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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation document

Rationalising the legislation controlling automatic fire suppression systems in care homes for children

Date of issue: 14 December 2022
Action required: Responses by 7 March 2023

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Overview

This consultation seeks views on proposals to amend the Building Regulations 2010 to rationalise the regulatory procedures that oversee automatic fire suppression systems in care homes for children.

How to respond

You can email your response to the questions in this consultation to: enquiries.brconstruction@gov.wales

If you are responding in writing, please make it clear that you are responding to the consultation on:

“Fire suppression systems in care homes for children.”

Written responses should be sent to:

Fire suppression systems in care homes for Children Building Regulations, Welsh Government, Cathays Park, Cardiff, CF10 3NQ

When you reply, it would be useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:

- your name,
- your position (if applicable),
- the name of organisation (if applicable),
- an address (including post code),
- an email address, and
- a contact telephone number

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For any enquiries about the consultation please contact the Welsh Government Building Regulations team by emailing: enquiries.brconstruction@gov.wales

For further information:
Building Regulations
Welsh Government
Cathays Park,
Cardiff,
CF10 3NQ
Telephone: 0300 062 8144

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

E mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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Introduction

Background

1. The Building Regulations 2010 (the Building Regulations) control certain types of building work, principally the erection and extension of buildings and provision or extension of certain services or fittings, chiefly to ensure that buildings meet certain standards of health, safety, welfare, convenience, and sustainability.
2. Building Regulations greatly influence how our buildings are constructed and used. As such, they help to deliver significant benefits to society. In 2014 the requirement for automatic fire suppression systems was introduced in certain buildings in Wales through the Building Regulations.
3. A [consultation](#) was undertaken 20 November 2020 to 4 January 2021 to amend the Building Regulations in respect of automatic fire suppression systems for care homes for children.
4. The consultation outlined the current position, where the Building Regulations provide the primary vehicle for the installation of automatic fire suppression systems in certain new and converted buildings. The Building Regulations include care homes for adults, however provisions for care homes for children are provided in the Domestic Fire Safety (Wales) Measure 2011 (the Measure). The consultation set out that having provisions for automatic fire suppression systems in two different pieces of legislation causes confusion and inconsistency in application.
5. To address this issue the consultation proposed that care homes for children should be transposed from the Measure to the Building Regulations. This would provide parity between these care homes and care homes for adults where automatic fire suppression systems are already required by the Building Regulations.
6. The Government response was issued in March 2021. This identified that the intention remains the amendment of the Building Regulations to include the requirement for automatic fire suppression systems in children's homes. The response also identified that further amendments were required to the legislation, and a second consultation will be issued to outline further proposals.

Proposals

7. The overall intention remains to amend the Building Regulations to include the requirement for automatic fire suppression systems in children's homes. The proposals seek to replicate provisions within the Measure so that reference can be made to a single piece of legislation. To do this, this consultation sets out three amendments:
 - An amendment to the definition of institution in regulation 2 (interpretation) to include the terms associated with care homes for children;

- An amendment to regulation 37A (provision of automatic fire suppression systems) to apply to care homes for children; and,
 - Provision, for the purposes of regulation 37A (provision of automatic fire suppression systems), that a material change of use includes a material change of use from a care home for children to a care home for adults or from a care home for adults to a care home for children.
8. To assist in considering these changes draft legislation has been produced and included as part of this consultation.

Amended definition in Regulation 2

9. We consider the wording of the definition of institution can be amended to provide greater clarity as to the buildings captured by it. The proposed change replaces some of the existing wording with a term taken from The Regulation and Inspection of Social Care (Wales) Act 2016 which is the legislation that oversees care homes in Wales. This change is provided for at draft regulation 2(2).

Amends Regulation 37A to apply to care homes for children

10. Care homes for children are to be explicitly included within regulation 37A of the Building Regulations. This would provide parity between care homes for children and care homes for adults where automatic fire suppression systems are already explicitly mentioned in regulation 37A. This is provided for at draft regulation 2(3)(a).

Change of use in from a care home for children to a care home for adults or from a care home for adults to a care home for children.

11. Section 6 of the Measure defines the term 'residence' for the purposes of the Measure, and lists care homes for children (section 6(f)) and care homes for adults (section 6(c)) separately. Under the Measure a change of use is relevant between each category of residence. As care homes for adults and care homes for children are defined separately and are regarded as two distinct types of building under the Measure, where one changes use to the other the provisions of the measure are triggered. Therefore to transpose the requirements into the Building Regulations 2010 the Building Regulations would also need to capture when one type of residence (a care homes for adult or children) is converted to another (a care homes for children or adult).
12. The amendments provided by draft Regulation 2(3)(b) replicates this provision contained in the Measure 2011 in the Building Regulations.
13. The purpose of this amendment is to transpose the provisions of the measure and not have consequences on the other provisions in the Building Regulations 2010 relating to a change of use. The new Regulation 37A(2A) and (2B) make clear the provision only applies to the requirements of Regulation 37A, and any other requirements of the Building Regulations set by Regulation 6 would not be applicable to such a change of use.

Temporary buildings

14. The Domestic Fire Safety Measure does not provide any exclusion for temporary buildings. This is in contrast to the Building Regulations 2010 which excludes (via regulation 37A(5)) temporary buildings with a planned time of use of two years or less from the requirements. The policy intention is to replicate the provisions in the

measure for children’s homes in the regulations however there is no intention to make a further amendment to regulation 37A(5) to remove the exclusion for temporary buildings as it is considered disproportionate to apply in this circumstance.

Effect on the measure

15. The proposed changes will ensure provisions contained within the measure are included within the Building Regulations, and therefore subject to oversight of a building control body. This oversight by building control bodies of the Building Regulations on all buildings will mean the Measure will have no practical effect and will be repealed when a suitable legislative vehicle is available.

Q1	Do you support the proposed amendment to the definition in Regulation 2 of the Building Regulations?	Yes	No	Unsure
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please explain your reasoning:				

Q2	Do you agree the amendments to Regulation 37A of the Building Regulations provide equivalence to the provisions in the Measure?	Yes	No	Unsure
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please explain your reasoning:				

Q3	If you have any further comments to make regarding the proposals, please set them out here.			

Assessment of impacts

16. The previous [consultation](#) identified the proposed costs/benefits of the proposal. This identified because it's a legislative change only, there are no impacts on costs as the requirements remain the same. These assumptions are considered to remain valid for this consultation.

Q4	Do you agree the impact assessment previously undertaken remains relevant?	Yes	No	Unsure
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If no, please explain and provide evidence of what you consider to be unidentified costs.

Q5	<p>We would like to know your views on the effects that the proposed amendments would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.</p> <p>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</p>
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Q5a	<p>Please also explain how you believe the proposed actions could be formulated or changed so as to have positive effects, or increased positive effects, on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.</p>
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Next steps

17. This consultation will close on 7 March 2023. This consultation period is shorter than the standard Welsh Government consultation period. A shorter period is considered appropriate because the consultation is targeted at a very specific and limited audience who may be affected by the change, which is providers of care facilities and building control bodies. These bodies have been informed of the consultation. Other stakeholders are unlikely to have an interest in this specific matter and previous consultation has been undertaken on this topic.
18. Responses to this consultation will be analysed and a Welsh Government Response will follow.

Draft legislation

2022 No. (W.)

BUILDING AND BUILDINGS, WALES

The Building (Amendment) (Wales) (No.3) Regulations 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Building Regulations 2010 (“the 2010 Regulations”) to include the requirement for automatic fire suppression systems to be installed in care homes for children where they are newly erected, or where building work results in a material change of use.

Regulation 2(2) amends the definition of institution in regulation 2 (interpretation) to include care homes for children.

Regulation 2(3)(a) amends regulation 37A (provision of automatic fire suppression systems) of the 2010 Regulations to apply to care homes for children. Regulation 2(3)(b) inserts a new paragraph in regulation 37A. The newly inserted paragraph (2A) provides that for the purposes of regulation 37A a material change of use in a building includes a material change of use from a care home for children to a care home for adults or from a care home for adults to a care home for children. The newly inserted paragraph (2B) confirms the requirements set by Regulation 6 of the 2010 Regulations will not apply to a material change of use described in paragraph (2A). These amendments replicate the provision contained in the Domestic Fire Safety (Wales) Measure 2011 Nawm 3 (“the 2011 Measure”) as prior to the enactment of these Regulations the requirements for automatic fire suppression systems in care homes for children were provided for in the 2011 Measure.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ and on the website at www.gov.wales.

2022 No. (W.)

BUILDING AND BUILDINGS, WALES

The Building (Amendment) (Wales) (No.3) Regulations 2022

Made ***

Laid before Senedd Cymru ***

Coming into force in accordance with regulation 1(3)

The Welsh Ministers make the following Regulations, in exercise of the powers conferred on the Secretary of State by sections 1 and 34 of, and paragraphs 7, 8 and 10 of Schedule 1 to, the Building Act 1984(1), now exercisable by them(2).

In making these Regulations the Welsh Ministers have regard to the matters in Section 1A(3) of that Act and before making these Regulations the Welsh Ministers consulted the Building Regulations Advisory Committee for Wales and such other bodies as appear to them to be representative of the interests concerned in accordance with section 14(7) of the Building Act 1984(4).

Title, application, and commencement

- a) The title of these Regulations is the Building (Amendment) (Wales) (No.3) Regulations 2022.
- These Regulations apply in relation to Wales.
- These Regulations come into force on [xxx].

Amendments of the Building Regulations 2010

- b) The Building Regulations 2010(3) are amended as follows.

In regulation 2 (interpretation) in the definition of “institution”, for “under the age of five years” substitute “subject to vulnerability or need”.

(1) 1984 c. 55; Section 1 was amended by section 1(1) and (2) of the Sustainable and Secure Buildings Act 2004 (c. 22) (“the 2004 Act”). Section 1A) was inserted by section 1(3) of the 2004 Act Paragraph 7 of Schedule 1 was amended by section 3 of the 2004 Act and by section 11 of the Climate Change and Sustainable Energy Act 2006 (c. 19); and paragraph 8 of Schedule 1 was amended by section 3 of the 2004 Act and section 40 of the Flood and Water Management Act 2010 (c. 29).

(2) The functions conferred on the Secretary of State by sections 1 and 34 of, and paragraphs 7, 8 and 10 of Schedule 1 to, the Building Act 1984 were, insofar as exercisable in relation to Wales, transferred to the Welsh Ministers by the Welsh Ministers (Transfer of Functions) (No.2) Order 2009 (S.I. 2009/3019) (“the 2009 Order”) and section 54 of the Wales Act 2017 (c.4).

(3) Section 1A was inserted by section 2 of the 2004 Act.

(4) Section 14(7) was added by the 2009 Order.

(3) S.I. 2010/2214, amended by 2022/564 (W. 130), S.I. 2018/48 (W. 15), S.I. 2019/1499 (W. 275), S.I. 2017/1274 (W. 296); there are other amending instruments, but none are relevant.

In regulation 37A(4) (provision of automatic fire suppression systems)—

After sub-paragraph (1)(a) insert—

“(aa) care homes for children, which means places at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016(5), is provided wholly or mainly to persons aged under 18; but not—

- (i) an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992(6);
- (ii) a place at which accommodation is provided for the purposes of—
 - (aa) a holiday;
 - (bb) a leisure, recreational, sporting, cultural or educational activity;unless a person under 18 is accommodated there for more than 28 days in any 12 month period;”

after sub-paragraph (2) insert—

“(2A) For the purposes of this regulation a material change of use comprises or includes a change in the purposes for which or the circumstances in which a building is used, so that after that change the building is used—

- (a) as an institution described in regulation 37A(1)(a) where previously it was used as an institution described in regulation 37A(1)(aa); or
 - (b) as an institution described in regulation 37A(1)(aa) where previously it was used as an institution described in regulation 37A(1)(a).
- (2B) Regulation 6 does not apply to the material change of use described in regulation 37A(2A).”

Name

Minister for Climate Change, one of the Welsh Ministers

Date

(2) Regulation 37A was inserted by S.I. 2013/2730 (W. 264) and amended by S.I. 2017/1274 (W. 296) and S.I. 2018/48 (W. 15). In relation to excepted energy buildings in Wales regulation 37A was inserted by S.I. 2018/558 (W. 96).

(3) 2016 anaw 2.

(4) 1992 c. 13. Section 91(3) was amended by paragraph 13(2) of Schedule 8 to the Apprenticeships, Skills, Children and Learning Act 2009 c. 22.