



Llywodraeth Cymru
Welsh Government

Number: WG48365

Welsh Government

Consultation – Summary of Responses and the
Government Response for the consultation on the
Building Safety proposed definition of a higher-risk
building

September 2023

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

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WG48365, Digital ISBN 978-1-83504-686-9

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1. Introduction

- 1.1. This report provides a summary of the responses to the consultation “Building Safety proposed definition of higher-risk building” published on 17 February 2023. The consultation closed on 12 May 2023. It is structured around the questions posed from question 2 to 15 of the consultation document. All other questions were related to personal details.
- 1.2. The views reported in this summary are those expressed by the respondents to the consultation and do not necessarily reflect those of the Welsh Government. Welsh Government has provided a response to each question, other than those dealing with personal details.
- 1.3. You will note in this document the term “definition” has been changed to “description”, this is to be more in keeping with how the Building Safety Act 2022 sets out the powers to make regulations to describe a higher-risk building.

2. Consultation Responses – Overview

- 2.1. The respondents
 - Overall there were 31 responses to the consultation. All the consultation responses have been read and considered as part of this analysis.
 - Respondents who completed the consultation response form were asked to assign their organisation to one of fifteen types identified on the form (including a self-designated ‘other’ option). The table below shows the number of responses received from each sector.
- 2.2. Breakdown of respondents by sector

Type of Organisation	Number of Respondents	%
Local Authority	6	19.4%
Manufacturer/supply chain	1	3.2%
Professional body	5	16.1%
Building Control Approved Inspector	3	9.7%
Other interested party (please specify)	7	22.6%
Architect	3	9.7%
LA Building Inspector	2	6.5%
Designer / Engineer / Surveyor	1	3.2%
Enforcing Authority	1	3.2%

3. Handling of responses

- 3.1. A standard response form was provided for ease of use, however, where respondents did not use the form, representations have been attributed to the most appropriate question. In addition, certain questions were designed to have three possible answers: yes, no, unsure. Where respondents have not answered with the standard responses proposed but have clearly indicated a clear position in their answer, they have been assigned that response in the statistical analysis. For example where a respondent used the phrase 'I support the proposal' their response was marked as yes. Where a clear response was not identifiable, answers were marked as 'no response' in the statistical analysis with the responses included in the summary of comments.

4. Consultation responses – brief summary and Government response

4.1. **Question 2:**

Do you agree with the proposal to include a building which has a single residential unit, as opposed to two or more residential units, within the definition of "higher-risk building"?

4.1.1. **Summary of responses**

Yes	24	77.4%
No	2	6.5%
Unsure	3	9.7%
No response	2	6.5%

- 4.1.2. There was overwhelming support for the inclusion of buildings with a single residential unit within the description.
- 4.1.3. One respondent commented as follows (with a similar sentiment expressed by others); – 'multiples of risk are irrelevant, one residential unit equating to a minimum of one person is justifiable risk and warrants full protection to preserve life'.
- 4.1.4. However, there were some who agreed but also felt that there is inconsistency with the Regulatory Reform (Fire Safety) Order 2005 which applies to Wales and England, which generally relates, in respect of domestic premises, to two or more units.

4.1.5. Of the responses that said no, there was a mix of comments, including that the proposal does not align with England, and that there was a greater risk with two units than one.

Government Response

4.1.6. The majority of the respondents supported the proposal. We have considered all responses and are of the view that the points made by those disagreeing do not warrant a change to the proposed description.

4.1.7. The comments on inconsistency with the FSO are noted, and we will consider amending the 'Building Regulation and Fire Safety – Procedural Guidance' (published jointly by DLUCH and the Welsh Government) to ensure this difference between Wales and England is clearly indicated.

4.1.8. The responses of those who disagreed with the inclusion of a single residential unit are noted, however it is considered that the level of risk attached to one unit justifies their inclusion with the description.

4.2. Question 3:

Do you agree with the proposal to include hospitals and care homes?

4.2.1. Summary of responses

Yes	23	74.2%
No	1	3.2%
Unsure	2	6.5%
N/A	2	6.5%
No response	3	9.7%

4.2.2. The majority of respondents agreed with the inclusion of hospitals and care homes and were in support of the reasoning provided for this proposal.

4.2.3. One respondent disagreed with the proposal stating that hospitals and care homes rely upon specific staff procedures and evacuation practices, and therefore the risk is inherent at any height.

Government Response

4.2.4. The majority of respondents supported the proposal, having considered all responses we will proceed with the description as proposed.

4.2.5. The decision for inclusion is based on evidence presented during scrutiny of what is now the Building Safety Act 2022, no further evidence was presented in response to this consultation which would warrant a change.

4.3. Question 4:

Do you agree with the proposed exclusions of secure residential institutions (e.g. prisons)?

4.3.1. Summary of responses

Yes	17	54.8%
No	5	16.1%
Unsure	3	9.7%
N/A	2	6.5%
No response	4	12.9%

4.3.2. The majority of respondents agreed with the exclusion of secure residential institutions. This was generally on the understanding that there are sufficient controls placed upon them within the bodies that they are managed by.

4.3.3. Those that disagreed in general felt that all buildings that met the height threshold should be included despite who they were managed by.

Government Response

4.3.4. We have considered all responses; the majority of respondents supported the proposal. We will proceed with the description as proposed (with some minor amendments being made for clarity).

4.3.5. We have also been in discussion with the Ministry of Justice and are content that their regimes are sufficiently stringent to not warrant inclusion at this time.

4.4. Question 5:

Do you agree with the proposed exclusion of temporary leisure establishments (e.g. hotels)?

4.4.1. Summary of responses

Yes	7	22.6%
No	17	54.8%
Unsure	4	12.9%
N/A	0	0.0%
No response	3	9.7%

- 4.4.2. 55% of respondents disagreed with the exclusion of temporary leisure establishments.
- 4.4.3. The main concerns included:
- The trend not to man these establishments 24/7 and rely on IT caused concern
 - The high density of occupation in such buildings makes evacuation difficult to implement safely and quickly.
 - Guests are likely to be unfamiliar with the individual layouts of such buildings, in particular to and from their sleeping accommodation, and hence will have reduced ability to navigate safely and quickly from such buildings.

Government Response

- 4.4.4. Although the majority of respondents did not support the exclusion of temporary leisure establishments (e.g. hotels) insufficient evidence was provided to support their inclusion within the description. We will therefore proceed with the description as proposed.
- 4.4.5. The Welsh Government accepts that there is an emerging trend in the way in which some hotels are being managed. In Wales all hotels which would be caught by this description are staffed 24/7.
- 4.4.6. Hotels are regulated under the Regulatory Reform (Fire Safety) Order 2005, and although there are some changes in management, generally these buildings are currently staffed 24/7.
- 4.4.7. These buildings should have multiple routes of escape, signage and emergency lighting to assist evacuation, and would generally have a higher level of detection and alarm systems than residential buildings.
- 4.4.8. There was no evidence presented by respondents that changed the risk profile for hotels that differs from what is currently available or previously understood, therefore, we still propose to exclude temporary leisure establishments.
- 4.4.9. However, during the first year of the implementation UK Government are undertaking a significant piece of research which will provide in depth evidence of risk profiles for a number of buildings including hotels. That research will inform whether a further review of these regulations will be required.
- 4.4.10. Further consideration will be undertaken when the UK Government research on risk profiles for buildings is available and reviewed.

4.5. Question 6:

Do you agree with the proposed exclusion of military premises (e.g. military barracks)?

4.5.1. Summary of responses

Yes	18	58.1%
No	5	16.1%
Unsure	3	9.7%
N/A	2	6.5%
No response	3	9.7%

4.5.2. The majority of responses agreed with the exclusion of military premises, in the same way that they agreed with secure residential institutions, that there was the understanding that there are sufficient controls placed upon them within the bodies responsible for such buildings.

4.5.3. Generally, those who did not agree with the proposal stated that there should be parity across all sectors.

Government Response

4.5.4. We have considered all responses. The majority of respondents supported the proposal, we acknowledge the reasoning of those who disagreed, but we will proceed with the definition as proposed.

4.5.5. We have also been in discussion with the Ministry of Defence and are content that their regimes are sufficiently stringent to not warrant inclusion at this time.

4.6. Question 7:

Do you agree with the proposed definition of “building”?

4.6.1. Summary of responses

Yes	20	64.5%
No	3	9.7%
Unsure	4	12.9%
N/A	1	3.2%
No response	3	9.7%

4.6.2. The majority of respondents agreed with the description of a building and were content that it aligned with the Building Act 1984.

4.6.3. Those that disagreed with the description, were of the opinion that it still caused some confusion as it does not fully reflect the Building Act 1984 description.

Government Response

4.6.4. Although the majority of respondents agreed with our description, on review of some of the other comments it was felt that the description of “building” could be improved, particularly in relation to the term “part”. We propose to amend the draft regulations to provide more clarity.

4.7. Question 8:

Do you agree with the proposed method for determining the height and storeys of a building?

4.7.1. Summary of responses

Yes	20	64.5%
No	5	16.1%
Unsure	2	6.5%
N/A	1	3.2%
No response	3	9.7%

4.7.2. There was overall agreement to the proposed method for determining the height and storeys of a building. The general consensus was that it aligned with the guidance set out in Approved Document B and this was understood and satisfactory.

4.7.3. There were comments raising concerns that this method is not clear, and that Approved Document B is also unclear. For example, there could be an issue over certain types of scenarios where there are steep inclines or footpaths in the vicinity which may mean that this measurement could be wrong.

Government Response

4.7.4. There was a large majority in agreement the proposal. We therefore intend to proceed with the method as proposed (making some minor amendments to for consistency). The points raised regarding concerns around clarity will be further considered in future reviews of these regulations and/or when a review of Approved Document B takes place.

4.8. Question 9:

Are you content that the costs as set out in the economic impact assessment cover all likely costs of the enhanced regime for higher-risk buildings?

4.8.1. Summary of responses

Yes	14	45.2%
No	1	3.2%
Unsure	7	22.6%
N/A	5	16.1%
No response	4	12.9%

4.8.2. Just over 50 % of the responses were either unsure or did not provide a response to this question.

4.8.3. One respondent commented that the numbers of buildings included seemed to be incorrect and another respondent stated that they felt the costs used for calculations, in particular those related to staff training, appeared too low.

Government Response

4.8.4. The numbers of buildings have been fully reviewed and based on the method for calculating height and the other criteria contained in the description of a higher risk building – the official number is now approximately 171 buildings. Existing buildings will come within the enhanced higher-risk building design and construction regime, primarily where further work is undertaken on them. The current estimate is that an average of 5 new higher-risk buildings will be built in Wales each year.

4.8.5. A review of the Regulatory Impact Assessment which was produced in June 2021 is being undertaken to lay with the regulations. We are grateful for the comments and feedback, which we have considered and will be used to update and refine the final impact assessment.

4.9. Question 10 to 12:

4.9.1. Question 10:

Do you think any aspect of this policy will adversely impact on those with protected characteristics? (The protected characteristics under the Equality Act 2010 are age, disability, gender re-assignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

4.9.2. Summary of responses

Yes	4	12.9%
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No	13	41.9%
Unsure	3	9.7%
N/A	6	19.4%
No response	5	16.1%

4.9.3. Question 11:

If yes, please tell us which aspect of this policy you think will adversely impact those with protected characteristics, and Question 12: For each aspect that you have identified, please tell us who you think will be adversely affected and how.

4.9.4. Nearly 42% of respondents did not think that any aspects of this policy would have an adverse impact on those with protected characteristics.

4.9.5. Those that considered there would be an adverse impact wanted the description to include some of the buildings that had been excluded including Care homes (where height threshold not met), hospitals (where height threshold not met), Military premises, secure institutions and hotels.

4.9.6. Some of the approximate 42% that didn't believe it would have an adverse impact felt that this would introduce improved safety measures for all people regardless of their protected characteristics.

Government Response

4.9.7. Overall the policy aim is to improve the safety of higher-risk buildings, to the benefit of all residents/ users. We have considered all the responses. We remain of the view that it is appropriate for hospitals and care homes (that meet the height threshold) to be included within the description, having taken into account the increased likelihood of those buildings being occupied by those with limited mobility.

We will keep the policy under review, particularly in respect of whether additional buildings should be added to the description should there be new evidence of increased risks.

4.10. Question 13:

We would like to know your views on the effects that the proposed policies 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?

4.10.1. There were no comments that identified any effects that the proposed policies would have on the Welsh language.

4.11. Question 14:

Please also explain how you believe the proposed policies 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.

- 4.11.1. There were no comments that identified any changes that could be made to the proposed policies would have a positive effect on the Welsh language. The Welsh language is a strategic priority for the Welsh Government and its vision is to see the language thrive. To help achieve this the Welsh Language Standards are a set of legally binding requirements which apply to the Welsh Government. All Building Regulation documents are considered against the standards and published accordingly.

4.12. Question 15:

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.

- 4.12.1. There were a small number of responses to this question. The key areas of concerns are reflected in the following two summarised comments:
- 4.12.2. There is a different landscape for Higher Risk Buildings in Wales to England however consistency with UK government is paramount to avoid extra learning and potential mistakes for those working across administrations.
- 4.12.3. It is understood that there is a decision to start at the narrower descriptions on a risk based approach, but regular reviews should be undertaken to ensure that higher risk buildings and their occupants are properly safeguarded.

Government Response

- 4.12.4. Consistency has been achieved in the most part between the England and Wales description. The only key difference being the increase of scope in Wales to add one residential unit rather than two into the description. This is because the one unit aligns with the requirements for combustible cladding and takes into account the primary risk of fire where people are sleeping on the premises. The sleeping risk is associated with a single dwelling and is not limited to buildings with two or more units.
- 4.12.5. During the first year of the implementation of the description, a significant piece of research is due to be undertaken and published. That research will inform the first review of these regulations.

5. Next Steps

- 5.1. These regulations will now be finalised, with some amendments being made for clarity/ to ensure the policy is fully implemented, and in line with the Government responses above and are likely to be laid in the Senedd in the Autumn following the affirmative procedure.