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Llywodraeth Cymru
Welsh Government

Annex A

Welsh Government
Consultation Document

Fire and Rescue Authorities becoming statutory consultees in the development management process

Date of issue: 28 July 2020

Responses by: 23 October 2020

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

Overview

This consultation contains proposals to amend the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“DNSPO”) to include as statutory consultees, the Fire and Rescue Authorities in Wales.

How to respond

The consultation includes a set of specific questions to which the Welsh Government would welcome your response.

Responses are welcome in either English or Welsh and should be sent by email or post to arrive no later than **23/10/2020**.

You can reply in any of the following ways.

Online:

Please complete the online consultation response form on the following link: gov.wales/consultations

Email:

Please complete the consultation response form at the end of this document and email to planconsultations-f@gov.wales

(please include ‘Planning Statutory Consultees – Fire and Rescue Authorities’ in the subject line)

Post:

Please complete the consultation response form at the end of this document and post to:

Planning Statutory Consultees – Fire and Rescue
Authorities
Planning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

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

Contact details

For further information:

Email: planconsultations-f@gov.wales

Tel: Amy Ravitz-Williams on 0300 025 5733

**Also available in
Welsh at:**

<https://llyw.cymru/ymgyngoriadau>

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

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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1. Purpose of this consultation

- 1.1 The Grenfell Tower tragedy of June 2017 has widespread and profound implications for the safety of residential buildings and how Fire and Rescue Services respond to fires in them. Following the fire, the Welsh Government convened a Building Safety Expert Group, which included developers, architects, landlords, building inspectors and Fire Service representatives. In its report of April 2019, the Group set out a number of recommendations on how Welsh policies and practices should change in light of the Grenfell fire.
- 1.2 Among its recommendations was that the Fire and Rescue Services should be more closely involved in the planning, design and construction of high-rise residential buildings. Involving the Fire and Rescue Services at an early stage would allow them to comment on changes in local fire risk and any aspects of proposed developments which gave rise to fire safety concerns. The recommendations included legislating for changes to both the planning and building control process, to make the Fire and Rescue Services statutory consultees in the planning approval process and enhancing their role in the building control approval process for high-rise residential buildings. The Minister for Housing and Local Government accepted these recommendations in May 2019, subject to further consultation.
- 1.3 At present, Fire and Rescue Authorities (“FRAs”) must be consulted on applications for Building Regulations approval. However, they are not required to be specifically consulted on applications for planning permission.
- 1.4 This consultation proposes to change that, to make FRAs statutory consultees on planning applications relating to specified developments. In this document where we refer to “Fire and Rescue Services” we mean the service provided by the FRA.

2. The current position

Fire and Rescue Authorities

- 2.1 There are three FRAs in Wales, covering North Wales, Mid and West Wales, and South Wales. Each is responsible under the Fire and Rescue Services Act 2004 for promoting fire safety, and for responding to fires, road accidents, floods and certain other emergencies. FRAs also have responsibility for regulating and enforcing fire safety in non-domestic premises, including the common areas of blocks of flats under the Regulatory Reform (Fire Safety) Order 2005.

Statutory consultees at development management stage

- 2.2 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“DMPWO”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (“DNSPO”) (referred to collectively as “the Procedure Orders”) place a requirement on key public bodies to be consulted at

both the pre-application¹ and post-application² consultation stages of the planning application process.

- 2.3 At the pre-application consultation stage, developers must consult those bodies listed³ in the Procedure Orders on development proposals that constitute major development or development of national significance and fall within the description listed. This is to ensure developers obtain representations of key bodies on specialist technical issues, or in relation to particular assets, to inform the design process of the development and the planning application.
- 2.4 Where a planning application is to be determined by the Local Planning Authority (“LPA”) or the Welsh Ministers, the Procedure Orders require them to consult those bodies listed where the proposed development falls within a set description. The purpose of this post-application consultation stage is to ensure LPAs and the Welsh Ministers obtain representations of key bodies on specialist technical issues, or in relation to particular assets, where an authority may have limited expertise or knowledge. The specialist knowledge obtained through the representations received will assist LPAs in their determination of certain planning applications.
- 2.5 There is also a duty on those listed bodies to respond where the LPA chooses to consult further on applications for approval, consent or agreement relating to a planning application on which they were initially consulted⁴. Given the nature of these types of applications, the legislation places a discretion and not a requirement on LPAs to consult these bodies on such applications.
- 2.6 The statutory consultees set out in the Procedure Orders cover a wide range of public bodies and include:
- Other LPAs
 - Community or Town Councils
 - The Health and Safety Executive
 - The Office for Nuclear Regulation
 - The Welsh Ministers
 - Railway Network Operators
 - The Local Highway Authorities
 - Road Concessionaires
 - The Coal Authority
 - Natural Resources Wales
 - The Theatres Trust

¹ Section 61Z of the Town and Country Planning Act 1990, as amended, and Articles 2B and 2D of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, as amended, and Articles 7 and 9 of the Developments of National Significance (Procedure) (Wales) Order 2016.

² Articles 14, 15 and 15ZA of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, as amended, and Articles 22, 23 and 24 of the Developments of National Significance (Procedure) (Wales) Order 2016.

³ Schedule 4 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, as amended, and Schedule 5 of the Developments of National Significance (Procedure) (Wales) Order 2016.

⁴ Section 100A of the Town and Country Planning Act 1990, as amended and Article 15E of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, as amended.

- Sport Wales; and
- The Canal and Rivers Trust

3. Why are we proposing change?

- 3.1 We are aware that several LPAs already consult FRAs on planning applications on a voluntary and non-statutory basis. We are proposing to formalise that process, for two reasons.
- 3.2 Firstly, it will allow FRAs to comment on proposed developments which give rise to concern from a fire safety perspective. Such concerns could, for instance, relate to the siting of the development relative to other premises at known risk of fire; proximity to land which is known to be at risk of wildfire; or access for fire appliances and availability of water supplies once the development is complete.
- 3.3 Secondly, and even if there are no such concerns, effective firefighting depends on FRAs having detailed knowledge of the premises in the areas they serve, and of their estimated risk of fire. That will help in establishing and maintaining the local capacity and capability to address those risks. Engagement at this stage will allow FRAs to update that knowledge, and to begin planning for any changes in operational capability which might be necessary in light of the development.
- 3.4 The direct stimulus for change was the Grenfell Tower fire; and high-rise residential blocks will always present particular risks and challenges to the Fire and Rescue Services. However, similar considerations apply to other large-scale developments. A major new low-rise housing estate might, for instance, be some distance from the nearest current fire station, or may be built adjacent to land which is at known risk of wildfire. Our proposals are therefore not confined to proposals for development of high-rise buildings.

4. What are the main changes we are proposing?

- 4.1 We are proposing to make FRAs a statutory consultee on planning applications for certain types of development (as proposed in paragraphs 4.12 – 4.16 below) at both the pre-application and post-application consultation stages of the process. It would not only apply to applications submitted to the LPA but also to applications for Developments of National Significance for determination by the Welsh Ministers⁵. This will mean that for certain types of development, developers will be required to consult the FRAs prior to submitting their application and require LPAs and the Welsh Ministers to consult them to inform their consideration and determination of the application.
- 4.2 As is the case with existing statutory consultees, it is also proposed that the FRAs will be required to respond where the LPA chooses to consult further on applications for approval, consent or agreement relating to a planning application on which it was initially consulted. This would include:

⁵ Section 62D of the Town and Country Planning Act 1990, as amended.

- applications for approval of reserved matters made under section 92 of the TCPA 1990;
- applications for non-material changes to planning permission made under section 96A of the TCPA 1990;
- applications for any other consent, agreement or approval required by any condition or limitation subject to which planning permission has been granted e.g. applications to discharge planning conditions.

Principle and duties of becoming a statutory consultee

4.3 We are interested in hearing your views about the principle of whether FRAs should be a statutory consultee in light of the potential burden this creates for them. We wish to avoid FRAs being overwhelmed by consultation requests, thereby slowing down the determination of planning applications through slow responses or unnecessarily diverting FRA staff resources away from front line tasks.

4.4 As with exiting statutory consultees, the FRA will have to comply with certain legal duties:

Duty to provide a 'substantive response'

4.5 All statutory consultees are required to provide a 'substantive response' to consultation requests from developers at the pre-application consultation stage and to LPAs and the Welsh Ministers at the post application consultation stages of the planning application process. They also need to do so where the LPA chooses to consult further on applications for approval, consent or agreement relating to a planning application on which the statutory consultee was initially consulted.

4.6 In line with the requirements in the Procedure Orders, a 'substantive response' to be required by the FRAs would be one which:

- confirms that they have no comment to make;
- confirms that they have no objection to the proposed development and refers the person consulting to the FRA's current standing advice on the subject of consultation;
- advises the person consulting of any concerns and how they can be addressed; or
- advises the person consulting that they object and sets out the reason for the objection.

4.7 However, at the post application consultation stage the 'substantive response' set out above may need to differ depending on whether the development proposal was subject to pre-application consultation requirements with the FRAs.

4.8 Where pre-application consultation has taken place and the FRA has given a response at that stage, a 'substantive response' to be provided in line with the Procedure Orders would be one which:

- confirms that the FRA has no further comment to make in respect of the proposed development and confirms that any comments provided at the pre-application consultation stage remain relevant;
- advises of any new concerns identified in relation to the proposed development, why the concerns were not identified in the response provided at the pre-application consultation stage and:
 - (i) how the concerns can be addressed by the applicant; or
 - (ii) that objections to the proposed development remain and the reasons for them.

Duty to provide a substantive response within a specified timeframe

- 4.9 In line with the requirements in the Procedure Orders for existing statutory consultees, we propose that:
- responses from the FRAs to developers in relation to the pre-application consultation stage are to be provided within a 28 day period (42 days in the case of DNS planning applications);
 - responses from FRAs to LPAs and the Welsh Ministers at the post application consultation stage and where consulted on applications for approval, consent or agreement relating to a planning application, they are to be submitted within a 21 day period, or 30 days in the case of EIA development; and
 - either period may be extended by agreement with the applicant in relation to pre-application consultation or the LPA or Welsh Ministers in relation to consultation on an application.

Duty to provide an annual performance report to the Welsh Ministers

- 4.10 We also propose that in line with requirements for other statutory consultees, FRAs will also be required to prepare an annual report on their performance to be submitted to the Welsh Ministers. This will need to cover compliance with their legal duty at both consultation stages of the planning application process and in responding to consultation requests by LPAs and the Welsh Ministers on applications for approval, consent or agreement relating to a planning application.
- 4.11 As required by the Procedure Orders⁶, the report will need to include for the reporting period the number of occasions when a ‘substantive response’ was required, the number provided and the time taken to provide the response in relation to the timeframes set out above. The reporting period will cover 12 months, beginning on 1 April in each year, with the report submitted to the Welsh Ministers by 1 July for the proceeding reporting period.

Q1	Do you agree with our proposal to amend the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and the Developments of National Significance (Procedure) (Wales) Order 2016 to make Fire and Rescue Authorities statutory consultees? If not, why not?
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⁶ Article 15F of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, as amended, and Article 24 of the Developments of National Significance (Procedure) (Wales) Order 2016.

Type of development subject to consultation

- 4.12 We explained in paragraph 3.4 that we are proposing consultation not just in relation to high-rise residential premises in respect to which the Building Safety Expert Group focussed on. We consider that FRAs should be consulted on all residential proposals where significant numbers of people are involved to ensure the design is appropriate and the resources available by the FRA are adequate to the fire risk presented by the new development.
- 4.13 In respect of non-residential proposals we consider the FRAs should be given the opportunity to comment on all larger scale proposals to ensure the design and availability of fire-fighting capability is appropriate.
- 4.14 All waste development proposals should be included for consultation with the FRAs. Waste site development can create a significant fire risk, often due to the large quantity of flammable materials (such as wood, plastic, cardboard and tyres) stored at these sites. It is therefore important that the FRA is made aware of such developments at the earliest stage.
- 4.15 The type of development that LPAs, the Welsh Ministers and developers must notify to statutory consultees greatly affects the volume of consultations. Our ongoing discussions with FRAs highlighted this as a concern to them. We wish to avoid FRAs being overwhelmed with unnecessary consultations. We therefore propose that the developments in relation to which the relevant FRA should be consulted involve any one or more of the following—
- (a) waste development;
 - (b) the provision of residential units where
 - (i) the number of residential units to be provided (including as a result of a change of use) is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (b)(i)⁷;
 - (c) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
 - (d) development carried out on a site having an area of 1 hectare or more.
- 4.16 These descriptions of development are similar to paragraphs (b) to (e) of the definition of “major development” in Article 2 of the DMPWO. We consider that 10 dwellings was an appropriate threshold where the concerns of FRAs about design and resource availability became significant. We have extended this to flats and HMOs so a similar number of households at risk are subject to consultation. Therefore, in light of our discussions, when we say “residential units” in paragraph 4.15 (b) above we propose to capture:
- (a) a dwellinghouse;
 - (b) a flat within a building;
 - (c) a bedroom in a house or flat in multiple occupation
 - (d) a bedroom in other residential accommodation, for example for students and the elderly.

⁷ Subparagraph (b) shall not apply in relation to a DNS planning application as housing is not specifically prescribed as DNS.

Q2	Do you agree that the type of development proposed to be notified to Fire and Rescue Authorities is appropriate, and if not how should it change?
Q3	Should the number of bedrooms where premises are in multiple occupation be used as a trigger for a consultation requirement? If not, why not?
Q4	What impact do you think the proposed changes may have on resources within Local Planning Authorities?
Q5	What impact do you think the proposed changes may have on resources within Fire and Rescue Authorities?
Q6	We would like to know your views on the effects that the 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?
Q7	Please also explain how you believe the proposals 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.
Q8	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please report them.