



Llywodraeth Cymru
Welsh Government

OPEN CONSULTATION

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

This consultation is about changes to the Regulatory Reform (Fire Safety) Order 2005.

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Introduction

In response to the Grenfell Tower fire our [Safer buildings in Wales](#) 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](#).

Overall, there was general support for our White Paper proposals. We recognised in our response to the consultation, however, that the scope of our proposed new building safety regime was extensive and achieving some of the reforms would take time. 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. The changes we outline in this consultation, however, will also apply to all non-domestic premises to which the FSO applies too, 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.

Opportunities to bring forward changes to fire safety in Wales

Opportunities to bring forward changes to fire safety in Wales

High-rise residential buildings in England are proportionately much more

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common than in Wales. However, the basic principles of fire safety in multi-occupied residential buildings are the same in both countries, and we share with the UK Government the aim of upholding those principles. In this case, by working constructively with the UK Government, we have taken an opportunity to make those improvements earlier in Wales, through legislation the UK Government has introduced.

Fire Safety Act 2021

The Grenfell Tower Public Inquiry's **Phase 1 report** was published in October 2019. This found compelling evidence that the rapid propagation of the fire at Grenfell Tower was due largely to defects in the design and installation of the windows and external cladding on the tower. This was compounded by the failure of internal fire doors and other structures to resist the spread of fire. The Inquiry called for changes to the **Regulatory Reform (Fire Safety) Order 2005** ('the FSO'), to ensure these elements of high-rise blocks of flats, are within the regulatory regime.

The UK Government proposed to do that through the **Fire Safety Act 2021**, changes that would confirm these areas of the building were in the scope of the FSO. As our **Safer buildings in Wales** White Paper also proposed to make those changes, it was agreed with the UK Government for the provisions to apply to Wales as they did to England. On 6 October 2020, the Senedd approved a Legislative Consent Motion, providing consent for the UK Government to extend those changes to Wales.

The Fire Safety Act 2021 was commenced in Wales on 1 October 2021 and provides that the entire structure of all buildings which contain two or more sets of domestic premises ("a relevant building") is covered by the FSO, including the internal and external walls (except walls completely within a flat), external doors, any common parts, windows, all doors between domestic premises and the common parts, and any balconies and similar structures. The only parts of a

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relevant building not covered are the interiors of individual dwellings. In practice, the “responsible person” (as described within the FSO) for each relevant building (which in a residential building generally means the landlord or managing agent), will have to assess the risk of fire arising from the whole structure, and will have to take steps to mitigate any such risks. It also means that Fire and Rescue authorities’ powers of inspection and enforcement specifically cover these areas of the building too.

Building Safety Act 2022

The remainder of the UK Government’s building safety reforms will be introduced through their **Building Safety Act 2022**. Whilst our own building safety reforms in Wales are taking shape, we have taken another opportunity to bring forward further improvements to fire safety in Wales, through the UK Building Safety Act 2022. This consultation is in relation to changes the Building Safety Act will, once commenced, make to the FSO as set out in **Section 156** of the Act. Again, some of these changes are fully consistent with several of the proposals in our White Paper consultation.

Working constructively with the UK Government, we have again been able to agree that these further changes to the FSO are extended to Wales. The Act also provides the Welsh Ministers with the powers to decide when to bring these changes into force in Wales, and we are seeking your views on when that should be.

New duties on responsible persons (for the purposes of the FSO)

Changes the Building Safety Act 2022 will make to the FSO are mainly around the duties on ‘responsible persons’, and are aimed at improving fire safety practices in all buildings to which the FSO applies (all buildings containing two or

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more sets of domestic dwellings and all other non-domestic premises for example businesses and public buildings, with some limited exceptions). When brought into force in full, section 156 of the Act will require that:

- a responsible person makes a record of their fire risk assessment and reviews
- where the responsible person appoints someone to assist with a fire risk assessment or review, they must ensure that person is a competent person and where the responsible person appoints more than one person, the responsible person must make arrangements for ensuring adequate co-operation between them
- 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 co-operate with each other

The Building Safety Act 2022 will also amend the FSO to increase the level of fines for certain offences from level 3 on the standard scale to unlimited. This will apply to offences in relation to the impersonation of an inspector, failure to comply with specific requirements imposed by an inspector, and failure to comply with requirements relating to the installation of luminous tube signs. This will bring the level of fines in line with other legislation and make way for increased penalties particularly for people who impersonate an inspector or fail to comply with an inspector’s imposed requirements. These are serious offences that put peoples’ lives at risk, and it is therefore important that there is scope to match the level of fines to the seriousness of the offences. This will not only help keep those using the building safe, but will also support responsible person’s in

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discharging their duties effectively and in line with the law.

Article 32 of the FSO currently provides that failure to comply with any requirement or prohibitions imposed by Articles 8 to 22 and Article 38, where that failure places one or more relevant persons at risk of death or serious injury in the case of fire, is an offence. As new articles will be introduced by section 156 failure to comply with these new articles will also be capable of being an offence under Article 32. There will also be amendments in respect of existing offences in relation to Article 9 and Article 11.

There will also be further changes to the FSO in relation to the provision of statutory guidance issued by the Welsh Ministers under Article 50 of the FSO, this is to strengthen the provision where it is suggested that someone has not complied with the FSO, but also ensures that it applies to all premises covered by the FSO. Whilst this already happens in practice, this change will formalise those arrangements.

How do these new duties on responsible persons compare with what is already in place?

Recording a fire risk assessment

Over 90 percent of those who responded to the question in our White Paper on whether a fire risk assessment should be permanently recorded, agreed with this proposal. The FSO already requires that responsible persons make a suitable and sufficient assessment of the fire risk in their buildings and to act on any findings, however currently, a responsible person is only required to record the assessment if:

- they employ 5 or more employees, (anywhere, not just in the premises being assessed)

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- there is a licence under an enactment in force in relation to the premises (for example a pub or theatre)
- there is an alterations notice requiring this in force

We think that, with hindsight, this is a defect in the FSO. Unless a fire risk assessment is recorded, it is impossible to show that a suitable and sufficient assessment has been made at all. It is also impossible to share the assessment with others such as contractors or building occupants, and difficult to take coherent and effective action to address fire safety defects. The Building Safety Act 2022, when brought into force, will correct that. It will make it a requirement that all fire risk assessments and reviews are recorded regardless of the type of building or the number of people using it. Once a record has been made, responsible persons will need to review it if they suspect it is no longer valid, and update it if there have been any changes to the building or its circumstances since the last fire risk assessment was carried out (they will need to make a record of the review).

As responsible persons are already required to undertake a fire risk assessment of buildings within their control, it makes sense that the assessment should be recorded. There are many fire risk assessment templates readily available to support responsible persons in recording their assessment so there is unlikely to be a need for responsible persons to create their own template, and guidance we will publish to support this new duty on responsible persons, will include an example. The amount of information responsible persons will need to record in a fire risk assessment will depend on the type of building and what it is used for. Whilst more complex buildings will require more detail, it is already likely that for those buildings, responsible persons already make a record or appoint a fire risk assessor to do it for them. For small and low-risk premises like many shops and offices, the fire risk assessment should normally be straightforward and guidance we will publish will support responsible persons to do that.

Appointing a competent fire risk assessor

The duty to undertake a suitable and sufficient fire risk assessment rests with the responsible person, regardless of whether they choose to undertake the assessment themselves (if they are able), or if they appoint a fire risk assessor to do it for them. The Building Safety Act 2022 will not change that; however, it will require that where a responsible person appoints someone to assist with a fire risk assessment, they must ensure that person is competent.

We believe, however, that we should delay bringing into force the requirement to instruct a competent fire risk assessor as set out in Article 9A(1) and 9A(2) of section 156(4) of the Building Safety Act 2022. The reason for this is that there may currently be a shortage of qualified fire risk assessors across the UK, which could make it hard for responsible persons to comply with this requirement. It is entirely possible that there are many fire risk assessors who lack formal qualifications but are nonetheless competent, but it is hard for responsible persons to identify and verify that. This does not mean that responsible persons are absolved of their duty to undertake an assessment of the fire risk in their buildings or that they can no longer appoint someone to do it for them. That duty still exists. Responsible persons should continue to act responsibly and take appropriate measures to reduce the fire risk in their buildings. They should also 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.

The Fire Sector Federation's guide to [Choosing a Competent Fire Risk Assessor](#) could help you in choosing a fire risk assessor; but responsible persons can also get some assurance by asking a potential assessor for references and testimonials from other clients. We will take time to define what we mean by a competent fire risk assessor and will set that out in guidance.

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Our proposal to delay commencement of Articles 9A(1) and 9A(2) will mean that commencement of Article 9A(3) which will make it a requirement that where the responsible person appoints more than one person, the responsible person must make arrangements for ensuring adequate co-operation between them, will also be delayed. Nonetheless, it is important that where the responsible person appoints more than one person to undertake an assessment of the fire risk in their buildings, that all those appointed work co-operatively. This will ensure there are no gaps or overlaps in maintaining fire safety in a building and identifying who is responsible for what areas. It will also ensure that a robust and comprehensive fire risk assessment is in place.

Providing information about a building to a new responsible person

When a building is sold or leased to new occupants, the identity of the responsible person often changes. Currently, the FSO does not require an outgoing responsible person (the responsible person who ceases to be the responsible person for the premises) to provide any information they hold about the building to a new responsible person. This is an important factor to managing and mitigating fire risk across the lifecycle of a building, whether it be a residential or business premise. If any issues have been identified about the building, then it is vital that information is transparent to the new responsible person to ensure the safety of the building and those occupying it.

When brought into force, section 156 of the Building Safety Act 2022 will correct that. It will amend the FSO to make it a requirement that the outgoing responsible person provides relevant fire safety information to the new responsible person. Such information will include the fire risk assessment for the building and the identity of anyone the responsible person has appointed to assist with the fire risk assessment, and the identity of any other responsible person for the building, including their UK address. The Act also provides Welsh Ministers with the powers to make regulations to specify other information that must be provided. In due course we may, for instance, make regulations

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requiring outgoing responsible persons to provide details of alterations notices, enforcement notices and prohibition notices that are in force in relation to the premises. However, we will consult separately about that; the issue now is simply when to bring the requirements set out above into force.

Providing information to residents of domestic premises

The FSO does not currently require that responsible persons provide residents with fire safety information about their building, or the name and address of the responsible person. However, there was overall support for this proposal in our White Paper, with a strong view that clear and timely information for residents about the risk areas of their building, was key to improving fire safety and helping residents keep themselves safe as well as making buildings safer overall. Providing residents with the name and address of the responsible person will provide them with a point of contact to raise any issues or concerns about the fire safety in their building, so that issues can be remedied without delay.

Section 156 of the Building Safety Act 2022 will make those changes by inserting new article 21A into the FSO. This will amend the FSO to require that responsible persons for a building containing two or more sets of domestic dwellings, provide relevant fire safety information to residents. This will include information about any risks identified by the fire risk assessment and the prevention and protection measures taken to mitigate them. It will also require that responsible persons provide their details (including their UK address) to residents and also for anyone they have appointed to assist with the fire risk assessment, or any other matter concerning fire safety for the building. The Act also provides the Welsh Ministers with the power to specify in regulations, the form and timings that information is provided to residents. We will consider using that power in due course; we are not consulting on that now.

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Co-operation and co-ordination between responsible persons for a building

Where there are 2 or more responsible persons for a building, the FSO already requires those persons to co-operate with each other to enable them to comply with their duties under the FSO, including any measures that need to be taken to mitigate the fire risk in the building or to address any prohibitions imposed on them. Changes the Building Safety Act 2022 will make to the FSO will strengthen those arrangements. It will make it a requirement that in the first instance, a responsible person should seek to establish if any other responsible person shares, or has duties for the building. It will also require that each responsible persons for that premise provides the other responsible person with their name and a UK address as well as information about which parts of the building they are responsible for; and to keep a record of that information. Working in isolation is likely to compromise fire safety in the building and introducing a requirement for responsible persons to co-operate and work together, can only mitigate that risk.

Knowing who the responsible person or persons are for a building will also help the Fire and Rescue services, who inspect and enforce fire safety in them. Often they have difficulty in identifying who the responsible person is for a building which can lead to delays in remedying fire safety defects, putting those who occupy the building at risk of fire.

Fire safety guidance

We will continue to work with the UK Government to ensure consistent guidance is published to support any new duties that we introduce. This will include guidance to support the new duties outlined in this consultation.

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Why consult on commencing changes that have already been agreed should apply to Wales?

Our [Safer buildings in Wales](#) White Paper focussed on the safety of multi-occupied residential buildings (those containing 2 or more sets of domestic premises) following the Grenfell Tower fire and we took an opportunity, through the UK Fire Safety Act 2021, to introduce some of the proposals relating to fire safety earlier in Wales. The Fire Safety Act 2021 now provides that the entire structure of multi-occupied residential buildings is included in the regulatory regime under the FSO.

The Building Safety Act 2022 will also address some of the proposals in our White Paper concerned with fire safety in multi-occupied residential premises, mainly around additional duties on responsible persons. However, many of these changes will apply to all buildings to which the FSO applies, not just residential buildings. It will include all other non-domestic premises (business premises and public buildings, with some limited exceptions); buildings which were not the focus of our White Paper consultation. We are therefore seeking your views on when these changes should be commenced in Wales.

While these further changes to the FSO are important, they are largely simple and do not require any particular technical expertise to apply to each premises. In many cases, it is already likely that these new duties on responsible persons are common practice, particularly in the case of more complex or larger buildings.

Proposed commencement date

We propose to commence section 156 (except for section 156(4), which introduces Article 9A in relation to appointing a competent fire risk assessor, and the provisions in section 156(8) that do not apply to Wales) of the Building

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Safety Act 2022 in Wales, in October 2023. These changes, however, could affect businesses which span both Wales and England and as such, we will engage with the UK Government on this proposed date. We are seeking your views on the proposed commencement date of October 2023.

Consultation questions

Question 1

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

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.

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?

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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?

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.

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.

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How to respond

Submit your comments by **19 May 2023**, in any of the following ways:

- complete our [online form](#)
- download, complete our [response form](#) and email fire@gov.wales
- download, complete our [response form](#) and post to:

Fire Services Branch
Welsh Government
Rhydycar
Merthyr Tydfil
CF48 1UZ

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- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please [tell us](#).

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Welsh Government
Cathays Park
Cardiff
CF10 3NQ

E-mail: dataprotectionofficer@gov.wales

Information Commissioner's Office

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: [Information Commissioner's Office](#)

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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.

Further information and related documents

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