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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of responses

Renting Homes (Wales) Act 2016

Regulations relating to Fitness for Human  
Habitation

**March 2021**

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

## Introduction

Section 91 of the Renting Homes (Wales) Act 2016 ('the 2016 Act') places a duty on a landlord to ensure a dwelling is fit for human habitation (FFHH). This duty will apply at the start, and for the duration, of an occupation contract. Section 94 of the Act requires the Welsh Ministers to make regulations for determining whether a dwelling is FFHH. These draft Regulations were subject to a public consultation which closed on 12th January 2018. Detailed consideration of these responses has now taken place and a summary of these responses is included below. This summary also includes details of any changes to the Regulations to take account of the consultation responses.

The Regulations will come into force at the same time as the 2016 Act. The Welsh Government has indicated its intention for the 2016 Act to come into force in the spring of 2022. The Welsh Government has, since this consultation took place, amended the 2016 Act through the Renting Homes (Wales) (Amendment) Bill 2020 details of this amending legislation can be found here:

<https://business.senedd.wales/mgIssueHistoryHome.aspx?Id=27569>

The Regulations will be kept under review, with the possibility of providing for further specific requirements to address particular issues, should the need arise.

## Responses Summary

This document summarises the responses to the eight consultation questions. Whilst, it cannot capture every comment, it tries to convey the key messages. Several matters were raised that did not have a direct bearing on the subject of the consultation. We have noted these matters but not considered them in any detail within this summary. Nearly all consultation responses were received from people or organisations based in Wales.

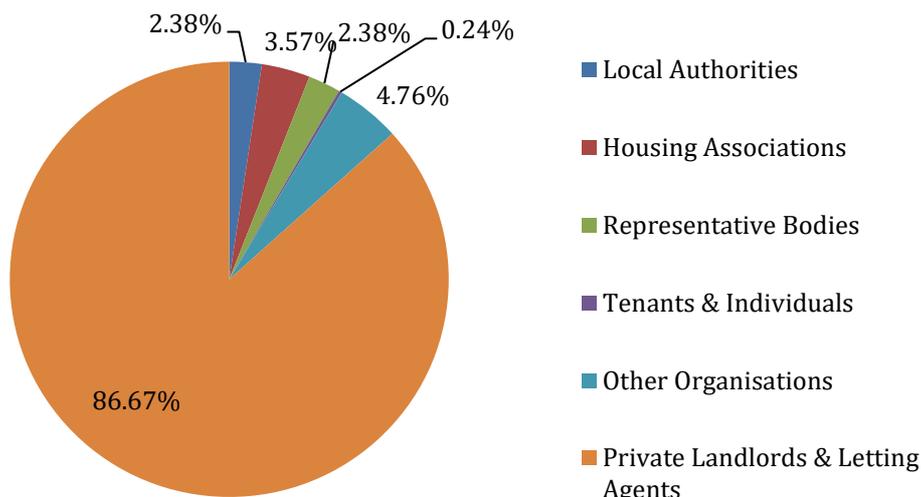
The Welsh Government received 420 responses to the consultation. Individuals could submit their responses by online questionnaire, email or post. 75 respondents replied by email, 46 by post and 354 online.

The breakdown by sector was as follows.

Local Authorities	<b>10</b>
Housing Associations	<b>15</b>
Representative Bodies	<b>10</b>
Tenants & Individuals	<b>1</b>
Other Organisations	<b>20</b>
Private Landlords & Letting Agents	<b>364</b>

The vast majority of responses were from private landlords or letting agents (364). 15 housing associations and 10 local authorities responded, as well as a range of other types of other organisations. Only one response was received from a tenant.

## Summary of Responses by Sector



### Key Findings

Generally, the overall approach underpinning the regulations was welcomed by each class of respondent. Similarly, the main features of the proposals received a positive response across all types of respondents

64% of respondents agreed with the specific requirements placed on landlords by the regulations:

- the presence of a working carbon monoxide alarm;
- the presence of working smoke alarm; and
- periodic electrical safety testing at least every five years.

Views were more mixed on whether there needed to be any additional requirements for smoke alarms. 53% agreed there should be additional requirements. Of the various options discussed, 57% of those who answered the question indicated interlinked hard-wired smoke alarms as their preferred option.

Overall, the requirement for electrical safety testing was endorsed by 83% of respondents, and requiring a test at least every five years was supported by 64% of respondents.

71% of respondents indicated that the requirements relating to smoke alarms, carbon monoxide alarms and electrical safety testing addressed their main health and safety concerns. However, some local authorities were of the opinion that additional obligations should be placed upon landlords, specifically relating to gas safety (addressed later in this document) and the presence of damp and mould.

70% of respondents agreed that the guidance adequately explains the nature of the 29 matters and circumstances underpinning FFHH. Some responses suggested the proposed accompanying guidance needed to be more detailed or specific, in order to determine definitively whether a property is FFHH.

## Responses to individual consultation questions

The content of responses varied greatly, though most respondents addressed the majority of the questions asked in the consultation. Some respondents gave very detailed replies, for which we are grateful. Whilst it is not possible to reflect fully all matters raised, the key themes raised in response to each question are summarised.

**Question 1** – Determination of whether a dwelling is fit for human habitation. Do you agree with our approach to determining whether a dwelling is fit for human habitation, in particular referencing the 29 matters and circumstances set out in the guidance?

Of the responses received:

270 (64%) answered 'yes'

140 (33%) answered 'no'

10 (3%) did not comment

The proposed approach for determining whether a dwelling is FFHH was supported by 64% of respondents. Most respondents agreed with including the specific preventative requirements outlined, in addition to the 29 matters and circumstances. It was felt the regulations are comprehensive and provide a checklist to help ensure dwellings are of a reasonable quality.

However, a number of local authorities stated they did not agree with the approach. The main concern was around using the 29 matters and circumstances in relation to both the Housing Health and Safety Rating System (HHSRS) and FFHH requirements. They argued there was the potential for confusion between the different systems.

Other local authorities argued that the FFHH should be combined/merged with the Welsh Housing Quality Standard (WHQS) so all tenants would have the same protection, whether living in the private or social rented sectors. It is also noted the only tenant who responded stated that it was important social landlords, as well as private landlords and letting agents, should comply with the new regulations.

Local authorities also raised concerns around the role they were expected to play in relation to implementation and enforcement of the regulations. They believed it would be difficult for landlords to know whether their dwelling is FFHH, and were likely to ask them for advice. They were unsure about whether they would be expected to give such advice to landlords.

### Welsh Government response to Question 1

The Welsh Government welcomes the generally positive response from consultees regarding the approach underpinning the proposed regulations for determining if a dwelling is FFHH. In light of the queries raised, some further clarification on the proposed approach is provided below.

The aim of the proposed fitness for human habitation Regulations is to provide a comprehensive, yet proportionate, approach to addressing the poorest conditions. They will require landlords to make considerable improvements to properties falling significantly below the requirements. At the same time, they will not penalise those landlords whose properties are already of a reasonable standard.

## **HHSRS, WHQS and FFHH Requirements**

As set out in the consultation, the 29 matters and circumstances will replicate those currently used under HHSRS. Adopting the same 29 matters and circumstances provides some continuity between the two systems, but more importantly they provide a more comprehensive approach to determining FFHH than the old fitness standard.

Some respondents expressed some confusion about how FFHH differs from HHSRS. Whilst the guidance does describe how the two differ, this description will be reconsidered in light of the comments received to ensure greater clarity. Additionally, to aid understanding, we will work closely with all stakeholders to ensure key messages are communicated clearly prior to the Act being implemented.

Once implemented, the Act will require all landlords (including local authorities and housing associations) to ensure they meet FFHH obligations. This is in addition to the current requirements of WHQS placed on social landlords. The WHQS guidance will also be reviewed to take account of the FFHH Regulations.

### ***How are landlords expected to judge whether a dwelling is FFHH?***

The guidance accompanying the regulations provides examples of actions that a landlord should consider in order to prevent / address the occurrence of a particular matter or circumstance. However, due to the wide variation in the type and age of dwellings, as well as potential alternative responses, these examples are intended only to serve as an aid to landlords. Following consideration of the guidance, it will be for landlords to decide what action is reasonable to ensure the dwelling is FFHH. Inevitably, this is a matter of judgement, taking into account the particular circumstances, including the design and construction of the dwelling.

A contract-holder also has a responsibility to take reasonable care of the dwelling, and the action or inaction of the contract-holder may contribute to whether or not a dwelling is FFHH. For example, in relation to damp and mould, the guidance states that providing the dwelling has adequate features/appliances, such as heating and ventilation systems and window openings/fans to prevent damp and mould occurring, it would be considered FFHH. Therefore, the dwelling would not be considered unfit if the presence of damp and mould is due solely to the contract-holder not adequately ventilating or heating the property.

Regarding advice, the Regulations do not place a duty on local authorities to provide an advice or inspection service to landlords. The final version of the guidance will be amended to ensure there is a clear distinction between HHSRS, the enforcement of which is the responsibility of the local authority, and FFHH, which is a term of an occupation contract that can be enforced by the contract-holder against the landlord.

**Question 2** – Landlord requirements - carbon monoxide. Do you agree with the requirement for a landlord to install a carbon monoxide alarm?

Of the responses received:

353 (84%) answered 'yes'

63 (15%) answered 'no'

4 (1%) did not comment

## Welsh Government response to Question 2

The Welsh Government welcomes the positive response from stakeholders, which confirms the presence of a carbon monoxide alarm is seen as a reasonable and proportionate preventative measure as part of the wider FFHH requirements

### **Smoke Alarms**

**Question 3** – Landlord requirements – smoke alarms. Do you agree with the requirement for a landlord to install a smoke alarm?

Of the responses received:

- 384 (91%) answered 'yes'
- 30 (7%) answered 'no'
- 6 (2%) did not comment

**Question 4** – If 'yes' to Question 3, should there be any additional requirements on the type of smoke alarm installed?

Of the responses received:

- 224 (53%) answered 'yes'
- 166 (40%) answered 'no'
- 30 (7%) did not comment

**Question 5** – If 'yes' to Question 4, which type of alarm should be installed?

**Question 5a.** Sealed unit lithium battery-powered smoke alarms with 10 year lifespan.

Of the responses received:

- 141 (34%) answered 'yes'
- 121 (29%) answered 'no'
- 158 (37%) did not comment

**Question 5b.** Interlinked sealed unit lithium battery-powered smoke alarms.

Of the responses received:

- 73 (17%) answered 'yes'
- 165 (39%) answered 'no'
- 182 (44%) did not comment

**Question 5c.** Interlinked hard-wired smoke alarms.

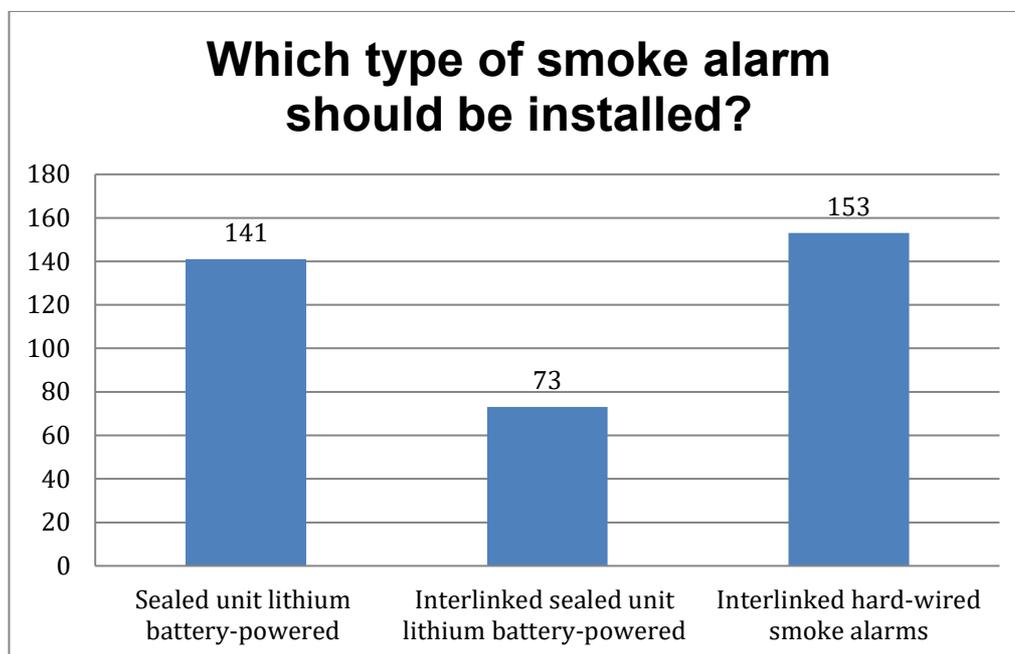
Of the responses received:

- 153 (37%) answered 'yes'
- 115 (27%) answered 'no'
- 152 (36%) did not comment

91% of respondents agreed the presence of a smoke alarms is a reasonable and proportionate preventative measure as part of the wider FFHH requirements.

There was, however, a more mixed response to Question 4, regarding any additional requirements as to the type of smoke alarm installed. However, a small majority (53%) agreed that there should be further specification within the Regulations.

The responses in relation to Questions 5 a-c indicate the preferred option is that the regulations should stipulate that interlinked hard-wired smoke alarms should be installed.



A number of reasons were given for this preference:

- Interlinking of alarms is essential in providing an early warning, particularly when the triggered alarm may be out of range.
- Battery powered units, even those which are sealed, can be tampered with or disabled more easily than a hard-wired unit.
- Regardless of the battery life of some units, they will still fail at some point. Failure to identify this through regular checks increases the risk of inadequate fire warning. This could be a particular problem in a dwelling when the contract-holder is often changing.

### Welsh Government response to Questions 3, 4 and 5 a to c

The Welsh Government has noted the responses received in relation to the requirements to install smoke alarms. It is recognised that these responses reflect a preference for additional requirements above those set out within the draft regulations. Consequently, it is proposed to amend the draft regulations to provide that all landlords will be required to install a hard-wired smoke alarm, and where more than one alarm is required that the alarms be interlinked.

**Question 6.** Landlord requirement for electrical safety testing. Do you agree with the requirement for a landlord to undertake electrical safety testing?

Of the responses received:

- 348 (83%) answered 'yes'
- 60 (14%) answered 'no'
- 12 (3%) did not comment

**Question 7.** Landlord requirement – electrical safety testing. Do you agree that the maximum period between electrical safety testing should be five years?

Of the responses received:

- 267 (64%) answered 'yes'
- 142 (34%) answered 'no'
- 11 (2%) did not comment

### Welsh Government response to Questions 6 and 7

The Welsh Government welcomes the response from stakeholders, which confirms that electrical safety testing at a maximum of five year intervals is seen as a reasonable and proportionate preventative measure as part of the wider FFHH requirements.

Some further provision will be made in the Regulations, specifically to provide a deadline of seven days for the landlord to provide a copy of the EICR, to the contract-holder, following a requirement for remedial work to be undertaken. Previously the regulations provided no timeframe for a landlord to evidence that the electrical installation had been made safe following this remedial work.

It should be noted that a landlord has one year to comply with the requirements of the electrical safety inspection and testing where a tenancy or licence has converted to a contract under the Act.

**Question 8:** Specific requirements imposed on landlords. Do you agree that the three specific requirements imposed on landlords (installing a carbon monoxide alarm, smoke alarm, and undertaking electrical safety testing) address the most important concerns?

Of the responses received:

- 299 (71%) answered 'yes'
- 108 (26%) answered 'no'
- 13 (3%) did not comment

71% of respondents agreed that the three specific requirements imposed on landlords will address the most important concerns. Some responses stated the proposed measures were not enough and that further requirements should be added. Suggestions for additional requirements included gas safety checks, annual boiler and heating checks, minimum energy efficiency standards, and provision of a fire blanket.

Some respondents noted that the responsibilities of contract-holders for their own health and safety should be emphasised. Other issues raised included difficulties the landlord may face in gaining access to the dwelling to install alarms or conduct electrical safety testing.

## Welsh Government response to Question 8

It is critical that the health and wellbeing of contract-holders is placed at the heart of FFHH, whilst balancing landlords' concerns regarding practicality and affordability. However, the Welsh Government welcomes the positive endorsement of the approach set out in the proposed regulations.

### *Gas safety and energy efficiency requirements*

The proposed Regulations do require that a landlord complies with the yearly inspection checks under regulation 36 of the Gas Safety (Installation and Use) Regulations 1998. Failure of a landlord to have a current gas safety certificate will mean the dwelling is not considered to be FFHH. In addition, the Rent Smart Wales Code of Practice for Landlords makes it a requirement that "any gas appliances and flues must be checked for safety within 12 months of being installed, and thereafter at least every 12 months by a qualified gas engineer".

Since April 2018, properties in the private rented sector are required to have an Energy Performance Certificate (EPC) rating of E or above. This will help to ensure properties can be heated at a reasonable cost.

### *Access to install preventative measures and contract-holders' responsibilities*

In some cases landlords will require access to the dwelling in order to carry out an inspection, or to install or test equipment required by the preventative measures. In order to do so, the landlord will need to make arrangements with the contract-holder. The Act provides that the landlord may, for the purpose of complying with their fitness and repairing obligations, enter the dwelling at any reasonable time, having provided 24 hours' notice to the contract-holder. A contract-holder preventing access to the dwelling for such purposes will be in breach of the occupation contract, and may therefore be subject to possession proceedings

**Question 9a:** Do you agree that the draft guidance on fitness for human habitation adequately explains the nature of the 29 matters and circumstances?

Of the responses received:

- 295 (70%) answered 'yes'
- 99 (24%) answered 'no'
- 26 (6%) did not comment

**Question Q9b:** Do you agree that the draft guidance on fitness for human habitation adequately explains the specific requirements placed on landlords by the Regulations?

Of the responses received:

- 269 (64%) answered 'yes'
- 120 (29%) answered 'no'
- 31 (7%) did not comment

Most respondents agreed that the guidance on the 29 matters and circumstances was comprehensive and provided clear explanation. In addition, most respondents agreed that the three specific requirements placed on landlords were adequately explained.

However, some respondents argued it would be difficult for landlords and contract-holders to know whether the dwelling was FFHH, and that more detailed guidance would be helpful. Others argued the guidance did not take into account differences between types of housing (e.g. listed buildings, terraced, new builds), which may affect what action would be considered appropriate.

A number of respondents suggested the guidance should include the responsibilities of contract-holders. These respondents argued there were many health and safety issues which remain the contract-holder's responsibility, and are not covered by the proposed Regulations, such as the use faulty personal electrical appliances, damage caused to appliances and the introduction of non-flameproof carpets and curtains.

A number of other responses queried how the proposed Regulations relate to common areas in HMOs and blocks of flats, including the maintenance of smoke alarms, sprinkler systems and emergency lighting in common areas.

### **Welsh Government response to Questions 9a and 9b**

The Welsh Government welcomes the positive responses, which confirm that the draft guidance on fitness for human habitation adequately explains the nature of the 29 matters and circumstances and the three specific requirements. The aim of the guidance is to support landlords in assessing their properties. Due to the wide range of types of dwelling, and also differences with respect to design and/or age, it is not possible to provide definitive guidance for every possible scenario.

Whilst the Welsh Government does not believe it would ever be possible for the guidance accompanying the Regulations to cover all possible scenarios, it is committed to ensuring the guidance is as helpful as possible. To that end, it intends to review the guidance after a period of three years following implementation.

#### *Contract-holders' Responsibilities*

It is acknowledged health and safety in the home remains a much wider concern, and there are hazards, such as those relating to the use of personal electrical appliances and the introduction of flammable materials, which will remain the responsibility of the contract-holder. Whilst it is not appropriate to address such matters through the FFHH regulations or the guidance, as these relate specifically to the landlord's obligations, landlords are encouraged to discuss these potential hazards with contract-holders. It is also proposed that occupation contracts will include a term relating to contract-holders needing to take care of the dwelling.

#### *Common Areas*

Section 91(2) of the Act requires a landlord to keep not only the dwelling FFHH but also the common parts of the dwelling, where they form part of the same building. This may, for example, require the landlord to maintain any communal stairs between flats.

**Question 10:** Do you have any further comments to make on the draft Regulations, including any on their cost implications?

There were mixed views around the cost implications of the FFHH requirements. Some responses argued the new requirements are too onerous and may result in landlords increasing rents due to increased maintenance costs. Conversely, other responses argued that the requirements included within the draft regulations should be more onerous.

Additionally, concern was expressed about the potential legal costs associated with disputes which reach the court. Some emphasised the need to ensure that all other avenues for dispute resolution should be exhausted first.

### **Welsh Government response to Question 10:**

It is critical that the health and wellbeing of contract-holders is placed at the heart of FFHH. Whilst some landlords may face significant costs as a result of complying with the regulations, this would largely reflect a lack of adequate investment previously. The Welsh Government will keep the Regulations under review, in recognition that what is considered FFHH is likely to change over time.

Once implemented, the Act will require landlords to issue a written statement of the occupation contract which clearly sets out the rights and responsibilities of landlords and those renting from them. This will provide the basis for better communication between the two parties. It is envisaged the majority of disputes between landlords and contract-holders will be resolved informally, and this should be encouraged wherever possible. However, if a dispute cannot be resolved, the court will ultimately decide whether a dwelling is FFHH or not.

### **Conclusion and next steps**

The Welsh Government is grateful for the overall positive response to the consultation. The draft Regulations will be amended and guidance will be amended in the light of the responses and the final versions will be published at least six months in advance of the 2016 Act coming fully into force, alongside other key documentation relating to the Act.