



**NFCC**  
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## **Higher Risk Buildings (Descriptions and Supplementary Provisions) Consultation**

The National Fire Chiefs Council (NFCC) is pleased to respond to the consultation published on 9 June 2022 *Higher Risk Buildings (Descriptions and Supplementary Provisions) Consultation*.

NFCC is the professional voice of the UK fire and rescue services (FRSs) and is comprised of a council of UK Chief Fire Officers. This response was put together by NFCC's Protection Policy and Reform Unit (PPRU).

This response was drafted in consultation with our members across the FRSs, and reflects their expertise and competence on the subject matter.

### **General Comments**

NFCC has many serious concerns arising out of this consultation and the definitions proposed within it. We believe that they do not serve to deliver the policy intent of making a safer building industry, we also do not believe that the proposals within it meet the policy intent outlined within the consultation to "make buildings safer, deliver improvements across the entire built environment" especially given the multiple exclusions of vulnerable people within the definitions.

NFCC raised concerns a number of times regarding the issues relating to the proposals within this consultation during the drafting of the Building Safety Act before it was introduced to Parliament, and during its progress through Parliament. We were severely disappointed that our concerns were not taken on board and that the Bill passed with these concerns still outstanding. This consultation reinforces the fundamental mistake and promotes misinformation that risk is related to height, an issue we have been and continue to highlight in our discussions with Government on multiple occasions around the bill, new policies, and draft regulations.

Care homes are on the National Risk Register, yet the Government refused to put protection in place for the vulnerable people within them by only including those with a minimum height threshold within scope. We would extend this need for no height threshold to hospitals and

specialised housing. With the current legislative and building control frameworks, and the current minimal building requirements and oversight for fire protection measures, FRSs cannot be expected to fully mitigate fire events beyond the expectations of the building regulations, and are not able to provide a safety net where buildings are inherently unsafe and at risk of rapid fire spread.

In 2017/18 some English FRSs undertook thematic inspection regimes of care homes, and where this took place, close to two thirds of care homes were found to have fire safety deficiencies. In 2019, NFCC submitted briefings and case studies to Government, of a number of hospitals, some built under PFI contracts, that following the Grenfell Tower fire, were found to have been constructed with numerous defects that could lead to rapid fire spread.

Serious fires will continue to occur - and in hospitals and care homes of any height will continue to pose a serious threat of 'catastrophic' consequences – both in terms of multiple life loss and major loss of critical community assets.

We do not believe that including these premises without a height threshold would place a disproportionate burden on Gateway One and Gateway Two, given the level of risk in these premises, and comparatively lower numbers of these types of buildings.

NFCC would also like to see an extension of the Golden Thread provisions into the occupation of some of these premises. We would like regulators, including FRSs, to have the ability during occupation to require the maintenance of the Golden Thread of information, whether this is achieved via the secondary legislation under the BSA, or the FSO. This will enable those premises that are in scope of the Gateways regime, but out of scope of the Safety Case regime, to keep the Golden Thread of information up to date following occupation.

Government claims that they are already going further than required by the Dame Judith Hackitt review, this justification is the wrong culture to be promoting, we would encourage Government to make changes and amendments to the industry with the intent of making it safer and not benchmarking it to the minimum required.

Yours sincerely,



**Nick Coombe**  
**Head of Protection Policy and Reform Unit**  
**National Fire Chiefs Council**

## **Questions**

### **Part 1: definition of a building**

*Question 1: We have proposed to align with the Building Act 1984 and define building as including any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. Do you have any concerns about this definition?*

**No**

*Question 1A: Please provide an explanation for your answer to question 1.*

NFCC do not disagree with this definition, however we are mindful that DLUHC are separately consulting on this definition within Working Group One (WG1). NFCC sit on WG1 and will be submitting our response to that consultation. We would support transparency and clarity within the built environment and would encourage continuity of the definition of a building across all areas and documents.

### **Part 2: including and excluding buildings from the design and construction part of the new regime**

*Question 2: Would you like to provide any comments on this proposal?*

We support this proposal. We particularly support the inclusion of care homes and hospitals within the definition of higher risk buildings, although the height barrier within the Building Safety Act restricts scope so much as to make its practical application to those premises of limited benefit.

*Question 3: Would you like to provide any comments on this proposal?*

We support the inclusion of hospitals and care homes but do not support a height or storey limit on these buildings and see all care homes and hospitals as high risk irrespective of height thresholds - as height is not the key risk influencing factor.

We have been very staunch in these views including during the drafting of the primary legislation. The key risk factors in hospitals and care homes are the complexities and challenges of evacuating dependent occupiers, and the critical reliance on actions and decisions of staff during an emergency. With the current legislative and building control frameworks, and the current minimal building requirements for fire protection measures it will not be possible for the Fire Service to foresee and fully mitigate serious fires and fire spread.

Serious fires will continue to occur - and in hospitals and care homes of any height will continue to pose a serious threat of 'catastrophic' consequences' – both in terms of multiple life loss and major loss of critical community assets.

Given the complexity of the interactions between building design and management requirements for these types of buildings we would also like to see a reconsideration of the circumstances in which they could be thought of as 'simple building types' allowing for the use of ADB. This consultation discusses those who can't evacuate, yet does not seem to acknowledge that building design does not facilitate evacuation, it just facilitates a period of time to allow for evacuation. We recommend that additional design guidance should be

produced for Care homes which outlines that they are complex systems and outlines the management that would be required in order for safe occupation and evacuation in an emergency to occur.

As per our views submitted before the passage of the Bill, we do not support a proposal that includes only those care homes and hospitals over 18m or 7 storey's high. Care homes and hospitals are rarely built above this threshold and new regulations should reflect this by not imposing this limitation on them.

Despite culture within the building industry being identified by Dame Judith as a significant issue, we have yet to see any tangible change in culture within the building industry. There is still a culture of building to the minimum standard required, until required otherwise. Given the vulnerable nature of those within these premises and the challenges of evacuation, applying a minimum height threshold does not protect the majority of these buildings by application of the new regulations. We do not think this is justifiable as it does not fulfil the policy intent of the new regime for its scope to be proportionate to the risks.

Question 4: Would you like to provide any comments on this proposal?

We do not support the inclusion of secure hospitals and secure local authority accommodation within the definition of secure residential buildings and would like them to be exempt from exclusion of these new regulations. We support other forms of secure residential being outside of the new regulations.

We outlined the serious consequence of excluding hospitals and care homes above and see secure hospitals and residencies as riskier. The equality duty is more likely to apply to these as they are often the permanent residence for those with mental health challenges. Secure accommodation can also include temporary respite facilities and sanctuary schemes which further exacerbate the need to ensure the buildings are safe reflecting the vulnerabilities of the residents within them.

Question 5: Would you like to provide any comments on this proposal?

We support the proposal to not include military premises.

### **Part 3: excluding buildings from the in-occupation part of the new regime**

Question 6: Would you like to provide any comments on this proposal?

NFCC, support the proposal to exclude care homes and hospitals within the in-occupation stage but would like to see a continuation and maintenance of the Golden Thread information for these premises, where they have been excluded from the Safety Case regime by this proposal. We would like regulators, including FRSs, to have the ability during occupation to require the maintenance of the Golden Thread of information, whether this is achieved via the secondary legislation under the BSA, or the FSO. This would enable those premises that are in scope of the Gateways regime, but out of scope of the Safety Case regime, to keep the Golden Thread of information up to date following occupation.

It is presumed that where these buildings form part of an in-scope building, they will have to be included, but this exclusion doesn't make that entirely clear. We recommend this is clarified.

We would also emphasise our prior comments that we do not support height limits or exclusions of these types of premises within the development Gateway one and two stages. We would also recommend additional design guidance should be produced for Care homes which outlines that they are complex systems and outlines the management that would be required in order for safe occupation and evacuation in an emergency to occur as stated within our answer to question 3.

*Question 7: Would you like to provide any comments on this proposal?*

Comments as per our answer above.

NFCC would reinforce that to ensure the exclusion of these types of premises from the in occupation stage they must be built correctly and that the design and build phase is vital, this includes remediation where the building doesn't meet the functional requirements.

*Question 8: Would you like to provide any comments on this proposal?*

NFCC support this proposal of excluding military premises.

#### **Part 4: defining buildings which are excluded and included in the new regime**

*Question 9: Would you like to provide any comments on this proposal?*

NFCC support the proposal to define hospital in alignment with the current Department of Health and Social Care and National Health Service definitions. Despite the support of the definition, we would reiterate our disappointment in the exclusion of these types of premises by height.

*Question 10: Would you like to provide any comments on this proposal?*

NFCC support the proposal to define care homes in alignment with the current Department of Health and Social Care and National Health Service definitions. Despite the support of the definition, we would reiterate our disappointment in the exclusion of these types of premises by height.

*Question 11: Would you like to provide any comments on this proposal?*

NFCC do not support this proposal. As per question four above we do not support the inclusion of secure hospitals and secure local authority accommodation within the definition of secure residential buildings and would like them to be exempt from exclusion of these new regulations. We support other forms of secure residential being outside of the new regulations.

*Question 12: Would you like to provide any comments on this proposal?*

We do not support this proposed definition as it is unclear on the point at which a hotel stops being a leisure facility and temporarily becomes medium to long term housing provision without a change in its purpose group definition.

There is also need for clarification over short term lets, it is our understanding from the Act that those who live within an in-scope building who short term let out their apartment, for holidays for example, will become both simultaneously residents and dutyholders. Additional

work is needed to understand the consequences of such situations when regulating across the applicable regulators.

*Question 13: Would you like to provide any comments on this proposal?*

We agree with the proposal for the definition of military premises.

## **Part 5: Measuring height**

*Question 14: Do you agree our proposed method for determining the height of a building is the right one?*

**Yes**

*Question 14A: If no or partly what changes do you suggest or what alternative method would you suggest?*

*Question 14B: Do you think there are any potential issues with our suggested method for determining height?*

**Partly**

*Question 14C: If yes or partly please provide an explanation for your answer.*

NFCC believe that there is need for additional clarification on this determination. Greater use is being made of roof-top amenities (e.g. roof gardens, play areas etc). The definition as written "Height of top storey excludes roof-top plant areas and any top storeys consisting exclusively of plant rooms" would include the roof as a storey if any amenities are provided there.

We would recommend a further clarification such as "where the roof provides amenities for the use of residents and does not, therefore, consist entirely of roof top plant, it should be considered a storey" or "ignoring any storey where they consist exclusively of machinery or plant rooms". We believe that without this clarification the system can be gamed.

## **Part 6: Measuring stories**

*Question 15: Do you agree with following the approach we have set out for determining storeys?*

**Partly**

*Question 15A: If no or partly please provide an explanation for your answer.*

NFCC believe that the approach would benefit from an additional diagram which shows a sloping site where the lower ground is entirely below ground on one side of the building and above ground on the other. This will support the policy intention as outlined within the text in the consultation: "a storey is treated as below ground level if any part of the finished surface of the ceiling of the storey is below the ground level immediately adjacent to that part of the building. We also plan to set out that storeys should be counted from the side of the building which gives you the highest number of storeys."



*Question 15B: What alternative approach to determine the number of storeys in a building would you suggest?*

We agree with the approach but believe that further clarification through an additional diagram as outlined in the answer above.

*Question 15C: Please explain why you have suggested we make these changes?*

This extra diagram will ensure that the policy intent of the approaches outlined within the consultation are met. NFCC want to ensure that the new regime delivers the changes intended and want to see the ability to game the system minimised through greater clarifications of definitions and approaches.

*Question 16: Do agree with the proposed definition of gallery?*

**Partly**

*Question 16A: If no or partly, what changes would you suggest or what alternative definition would you suggest?*

NFCC would suggest that this definition align with Approved Document B (ADB) in its treatment of a gallery as a storey.

*Question 16B: Please explain why you have suggested we make these changes.*

This definition doesn't align with ADB's characterisation of a gallery as a storey. Appendix A within ADB defines a storey within this instance as "Any gallery .....if its area is more than half that of the space into which it projects." The definition within this consultation states it to be more than 50% of the largest storey, this is problematic as many buildings reduce floor area on upper levels. We would also caution definitions that are contradictory or different to those already being used in practice and within the Approved Documents, differing definitions take away from transparency of definitions and can open up the system to gaming.

## **Part 7: Equalities impact of our proposals**

Question 17: What do you consider to be the equalities impact on individuals with protected characteristics of any of the proposed details to be included in the regulations? Please give reasons and any evidence that you consider relevant.

Yes, as outlined within our answers we believe that by putting height restrictions within the development stage definitions has a negative impact for vulnerable people within care homes and secure hospitals.

NFCC have not been given any justifiable reasoning for the exclusion of these premises by height and given that care homes are on the national risk register they pose a great risk that further adds to their need to not be excluded by height.