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Welsh Government

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Consultation Document

Building Safety proposed definition of higher-risk building consultation

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Action required: Responses by 12 May 2023

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Overview

The Building Safety Act 2022 which received Royal Assent in April 2022, brought forward a package of legislative changes related to building safety. For Wales the Act contains, amongst other provisions, legislative changes to establish new design and construction processes, oversee the competence of those who operate in the system, and other improvements to support the building of safer buildings generally. A key part of these reforms includes a new and more stringent regulatory regime for those buildings which are identified as higher-risk building. This is the consultation on the definition of “higher-risk building”.

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: “Definition of Higher-Risk Building”

Written responses should be sent to:
Definition of Higher-Risk Building
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

UK General Data Protection Regulation (UK 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 UK GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
e-mail:
dataprotectionofficer@gov.wales

The contact details for the Information Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 0303 123 1113
Website: <https://ico.org.uk/>

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Introduction

1. Following the Grenfell Tower tragedy, the UK Government appointed Dame Judith Hackitt to lead an independent review of building regulations and fire safety in England. In her report - Dame Judith Hackitt outlined a new approach to managing fire and structural safety risks in high-rise multi-occupied residential buildings.
2. The Welsh Government Building Safety Expert Group developed a Road Map to Safer Buildings in Wales which considered the application of the Hackitt report recommendations to Wales. These proposals were built on in the White paper: Safer Buildings in Wales (“the White Paper”) which set out proposals for how we planned to address the issues in the design and construction and occupation stages. This explained that changes to the design and construction regime in Wales would be brought forward through the Building Safety Act 2022.
3. The Building Safety Act 2022 which received Royal Assent in April 2022, brought forward a package of legislative changes, some of which apply in relation to Wales. In relation to the design and construction phase, for Wales the Act contains legislative changes to establish new design and construction processes, oversee the competence of those who operate in the system, and other improvements to support the building of safer buildings generally. A key part of these reforms includes a new and more stringent regulatory regime for those buildings which are identified as “higher-risk buildings”. The Welsh Ministers have a power, introduced by section 31 of the Building Safety Act 2022, to define “higher-risk building” for the purposes of the design and construction phase.
4. Work on secondary legislation to facilitate the implementation of the Building Safety Act 2022 in Wales is underway.
5. This consultation sets out the proposals for the definition of “higher-risk building” which is fundamental to the reform of the design and construction phase of the Building Safety system. Proposals for the types of buildings that would be in scope of the new regime were set out in the White Paper and Government Response. We are now proposing to include care homes and hospitals within the scope of the new regime.

The purpose of this consultation

6. The new more stringent regulatory regime will apply to buildings which come within the definition of “higher-risk building”. This definition will apply to the design and construction phase and for any works to existing buildings that require building regulation consent. The reform of the building safety regime during the occupation phase is being taken forward separately, and the categories of buildings coming within that regime may be different.

7. The consultation is accompanied by a set of draft regulations to help understand the proposals.
8. There are a number of questions detailed within this consultation paper where we are seeking your input. A separate response paper is provided for you to provide your responses to these questions should you wish to. Wherever possible it would be helpful if you could provide evidence to support your comments.

How will this definition be used?

9. The definition will be used to categorise buildings which come within the scope of the new, more stringent, regulatory regime in design and construction. The new design and construction regulatory framework for “higher-risk building” will introduce the following measures:
 - **Regulator** Only Local Authority Building Control will oversee the design and construction of a “higher-risk building”
 - **Gateways** will provide rigorous inspection of building regulations requirements, ensuring that building safety is considered at each stage of design and construction.
 - Requiring a ‘**golden thread**’ of building information to be created, stored and updated throughout the building’s lifecycle.
 - **Dutyholders** that will have accountability and statutory responsibilities when buildings are designed and constructed.
 - **Competence** requirements, those appointed to work on a higher-risk project must have the relevant skills, knowledge, experience and behaviours necessary to undertake the role. Details of the competence requirements of Building Inspectors is covered in our other consultations on the registration of Building Inspectors.

Proposals

10. It is proposed that a “higher-risk building” is defined as a building that is at least 18 metres in height or has at least 7 storeys (See Figure 1 and Figure 2 below) where it also contains at least one residential unit or is a hospital or a care home.
11. To ensure the scope of the more stringent regime is based on objective and measurable risk factors we have chosen the two metrics of height/ storey and use to define a “higher-risk building”. Height and use are metrics commonly used within current Building Regulations. This provides clarity when deciding whether or not a building is in scope of the new regime. We want to ensure that proportionate rigour is applied in relation to structural and fire safety.
12. We are proposing that the regulations will define terms included in this definition. The full detail can be found in the draft regulations supplied as part of

this consultation. We wish to ask specific questions about some of these terms and have therefore included the terms as drafted in regulations below.

13. Regulation 3 of the draft regulations states:

“residential unit” means a dwelling, or any other unit of accommodation used by one or more persons to live and sleep and includes a room in a hostel, a room in a hall of residence or other accommodation for students or pupils, and a room in a children’s home;

Use

- 14.** The types of buildings included and excluded from the scope of the new regime has been previously consulted on through the White Paper. Since that time the proposed definition has been revised to reflect evidence on the risk of different building types.
- 15.** Residential units still present the greater fire risk and therefore remain the core part of the new regime. We propose that a building above the height/ storey threshold with a single residential unit is included within the scope. This would mean that multi-use buildings are also included in the new regime where they contain a residential unit.
- 16.** We are proposing a move from two residential units to one residential unit, this change is being proposed to align with the requirements for combustible cladding and also to take into account that the primary risk of fire where people are sleeping on the premise. The sleeping risk is associated with a single dwelling and is not limited to building with two or more units.
- 17.** Since the White Paper consultation, the proposed definition of a “higher-risk building” has been expanded to include care homes and hospitals. Their inclusion is based on evidence presented during scrutiny of what is now the Building Safety Act 2022. Including hospitals and care homes ensures “higher-risk buildings” (i.e those that meet the height/ storey threshold) which may be occupied by those with limited mobility are designed and constructed in accordance with the new regime. It is proposed that a hospital will only come within scope where it has at least one bed intended for use by a person admitted to the premises for an overnight stay.

Exclusions

- 18.** We are proposing that the regulations define specific buildings, which would otherwise meet the criteria, be excluded from the definition of “higher-risk buildings”. These are listed in Regulation 6. The buildings excluded are:
- secure residential institutions (e.g. prisons);
 - temporary leisure establishments (e.g. hotels); and
 - military premises (e.g. military barracks).

19. We propose to exclude temporary leisure establishments as these are generally, actively managed properties. However, we recognise that in some circumstances there has been a change in the way such establishments are managed, for example, automatic reception/concierge services.
20. We propose to exclude secure residential institutions as these buildings have specific security considerations which need to be considered, and the Ministry of Justice (MOJ) have their own building and fire safety arrangements. We believe it is right that these are maintained.
21. We also propose to exclude military premises as the Ministry of Defence (MOD) have their own building and fire safety arrangements and specific security considerations which need to be considered. We believe it is right that these are maintained. We understand that the MOD will be applying the key elements of the new regime in their arrangements.

Definition of a building

22. We are proposing that the regulations will define what is meant by 'building'. The proposal is that the regulations use the following definition:

“building” includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building as defined by the Building Act 1984”

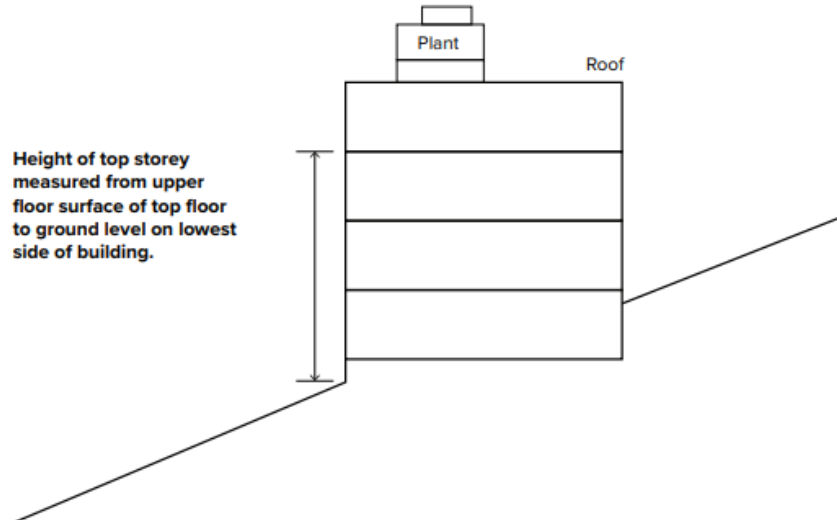
23. We are proposing this definition as it is an established definition recognised in the sector and currently used for building work.

Height and storeys

24. We propose the regulations also define how buildings should be measured to understand whether or not they meet the threshold required to be subject to the new more stringent regime requirements. We have chosen to introduce two tests for measurement to prevent gaming the system; these are height and storeys.
25. We propose to set out that the height of a building is measured from the ground level to the top floor surface of the top storey of the building (excluding roof top plant areas and any top storeys consisting exclusively of machinery or plant rooms (See Figure 1).

Figure 1: Height of top storey in building

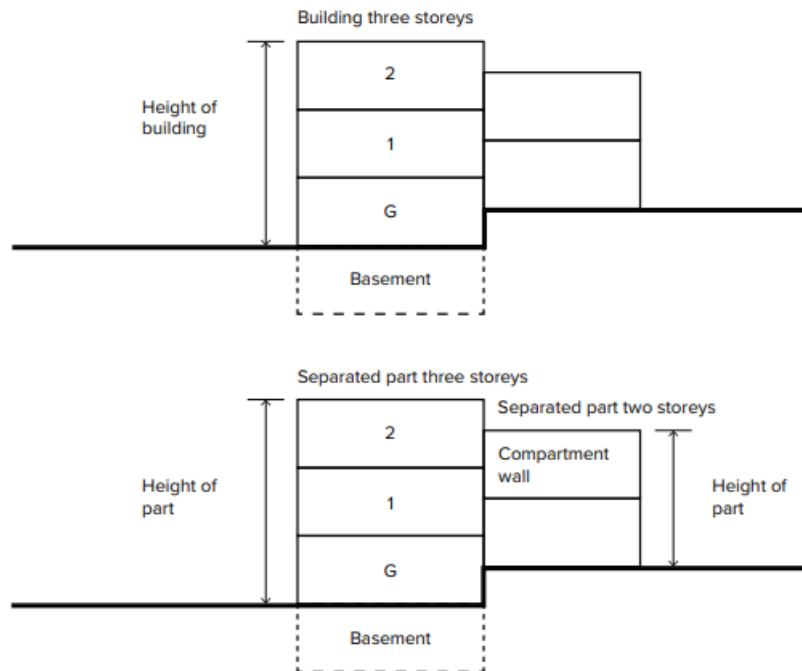
Height of top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms.



26. We are also proposing that the regulations provide a way of determining the number of storeys of a building, to determine whether or not they meet the 7-storey threshold required in order to be subject to the new more stringent regime requirements.
27. We propose to set out that any storey which is below ground level is to be ignored. Any mezzanine floor is to be treated as a storey if its internal floor area is at least 50% of the internal floor area of the largest storey in the building which is not below ground level. A storey is treated as below ground level if any part of the finished surface of the ceiling of the storey is below the ground level immediately adjacent to the building. We also plan to set out that storeys should be counted from the side of the building which gives you the highest number of storeys (see Figure 2).
28. These methods are being used as they are already well established in accordance with Approved Document B under the Building Regulations 2010.

Figure 2: Number of storeys in a building

To count the number of storeys in a building, or in a separated part of a building, count only at the position which gives the greatest number and exclude any basement storeys.



Notes:

In assembly buildings, a gallery is included as a storey, but not if it is a loading gallery, fly gallery, stage grid, lighting bridge, or any gallery provided for similar purposes, or for maintenance and repair.

In other purpose group buildings, galleries are not counted as a storey.

Regulatory Impact Assessment

29. This legislation does not in itself create a cost implication. The costs will be created when associated future legislation, which contains the detailed requirements of the enhanced regime for higher-risk buildings, are made. As the future legislation will rely on the definition being consulted on to define the scope of the regime, the definition will affect the extent of costs.
30. We would like your opinions on the potential cost implications of the future regime as a result of this definition. The details of the proposed regime and its costs were set out in the Economic Impact Assessment which was produced for the design and construction elements of the Building Safety Bill for Wales. Which can be found here [The Building Safety Bill: impact assessments | GOV.WALES](#).