

Building Safety Act 2022

A client's guide to the new dutyholder regime during design and construction

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Introduction

The new dutyholder regime is part of the wider changes that have been made to the building regulations flowing from the Building Safety Act 2022 (“BSA”). The Building Regulations etc. (Amendment) (England) Regulations 2023 amend the Building Regulations 2010 (“Regulations”) and set out a framework, which defines various dutyholders involved in the procurement, design and undertaking of building work and imposes duties on them. These changes apply to all “buildings” not just to higher-risk buildings (“HRBs”).

The amendments to the Regulations came into force on 1 October 2023, subject to limited exceptions in the transitional provisions. The Regulations will not apply to building work that started before 1 October 2023; or where plans were deposited with a local authority – and not subsequently rejected – or a building notice has been given before 1 October 2023 and work has started before 6 April 2024.

The Regulations define a building as follows:

- In the application of any provision of the Regulations to the construction of HRBs, has the meaning given in regulation 4 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023
- In any other case, means any permanent or temporary building but not any other kind of structure or erection, and a reference to a building includes a reference to part of a building.

This guide sets out the key provisions of this new dutyholder regime.¹

¹ This guidance note applies to England only. The position in Wales, Scotland and Northern Ireland is still developing.

Dutyholders

The dutyholders to which the Regulations apply are clients, principal designers, designers, principal contractors and contractors.

Client	Any person for whom a project is carried out.
Contractor	Any person – including a client, but not a domestic client – who, in the course of a business, carries out, manages or controls any building work.
Designer	Any person who in the course of a business carries out any design work, or arranges for, or instructs, any person under their control to do so. Therefore, clients and contractors may be regarded as designers under the dutyholder regime.
Principal contractor	The contractor appointed under regulation 11D to perform the duties of a principal contractor under the Regulations.
Principal designer	The designer appointed under regulation 11D to perform the duties of a principal designer under these Regulations.

The roles are modelled on those set out in the Construction (Design and Management) Regulations 2015 (“CDM Regulations”). However, in practice, the roles are very different with the CDM Regulations concerned with meeting health and safety requirements, while the new dutyholders regime is aimed at ensuring the work undertaken meets the relevant requirements of the building regulations.

These relevant requirements are defined to mean, to the extent relevant to the building work or design work in question, the requirements of regulations 4, 6, 7, 8, 22, 23, 25B, 26, 26A, 28, 36, 41(2)(a), 42(2)(a), 43(2)(a), 44A, 44ZA, 44ZC and 44D to 44I and Schedule 1 of the Building Regulations.

The same person can fulfil both roles under the CDM Regulations and the Building Regulations, but only if competent to do so.



Who is the client?

The Regulations define the Client as “any person for whom a project is carried out” as part of a business.¹

The government response to the consultation on the Regulations states that: “The client is the person for whom the building work is done. They have a major influence over the way a project is procured, managed and funded. They control the contract, the finances, and the time available for the project”.

The response advises that the client will need to make sure they appoint the right people, with the right competencies, at the right time. They will also need to make sure there is sufficient resource, including finances, for the work to be undertaken to comply with all relevant building regulations.

Where there is more than one client in relation to a project, the clients may agree in writing which of them is to be treated for the purposes of the Regulations as the client. This is a similar approach to the CDM Regulations and so similar provisions will be included in development agreements and agreements for lease to state that the developer is to be treated as client.

Only the person who agrees to be treated as the client under the Regulations will be subject to the duties owed by a client under the Regulations except for the duties referred to in Regulation 11A(6) (see page 6), which will be owed by all clients.

¹ This note does not deal with work carried out by a domestic client (i.e. not carried out in the course or furtherance of a business of a client).





Duties of clients

Suitable arrangements (Regulation 11A and 11B)

The client must:

- Make suitable arrangements for planning, managing and monitoring a project (including allocation of sufficient time and other resources) so as to ensure compliance with all relevant requirements
- Ensure these arrangements are maintained and reviewed throughout the project.

Arrangements are suitable if:

- They ensure that the design work is carried out so that the building work to which the design relates, if built, would be in compliance with all relevant requirements
- They ensure the building work is carried out in accordance with all relevant requirements
- They enable the designers and contractors to cooperate with each other to ensure compliance with all relevant requirements
- They provide for periodic review of the building work – and the design work – included or to be included in the project so as to identify whether it is HRB work.

In addition, the client – and if more than one client, **all clients** – must:

- Provide building information – defined in Regulation 11Q(1) – as soon as is practicable to every designer and contractor on the project to the extent that information is in the possession of the client, or which is reasonably obtainable by or on behalf of the client
- Cooperate with any other person working on or in relation to a project to the extent necessary to enable any person with a duty or function under the Regulations to fulfil that duty or function
- Make suitable arrangements to ensure information is provided to the designers and contractors working on a project that includes any HRB work to make them aware that the project includes HRB work and the nature of the HRB work. This includes a duty to periodically review the building work – and the design work – included or to be included in the project to identify whether it is HRB work and to ensure information is provided where the work becomes HRB work.

(Regulation 11A(6)).

Duties of dutyholders

General duties (Regulation 11J):

Any person carrying out any **building work** must:

- Ensure the work carried out by them – and by any workers under their control – is planned, managed and monitored so as to be in compliance with all relevant requirements
- Cooperate with the client, designers and contractors, including the principal designer and principal contractor, if any, to the extent necessary to ensure that the work is in compliance with all relevant requirements.

Any person carrying out any **design work** must:

- Take all reasonable steps to ensure the design work carried out by them – and by any workers under their control – is planned, managed and monitored so that the design is such that, if the building work to which the design relates were built in accordance with that design, the building work would be in compliance with all relevant requirements
- Cooperate with the client, designers and contractors, including the principal designer and principal contractor, if any, to the extent necessary to ensure that the design is such that if the building work to which the design relates were built in accordance with that design, the building work would be in compliance with all relevant requirements.

Additional duties of designers include (Regulation 11K):

- Not to start design work unless satisfied that the client is aware of the duties owed by the client for the building work to which the design relates under all relevant requirements
- To take all reasonable steps to ensure that the design is such that if the building work to which the design relates were built in accordance with that design the building work would be in compliance with all relevant requirements
- To take all reasonable steps to provide sufficient information about the design, construction and maintenance of the building to assist the client, other designers and contractors to comply with all relevant requirements
- Where a designer is carrying out only part of the design of the building work which comprises a project, to consider other design work which directly relates to that building work and report any concerns as to compliance with all relevant requirements to the principal designer
- If requested to do so, a designer must provide advice to the principal designer or the client on whether any work, to which a design they are preparing or modifying relates, is HRB work.

Additional duties of contractors include (Regulation 11L):

A contractor must:

- Not start any building work unless satisfied that the client is aware of the duties owed by the client under all relevant requirements
- Ensure the building work they carry out is in compliance with all relevant requirements
- Provide each worker under their control with appropriate supervision, instructions and information, so as to ensure that the building work is in compliance with all relevant requirements
- Take all reasonable steps to provide sufficient information about the work to assist the client, other contractors and designers to comply with all relevant requirements
- Where it is carrying out only part of the building work, which comprises a project, consider other work that directly relates to that building work and report any concerns as to compliance with all relevant requirements to the principal contractor
- If requested to do so, provide advice to the principal contractor or the client on whether any work is HRB work.

Additional duties of a principal designer (Regulation 11M)

The principal designer must plan, manage and monitor the design work during the design phase and coordinate matters relating to the design work comprised in the project so that all reasonable steps are taken to ensure that the design is such that if the building work to which the design relates were built in accordance with that design the building work would be in compliance with all relevant requirements.

The principal designer must take all reasonable steps to ensure that:

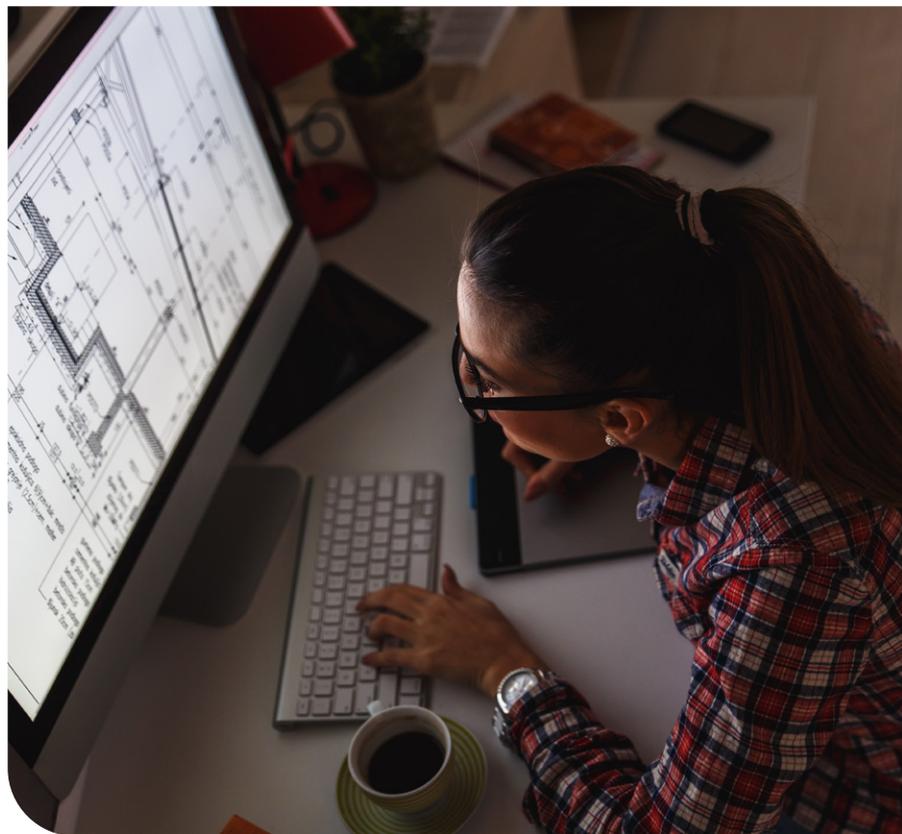
- Designers, and any other person involved in relation to design work, cooperate with the client, the principal designer, the principal contractor and each other
- The design work of all designers is coordinated, so that the design is such that if the building work to which the design relates were built in accordance with that design the building work would be in compliance with all relevant requirements
- Designers, and any other person involved in relation to design work, comply with their duties under the Regulations.

The principal designer must:

- Liaise with the principal contractor and share with the principal contractor any information relevant to the planning, management and monitoring of the building work, and the coordination of building work and design work for the purpose of ensuring compliance with all relevant requirements
- Where the principal contractor provides comments to the principal designer in relation to compliance with the relevant requirements, have regard to those comments
- If requested, assist the client in providing information to other designers and contractors.

When the principal designer's appointment ends, no later than 28 days after the end of the appointment, it must give the client a document explaining the arrangements it put in place to fulfil its duties.

Where a replacement principal designer is appointed, they must review the arrangements the previous principal designer put in place for fulfilling the duties so that all reasonable steps are taken to ensure that the design is such that if the building work to which the design relates were built in accordance with that design the building work would be in compliance with all relevant requirements.



Additional duties of a principal contractor

(Regulation 11N)

The principal contractor must plan, manage and monitor the building work during the construction phase, and coordinate matters relating to the building work comprised in the project to ensure the building work is in compliance with all relevant requirements.

The principal contractor must take all reasonable steps to ensure:

- Contractors and any other person involved in relation to the building work cooperate with the client, the principal designer, the principal contractor and each other, including any successor in a role
- The building work of all contractors is coordinated so that the work is in compliance with all relevant requirements
- Contractors and any other person involved in relation to building work comply with the duties under the Regulations.

The principal contractor must:

- Liaise with the principal designer and share with the principal designer any information relevant to the planning, management and monitoring of the design work, and the coordination of building work and design work for the purpose of ensuring compliance with all relevant requirements
- Where the principal designer provides comments to the principal contractor in relation to compliance with the relevant requirements, must have regard to those comments
- If requested, assist the client in providing information to other designers and contractors.

When the principal contractor's appointment ends, no later than 28 days after the end of the appointment, it must give to the client a document explaining the arrangements it put in place to fulfil its duties.

Where a replacement principal contractor is appointed, it must review the arrangements the previous principal contractor put in place for fulfilling the duties to ensure that the building work is in compliance with all relevant requirements.





Appointing dutyholders

Appointing a principal designer and principal contractor

Where there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on a project, the client must appoint in writing a principal contractor and principal designer – (Regulation 11D). In relation to HRB work it is essential the client keeps records of the steps it took under Regulation 11E to consider suitability and competence – see “Records” on page 12.

Alternatively, the client can certify, in writing, that the person who is the CDM principal designer and/or CDM principal contractor, is treated as appointed as the principal designer and/or the principal contractor, for the purposes of the Regulations (Regulation 11D(2)), provided the competency requirements are met.

Timing of appointments:

For projects that include HRBs, the appointments must be made before the application for building control approval is submitted to the Building Safety Regulator (BSR).

In relation to all other projects, the appointments must be made before the construction phase begins (Regulation 11D(3)).

If the client fails to appoint a principal contractor or a principal designer (or any replacement) the client must fulfil the duties of those roles.

Where there is only one contractor working on a project:

- That contractor is to be treated as appointed as the principal contractor and must fulfil the duties of the principal contractor set out in the Regulations
- Where there is also only one designer, or it is reasonably foreseeable that there will be only one designer working on a project, the designer must fulfil the duties of the principal designer set out in the Regulations
- But, where there is more than one designer, or it is reasonably foreseeable that there will be more than one designer working on a project at any time, the designers must agree in writing which designer is to fulfil the duties of the principal designer set out in the Regulations – “the lead designer” – and the lead designer must give a copy of the agreement to the client.

Competence

Any person carrying out any building work or any design work must be competent (Regulation 11F).

There is no requirement for clients to be competent. The response to the consultation stated: “We do not intend to place competence requirements on clients who commission design work and/or building work. We recognise that some clients may need assistance to undertake their duties and may request that some of their functions are taken on by another person, such as the principal designer, the principal contractor or another person. However, the accountability rests with the client and they can only delegate the functions, and not the duty, to another person.”

Any person carrying out building work or design work must have the skills, knowledge, experience and behaviours necessary – where the person is an individual – or the organisational capability – where the person is not an individual – to carry out:

- The building work in accordance with all relevant requirements
- The design work so that the building work to which the design relates, if built, would be in accordance with all relevant requirements.

Organisational capability is defined in Regulation 11Q(3). This includes having the appropriate management policies, procedures, systems and resources to ensure individuals under the control of the organisation that are carrying out any building work or design work comply with the applicable Regulations.

These provisions do not apply where an individual is training to fulfil those requirements, but they must be adequately supervised when carrying out the work. The consultation response stated: “We recognise that competent individuals may be supported by others who may not be fully competent (such as apprentices), and newly trained individuals need to be given the opportunity to gain experience of working. If they are not fully competent or are newly trained and without sufficient experience, they must be in the process of obtaining the relevant competence and be appropriately supervised by someone who is competent.”

However, note that a person who is in training to fulfil the requirements of a principal contractor or a principal designer may not be appointed as a principal contractor or a principal designer.

Competence of the principal designer and principal contractor (Regulations 11G and 11H):

- A principal designer and principal contractor must have the skills, knowledge, experience and behaviours necessary – where the person is an individual – or the organisational capability – where the person is not an individual – to fulfil their duties under the Regulations
- Where the principal designer and/or principal contractor is an organisation, the organisation must designate an individual who has the task of managing its functions. The organisation must take all reasonable steps to satisfy themselves that the individual to be designated has the skills, knowledge, experience and behaviours necessary to manage the function on behalf of the organisation to ensure the organisation fulfils its duties under these Regulations.

The BSI have published frameworks for the roles of the principal contractor and principal designer:

- PAS 8671:2022 Built environment – Framework for competence of individual Principal Designers – Specification
- PAS 8672:2022: Built environment – Framework for competence of individual Principal Contractors – Specification.

However, these frameworks are more output based and accordingly do not set out detailed provisions to state what skills, knowledge etc will make a person competent for the role and the government intends to leave this to the industry to work out. For example, the RIBA have launched a Principal Designer Register which they say will allow “RIBA Chartered Members in the UK to demonstrate that they meet the competence criteria to serve as principal designers” and also propose to publish the RIBA Principal Designer Guide in April 2024.

Ceasing to be competent (Regulation 11I):

- If a principal contractor or principal designer ceases to be competent, they must notify the client
- Where there is more than one contractor:
 - a. A designer who ceases to be competent must notify the person who asked them to carry out the design work and the principal designer (or client if no principal designer has been appointed)
 - b. A contractor who ceases to be competent must notify the person who asked them to carry out the design work and the principal contractor (or client if no principal contractor has been appointed).

In any other case, they must notify the person who asked them to carry out the work.

Considerations before a person carries out any building work or design work

Regulation 11E sets out the considerations where a person (P) is proposing to use any person (A) to carry out any building work or design work. Before permitting A to carry out any work:

- P must take all reasonable steps to satisfy themselves that A is competent or is an individual who is in training and arrangements have been put in place to supervise A. The response to the consultation states that “all reasonable steps’ will depend on the nature and complexity of the project, and the range and level of the risks involved”
- For HRB, the dutyholder making the appointment must ask the appointee whether a serious sanction has occurred, in relation to them, within the 5 years ending on the date of the appointment; and consider any information available to P relating to any misconduct of A, including any serious sanction
- Serious sanction is defined in Regulation 11E(8) and includes whether A has been issued with a compliance notice, a stop notice, a conviction under the Building Act 1984, BSA, the Health and Safety at Work etc. Act 1974 and/or the Regulatory Reform (Fire Safety) Order 2005 or a report published by an inquiry under the Inquiries Act 2005 finds that A’s action or inaction resulted in one or more deaths or was likely to have been a contravention of any requirement of one of these Acts
- P must also take all reasonable steps to satisfy themselves that A is able to fulfil the duties to plan, manage and monitor work
- For principal contractors and principal designers, clients must take all reasonable steps to satisfy themselves that A fulfils the additional requirements in the Regulations in respect of competence for those roles.

A must not accept any request to undertake any building work or any design work if they do not satisfy the competency requirements set out in the Regulations at the time of the appointment.

Records (Regulation 11D(8) to (10)):

In relation to HRB work, the client must keep a record, in writing, of the steps it took under Regulation 11E in appointing a principal contractor and principal designer. On appointing any other person, the person making the appointment must give to the client – and the client must keep – a record, in writing, of the steps the person making the appointment took under Regulation 11E, so this will apply to consultant, sub-consultant and sub-contractor appointments.



Notification of change of dutyholder



Where a client, principal contractor (or sole contractor) and/or principal designer (or sole or lead designer) changes (or is appointed) after an application for building control approval is made or a building notice is given, the client (or new client) must give a notice to the building control authority in accordance with Regulation 11O.

The notice must be given to the relevant authority within the period of 14 calendar days beginning with the date of the appointment or, as the case may be, the date when the person became the client.

Regulation 11O does not apply to HRBs, but instead similar provisions for notice and other requirements are contained in The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023.



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