

Draft Regulations laid before Senedd Cymru under section 120A(9) of Building Act 1984, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2023 No. (W.)

**BUILDING AND BUILDINGS,
WALES**

**The Building Safety (Definition of
Higher-Risk Building) (Design and
Construction Phase) (Wales)
Regulations 2023**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations define what constitutes a higher-risk building for the purposes of section 120I of the Building Act 1984 (“the 1984 Act”). Part 3 of the Building Safety Act 2022 (“the 2022 Act”), which inserted section 120I into the 1984 Act, makes provision for higher-risk buildings to be subject to an enhanced regulatory regime during the design and construction phase.

Regulation 3 defines a higher-risk building as a building that is either 18 metres or greater in height or has at least 7 storeys where it also contains at least one residential unit or is a hospital or a care home. Regulation 4 details how the height of a building is to be measured for the purposes of regulation 3. Regulation 5 makes provision about how the number of storeys that a building has is to be calculated. Regulation 6 lists buildings that are excluded from the definition in regulation 3 and are therefore not higher-risk buildings for the purposes of the enhanced regulatory regime.

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 Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.

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Made ***

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred on them by sections 120A (3) and 120I(2), (4) and (5)(a) of the Building Act 1984⁽¹⁾, make the following Regulations.

In accordance with section 120C(2)(2) of the Building Act 1984 the Welsh Ministers have consulted the Building Regulations Advisory Committee for Wales and such other persons as they consider appropriate.

In accordance with section 120A(9) of the Building Act 1984 a draft of these Regulations has been laid before and approved by a resolution of Senedd Cymru.

Title and commencement

1.—(1) The title of these Regulations is the Building Safety (Definition of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023.

(2) These Regulations come into force on ***.

(1) 1984 c. 55. Section 120A was inserted by paragraph 77 of Schedule 5 to, and section 120I was inserted by section 31 of, the Building Safety Act 2022 (c. 30).

(2) Section 120C was inserted by paragraph 77 of Schedule 5 to the Building Safety Act 2022.

Interpretation

2. In these Regulations—

“building” (“*adeilad*”) 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;

“care home” (“*cartref gofal*”) means a place at which a care home service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾ is provided wholly or mainly to persons aged 18 or over;

“children’s home” (“*cartref plant*”) means a place at which a care home service or a secure accommodation service within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 is provided wholly or mainly to persons aged under 18, but not—

- (a) an institution within the further education sector as defined by section 91(3) of the Further and Higher Education Act 1992⁽²⁾;
- (b) a place at which accommodation is provided for the purposes of—
 - (i) a holiday;
 - (ii) 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;

“dwelling” (“*annedd*”) includes a dwelling-house and a self-contained flat;

“excluded building” (“*adeilad a eithrir*”) has the meaning given by regulation 6;

“flat” (“*fflat*”) means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally;

“ground level” (“*lefel y ddaear*”) , in relation to a building, means—

- (a) the level of the surface of the ground immediately adjacent to the building, or
- (b) where the level of the surface of the ground on which the building is situated is not uniform, the level of the lowest part of the surface of the ground immediately adjacent to it;

(1) 2016 anaw 2.

(2) 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.

“hospital” (“*ysbyty*”) means a health service hospital within the meaning of the National Health Service (Wales) Act 2006 (see section 206(1) of that Act) or an independent hospital within the meaning of the Care Standards Act 2000;

“hostel” (“*hostel*”) means a hostel other than a hostel providing temporary accommodation to those who are ordinarily resident elsewhere;

“military premises” (“*mangre filwrol*”) means—

- (a) military barracks,
- (b) a building occupied solely for the purposes of the armed forces, or
- (c) a building occupied solely for the purposes of a visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964⁽¹⁾.

“residential unit” (“*uned breswyl*”) 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;

“secure residential institution” (“*sefydliad preswyl diogel*”) means an institution used for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital or secure local authority accommodation for persons aged 18 or over;

“temporary leisure establishment” (“*sefydliad hamdden dros dro*”) means a hotel or similar establishment which offers overnight accommodation for the purpose of leisure.

Definition of higher-risk building

3. A higher-risk building for the purposes of the Building Act 1984 is a building that—

- (a) is—
 - (i) at least 18 metres in height (when measured in accordance with regulation 4), or
 - (ii) has at least 7 storeys (when calculated in accordance with regulation 5), and
- (b) either—
 - (i) contains at least one residential unit,

(1) 1964 c. 5.

- (ii) is a hospital that has at least one bed intended for use by a person admitted to the premises for an overnight stay, or
 - (iii) is a care home, and
- (c) is not an excluded building (see regulation 6).

Measuring height of a building

4.—(1) Subject to paragraph (2), for the purposes of regulation 3(a)(i) the height of a building is to be measured from the ground level to the top floor surface of the top storey of the building.

(2) The height of the following is to be ignored for the purposes of measuring the height of a building—

- (a) any roof-top machinery or plant areas;
- (b) any top storey that consists exclusively of machinery or plant rooms.

Counting storeys in a building

5.—(1) For the purposes of regulation 3(1)(a)(ii) the number of storeys a building has is to be calculated at the position that gives the greatest number of storeys, subject to—

- (a) any storey that is below ground level is to be disregarded;
- (b) any mezzanine floor is to be regarded as a storey if its internal floor area is at least half of the internal floor area of the largest storey in the building that is not below ground level.

(2) For the purposes of this regulation, a storey is below ground level if the finished surface of the ceiling of the storey is below ground level.

Excluded buildings

6.—(1) For the purposes of regulation 3(c) a building is an excluded building if it is comprised entirely of—

- (a) a secure residential institution,
- (b) a temporary leisure establishment, or
- (c) military premises.

Name

The Minister for Climate Change, one of the Welsh Ministers

Date