

SL(6)397 – The Building Safety (Description of Higher-Risk Building) (Design and Construction Phase) (Wales) Regulations 2023

Background and Purpose

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

Regulation 3 defines a higher-risk building as a building that is either at least 18 metres high, or has at least 7 storeys, where it always contains at least one residential unit or is a hospital, care home or children's home.

Regulation 4 makes provision for the measuring of the height of a building.

Regulation 5 makes provision for the calculation of the number of storeys in a building.

Regulation 6 provides for exceptions to the definition of higher-risk building. Such buildings will not be subject to the enhanced regulatory regime.

Procedure

Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following two points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation

In regulation 2, it is unclear why a specific definition of a "dwelling" has been included, and why it only makes direct reference to the inclusion of a flat. The definition of a "residential unit" is broad, and includes a dwelling or "any other unit of living accommodation...". A flat would likely fall within the ordinary meaning of limb (a) of the definition as a "dwelling" and would likely also fall within the very broad definition of (b) "any other unit of living accommodation...". As such, the choice to define "dwelling" as including a flat, and then defining "flat" itself as a premises "divided horizontally" may cause confusion to a reader. The definitions make it unclear what the status of a maisonette or similar dwelling might be, which



spans different floors and may have a vertical and horizontal divisions to accommodate e.g. private staircases. Later, the reader finds that a “residential unit” would likely include a maisonette in any event. As such, the inclusion of the definition of “dwelling” and “flat” require further explanation, as both have known meanings in ordinary language, that the regulations do not appear to wish to depart from. The definition of “residential units” appears to have been clearly drafted without the need for these additional supporting definitions.

2. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation

In regulation 2, the definition of “His Majesty’s forces” is given the same meaning as in the Armed Forces Act 2006. But the relevant section number where the term can be found in the Armed Forces Act 2006 is noted in footnote (3) on page 3. This also occurs in the definition of “visiting force” which has the same meaning as it does for the purposes of Part 1 of the Visiting Forces Act 1952. But the relevant section number of that Act is noted in footnote (2) on page 4. There does not seem an obvious reason for including the relevant section numbers in footnotes, which are non-operative parts of the text, rather than in the definitions themselves.

Similarly, the definitions of “care home” and “children’s home” refer to a care home service and a secure accommodation service within the meaning given in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016. But they also fail to identify the specific provisions where those terms are defined and given a meaning for the purposes of Part 1 in that Act. This also occurs in the definition of “hospital” when referring to an “independent hospital” within the meaning the Care Standards Act 2000. Therefore, the reader has to search those Acts to discover where the terms are found in them.

It would be preferable to have the relevant section numbers included in the definition in each case, to aid the reader to locate and understand the definitions being used in this instrument.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

27 October 2023

