totally honest I would have hoped to have seen this fly through but it has to be done and there have to be balances and checks. Pre-legislative scrutiny by both the Welsh Affairs Select Committee and an Assembly Committee—bear in mind that we have changed the way we work in the Assembly now

where we have five legislation committees, four dedicated to government legislation and one dedicated to backbenchers' legislation—it will be interesting to see how I scrutinise myself when it comes back because I sit on the backbench legislation—I tend to run around the table and answer the questions. We have now got that system whereby we have got four legislation committees but when my proposal went through they set an ad hoc committee up and I think it is now easier for you as the Welsh Affairs Select Committee to work with their legislation committees in looking at a particular piece of legislation and doing the pre-legislative scrutiny together. I have always been an advocate of working together on issues that we could take forward.

Q46 Chairman: Thank you very much for answering all our questions enthusiastically and very comprehensively. From the chair I can assure you that we will deal with this very speedily and we are very confident that we will produce a report very soon, certainly before Christmas.

Ms Jones: Thank you very much.

Witnesses: **Ms Jane Davidson**, AM, Minister for Housing, Sustainability and the Environment, and **Mr Francois Samuel**, Department for Housing, Sustainability and the Environment, Welsh Assembly Government, gave evidence.

Q47 Chairman: Good morning; welcome to the Welsh Affairs Committee. Minister, could you introduce yourself and your colleague please?

Ms Davidson: Jane Davidson, Assembly Member for Pontypridd and Minister in the Welsh Assembly Government for Environment, Sustainability and Housing. May I introduce Francois Samuel, the Welsh Assembly Government official in the housing directorate who specialises in building regulations.

Q48 Chairman: We are very pleased to have this session a little earlier than expected and could I thank you and the earlier witnesses for being so accommodating; I am sure everyone is delighted that we are doing this earlier than expected. But that leads me to the question why has it actually taken two years? What was the nature of the hold-up?

Ms Davidson: If we look at the general questions that the Welsh Affairs Committee has asked in looking at this—and I would draw you to your own questions 8 and 9—is the use of an LCO more appropriate than, for example, the use of framework powers or has full use been made of any existing powers to issue statutory guidance and/or secondary legislation.³ Of course what we had hoped to do originally was to use the transfer of building regulations in terms of taking forward the regulation aspect in the context of fire safety from the Assembly Government, so from the beginning of this process we were very happy to say to Ann Jones that we would support her bid for the outcome to introduce sprinklers and that we would propose the regulatory

process in terms of doing so. Of course, as this Committee knows, the building regulations, although now nearly agreed through the legislative process—Privy Council is on 13 November—the commencement date of course is the end of December 2011 and therefore we wanted to subsequently support Ann in her mission in bringing forward the Legislative Competence Order so that this could be dealt with separately and within the timetable of this administration.

Q49 Alun Michael: To what extent was the Welsh Assembly Government then involved in the drafting of the Legislative Competence Order and how long did that take?

Mr Samuel: The Legislative Competence Order was drafted by the National Assembly Legislative Council. We commented on drafts, we had an opportunity and offered views, but we were not responsible for it.

Q50 Alun Michael: But there was an iterative process on the development of the draft that eventually came forward; how long did that take?

Mr Samuel: Ann Jones has already mentioned that there was a bit of a stop-start to this process because we were engaged in the transfer discussions but it is difficult to say in terms of timescale because it is a relatively simple LCO—when I say simple, it is a very specific LCO.

Q51 Alun Michael: That is rather my point.

Mr Samuel: Point taken.

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Q52 Alun Michael: I do understand that if you think you have got one legislative process, as the Minister said, there is a tendency then to perhaps lose time. This one seems to have taken rather a long time for something that is so simple and straightforward and that is why, if you do not mind, I repeat the question: how long did it take to draft?

Mr Samuel: I suppose it did not really take long in terms of providing comments because, as I say, it is a fairly straightforward Order. Consideration of the consequences of the LCO perhaps took longer because at that time—and the Minister has referred to building regulations—in evidence that was given to the Assembly scrutiny committee we could see the interaction and the advantages of building regulations and really it was the interaction with Part B of the building regulations that we probably spent more time on. Building regulations are performance related, they are functional requirements, they do not stipulate how you go about it. They provide ways of achieving it and, clearly, this is a very specific form of fire protection.

Q53 Alun Michael: Indeed, that is my point. I was involved in planning for many years before entering this place and I am conscious how long it takes for any impact of building regulations to take, so I really cannot understand why they were allowed to drive out the good and there was not fairly swift drafting of the Order in order to enable the Welsh Assembly as a whole and ministers to be able to get on with it. That is why I am asking about the drafting period.

Mr Samuel: I can only repeat the drafting itself and the comments and scrutiny did not take long. It was because it was caught up, if you want, in what we saw as the bigger picture of the building regulations and our discussions with government that there were delays to the process.

Q54 Alun Michael: There is a wider issue of course about drafting because sometimes Statutory Instruments or the equivalent in the Assembly do seem to take longer to come forward; we saw that with things like the Clean Neighbourhoods secondary legislation and so on. Is this something that needs looking at?

Mr Samuel: That is a matter for the Assembly Government, it is a matter of balancing priorities and resources.

Q55 Alun Michael: If I may return to the Minister, to what extent have you felt that there is a demand for legislation on this area? You indicated that if the powers had been there you would have approached it through the building regulations so are you satisfied that this a popular measure and one for which there is a demand on those who are concerned with these issues?

Ms Davidson: I would like to say two things in response to that. The first one is that as Ann Jones has given you evidence about, she has spent the vast majority of her working life in the Fire Service and what was very important about this particular proposal was that she was able to bring her personal experience to bear on a proposition that was good

for people in Wales and was strongly supported by the fire and rescue services. I was very taken with paragraph 28 in her explanatory memorandum. The end of that paragraph reads: “There are no cases on record where multiple fire deaths have occurred in buildings with working sprinkler systems and the evidence also shows that no lives have been lost in the UK due to fire in buildings fitted with domestic sprinkler systems.” You will also know that in the previous Assembly Government when I was Minister for Education we introduced changes in the context of schools in relation to fire sprinklers as a direct result of Ann’s lobbying, so it is an agenda that she has pursued with evidence behind her and the fire and rescue services behind her for a number of years, and therefore when she made the proposition we were very pleased, I have to say, that the first proposal for legislative competence was a proposition that was actually about the safety of the people in Wales. If I might return to your previous questions about drafting to Francois, I do think that in a sense we were broadly all caught up in the fact that this was the very first because of course I have sat in this room, giving you evidence in this Committee, about how long it took to get the environmental LCO through, which of course was the first government LCO as well.

Q56 Alun Michael: But also a very much more complex Order.

Ms Davidson: Yes, but the point about both is that actually the building regulations debate has not been a single department debate and it is when you have to go across government departments. At every stage of a process we look at what one government department says before we then test what another says, and in a sense I have also had to work with a range of different ministers in this debate because we might have achieved a resolution and then a minister would change and, in a sense, we would not be right back at the starting block but the legislative competence process has not been sufficiently embedded. The speed at which things are moving now is a great deal quicker and we are seeing this because we are seeing a number of things come through, we are seeing them come through in the context of the Welsh Affairs Select Committee as well. What I would want to assure you is that government has been behind the delivery of the outcome from the beginning.

Q57 Alun Michael: You seem to imply there—and this is just for clarification—that government to government communications are as much an issue in relation to a Private Member’s Legislative Competence Order as they would be for one that was initiated by the Welsh Assembly Government itself.

Ms Davidson: I am not sure that I would put it like that in the sense that I have to say there was no resistance in my conversations with UK government ministers over the support for devolving building regulations, but as you know it has been a very, very long process and, despite the fact that there was not only a key manifesto agreement of the *One Wales*

government and some work that happened prior to that in devolution of building regulations, we are only looking at a Privy Council outcome next week.

Q58 Alun Michael: You are referring to that process rather than the one in relation to this particular Legislative Competence Order.

Ms Davidson: I am, because of course what we did at the beginning, thinking it was helpful, was to say we very much support the principle of what Ann is trying to achieve and we offered to bring forward regulations once we had the transfer of building regulations to enable that to happen. Since the transfer of building regulations will not commence until the end of December 2011 we then were very happy to get behind Ann's second bid as it were for the Legislative Competence Order so that it could be expedited as quickly as possible because it is so specific.

Q59 Chairman: Before we move on to the detail of the LCO could I just put to bed so to speak this question about the delay or the apparent long period? We are very concerned as a Committee about the relationships between governments and also the relationships between backbenchers and government—that is why we are about to have an inquiry into Wales and Whitehall. Would you say in light of your experience with both these LCOs that it would be very helpful to have greater transparency and more announcements of what is actually happening between governments and between backbenchers as you progress these issues? We certainly would have appreciated more knowledge and knowledge in the public domain about why there were these delays.

Ms Davidson: We would be very happy to consider a proposition, in a sense, about updating members on progress; that would seem to me an entirely sensible proposition. What I would also say is that because I have been involved in both the Building Regulations Transfer of Functions Order and the environmental Legislative Competence Order from the beginning—and of course they are two different processes—if we were to start now on both of those I think they would be expedited a great deal more swiftly because of course we were at the very beginning of a totally new process and when we first started trying to draw down the powers the memorandum in terms of how we work together was not yet written. Of course those issues have now subsequently been resolved so I think the work that you are going to do in analysis about the relationship, with lessons for the future, is going to be a very important piece of work.

Q60 Mrs James: There is a concern as to whether the LCO is clear enough in its definition of the term “residential premises” and whether the Order covers premises such as mobile homes, houseboats, residences that are used for the short term such as hotels, halls of residence *et cetera*. What is your view?

Ms Davidson: In our view the purpose of the LCO is clear and so we are happy to accept it as it is.

Q61 Mrs James: There is some concern that we should actually cover those areas as well and we heard earlier evidence that that is something that might come up in further discussion. Would you be happy to discuss these matters and further support them?

Mr Samuel: The Assembly Member has already indicated a willingness to discuss the subject of mobile homes. This is about the competency, the detail of which will be dealt with in the Measure and if the AM is happy to open a dialogue on the need for further definition to clarify her intentions then that would seem to make sense so that there is total clarity there.

Q62 Nia Griffith: I wonder if you could tell us whether the Order could be extended to include premises that are deemed as Crown property, for example building a new prison in Wales, and whether it would be automatic as part of the Order or whether there would have to be separate negotiation between the Assembly Government and the appropriate department?

Mr Samuel: Currently Crown buildings are exempt from building regulations so in developing the Measure there will have to be discussion with the UK Government about the scope of that Measure and any limitations of the Government of Wales Act because clearly the powers that have been transferred under the building regulations will not impact on Crown buildings. This Measure could bring in the equivalent of the building regulations in terms of its result and I would imagine we would need discussion with government about that.

Q63 Albert Owen: I understand that the Measure will have the details and the definitions and you said that in response to my colleague earlier on, but what is clear is that we are talking about all new residential properties. If this was to be extended to all premises, not just new premises, would you require a new LCO?

Mr Samuel: My reading of the LCO is that it does not impact on the rehabilitation of existing properties if that is what you are driving at.

Q64 Albert Owen: What does that mean?

Mr Samuel: Existing houses—houses that exist at the moment, houses that are improved or modified, single dwellings. That is my interpretation.

Q65 Albert Owen: That is clear, so the next step is if you were to extend it would you require a new LCO or would a Measure in the Assembly be laid down?

Mr Samuel: If the competence is limited to new dwellings or dwellings that are sub-divided or amalgamated, then if there is a desire to apply it to existing housing that may need a further LCO.

Q66 Albert Owen: We are not trying to trip you up, we just want clarity on it. I am not a lawyer either but there are people following these proceedings who are clear that it is new and that a Measure or an LCO is required; I just wanted to know which one. Do you want to comment on that Minister?

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Ms Davidson: My understanding is why I said the purpose of the LCO is clear, to require an automatic fire suppression system to be installed in all new and converted domestic properties, including by subdivision or amalgamation of existing properties and non-domestic buildings converted to residential use. It does not cover the renovation of a single existing dwelling.

Q67 Albert Owen: That would require a new LCO; that is the question.

Ms Davidson: This is what this LCO covers.

Q68 Albert Owen: If you wanted to extend it you would apply for a new LCO rather than use the Measure.

Ms Davidson: You would not be able to use the Measure because the Measure derives its competency from this Legislative Competence Order application.

Q69 Hywel Williams: Last week I actually took part in the debate on the Transfer of Functions Order on Building Regulations and it occurred to me then that there was interplay between this one and that particular transfer. Perhaps I am a bit dull this morning, but can we just go through bits fairly briefly. For example, will the powers devolved to the Welsh Assembly Government for this LCO be superseded by the building regulations? Will this LCO stand from a legal perspective when the building regulations are passed in 2011. Can you just go through it fairly briefly for the Committee—or for me at least?

Ms Davidson: Through the building regulations we would have been able to put in place government requirements for fire sprinklers but the LCO is doing something different to the regulations: it is devolving powers to the National Assembly to legislate rather than giving Welsh ministers powers to regulate, so the competence that the LCO provides is not at odds with the functions being sought in respect of building regulations, it would enable National Assembly for Wales backbenchers or committees to propose legislation as a result of the LCO. The relationship of any proposed requirement introduced by a subsequent Measure with the building regulations would be considered at the time the Measure is proposed but issues of implementation and enforcement will need to have regard to existing building control mechanisms, because that is clearly the easiest way to effect enforcement, so there would need to be coherence between the two. That would be done at Measure stage.

Q70 Alun Michael: Can I just probe that a little further. I think I understood the reply: that would mean that as soon as the LCO comes in the requirement for sprinklers in the terms of whatever Measure comes forward could then apply. You would then have a period of time before the building regulations become a matter for the Welsh Assembly Government and at a point later on presumably it would be a responsibility of the Welsh Assembly

Government, scrutinised by the Assembly of course, to make sure that the building regulations were consistent with any Measure that was developed under the Legislative Competence Order.

Ms Davidson: You are absolutely right in the sense that this Measure, subject to its move through the legislative processes, would be in place before the commencement of the building regulations so we would have existing building control mechanisms.

Q71 Alun Michael: It would just be a question of common sense in making sure there was consistency between any Measure passed as a result of the Legislative Competence Order and any eventual decisions made in relation to building regulations.

Ms Davidson: It would be a case of making sure that there was coherence between the two, particularly if building control mechanisms were used in the context of enforcement, but building regulations relationship with policy and other legislation has operated like that previously.

Q72 Mark Williams: Turning now to the costs of the proposal, the Assembly Government, to its credit, funded a pilot scheme looking at the technical difficulties and the cost of installing sprinklers. Other research has shown that the proposed LCO could add approximately £1500 to the cost of a new home; does the Assembly Government support that, particularly in the light of the current economic crisis?

Ms Davidson: Of course that is not a matter in one sense for the transfer of the function because the Order provides the competency, it is not of itself a requirement for sprinklers, the detail would be in the subsequent Measure and, clearly, the costs and benefits including the additional burden on consumers and business would be considered as part of the Regulatory Impact Assessment to which any Assembly Measure would be subject and would also be subject to full consultation. The proper issue around the relationship between costs and benefits is a matter for another place and another time.

Q73 Mark Williams: Absolutely, that is well understood and I totally support that, but have there been representations from the building industry at this juncture expressing any concern about the costs? I personally think they are minimal costs and obviously the objective of the LCO supersedes those, but have there been concerns expressed?

Ms Davidson: The building industry has not expressed concerns specifically to me about this Legislative Competence Order but of course they will have an opportunity to express their views when it goes through the proper Measure process. My dialogue with the building industry at the moment is in relation to issues around increased sustainability and energy efficiency and that dialogue is robust on costs.

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Q74 Albert Owen: I understand that cost is a matter for the Measure but what I am not clear about is would you need to put into the LCO now or will it perhaps be made clear that annual maintenance is required *per se*?

Mr Samuel: Our view is that the maintenance issue and where responsibility falls and how that is regulated are matters for the Measure and perhaps any subordinate legislation that follows the Measure.

Q75 Albert Owen: At this stage the fact is that they are just installed in new premises.

Mr Samuel: This provides a competency to bring forward legislation which could require sprinklers.

Q76 Albert Owen: The clearer the competence is the easier it is to move forward.

Mr Samuel: That is one way of looking at it but LCOs can be broad because it is a policy development tool. We would say that was a matter for the Measure.

Q77 Albert Owen: The previous witnesses were quite clear on this in fairness. They said that there are costs and there is a need for maintenance at this stage. We are just trying, for our Report, to be absolutely clear whether within the Competence Order it would or would not require annual maintenance to be effective.

Mr Samuel: Those are issues of detail that have not yet been considered or their impact assessed. As I say, the passing of the Competence Order in itself will not require domestic sprinklers.

Q78 Albert Owen: The other point we mentioned to the earlier witnesses as well was the concerns that the building trade has, particularly close to border areas, about costs in Wales as opposed to costs in England and the large companies who may have plots of land

on both sides of the border and considering building in the future. Do you think that will have an impact and that they might consider this to be a burden and an additional cost?

Ms Davidson: Once again because this is actually about whether or not it is considered appropriate for the Assembly to have the enduring power to make decisions on this, I believe it is.

Q79 Albert Owen: I fully understand that, this is a question we have with every minister. We are just having a general discussion for our Report as to whether you feel through your relationship with the construction industry that this has arisen, as to whether they have fears that additional measures and additional burdens and cost could push the industry not to invest in Wales?

Ms Davidson: It would be very unlikely in terms of the costs proposed at the moment in this Legislative Competence Order and also having listened to the evidence of Ann Jones in proposing the Legislative Competence Order there are unique selling points for purchasers in terms of knowing that they have a greater degree of safety. If it turned out that the costs were passed on to purchasers on the major capital investment the proportion is very small indeed. It is increasingly important that we look at issues around the safety of our homes, the resilience to flooding, the sustainability and energy efficiency and these should become issues that actually people take into account when they purchase properties for the future so that they know that their big capital decision—often the biggest one that people make in their lives—is going to have the most sustainable outcome.

Albert Owen: Sure, and that is the kind of response that we like in this Committee. Thank you.

Chairman: Thank you very much for your presence today and once again thank you for being so amenable in rearranging the date.

Witnesses: **Mr Wayne David MP**, Parliamentary Under-Secretary of State, **Ms Sue Perry**, and **Mr James George**, Wales Office, gave evidence.

Q80 Chairman: Good morning and welcome. Minister, could you introduce yourself and your colleagues for the record, please?

Mr David: I am Wayne David, on my left is Sue Perry from the legislative team at the Wales Office and to my right is James George who is a legal expert.

Q81 Chairman: Thank you very much. Could I begin by asking a very straightforward question: what will this LCO allow the Welsh Assembly to do that cannot be done currently with existing powers?

Mr David: Dr Francis, essentially the objective of the LCO is to reduce the incidence of death and injury from fires in new build housing in Wales and this will be achieved through a requirement for automatic fire suppression systems to be fitted in all new residential premises. Technically, the broad

Order would insert a new Matter, 11.1, into Field 11, Housing, of Part One of Schedule 5 of the Government of Wales Act 2006.

Q82 Mrs James: The word “new” does not appear in the first two definitions of new residential premises. Should appropriate references to new be introduced into each of these definitions to avoid any unnecessary ambiguity?

Mr David: There have been discussions about relatively small but nevertheless important technical changes and that is one area where there might be need for further absolute clarification so that there is no doubt whatsoever about what the intention is. Discussions have taken place with Ann Jones about it but I would certainly welcome the Committee’s view on that point.

10 November 2009 Mr Wayne David MP, Ms Sue Perry and Mr James George

Q83 Mark Williams: You have been listening to the evidence and you have heard the question about the issue of how precise is the definition on residential premises and whether the Order covers premises such as mobile homes, houseboats, and premises that are used for short term residence such as hotels, halls of residence in university towns. What is your view on that debate on the precision of the definition?

Mr David: This is important in purely practical terms and by and large the definition is appropriate, the intention is clear. You might ask, for example, where do houseboats fall in this particular definition; it is our legal opinion that houseboats, for instance, would be excluded. The Legislative Competence Order as it stands does not include any floating exceptions but nevertheless, generally, those floating exceptions which apply elsewhere would apply here as well.

Q84 Mark Williams: What about mobile homes specifically given that there is an issue there about how long people can be domiciled in a year to qualify for other purposes. Would they be covered, should they be covered?

Mr David: It is my understanding that mobile homes would be covered. If I could refer to the discussion earlier on, for example, about Crown properties, they would not be included here but nevertheless in purely practical terms certainly the Government would want to have a discussion with the Welsh Assembly Government so that there is a practical uniformity of standards as far as all similar sorts of premises are concerned in Wales.

Q85 Nia Griffith: Following on that conversation, Minister, can you see any particular ways in which we should be facilitating that type of dialogue, because it is not just going to be this legislation now which is going to demand similar dialogue between a Whitehall department and the Assembly Government; how best can we facilitate good communication where there are differences in the requirements in Wales and in England?

Mr David: It is an extremely important issue because, as we know, devolution is about a new relationship, a new partnership and if that partnership is to be effective there needs to be an ongoing constructive dialogue. That is one of the developing roles of the Wales Office in particular in this post-devolution age and we have to ensure that of course there is a democratic and accountable element to that role. That is really one area that we might look at in developing the role of this Committee, for example, as the interface between what is happening at a governmental level and, of course, the awareness of Members of Parliament.

Q86 Mr Martyn Jones: Minister, there is a draft Transfer of Functions Order that devolves responsibility for building regulations to the Assembly and has been laid before Parliament already. If building regulations are devolved to Welsh ministers on 31 December 2011 will the

powers devolved to the Welsh Assembly Government through this LCO be superseded by those regulations?

Mr David: They would not, but it is a fairly complicated situation that we are in at the moment. The discussions on the devolution of housing regulations have virtually concluded successfully, I presented the regulations to a statutory committee of this House only last week and we anticipate matters being expedited very effectively. This Legislative Competence Order is quite separate from that and under the direction from the Welsh Assembly Government we have done our best both to expedite the building regulations and this Legislative Competence Order. As has been explained by previous witnesses if this goes through the Houses of Parliament successfully and receives royal approval, then the Assembly will have powers to introduce distinct Measures on the basis of this LCO some time before the building regulations actually come into effect.

Q87 Mr Martyn Jones: But the legal standing of the LCO will remain after the building regulations as far as you are aware.

Mr David: It will, yes.

Q88 Mr Martyn Jones: Going to the idea of using a specific Welsh LCO rather than using a Westminster Bill, if we had a Westminster Bill then all the citizens of England and Wales would be covered by this kind of legislation. What has the Government's position been on this, did it consider having a Westminster Bill to cover people in England as well as Wales?

Mr David: Could I say first of all that it has been the Government's position to adopt a slightly different approach in England. For example, the building regulations for England and Wales include a requirement as things stand for automatic fire suppression systems where it is deemed reasonably necessary. This includes blocks of flats exceeding 13 metres in height, for example, and that is the England and Wales situation. It is the view of central government that at this stage certainly they do not see the need to go beyond that as far as England is concerned. The situation obviously in Wales is somewhat different and the Welsh Assembly Government by supporting what Ann Jones has brought forward has indicated that it wishes this issue to be addressed and regulations introduced which are tighter and address the problem that we have identified. That is their chosen route and it is our job to facilitate that as far as we possibly can.

Q89 Mr Martyn Jones: Wales is leading England in this matter then.

Mr David: As with many other matters indeed.

Q90 Mr Martyn Jones: Absolutely.

Mr David: That shows how the devolution settlement is working effectively.

Chairman: There is tomorrow's headline for you. Alun Michael.

10 November 2009 Mr Wayne David MP, Ms Sue Perry and Mr James George

Q91 Alun Michael: The differences between England and Wales with regard to fire safety as a result of the LCO could lead to pleas in England for some of the measures to be introduced there, but do you see that having any impact on competition or other issues in border areas?

Mr David: Could I say with regard to your first point an important element which is sometimes forgotten about is that devolution allows Wales to certainly add value and do things somewhat differently and more appropriately. One of the things that does happen as a consequence of devolution is that one part of the United Kingdom might learn from another part of the United Kingdom.

Q92 Alun Michael: Indeed.

Mr David: That dissemination of experience is a vitally important element of the devolution process. Sorry, what was your second point?

Q93 Alun Michael: Do you think that it will have any impact on competition? My guess is that that is more about perception, but do you think there is any problem in that area?

Mr David: It is true to say that there have been concerns expressed by the building industry that we might have a situation in Wales where building costs would be greater compared with England. The important thing now is that when we go beyond the LCO stage and actually enable the Assembly to consider bringing forward Measures, and that a constructive dialogue and debate takes place with industry. I am pleased to say that both in terms of Ann Jones and in terms of the Welsh Minister a categorical commitment has been given to ensure there is the greatest possible dialogue so that hopefully a consensual approach will be reached.

Q94 Alun Michael: That would focus around the terms of the Measure then.

Mr David: That would be in terms of the Measure. There will be a Regulatory Impact Assessment, for example, and Ann Jones has given a commitment to work closely with the Welsh Assembly Government to ensure that that Regulatory Impact Assessment is as effective and as comprehensive as it needs to be.

Q95 Alun Michael: With the other witnesses we have probed the reasons for what does seem a long delay in achieving the current stage of getting to the end of

the Legislative Competence Order process. Can you tell us what the Wales Office has done to try to keep those delays to a minimum and perhaps what element of delays has been at the Whitehall end of the process?

Mr David: As always the Wales Office does its utmost to expedite things along quickly and effectively. As has been explained earlier there has been an ongoing discussion within the Welsh Assembly about whether or not the best way to facilitate this proposal has been to have a freestanding LCO or to wait for the building regulations. That decision is very much the Welsh Assembly Government's call; we do not interfere in that decision, we simply respond to the decision that is taken.

Q96 Alun Michael: Are you saying that the Wales Office did not take any part in that decision then?

Mr David: No, that was entirely a decision of the Welsh Assembly Government, we simply responded to that. The issue of building regulations has been a complicated issue as the Welsh Minister has said. There have been discussions with a number of government departments over quite a period of time because the issues are so complex. As far as this particular LCO is concerned we are talking about a relatively narrowly defined area. It is true to say that discussions with central government departments have been actually quite straightforward.

Q97 Alun Michael: Just to be clear, if the Welsh Assembly Government had taken an earlier decision to go ahead with this Legislative Competence Order rather than waiting for the transfer of the building regulation powers, at that point the Wales Office would have responded and tried to help that through.

Mr David: We respond to any prioritisation that comes from the Welsh Assembly Government. It is not our job to second guess or pick and choose which proposals we expedite. We expedite everything according to the priorities of the Welsh Assembly Government.

Chairman: Thank you very much for your attendance today and the comprehensive way in which you have answered the questions. As I have said to all other witnesses, we are very grateful to you for being so accommodating in the way we have rearranged the timetable. Thank you very much.

Letter from Rt Hon Peter Hain MP, Secretary of State for Wales, Wales Office, to the Chairman

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (HOUSING) ORDER 2009 RELATING TO DOMESTIC FIRE SAFETY

I am writing to invite you and your committee to undertake pre-legislative scrutiny of the proposed Housing Order in Council relating to Domestic Fire Safety. This Order has been proposed by a backbench member of the National Assembly for Wales, Ann Jones, and has the support of the Welsh Assembly Government. I am pleased to be able to inform you that the UK Government has given its consent to this Order being submitted to Parliament for pre-legislative scrutiny and I would be grateful if you could make the necessary arrangements for this to happen.

I have today laid the Order along with the accompanying explanatory memorandum before Parliament in the form of a Command Paper (Cm 7715) and I intend to issue a written ministerial statement drawing the Command Paper to the attention of Members when the House returns. I have also written specifically to Welsh Members and Members who speak regularly on Welsh matters.

I look forward to your Committee's views on this Order.

7 October 2009

Welsh Affairs Committee Press Notice

PRE-LEGISLATIVE SCRUTINY OF THE PROPOSED LEGISLATIVE COMPETENCE ORDER IN COUNCIL ON HOUSING RELATING TO DOMESTIC FIRE SAFETY

Call for written submissions

The Government of Wales Act 2006 introduced a process enabling the National Assembly for Wales further to enhance its law-making powers by a new procedure known as Legislative Competence Orders in Council (LCO).

At its meeting on 13 October, the Welsh Affairs Committee decided formally to accept the Secretary of State's invitation to the Committee to conduct pre-legislative scrutiny of the proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009, relating to Domestic Fire Safety. The proposed Order, together with an explanatory memorandum by Ann Jones AM and endorsed by the Welsh Assembly Government, was published as a Command Paper by the Wales Office on 08 October (Cm 7715) and can be found on the internet at:

<http://www.official-documents.gov.uk/document/cm77/7715/7715.pdf>

The Committee asks for written submissions in accordance with the guidelines stated below by 10 November 2009.

The Committee would particularly welcome comments on the following aspects of the proposed Order:

1. Is the LCO request in the spirit and scope of the devolution settlement?
2. Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?
3. To what extent is there a demand for legislation on the matter(s) in question?
4. Are there any cross-border issues relating to the LCO? (eg financial or policy issues)
5. Are the purpose and scope of the LCO clearly defined, including the terms and definitions used?
6. Does the LCO have the potential to increase the regulatory burden on the private or public sector?
7. Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures? If so, where does the legislative competence to exercise such changes lie?
8. Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly?
9. Has full use been made of any existing powers to issue statutory guidance and/or secondary legislation in relation to this Matter?

Concurrent to the work of the Welsh Affairs Select Committee, a detailed legal examination of the proposed Order will be conducted by the Constitution Committee, House of Lords.

14 October 2009

PROPOSED ORDER FOR PRE-LEGISLATIVE SCRUTINY

DRAFT STATUTORY INSTRUMENTS

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

The National Assembly for Wales (Legislative
Competence) (Housing) Order 2009

Made - - - - - ***

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the *** day of ***2009

Present

The Queen's Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006^(a) a draft of this order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Housing) Order 2009 and shall come into force on the day after the day on which it is made.

Amendments to Schedule 5 to the Government of Wales Act 2006

2.—(1) Part 1 of Schedule 5 to the Government of Wales Act 2006 is amended in accordance with this article.

(2) In Field 11 (housing) insert—

Matter 11.1

^(a) 2006 c. 32.

Provision for and in connection with a requirement that an automatic fire suppression system be installed in new residential premises.

Interpretation of this Matter

“New residential premises” means –

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

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 5 to the Government of Wales Act 2006 (“the 2006 Act”). The effect of the Order is to extend the legislative competence of the National Assembly for Wales to make new laws for Wales by Measure under section 93 of the 2006 Act.

Article 2 inserts a new matter 11.1 into Field 11. The new matter inserted is about enabling a requirement to be imposed that an automatic fire suppression system be installed in new residential premises (including existing residential premises physically sub-divided or incorporated so as to convert them to use as one or more new residences). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act.

**Explanatory memorandum by Ann Jones AM and
Endorsed by The Welsh Assembly Government**

**Proposal for a Legislative Competence Order
relating to Domestic Fire Safety**

Introduction

1. This Explanatory Memorandum sets out the background to the provisions in the Member proposed Legislative Competence Order, *The National Assembly for Wales (Legislative Competence) (Housing) Order 2009*, which would confer additional legislative competence upon the National Assembly for Wales. It explains the scope of the power requested.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy. The UK Government's White Paper "Better Governance for Wales" published in June 2005 set out the UK Government's commitment to enhance the legislative powers of the National Assembly for Wales, as a democratically elected institution with its own detailed scrutiny procedures.
3. 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. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum.
4. Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or a Legislative Competence Order, approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via a Legislative Competence Order.
5. The proposed Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of Housing (field 11, Part 1, Schedule 5 to the 2006 Act).

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6. New legislative powers in respect of the specified “matter” will enable the Assembly Government, Assembly Members and Assembly Committees to bring forward coherent proposals for legislation, in the form of Measures, which are based on Welsh priorities and timescales. These Measures will be subject to thorough scrutiny and approval by the Assembly.
 7. On 26 June 2007 Ann Jones won the ballot to bring forward a proposed LCO. On 10 October 2007 the National Assembly for Wales agreed that Ann Jones may lay a proposed Order and an explanatory memorandum.¹
 8. The proposed Order was laid on 20 February 2008 and an Assembly Committee, the Proposed Domestic Fire Safety LCO Committee (“the LCO Committee”) was established to scrutinise the proposed Order. On 11 June 2008 the LCO Committee report was laid. This revised Explanatory Memorandum reflects changes made to the Proposed LCO as a consequence of the Committee’s report.

Background

What the LCO aims to achieve

9. The LCO seeks to confer legislative competence on the National Assembly for Wales so that an Assembly Measure may be brought forward requiring all new build housing in Wales to be fitted with an automatic fire suppression system. At present this would most likely be a water-based fire sprinkler system. For the purposes of the proposed Order, “new build housing” means “new residential premises” which is defined as premises constructed for or converted to residential use, including existing residential premises that are physically subdivided or incorporated into one or more new residences. The LCO would allow the National Assembly for Wales to legislate in this area of policy. A Measure would then be brought forward making it a requirement for automatic fire suppression systems to be fitted in new residential premises.
10. Ann Jones has accepted all of the LCO Committee’s recommendations in full, apart from recommendation 3, which she has accepted in part. Recommendation 3 states:

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).

¹ RoP p 79 – 100, 10 October 2007.

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 : 2005.²

11. Ann Jones has 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 physically subdivided or incorporated into one or more new residences. Parts (c) and (d) of the interpretation have been reworded so that it is clear that the competence applies to all parts of existing residential premises that are converted, including any common areas. She has accepted 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 proposed Order.
12. The objective of the proposed LCO (and the subsequent Measure) is to reduce the incidence of death and injury from fires in new build housing in Wales. This is to be achieved through a requirement for automatic fire suppression systems to be fitted in all new residential premises. This is seen as a preventative measure so that people can get out of their homes in the event of a fire occurring. It will also reduce the risk to fire fighters who are called to deal with domestic fires.
13. It is intended that the LCO includes all newly constructed residential premises and conversion of buildings from another use to residential use. Retrospective fitting of sprinkler systems to existing residential premises would not be included.

² Proposed Domestic Fire Safety LCO Committee, *National Assembly for Wales (Legislative Competence) (No. 7) Order 2008*, Committee Report, June 2008.

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14. 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 setting.³
15. 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; and
 - it must be a fire suppression system, one designed specifically to deal with fires rather than other hazards.
16. The current British Standard for residential fire sprinklers referred to in the Building Regulations is BS 9251 : 2005.

Fire Deaths in Wales

17. 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.
18. In the year to September 2006, there were 10 deaths in accidental fires and 494 fire related injuries in dwellings in Wales. In addition there was one death and 80 fire related injuries from deliberate fires in dwellings in Wales.⁴
19. 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 population.⁵ According to this research, the vulnerable groups tend towards lower income/deprived demographic groups, specifically:
- Single middle aged people, drink and smoke at home (aged 40 – 59 male bias).

³ RoP p 28, Proposed Domestic Fire Safety LCO Committee, 22 April 2008.

⁴ Welsh Assembly Government, Statistical Directorate, Fire Statistics Monitor, Quarter 3 2006: <http://new.wales.gov.uk/topics/statistics/headlines/other-2007/hdw200708091/?lang=en>

⁵ Department of Communities & Local Government, Research Bulletin No 9—Learning Lessons from Real Fires: Findings from Fatal Fire Investigation Reports, July 2006: <http://www.communities.gov.uk/publications/fire/researchbulletinno9>

- Female single parents.
 - Very elderly.
 - Disabled/impaired.
 - Young people (16 – 24)—including students.
20. 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*⁶ 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

21. In 2004, the total economic cost of fire in the UK was estimated at £7.03 billion, equivalent to approximately 0.78% of the gross value added of the economy.⁷
22. Based on the Welsh share of the total number of fires in England and Wales for the 12 months ending 30 September 2006, the total economic cost of fires in Wales can be estimated to be about £408 million per annum.
23. 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.
24. 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.
25. 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).
26. 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.

⁶ Community Fire Safety Working Group, *Wired for Safety*, October 2001: <http://new.wales.gov.uk/dsilg/publications/fire/wiredforsafety/report?lang=en>

⁷ Department of Communities and Local Government, *The Economic Cost of Fire: Estimates for 2004, April 2006*: <http://www.communities.gov.uk/fire/fireandresiliencestatisticsandfirestatistics/economiccost/>

The benefits of fitting fire sprinkler systems in domestic properties

27. 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 Regulations.⁸
28. 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. The evidence also shows that no lives have been lost in the UK due to fire in buildings fitted with domestic sprinkler systems.
29. A report⁹ published in the USA in 2007 by the National Fire Protection Association concluded that in properties where sprinklers are fitted:
- The death rate per fire is lower by at least 57%;
 - For most property uses, damage per fire is lower by one-third to two-thirds; and
 - 89% of reported structure fires have flame damage confined to the room of origin compared to 57% when no automatic extinguishing system is present.
30. A recent study¹⁰ 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.
31. 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 1972–74 the number of deaths per 100,000 population was just under seven per year. By the period 1992–98 the number of deaths per 100,000 population had fallen to 0.6, as a result of the mandatory sprinkler regulations.¹¹

⁸ Department for Communities and Local Government. Approved Document B (Fire safety)—Volume 1: Dwelling houses (2006 Edition) <http://www.planningportal.gov.uk/england/professionals/en/1115314683674.html>

⁹ National Fire Protection Association, US experience with sprinklers and other automatic fire extinguishing equipment, June 2007: <http://www.nfpa.org/assets/files/PDF/OSsprinklers.pdf>

¹⁰ US Department of Commerce, National Institute of Standards and Technology (NIST), Benefit-Cost Analysis of Residential Fire Sprinkler System, September 2007: http://www.bfrl.nist.gov/oa/publications/nistirs/NISTIR_7451_Oct07.pdf

¹¹ Building Research Establishment, Effectiveness of sprinklers in residential premises, February 2004: http://www.bre.co.uk/filelibrary/rpts/sprinkler/sprinkler_section3.pdf

32. The most comprehensive study into the effectiveness of residential fire sprinklers to date was carried out by the Rural/Metro Fire Department, Scottsdale, Arizona.¹² 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.
33. 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 Ordinance.
34. The Scottsdale study included a review of 109 fires that occurred in sprinklered structures, 44 of those being residential structures. In more than 90% 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 eight lives were saved over the period as a direct result of the installation of fire sprinkler systems, four of these in residential properties, and that up to \$25.4 million was saved based on the total potential loss due to fire in sprinklered residential properties.
35. Fire sprinklers are only activated when the room temperature with 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 one in 16 million.

Costs of domestic fire sprinkler systems

36. The main cost associated with fire sprinkler systems is the capital cost of installation. There are also on-going maintenance costs.
37. The cost for most new homes is estimated to be about 1% to 2% of the total cost of construction. Annual maintenance costs are between £75 and £150 per annum. 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 construction costs where sprinklers permit the elimination of costly fire rated doors or other structural elements. This is not a Regulatory Impact Assessment for any Measure that may come forward as a result of this proposed LCO. Any resulting Measure would need to be accompanied by an Explanatory Memorandum containing an estimate of the cost benefits.

¹² <http://www.firesprinklers.org.uk/Services/Documents/Scottsdale.pdf>

Scope

38. The LCO would add the following matter to field 11 of Schedule 5:

Matter 11.1

Provision for and in connection with a requirement that an automatic fire suppression system be installed in new residential premises.

Interpretation of this Matter

“New residential premises” means:

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

39. The LCO seeks to confer powers on the Assembly to make Assembly Measures in relation to the installation of automatic fire suppression systems in new residential premises.

40. If this power is conferred the intention is to bring forward a Proposed Measure that would make it a statutory requirement to install an automatic fire suppression (fire sprinkler) system in all of the following:

- Newly built residential premises including flats/apartments;
- Existing residential premises that are either physically subdivided or incorporated 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; and
- Existing buildings that are converted from a non-residential use to a residential use (eg: office space converted to flats).

41. Any Measure made in reliance on the legislative competence conferred by the LCO would more particularly specify the premises to which the Measure would apply. It would also specify in more detail the type of equipment to be installed.

Exceptions

Geographical limits of any Assembly Measure

42. Section 93 of the 2006 Act imposes a prohibition upon Assembly Measures having effect other than in relation to Wales. It provides that a provision of an Assembly Measure is not law in so far as it is outside the Assembly's legislative competence. A provision is outside 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.

43. 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

44. This proposed Order in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 of Schedule 5 of the 2006 Act, the Assembly may not by Measure alter the functions of the Minister of the Crown without the consent of the Secretary of State for Wales. 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 proposed LCO.

Conclusion

45. For the reasons outlined above, Ann Jones AM wishes to propose that legislative competence should be conferred on the National Assembly for Wales in relation to automatic fire suppression systems in new residential premises, in accordance with the provisions of the proposed Order to which this Explanatory Memorandum relates.
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Written evidence from the Chief Fire Officers Association

The Chief Fire Officers Association is the professional voice of the UK Fire and Rescue Services covering all Fire and Rescue Services within the United Kingdom.

Membership of the Chief Fire Officers Association includes Chief Fire Officers and Senior Management teams from across all UK Fire and Rescue Services.

The Chief Fire Officers Association is pleased to provide full support for the proposed LCO by Ann Jones on domestic fire safety.

The Chief Fire Officers Association believe that this LCO, if adopted in Wales along with appropriate measures, will significantly reduce the loss of life and incidents of serious injury caused by fires in the home in Wales; support sustainability in the home and in the community; support all Welsh Assembly environmental friendly policies and practices; save millions of pounds for the economy of Wales.

1. *Is the LCO request in the spirit and the scope of the devolution settlement?*

1.1 We believe that the proposed LCO is in the spirit and scope of the devolution settlement and is supported by sections 108, subsection 4 and, subsection 5 of the Government of Wales Act 2006.

2. *Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?*

2.1 Yes. We believe that this proposed LCO absolutely fits into the section 208 legislative competence of the Government of Wales Act 2006, in that it applies to the subjects of Wales, and it provides for the enforcement of a provision of an assembly member to the subjects of Wales.

3. *To what extent is there a demand for legislation on the matter in question?*

3.1 The Chief Fire Officers Association is aware of the devolution of building regulations to the Welsh Assembly, however, building regulations are only guidance and are better supported by specific pieces of legislation to ensure that adequate safety standards are always put into place.

3.2 This LCO can be achieved far sooner than any amendment to Building Regulations once devolved. The administrative implications are significant and there is no guarantee that this would be a top priority for the relevant minister meaning that the whole process could be set back for years or even dropped entirely. In the meantime any new home will be lost to the Order meaning that less people stand to benefit.

3.3 We would draw your attention to the UK Government's policy guidance, introduced in March 2007, to ensure all new schools are constructed with sprinklers installed. Evidence shows failing to make this a mandatory requirement has resulted in almost half of new schools being constructed without sprinkler systems installed, thereby failing to reduce risk of fire damage. We believe that should discretion be allowed on the issue of domestic sprinklers, then we will see a similar, if not a greater pattern, of projects being built without sprinklers.

3.4 We believe therefore that legislation is required to bring a level playing field to all those involved in the house building industry, thus ensuring a common standard of safety throughout the whole of Wales.

3.5 The Chief Fire Officers Association believe that by bringing legislation in on domestic sprinklers over future years, Wales will experience diminishing injury and loss of life in the home, eventually arriving at a point where the loss of life due to fire in a home becomes an extremely rare occurrence, thus making Wales the safest place to live in the UK.

4. *Are there any cross border issues relating to the LCO (eg financial or policy issues)?*

4.1 Every Fire and Rescue Service in Wales is required to produce a risk reduction plan and every Fire and Rescue Service in England is required to produce an Integrated Risk Management Plan. On production of these plans, Fire and Rescue Services are required to review their current provision for prevention, protection and response. In reviewing this provision, Fire and Rescue Services will not only look at the provision that it provided within their own boundaries, but also those provision that are provided by neighbouring Fire and Rescue Services. This LCO will only support cross-border issues by requiring over time, less cross-border responses due to a decreasing need of major Fire and Rescue involvement at house fires. This cross-border support will be extended across all of the emergency services and other voluntary services.

4.2 Section 13 of the Fire Services Act 2004 covers reinforcement schemes, which is the assistance in discharge of functions of Fire and Rescue Services. Section 16 covers arrangements for discharge of functions by others. A Fire and Rescue Service (Fire Authority) may enter into arrangements with another Fire and Rescue Service or any other person for discharge, to any extent that the authority or other person of function conferred on the Fire Authority under any sections 6–9 and 11. Often these agreements are made between Fire and Rescue Services and are chargeable between them. This LCO will over time enable the three Fire and Rescue Services in Wales to scale down these agreements thus scaling down the costs of any reinforcement schemes.

5. *Are the purpose and scope of the LCO clearly defined, including the terms and definitions used?*

5.1 We believe that the terms and the purpose are clearly defined and the terms and definitions used have been consulted on widely. The terms used being widely accepted terms in both the building and the fire industry. The definitions used meet legal standards for both the fire and the building industry.

5.2 In support of terms and definitions, there is an explanatory memorandum which goes on to explain in detail all of the issues covered by the LCO.

6. *Does the LCO have the potential to increase regulatory burden on the private or public sector?*

6.1 The Chief Fire Officers Association believes that any increase to the regulatory burden on the private and public sector relating to this LCO will be more than offset by the benefits gained. Those benefits being:

6.1.1 Economic.

6.1.2 Environmental.

6.1.3 Prevention of loss of life.

6.1.4 Prevention of injury.

6.2 There will be no gains made by any one section because of this regulatory approach to domestic fire safety. It will mean all house builders and potential organisations looking to provide housing will be required to meet the same standard.

7. *Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures, if so, where does the legislative competence to exercise such change lie?*

7.1 We believe that this LCO would not necessitate the formation or abolition of Welsh institutions and structures. Rather, it will ensure that the house building industry is regulated to a common standard, in pursuance of safety of the occupants of any new homes.

8. *Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly?*

8.1 It is the opinion of the Chief Fire Officers Association that this LCO provides structure and support to other powers that are available to the assembly, such as the devolution of building regulations. This LCO compliments the devolution of building regulations and the application of measures seek to support the framework of cover that building regulations provide.

9. *Has full use been made of any existing powers to issue statutory guidance and/or secondary legislation in relation to this matter?*

9.1 The guidance that exists currently in relation to this matter is covered under the Fire Services Act 2004, part 2, section 6, fire safety, paragraph 2, subsection A, the provision of information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire. This information is via advice only, thus allowing a great deal of flexibility for domestic inhabitants to choose their own safety standards in either new or existing homes.

9.2 We believe that this LCO will support the work of Fire and Rescue Services in Wales in trying to reduce the numbers of fires, deaths and injuries in the home.

10. *Wales taking the UK lead*

10.1 It is clear from other fire safety legislations such as sprinklers in schools, that Wales have shown that devolution applied correctly allows Wales to show the United Kingdom how excellence can be achieved.

10.2 The Chief Fire Officers Association believes that by granting this LCO, and implementing the measures of support, Wales will again show that it has the courage and foresight to bring in supportive legislation that demonstrates a clear commitment to the people of Wales and a clear commitment to the leadership of Wales by the Welsh Assembly.

10.3 The Chief Fire Officers Association would like to offer full support to this LCO and to the work of Ann Jones, Assembly Member, as we believe that working towards a safer Wales, a greener Wales and a more economic Wales demonstrates clearly how governments in London and Scotland may observe, take evidence and follow suit.

Written evidence from the National Fire Sprinkler Network

EXECUTIVE SUMMARY

I must applaud the Welsh Assembly (and Ann Jones AM in particular) about its visionary and realistic approach to seek to bring about this further safety measure for the people of Wales where accidental fire deaths are in the upper quartile of fire death statistics per 100,000 population.

Those dying in Wales are from a narrow age band and well defined socio-economic group, where smoke alarms and community education has failed to impact, and we concur with the Fire & Rescue Services that automatic fire sprinkler protection is the only way to reduce further the rate of fire deaths, and injuries from fire.

It would be difficult to find any other regulatory means to transfer these powers to the Welsh Assembly expediently, which impact on such a relatively small number of people (some 3 million).

There would appear to be minimal issues for other Welsh institutions, except for Dwr Cymru, and they are generally supportive of the justification for this initiative.

The LCO is in accordance with the Government of Wales Act 2006, and will undergo further extensive scrutiny in Wales, during the Measures stage, if approved.

BRIEF INTRODUCTION FROM THE SUBMITTER

My name is Iain Cox QFSM MA BSc (Hons) MCIPD, and I am the current Chief Fire Officer of the Royal Berkshire Fire & Rescue Service, and also the Chair of the National Fire Sprinkler Network.

I also serve on the Board of the Chief Fire Officers' Association, having been the lead Officer of the CFOA National Fire Safety Committee.

FACTUAL INFORMATION

1. The LCO is within the spirit and scope of the devolution settlement, in that it seeks powers under the LCO, to undertake something which is of concern specifically to Wales, which cannot be achieved under the existing Regulations.

2. The use of the LCO mechanism is in accordance with the Government of Wales Act 2006 (Part 3 Measures—paragraphs 94 to 96), which allows specific measures to be devolved, using the LCO, where it is expedient and beneficial, and where the Welsh Assembly Government is seen as competent to have such powers devolved.

The issues affecting the people of Wales differ from those in other parts of the UK, and it would seem right and proper for Wales to be able to determine the measures necessary to achieve its own fire safety needs and objectives.

3. Accidental fire deaths in Wales are in the upper quartile of UK fire death statistics per 100,000 population. The excellent research undertaken by the Fire & Rescue Services in Wales has identified those who are dying in fires in Wales, are from a narrow age band and well defined socio-economic group. Clearly the installation of smoke alarms and community safety education has failed to impact on this group, and we concur with the views expressed by the Fire & Rescue Services, that sprinklers are the only way to reduce further the rate of fire deaths.

4. The LCO will not require any additional funding to be transferred, and the only policy change will be a variation from England, insofar as the Building Regulations apply to fire safety in domestic dwellings.

5. The purpose and scope of the LCO were extensively discussed and defined during the scrutiny stage of the Welsh Assembly Government's procedure as outlined in the June 2008 report.

6. The LCO will require all new build housing to have an automatic fire sprinkler system installed, which will ultimately almost eliminate fire deaths, reduce injuries from fire by 80%, and property damage by 80%, it is consistent with Government's policy on sustainable homes and significantly reduces the impact of fire on the environment, whilst improving firefighter safety.

7. The proposed LCO would not appear to necessitate the formation of abolition of Welsh institutions and structures.

8. The use of the LCO is more appropriate than for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly. It is more expedient and affects only a relatively small population of some 3 million people.

9. Statutory guidance and/or secondary legislation would be difficult, without it also being retrospective in England. This is a Wales specific issue, identified by the Fire & Rescue Services in Wales, and recognised by the Welsh Assembly. It would seem right and proper for Wales to be able to determine the measures necessary to achieve its own solutions in relation to Fire Safety, where the Fire & Rescue Service is now the responsibility of the Welsh Assembly.

November 2009

Written evidence from North Wales Fire and Rescue Service

Q1. *Is the LCO request in the spirit and scope of the devolution settlement?*

The constitutional context to this request is set out by the Government of Wales Act 2006 (the 2006 Act) and the UK Government's policy. The UK Government's White Paper "Better Governance for Wales" published in June 2005 set out the UK Government's commitment to enhance the legislative powers of the National Assembly for Wales, as a democratically elected institution with its own detailed scrutiny procedures.

Q2. *Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?*

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. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (LCO) in this memorandum.

Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or a Legislative Competence Order, approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via a Legislative Competence Order.

The proposed Legislative Competence Order would confer further legislative competence on the National Assembly for Wales, in the field of Housing (field 11, Part 1, Schedule 5 to the 2006 Act).

Q3. *To what extent is there a demand for legislation on the matter in question?*

The objective of the proposed LCO (and the subsequent Measure) is to reduce the incidence of death and injury from fires in new build housing in Wales. In the last five years there have been 88 deaths and 1,325 injuries in domestic dwelling fires across the Welsh region.

This is to be achieved through a requirement for automatic fire suppression systems to be fitted in all new residential premises. This is seen as a preventative measure so that people can get out of their homes in the event of a fire occurring. It will also reduce the risk to fire fighters who are called to deal with domestic fires.

Evidence suggests that certain population groups are more at risk from domestic fires, these groups were identified in a report in North Wales into accidental dwelling fire deaths. Those groups identified at higher risk were:

- Individuals living alone which accounted for 83% of fire deaths.
- Individuals over the age of 60 accounting for 53% of fire deaths.
- Individuals with substance misuse issues accounting for 50% of fire deaths.
- Individuals living in rented accommodation 48% of fire deaths.

"Wired for Safety" a Welsh Assembly Government document published in 2001 advised that losses from fires in buildings protected by sprinklers in Europe over a 10 year period were estimated to be 10% of those in unprotected buildings. In buildings fully protected by sprinklers in the same period, sprinklers alone controlled 90% of fires, 60% of fires were controlled by no more than 4 sprinkler heads. Apart from explosions, there have never been multiple fatalities in a fully sprinklered building in the United Kingdom. The total number of deaths worldwide in all sprinklered buildings is only 50 compared with the many thousands in non-sprinklered buildings. There is no evidence of a fire death in a residential property fitted with sprinklers.

Q4. *Are there any cross border issues relating to the LCO (eg financial or policy issues)?*

It is anticipated that the introduction of this legislation would in time lead to a significant reduction in the social and economic costs to the Welsh economy which would include construction and healthcare costs.

The Welsh Assembly is currently pursuing the devolution of the Building Regulations to Wales, which are a key driver for the provision of fire protection in the built environment; it would however be more expedient for dedicated legislation to be applied with respect to Domestic Fire Safety.

Q5. *Are the purpose and scope of the LCO clearly defined, including the terms and definitions used?*

Ann Jones and her advisors have produced a comprehensive “Explanatory Memorandum” which explains fully the background, scope, interpretation and exceptions contained within the LCO.

Q6. *Does the LCO have the potential to increase regulatory burden on the private or public sector?*

There will be an increased burden on both the private and public sectors; however this will be more than offset by the significant improvement in public safety by reducing deaths and injuries.

Q7. *Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures, if so, where does the legislative competence to exercise such change lie?*

Not aware of any institution or structure that would be required or nullified by this proposed LCO.

Q8. *Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill to confer competence on the Assembly?*

The LCO seeks to confer legislative competence on the National Assembly for Wales so that an Assembly Measure may be brought forward requiring all new build housing in Wales to be fitted with an automatic fire suppression system.

The LCO would allow the National Assembly for Wales to legislate in this area of policy. A Measure would then be brought forward making it a requirement for automatic fire suppression systems to be fitted in new residential premises.

Q9. *Has full use been made of any existing powers to issue statutory guidance and/or secondary legislation in relation to this matter?*

The Fire Services Act 2004, Part 2, Section 6, paragraph 2 offers guidance in relation to the provision of information, publicity and encouragement in respect of actions that may be taken to prevent fires and therefore deaths and injuries from fires. This is however only guidance or advice which allows individuals to select their own safety standards in their homes.

November 2009
