



Buckinghamshire & Milton Keynes Fire Authority

MEETING	Fire Authority
DATE OF MEETING	14 October 2020
OFFICER	Graham Britten, Director of Legal and Governance
LEAD MEMBER	Councillor Lesley Clarke OBE
SUBJECT OF THE REPORT	Fire and rescue authorities becoming statutory consultees in the development management process - Consultation by the Welsh Government
EXECUTIVE SUMMARY	<p>The purpose of this report is to apprise the Authority of:</p> <ul style="list-style-type: none"> a) a consultation launched by the Welsh Government on 28 July 2020 about its proposals to make the three Welsh fire and rescue authorities statutory consultees on planning applications relating to specified developments; b) the current position in England in respect of consultation and fire and rescue authorities; and c) proposals contained within the draft Building Safety Bill. <p>The relevant legislation in respect of the consultation obligations on planning authorities, after an application has been submitted and before planning permission can be granted, is essentially the same currently in Wales as it is in England.</p> <p>The proposals, if implemented through changes to legislation¹ in Wales, would mean that for certain types of development:</p> <ul style="list-style-type: none"> 1. developers would be required to consult fire and rescue authorities prior to submitting their application; 2. local planning authorities and the Welsh Ministers would be required to consult fire and rescue authorities to inform their consideration and determination of the application; and 3. the fire and rescue authority would need to respond where the local planning authority chooses to consult further on applications for

¹ Changes would be made to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (SI 2012/801) and the Developments of National Significance (Procedure) (Wales) Order 2016 (SI 2016/55).

approval, consent or agreement relating to a planning application on which they were initially consulted.

The Welsh Government's rationale for the proposals are summarised in its consultation document at §§ 3.2 -3.4:

"3.2 Firstly, it will allow FRAs [fire and rescue authorities] 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."

And at §§ 4.12 to 4.14:

"4.12 [...]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

	<p>sites. It is therefore important that the FRA is made aware of such developments at the earliest stage.”</p> <p>The consultation closes on 23 October 2020.</p>
ACTION	Decision
RECOMMENDATIONS	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. the content of Welsh Government Consultation Document (Annex A) be noted; and 2. the Chief Fire Officer be authorised, after consultation with the Group Leaders and Vice Chairman, to submit the views of the Group Leaders about fire and rescue authorities becoming consultees in the development management process to: <ol style="list-style-type: none"> a) the Minister of State for Building Safety, Fire and Communities; and b) the LGA Fire Services Management Committee.
RISK MANAGEMENT	No risks arise to the delivery of the Authority’s functions from the recommendations.
FINANCIAL IMPLICATIONS	There is no direct financial impact from responding to the consultation. However, changes to legislation in England of the type contemplated in Wales would require the necessary levels of staffing and competency within the FRA to enable it to comply with a duty to provide a “substantive response” to the relevant planning authority.
LEGAL IMPLICATIONS	<p>In England and Wales most building work, and certain changes of use involving buildings, are subject to the Building Regulations 2010. If a building’s intended purpose is that it is to be used other than a single dwelling it will also be subject to the Regulatory Reform (Fire Safety) Order 2005 once the work is completed and the building is occupied.</p> <p>Building control bodies (local councils’ building control departments and Approved Inspectors) are responsible for checking for compliance with the requirements of the Building Regulations. The Regulations are concerned with building work and with material changes of use (which may give rise to requirements for building work) and the requirements for fire safety will apply to most buildings. Fire safety requirements are set out in Part B of Schedule 1 to the Building Regulations. These cover means of escape, means of early warning, fire spread, and access and facilities for the fire and rescue service. Ways of meeting the requirements are given in statutory guidance issued in England and separately in Wales as ‘Approved Document B (Fire safety)’.</p> <p>At present, FRAs are consulted on applications for</p>

Building Regulations approval when required under Approved Document B.

In a building to which of the Regulatory Reform (Fire Safety) Order 2005 applies, Article 45 of that Order provides for consultation between a local authority and the FRA if plans have been deposited with the local authority in accordance with the Building Regulations 2010. In these circumstances the local authority must consult with the FRA. Regulation 13 of the Building (Approved Inspectors etc) Regulations 2000 (SI 2000/2532) makes similar provision for consultation by Approved Inspectors.

However, FRAs are not prescribed bodies to be consulted about applications for planning permission.

Consultation by planning authorities prior to planning permission

Articles 18 to 20, and Schedule 4, of the Town and Country Planning (Development Management Procedure (England) Order 2015 impose detailed requirements to consult specified authorities and bodies in respect of particular descriptions of development². (The table from Schedule 4 listing the current consultees in England is reproduced in **Annex B**) The Secretary of State may also give directions requiring consultation with a named person or body.

A period of 21 days must be allowed for a response from a statutory consultee although the authority may proceed earlier if it receives representations or notice that the consultee does not intend to make representations. The authority must take any representations received into account.

Local planning authorities have a discretion to consult 'non statutory consultees', 'where there are planning policy reasons to engage other consultees who – whilst not designated in law – are likely to have an interest in a proposed development.'

([National Planning Policy and Guidance, Published 6 March 2014 Last updated 13 May 2020](#)) This Guidance to English planning authorities also states as follows:

"To help applicants develop their proposals, local planning authorities are encouraged to produce and publish a locally specific list of non-statutory consultees. [...]"

Local planning authorities need to identify the particular types of development or areas in which non-

² In addition, in areas of two-tier authorities consultation by a district planning authority with the county planning authority for its area is required under circumstances set out under Paragraph 7 of Schedule 1 to the Town and Country Planning Act 1990, Article 21 Development Management Procedure Order and Schedule 4(b)(c) Development Management Procedure Order

	<p>statutory consultees have an interest, so that any consultation can be directed appropriately, and unnecessary consultation avoided.</p> <p>To ensure consultations are received promptly it is helpful for applicants and local planning authorities to agree the most cost and time effective system of notification on individual applications.”</p> <p>A consultee may recommend that a planning application be refused but cannot in most cases direct that this happens³.</p> <p>Consultation by developers pre-application</p> <p>In England there is no general statutory requirement for developers to undertake consultation before submitting a planning application. Of the few exceptions, one is if the application is for development which is a <i>nationally significant infrastructure project</i> (NSIP). Applicants seeking NSIP consent are subject to pre-application publicity and consultation requirements. The statutory consultees are the prescribed persons listed in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009/2264 . FRAs are statutory consultees in England only where these regulations apply.</p>
CONSISTENCY WITH THE PRINCIPLES OF THE DUTY TO COLLABORATE	The Policing and Crime Act 2017 requires the Authority to keep opportunities for collaboration with the police and ambulance services under review. It is not engaged by the consultation under consideration.
HEALTH AND SAFETY	None arising from the recommendations.
EQUALITY AND DIVERSITY	No implications arising from the recommendations.
USE OF RESOURCES	The formulation of any response to the consultation can be accommodated within existing resources. However, changes to legislation in England of the type contemplated in Wales would require the necessary levels of staffing and competency within the FRA to enable it to comply with a duty to provide a “substantive response” to the relevant planning authority (as defined – i.e. a response which (a) states that the consultee has no comment to make;

³ ‘Town and Country Planning (Development Affecting Trunk Roads) Direction 2018 is that if Highways England, having been consulted on a planning application under Schedule 4 of the Development Management Order 2015, makes a recommendation which the local planning authority does not intend to follow, the local planning authority must consult the Secretary of State and must determine the application in accordance with any Direction given within 21 days by the Secretary of State. In addition, article 6 of the Town and Country Planning (Mayor of London) Order 2008 sets out a power for the Mayor of London to direct refusal of a planning application in certain instances. Several combined authorities also have similar powers’.
[Paragraph: 027 National Planning Policy and Guidance, Planning Practice Guidance :Consultation and pre-decision matters]

	<p>(b) states that, on the basis of the information available, the consultee is content with the development proposed;(c) refers the consultor to current standing advice by the consultee on the subject of the consultation; or (d) provides advice to the consultor.)</p> <p>The substantive response would need to include reasons for the consultee’s views so that where these views have informed a subsequent decision made by a local planning authority the decision is transparent. A holding reply would not be acceptable as a substantive response. Statutory consultees who are under a duty to provide a substantive response must provide an annual report on their performance in providing such responses within the 21-day period or longer agreed period, and a summary of the reasons why they failed to comply with the duty to respond within the relevant timescale.</p> <p>These annual reports would need to be sent to the Ministry of Housing, Communities and Local Government each year; and published on the FRA’s website.</p>
<p>PROVENANCE SECTION & BACKGROUND PAPERS</p>	<p>Welsh Government Consultation Document Fire and Rescue Authorities becoming statutory consultees in the development management process</p> <p>The Welsh consultation proposals are separate from those proposed for England under the Building Safety Bill.</p> <p>On 20 July 2020 the Government published the draft Building Safety Bill.</p> <p>The stated intention of the Bill is to create a more stringent regulatory regime for ‘higher-risk’⁴ residential buildings and is part of the Government’s response to the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt. Dame Judith’s final report, Building a Safer Future , was published on 17 May 2018.</p> <p>The Bill introduces a ‘Building Safety Regulator’ as a new role to be undertaken by the Health and Safety Executive and its functions in relation to buildings in England; and, inter alia, would amend the Building Act 1984 to create a new ‘Gateway’ regime.</p>

⁴ Left to be defined by secondary legislation. The Government has signalled its intention that it proposes to define a ‘higher-risk building’ as: A building 1) in which the floor surface of the building’s top storey is 18 metres or more above ground level (ignoring any storey which is a roof-top plant and machinery area or any storey consisting exclusively of plant and machinery rooms); or in which there are more than 6 storeys (ignoring any storey which is below ground level); and 2) contains: a) Two or more dwellings (i.e. house, flat or serviced apartment); b) Two or more rooms for residential purposes (e.g. supported accommodation), or c) Student accommodation.

Building Safety Regulator (England only)

Clause 13 of the Bill enables the Building Safety Regulator to call on assistance from local authorities and FRAs when regulating higher-risk buildings. Its intention is that local authorities and FRAs have the legal power to provide assistance requested by the Building Safety Regulator.

Clause 13 also enables the Building Safety Regulator to direct a local authority or FRA to provide support requested under clause 13, subject to the following provisos:

- Before making a direction, the Building Safety Regulator must first make a formal, written request to the local authority or FRA setting out the reason why the assistance is being requested. The local authority or FRA must be given the opportunity to give reasons why it should not be required to provide the assistance.
- If the local authority or FRA does not undertake the requested activity, the Building Safety Regulator may direct the relevant authority to do so. However, the Building Safety Regulator must have considered any reasons provided by the authority for not undertaking the activity; still consider it expedient for the authority to undertake the activity; and have secured the consent of the Secretary of State for the direction.

Clause 14 makes further provisions in relation to the assistance to be provided by local authorities and FRAs. Including:

- funding to be provided for the activity requested from local authorities and FRAs, and any activity necessary to support this, both through grants from the Secretary of State and enabling regulations to be made setting out how the Building Safety Regulator would reimburse local authorities and FRAs; and
- a duty on FRAs and local authorities to only use staff with the 'appropriate skills, knowledge, experience and behaviours' when supporting the Building Safety Regulator.

The Gateway Process for 'higher risk buildings'⁵ (England only)

The Bill intends to introduce a Gateway process by inserting amendments into Schedule 1 of the Building Act 1984. The details of the Gateway regime will be left to secondary legislation however the first Gateway

⁵ See note 4 above

	<p>is the 'Planning Gateway'</p> <p>This Gateway's requirements would be fulfilled by those applying for planning permission for developments containing a 'higher-risk building'.</p> <p>Information will need to be submitted to the Local Planning Authority with the planning application information that demonstrates fire safety requirements which impact on planning considerations have been considered at an early stage and incorporated into the proposals.</p> <p>This information will take the form of a Fire Statement.</p> <p>A new statutory consultee, in the form of the Building Safety Regulator, will be introduced for all planning applications containing a higher-risk building, this will provide specialist fire safety input on the proposals to assist the Local Planning Authority in their decision-making process. (Note that the Regulator will be able to call upon an FRA for assistance - per clauses 13 and 14 of the Bill, above)</p> <p>However, where a planning application is not currently required (i.e. it has been permitted by the General Permitted Development Order 2015), the requirements of the Planning Gateway will not apply, and development proposals will proceed straight to Gateway two.</p> <p>The Bill proposes that Gateway two occurs prior to construction work beginning. It is intended to bolster the current building control 'deposit of full plans'.</p> <p>Gateway two is intended to provide a 'hard stop' where construction cannot begin until the Building Safety Regulator is satisfied that the building's design meets the functional requirements of the building regulations and does not contain any unrealistic safety management expectations.</p> <p>Key information will need to have been submitted to the Building Safety Regulator to demonstrate how the building, once built, will comply with the requirements of building regulations. Design decisions in relation to fire and structural safety will have to have been well considered and justified, to ensure they will work effectively during occupation.</p>
<p>APPENDICES</p>	<p>Annex A: Welsh Government Consultation Document Fire and Rescue Authorities becoming statutory consultees in the development management process Date of issue: 28 July 2020.</p> <p>Annex B: Schedule 4 of the Town and Country Planning (Development Management Procedure (England) Order 2015</p>

TIME REQUIRED	15 Minutes
REPORT ORIGINATOR AND CONTACT	Graham Britten gbritten@bucksfire.gov.uk 01296 744441

Number: WG40994



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.

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Table of Statutory Consultees: Schedule 4 of the Town and Country Planning (Development Management Procedure (England) Order 2015

	<i>Description of Development</i>	<i>Consultee</i>
(a)	Development likely to affect land in a National Park	The National Park authority concerned
(b)	Development likely to affect land in Greater London or in a metropolitan county other than land in a National Park	The local planning authority concerned
(c)	Development likely to affect land in a non-metropolitan county other than land in a National Park	The district planning authority concerned or, where there is no district planning authority in relation to the land, the county planning authority concerned
(d)	Development, in relation to which an application for planning permission has been made to the Secretary of State under section 293A of the 1990 Act (urgent Crown Development: application), where that development is likely to affect land in the area of a parish council[or a neighbourhood area for which a neighbourhood forum has been designated]	The parish council [or the neighbourhood forum (as the case may be)]
(e)	Development within an area which has been notified to the local planning authority by the Health and Safety Executive for the purpose of this provision because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances (otherwise than on a relevant nuclear site) and which involves the provision of— (i) residential accommodation; (ii) more than 250 square metres of retail floor space; (iii) more than 500 square metres of office floor space; or	The Health and Safety Executive

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	<p>(iv) more than 750 square metres of floor space to be used for an industrial process,</p> <p>or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area</p>	
(f)	<p>Development within an area which has been notified to the local planning authority by the Office for Nuclear Regulation for the purpose of this provision because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances on a relevant nuclear site and which involves the provision of—</p> <p>(i) residential accommodation;</p> <p>(ii) more than 250 square metres of retail floor space; or</p> <p>(iii) more than 500 square metres of office floor space; or</p> <p>(iv) more than 750 square metres of floor space to be used for an industrial process.</p> <p>or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area.</p>	The Office for Nuclear Regulation
(g)	<p>Development other than minor development, likely to result in an adverse impact on the safety of, or queuing, on a trunk road</p>	The highway authority for the trunk road
(h)	<p>Development likely to prejudice the improvement or construction of a trunk road</p>	The highway authority for the trunk road
(i)	<p>Development which consists of or includes the construction, formation or laying out of access to or from a trunk road</p>	The highway authority for the trunk road

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(j)	Development which is likely to result in a material increase in the volume or a material change in the character of traffic using a level crossing over a railway	The operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport
(k)	Development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a classified road or proposed highway	The local highway authority concerned
(l)	Development likely to prejudice the improvement or construction of a classified road or proposed highway	The local highway authority concerned
(m)	Development involving—	
	(i) the formation, laying out or alteration of any means of access to a highway (other than a trunk road); or	The local highway authority concerned
	(ii) the construction of a highway or private means of access to premises affording access to a road in relation to which a toll order is in force	The local highway authority concerned, and in the case of a road subject to a concession, the concessionaire
(n)	Development which consists of or includes the laying out or construction of a new street	The local highway authority
(o)	Development which involves the provision of a building or pipeline in an area of coal working notified by the Coal Authority to the local planning authority	The Coal Authority
(P)	Development involving or including mining operations	The Environment Agency
(q)	Development of land involving the demolition, in whole or in part, or the material alteration of a listed building which is classified as Grade I or Grade II*	Historic England
(r)	Development likely to affect the site of a scheduled monument	Historic England

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(s)	Development likely to affect any battlefield, garden or park of special historic interest which is registered in accordance with section 8C of the Historic Buildings and Ancient Monuments Act 1953 (register of gardens)	(a) Historic England in relation to any battlefield, and any garden or park which is classified as Grade I or Grade II*; and (b) the Garden History Society in relation to all registered gardens or parks
(t)	Development involving the carrying out of works or operations in the bed of, or within 20 metres of the top of a bank of, a main river which has been notified to the local planning authority by the Environment Agency as a main river for the purposes of this provision	The Environment Agency
(u)	Development for the purpose of refining or storing mineral oils and their derivatives	The Environment Agency
(v)	Development relating to the use of land as a cemetery	The Environment Agency
(w)	Development in or likely to affect a site of special scientific interest	Natural England
(x)	Development involving any land on which there is a theatre	The Theatres Trust
(y)	Development which is not for agricultural purposes and is not in accordance with the provisions of a development plan and involves— (i) the loss of not less than 20 hectares of grades 1, 2 or 3a agricultural land which is for the time being used (or was last used) for agricultural purposes; or (ii) the loss of less than 20 hectares of grades 1, 2 or 3a agricultural land which is for the time being used (or was last used) for agricultural purposes, in circumstances in which the development is likely to lead to a further loss of agricultural land	Natural England

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	amounting cumulatively to 20 hectares or more	
(z)	<p>Development which—</p> <p>(i) is likely to prejudice the use, or lead to the loss of use, of land being used as a playing field; or</p> <p>(ii) is on land which has been—</p> <p>(aa) used as a playing field at any time in the 5 years before the making of the relevant application and which remains undeveloped; or</p> <p>(bb) allocated for use as a playing field in a development plan or in proposals for such a plan or its alteration or replacement; or</p> <p>(iii) involves the replacement of the grass surface of a playing pitch on a playing field with an artificial, man-made or composite surface</p>	Sport England
(za)	<p>Development likely to affect—</p> <p>(i) any inland waterway (whether natural or artificial) or reservoir owned or managed by the Canal & River Trust; or</p> <p>(ii) any canal feeder channel, watercourse, let off or culvert, which is within an area which has been notified for the purposes of this provision to the local planning authority by the Canal & River Trust</p>	The Canal & River Trust
(zb)	<p>Development falling within any of the following descriptions—</p> <p>(i) development involving the siting of new establishments;</p> <p>(ii) development consisting of modifications to existing establishments covered by Article 11 of Directive 2012/18EU of the European Parliament and of the Council on the control of major-</p>	<p>(a) The COMAH competent authority;</p> <p>(b) where it appears to the local planning authority that an area of particular natural sensitivity or interest may be affected. Natural England; and</p> <p>(c) in the case of development falling within paragraph (iii), any person who according to—</p>

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	<p>accident hazards involving dangerous substances; or</p> <p>(iii) new developments including transport routes, locations of public use and residential areas in the vicinity of establishments, where the siting or development may be the source of or increase the risk or consequences of a major accident.</p>	<p>(i) the register held by the hazardous substances authority under regulation 20 of the Planning (Hazardous Substances) Regulations 2015, or</p> <p>(ii) a notice submitted under regulation 32(1)(b) of those Regulations where the local authority has been notified under regulation 32(3) of those Regulations,</p> <p>is the person in control of the land on which any establishment is located.</p>
(zc)	<p>Development, other than minor development, which is to be carried out on land—</p> <p>(i) in an area within Flood Zone 2 or Flood Zone 3; or</p> <p>(ii) in an area within Flood Zone 1 which has critical drainage problems and which has been notified for the purpose of this provision to the local planning authority by the Environment Agency</p>	<p>The Environment Agency</p>
(zd)	<p>Major development which does not use the services of a sewerage undertaker for the disposal of sewage</p>	<p>The Environment Agency</p>
(ze)	<p>Major development with surface water drainage</p>	<p>The Lead local flood authority</p>
(zf)	<p>Development involving the boring for or getting of oil and natural gas from shale</p>	<p>Any water or sewerage undertaker in whose area of appointment the development is proposed and, in the case where the development is likely to affect water resources in the area of appointment of another water or sewerage undertaker, that undertaker</p>