



Llywodraeth Cymru
Welsh Government

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Welsh Government
Consultation – summary of responses

Commencement of section 156 of the UK Building Safety Act 2022 in
Wales

Changes to the Regulatory Reform (Fire Safety) Order 2005

July 2023

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

Overview

This document provides a summary of responses and the Welsh Government's response to them, in respect of the consultation on commencement of section 156 of the UK Building Safety Act 2022 in Wales, which when commenced, will make amendments to the Regulatory Reform (Fire Safety) Order 2005 ('The FSO'). These changes will impose additional duties on those responsible for fire safety in residential buildings which contain two or more sets of domestic dwellings and most other non-domestic premises covered by the FSO.

Action Required

This document is for information only.

Further information and related documents

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

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Commencement of section 156 of the UK Building Safety Act 2022 in Wales](#)

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Introduction

1. In response to the Grenfell Tower fire our [Safer buildings in Wales](#) White Paper ('The White Paper') set out proposals for a comprehensive reform of legislation to improve the safety in all multi-occupied residential buildings in Wales (those containing 2 or more sets of domestic dwellings), from design and construction, through to occupation and how they are maintained. The proposals set out to address problems found by the [Hackitt review](#), the [Grenfell Tower Inquiries](#) and our own [Building Safety Expert Group](#).
2. Overall, there was general support for our White Paper proposals. However, we recognised in our response to the consultation, that the scope of our proposed new building safety regime was extensive and achieving some of the reforms would take time. Furthermore, some of the proposals particularly those relating to the occupation phase, would need primary legislation to be taken through the Senedd, including our proposals to improve fire safety in these buildings. Consequently, we have taken opportunities to bring forward some of our fire safety proposals earlier in Wales, through the UK Government's Fire Safety Act 2021 which was commenced (i.e. brought into force) in Wales in October 2021, and now through section 156 of its [Building Safety Act 2022](#) ('BSA'). Both have made important changes to the Regulatory Reform (Fire Safety) Order 2005 ('the FSO') in relation to fire safety, which our White Paper sought to do.
3. The latter, however, will also apply to all non-domestic premises (except where the new duty specifically relates to multi-occupied domestic dwellings) to which the FSO applies; from workplace premises and public buildings to guest houses, mobile homes (where they are rented out as holiday accommodation) and short-term temporary rentals via services like AirBnB. With this in mind, we decided to undertake a further 12 week consultation to seek views on when to commence these further changes to the FSO in Wales.
4. The [consultation](#) proposed a commencement date of 1 October 2023, in line with the proposed commencement date in England. When brought into force, section 156 of the BSA 2022 will impose new duties on responsible persons, as summarised in paragraph 19 below. For reasons set out in the consultation, we have decided to delay the commencement of section 156(4) relating to competent fire risk assessors, but have nonetheless, asked for views on that decision. This will be covered in more detail in our response to questions 3 and 4 below.

Consultation process

5. A 12-week consultation was published on the Welsh Government's website on 24 February and was open for responses until 19 May. We asked 6 specific questions including about the Welsh language, with a final open question where respondents were invited to provide any additional information not covered by the questions. There was an option to respond to the consultation by completion of an online form, by e-mail or by post.
6. The Welsh Government received 25 responses to the consultation, from the following organisations:

- 3 from the Fire and Rescue Authorities in Wales
- 1 from the National Fire Chiefs Council
- 5 from Welsh Local Authorities
- 6 from the social and private rented housing sectors
- 2 from professional bodies
- 4 from manufacturing businesses
- 1 from tourism businesses
- 3 from members of the public

7. The Welsh Government welcomes the responses to the consultation and would like to thank those who responded.

Summary of consultation responses

8. The Welsh Government has considered the responses to the consultation. This document provides a summary of the responses received to each of the specific questions and the Welsh Government's response to them.

Question 1: Are you a 'responsible person' for the purposes of the Regulatory Reform (Fire Safety) Order 2005?

9. Of the 25 who responded to the consultation, 9 confirmed they were a 'responsible person' for the purposes of the FSO, with the remaining 16 confirming they were not. Of the 16 who were not a 'responsible person', 1 represented property agents who could be considered responsible persons and 1 was responding on behalf of its members, many of whom operate visitor-centred businesses.

Welsh Government Response:

10. The Welsh Government posed this question in order to determine if there was a difference in opinion between a 'responsible person' to whom these changes would directly affect and a respondent who was not a 'responsible person'. Conversely, the responses to each question varied across the cadre of respondents, with no common response from 'responsible persons' as a whole or from those who were not a 'responsible person'.

Question 2a: Do you envisage any difficulties or obstacles for responsible persons in discharging the new duties outlined in the consultation, with effect from October 2023?

Question 2b: If you have answered 'yes', please explain what you see those difficulties to be and what you consider a reasonable timeframe would be for putting those in place.

11. Of the 25 responses received, 8 respondents did not consider there to be any foreseeable difficulties or obstacles for responsible persons in discharging the new duties imposed by commencement of section 156 of the BSA on 1 October 2023. This included 1 of the Welsh FRAs, 1 local authority, 3 from the housing sector, 1 professional body, 1 from manufacturing and 1 individual. Of the remaining 17, 1 was

unsure, 1 did not answer the question and the remaining 15 believed that responsible persons would experience some issues, and those have been summarised below. Whilst the National Fire Chiefs Council (NFCC) responded as 'unsure', it did not consider the new requirements to be disproportionately onerous. It believed the new requirements to be either an extension of what was already required or a formalisation of what was, in many cases, already carried out; and where requirements were entirely new, it was of the view that these were limited in nature.

12. Two of the local authorities who had reservations considered there would only be difficulties at initial implementation stage. One of the local authorities was of the view that in most cases, the duties were already being performed to a certain degree. The other local authority suggested a cultural change in the industry was required on the basis that some responsible persons had limited understanding or willingness to actively participate. This local authority suggested a timeframe of 12 months to embed a change in culture.
13. The remaining 13 included responses from the other 2 Welsh FRAs. Whilst the changes were welcomed, both FRAs raised concerns relating to the responsible person; one about difficulties in identifying the responsible person at residential premises due to ownership models and the other about making the responsible person aware of their new duties, particularly those who did not currently have to record a fire risk assessment under the FSO. One individual also had a similar view.
14. One of the professional bodies was also of the view that it was frequently difficult to identify who the responsible person was for a building. That organisation also suggested there were instances where the responsible person was unaware they had been appointed to the role and believed the primary barrier behind a responsible person meeting their duties was that it was unclear in legislation who the responsible person must be. The same organisation referred to the UK Government's [guidance](#) on the roles and responsibilities of responsible persons, which in their view was non-specific and lacked assertiveness on who the responsible person should be. This organisation also suggested a 'default' responsible person be considered in cases where a responsible person had not been specifically appointed.
15. Of the remaining 9 respondents who expressed a view that there would be difficulties for responsible person in discharging the new duties from October 2023, four (3 from manufacturing businesses and 1 individual), raised concerns over the lack of competent fire risk assessors, with the individual of the view that responsible persons lacked the ability to recognise competency. That individual also considered the delay in commencement of Articles 9A(1) and 9A(2) of the FSO as amended to be a mistake. The NFCC raised similar concerns in its response, highlighting the challenges responsible persons currently faced in identifying suitable fire risk assessors. This reflects another of our proposals (see questions 3 and 4 below).
16. Two of the remaining 5 respondents (1 local authority and 1 from the housing sector) expressed concerns that some of the new changes could prove burdensome for responsible persons, particularly where they had a large housing portfolio. The local authority suggested an option of delegation to an appropriate person below that of Chief Executive and that that should be prescribed in legislation. Whilst the

respondent from the housing sector was committed to engaging with its customers and informing them of key fire safety matters, it urged the Welsh Government to consider that when prescribing the frequency and in which form fire safety information should be provided to residents in regulations, those requirements should not be burdensome.

17. The same respondent suggested fire safety information be provided to residents via a webpage, to be accessed by residents as and when they required, with the provision of hard copy information to those residents who could not access it online. It was also of the view that providing information too frequently and to all residents when they had not requested it, could lead to information overload and an impact on our carbon footprint. The same respondent referred to regulations 9 and 10 of [The Fire Safety \(England\) Regulations 2022](#) and confirmed that in line with those, it was developing an engagement strategy to provide key fire safety information to its customers on an annual and first contact basis.
18. Two of the remaining 3 respondents (1 local authority and 1 from the housing sector) who expressed reservations, had concerns around fire risk assessments; one about achieving competency in fire risk assessments and the other suggesting guidance was required on what detail should be shared from the risk assessment, including timescales within which responsible persons were required to share that information. In its response, the NFCC also suggested guidance to support responsible persons to comply with the new requirements, in particular where the responsible person was not based in the UK and there was no representative in the UK. The last of the respondents who expressed reservations was from the housing sector. It felt that multi-occupancy buildings and their frequent change of use already proved challenging for responsible persons; with some tenants not actively engaging or taking fire safety seriously. It also felt there was a lack of support from the fire and rescue services.

Welsh Government Response:

19. We believe the changes to the FSO are sensible and will improve safety; and that they should therefore be brought into force promptly. As many businesses operate in both Wales and England, we also believe it would be sensible to commence section 156 of the BSA 2022 simultaneously with commencement in England to avoid any confusion between responsible persons for those buildings. On that basis, our proposal is to commence the changes on 1 October 2023. The new duties, when commenced, will require that:
 - all responsible persons make a record of their fire risk assessment and reviews;
 - where a responsible person ceases to be a responsible person for a premises and another person takes over as a responsible person for the premises, the outgoing person must give the new responsible person any relevant fire safety information they hold about the building;
 - where a building has two or more sets of domestic premises the responsible person must give residents information about “relevant fire safety matters”, which include identified risks, preventive and protective measures and the name and a UK based address for the responsible person;

- where there is more than one responsible person for a building, that they cooperate with each other including providing their name and a UK based address.
20. We are proposing to delay the requirement that where responsible persons appoint someone to assist with a fire risk assessment or review that they must ensure that person is a competent person, until such time as the policy for that is established. Further detail on our reasons for this are covered under questions 3 and 4.
21. We acknowledge the issues raised by the FRAs in identifying responsible persons for residential buildings and the need to make them aware of these new duties. However, we do not believe it is a reason for not commencing these important changes to the FSO. Duties already exist for responsible persons in the FSO, and these changes are an extension of those duties. Delaying commencement will not change any issues that currently exist in identifying responsible persons.
22. The majority of these changes, where they relate to premises containing two or more sets of domestic premises, were consulted on in our White Paper in 2021, which received strong support for the proposals. Whilst changes brought about by section 156 of the BSA will also apply to mostly all other non-domestic premises too, some of the larger businesses will already be required to record a fire risk assessment; if they are licenced – e.g. pubs and restaurants, or they have five or more employees, or if there is an alterations notice in place on the building requiring this to be in place. Whilst a number of respondents answered ‘yes’ to this question, the reasons supporting those decisions do not, in our view, provide any strong case for delaying commencement of section 156 (except for section 156(4)), in October. Additionally, several of the respondents did not provide a supporting view that was specific to questions 2a and 2b.
23. Some of those who responded with reservations only anticipated there to be difficulties for responsible persons at implementation stage, recognising as we do, that most of the new duties are already happening in practice. Others raised concerns about the lack of competent fire risk assessors, with one individual of the view that the requirement to only use a competent fire risk assessor should not be delayed; our response to this will be covered under questions 3 and 4.
24. A further few respondents who expressed reservations considered guidance was required to support responsible persons in discharging these new duties, including for recording a fire risk assessment. We agree; and will be publishing guidance to support responsible persons with these changes prior to commencement. We will also publish a Fire Risk Assessment Checklist to assist responsible persons in completing a fire risk assessment along with a suite of short fire safety guides relating to specific premises; with more detailed guidance to follow after that.
25. On the issue of delegation, it is of course commonplace for duties placed on an organisation to be delegated to, and discharged by, its employees. That could also happen here, and we do not consider that specific statutory authorisation is needed.
26. On the suggestion of resorting to a ‘default’ responsible person in cases where a responsible person had not been specifically appointed, we believe the FSO already

prescribes a default position. It specifies that for a workplace, the responsible person would generally be the employer; and for any other premises it would either be the person who had control of the premises where they trade or run their business from or the owner of the premises (Article 3 of the FSO provides greater detail).

27. Overall, we do not believe that responses we have received to questions 2a and 2b give us reason not to commence section 156 (except for section 156(4)) on 1 October 2023, and will therefore proceed on that basis.

Question 3: Do you have any views on what is meant by a competent fire risk assessor and the types of qualifications they would require to be deemed competent?

Question 4: Do you have any views on when we should commence the requirement that anyone appointed to do a fire risk assessment is a competent person?

28. There was almost universal support for the proposal in our White Paper that only someone with suitable qualifications and experience should conduct a fire risk assessment. However, some respondents felt there needed to be clarity about the types of qualifications that would be appropriate. We agreed, and proposed to set that out in future regulations, building on existing qualifications and accreditation schemes, and on other work done by the fire safety sector.
29. Work to develop that detail is ongoing, in discussion with the UK Government and industry experts. For that reason, we are delaying commencement of section 156(4) of the UK Building Safety Act 2022, in Wales. However, to support those ongoing discussions, we thought it would be beneficial to gather stakeholders' views on what they believe a competent fire risk assessor to be, and the types of qualifications fire risk assessors needed to attain, in order to be competent. Twenty respondents provided their views. These included suggestions that competence was measurable through experience, often combined with qualifications, with many of the view that a building's size and complexity would also need to be considered when measuring if someone was competent. A few respondents also suggested attaining competence through membership of IFE was a good benchmark as well as the requirement for continued professional development. Conversely, one respondent was of the view that being too prescriptive could cause issues for experienced competent fire risk assessors who may lack formal qualifications. We will consider all of those as part of our ongoing discussions, the outcome of which will be subject to a further consultation.
30. We also asked for views on when we should commence the requirement that anyone appointed to do a fire risk assessment, should be competent. Of the 21 who responded, almost half felt that there was no reason to delay commencing the requirement and that it should be introduced as soon as possible, or with a transitional period. Respondents included the 3 FRAs (though 1 recognised it was unrealistic), 2 from the housing sector, 1 from manufacturing, 1 from tourism, a professional body and an individual. Finally, the remaining respondents agreed with our decision to delay the commencement of section 156(4) suggesting a lead-in time

of six months to a year, or at such time that there was a sufficient cadre of competent fire risk assessors available to undertake the assessments; and to introduce the requirements simultaneously with England to maintain consistency.

Welsh Government Response:

31. We acknowledge that making it a requirement that responsible persons only appoint fire risk assessors who are competent is essential to ensuring fire safety in our buildings, and that introducing the requirement sooner rather than later would be the best option. However, it could be difficult for responsible persons to comply with this requirement if we were to introduce it in October. Instead, we believe it would be more beneficial to determine what is meant by a competent person and the qualifications they would require, before setting that out in regulations. Half of those who responded agreed.
32. It still remains that responsible persons must make a suitable and sufficient assessment of the fire risks in their buildings and should continue to ensure that to the best of their knowledge, any person who they appoint to undertake a fire risk assessment of their building, can do so competently. Ideally that would mean someone who held formal qualifications, and/or a company which was suitably accredited.

Question 5: We would like to know your views on the effects that the above proposals 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. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6: Please also explain how you believe the proposed policy 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.

33. Over a quarter of the respondents did not provide any views on questions 5 and 6. Of those who did respond, half were of the view that the proposals would have little or no effect on the Welsh language, or on treating the Welsh language less favourably than English. Two respondents supported their view on the basis that as long as information was provided bilingually, there would be no negative effect. Another was of the view that there was likely to be limited Welsh trainers, though felt that delaying commencement of section 156(4) by 12 months could help the limited resource.
34. Views from the remaining respondents were around the likely lack of competent fire risk assessors who could conduct fire risk assessments in Welsh, the potential for important fire safety messages to be compromised through less fluent Welsh speakers and increased costs associated with translation and bilingual publications. Conversely, some were of the view that it could provide more opportunities for Welsh speakers and translators.

35. Views on how the new duties could be formulated or changed to have a positive effect on opportunities for people to use the Welsh language, included suggestions that any accreditation/register of fire risk assessors should include whether that person is a Welsh speaker and to what level, and an extended time limit should a responsible person be unable to secure the services of a Welsh speaker or translator to produce a fire risk assessment in Welsh, including where an enforcement notice had been issued. Other views included a requirement to produce information bilingually in parts of Wales where there was a high population of first language Welsh speakers and to have an affordable option to translate existing fire risk assessments in Welsh.

Welsh Government Response:

36. The Welsh Language (Wales) Measure 2011 makes Welsh an official language in Wales. This means it must be treated no less favourably than English. Therefore, any information that is provided to the public, should be provided in both languages, unless there is a specific request that a Welsh version is not required. The Welsh Government and its contractors will publish information in line with the duties set out in the Welsh Language Standards, imposed on the Welsh Ministers by the Welsh Language Commissioner. Any public sector body in Wales publishing information will be expected to comply with its statutory duties too in publishing information. The short fire safety guidance documents we mentioned earlier in this document, will be published bilingually.

37. The amendments to the FSO which we are bringing into force include those requiring responsible persons for residential buildings to provide fire safety information to residents. While Welsh language standards may not apply to all such persons (e.g. private sector landlords), we would nonetheless expect them to provide information to residents in both Welsh and English where possible (and, where appropriate, in other languages too). Generic fire safety advice in Welsh is already available from the Fire and Rescue Services. Although this point was not specifically raised in responses to the consultation, we will include an appropriate reference to it in guidance on the new FSO duties, which we will publish shortly.

38. We appreciate that there might be a lack of competent fire risk assessors who are able to conduct a fire risk assessment in Welsh and that a translator might be required which could cause delays. We have no information about the capacity of the sector to work through the medium of Welsh, as there is currently no central register of fire risk assessors. However, a fire risk assessment is normally prepared for management use only; it is not published. So conducting a fire risk assessment in Welsh would be at a responsible person's discretion, and subject to their internal policies on language use. As most fire risk assessments will be conducted or reviewed annually, responsible persons should have time to factor any such requirement they had into the process. As for an extended timeframe to comply with an enforcement notice, FRAs serve enforcement notices in Welsh and/or English in line with their own Welsh language standards. We do not believe it would be justified to offer extra time to undertake safety-critical work on these grounds.

Question 7: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

39. Almost half of those who responded to the consultation had further issues to raise. These issues were far ranging and are summarised below. Where additional comments were provided in relation to competent fire risk assessors, those will be considered as part of our ongoing discussions for developing that policy.

Fire safety certificates should be issued by the fire and rescue services.

We disagree; the FSO was introduced in 2005 to replace the Fire Precautions Act 1971, which had prescribed the requirement for fire safety certificates. We believe responsible persons are best placed to consider the fire risks in building they manage and therefore, the responsibility quite rightly, rests with them.

Confusion between the ‘accountable’ and ‘responsible’ persons, which have distinct responsibilities; no mention of the accountable person in this consultation.

Article 22B of the FSO, as inserted by section 156 of the Building Safety Act 2022, will only apply in England; the reference to accountable persons, therefore, only applies to England.

Require that responsible persons conduct a fire risk assessment at reasonable intervals; currently no requirement under Section 156 of the Building Safety Act 2022.

It still remains that responsible persons must make a suitable and sufficient assessment of the risks in their building and to review the assessment regularly to ensure it is up to date, particularly where there is reason to suspect it is no longer valid or where there have been changes to the building since the last assessment (Article 9 of the FSO). Our White Paper proposals included legislating for the fire risk assessment to be conducted or reviewed at least annually, and after major works to the premises (requiring planning permission and/or building regulations approval) have been undertaken.

Standard formats for fire risk assessments are not desirable.

It is not our intention to adopt a standard format for fire risk assessments, although many fire risk assessors and responsible persons find it helpful to use one of the templates that are available. These provide assurance that the assessment has been thorough and methodical. We will, however, publish a short guide with an accompanying fire risk assessment checklist to support responsible persons with the process.

Support the Welsh Government’s recent consultation on the proposed definition of high-risk buildings; consideration should be given to update the FSO in this regard as current proposals have created a disconnect between the FSO legislation and the proposed definition of high risk.

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 definition in those regulations (when made) does not apply to affect occupied buildings subject to the FSO – which does not have any definition of a high risk building.

40. Furthermore, 1 of the FRAs felt the BSA 2022 presented an opportunity to correct some minor discrepancies in the FSO which had caused some longstanding issues for enforcing authorities. One was in relation to the serving of ineffective and inappropriate formal notices when circumstances warranted a Prohibition or Enforcement Notice rather than an Alterations Notice; and another was about imposing a duty on responsible persons to keep a record of maintenance and training, which the FSO did not currently prescribe.
41. Another respondent reiterated its response to our White Paper highlighting that the scope of the new building safety regime in Wales should include all buildings taller than 11m/three storeys (including, for example, hotels and offices); and all buildings with vulnerable occupants, regardless of height; including hospitals, care homes, sheltered housing, schools and entertainment venues. Another respondent referred to a PAS79 risk assessment as best practice.
42. Finally, 1 of the respondents was concerned that the new duties would fail to work in practice, in particular the duty on responsible persons to co-operate with other responsible persons and questioned whether it was a legal requirement. They also raised concerns about imposing unlimited fines as that appeared disproportionate compared with other penalties for criminal offences. The same respondent referred to other Welsh Government's proposals affecting heritage, tourism and hospitality businesses and urged the Welsh Government to be mindful of the consequences on businesses when introducing a number of changes in a short space of time.

Welsh Government Response:

43. We welcome the additional comments from those who responded to question 7. The overall aim of the new duties on responsible persons is to improve fire safety in all buildings to which the FSO applies so that all who reside or work in them can do so safely. On that basis, we believe the level of fines to be appropriate and they bring these remaining areas to the level of other similar fines within the FSO. The new duties will be legally binding and therefore must be enforceable if they are not discharged. The actual level of any fine will of course be a matter for the court as it is now; generally, the court will consider the actual or potential harm caused and the culpability of the offender; and, where the offender is a corporate entity, its turnover and ability to pay. We see no need to interfere with these well-established legal principles.
44. In response to the proposal for further changes to the FSO; the Welsh Ministers currently only have scope to apply existing provisions in the BSA 2022, in Wales. Any further changes to the FSO will generally require primary legislation to be taken through the Senedd.

