

Building Safety in Brief

The New Dutyholder Regime

Background

- A new dutyholder regime has been introduced by the Building Safety Act 2022 (BSA).
- For the design and construction phase of a project, this new regime has been implemented through the Building Regulations etc. (Amendment) (England) Regulations 2023 (BR Amendment Regulations) and the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (HRB Procedure Regulations).
- Both of these Regulations came into force on 1 October 2023, following a key government Consultation in July 2022 and the subsequent **Consultation Response** in August 2023.
- This factsheet provides a high-level overview of the dutyholder regime during the design and construction phase only. (There is a different dutyholder regime for the occupation phase.) This factsheet applies to England only.

Application of the new dutyholder regime

- During the design and construction phase, the dutyholder regime applies to higher-risk buildings (HRBs) and non-HRBs, with some limited exceptions. (You can find out more about HRBs in our factsheet [here](#)).
- During the occupation phase, the Accountable Person (AP) dutyholder regime applies, only to HRBs. Find out more on the AP regime [here](#).
- During a substantial refurbishment of an existing building, it is possible that both dutyholder and AP regimes could apply.
- The dutyholder regime does not apply where works are not notifiable as building work, as described in Schedule 4 of the Building Regulations 2010 (typically, this is minor building work where there is no significant risk to health and safety, so it does not need to be notified to a building control body).

The BSA and dutyholders

Section 34 of the BSA inserts new paragraphs 5A and 5B, and Section 35 of the BSA inserts a new paragraph 5C, into Schedule 1 of the Building Act 1984 (BA):

- Paragraph 5A - creates the power to require appointments to be made in relation to any work under the building regulations
- Paragraph 5B - creates the power to impose duties on relevant persons in the design and construction phase of a project
- Paragraph 5C - creates the power to prescribe competence requirements into building regulations.

Sections 34 and 35 came into force on 6 April 2023.

The new dutyholders

The dutyholders will be:

- Client
- Designers
- Principal designer
- Contractors
- Principal contractor

These dutyholder roles on the face of it align with those in the Construction (Design and Management) Regulations 2015 (CDM 2015), but instead focus on compliance with building regulations. The same person or organisation can be a dutyholder under both CDM 2015 and the dutyholder regime, if they are competent to do so (more below).

“General duties” for all dutyholders

These include:

- ensuring the work carried out by them (and others under their control) is planned, managed and monitored so as to be in compliance with all relevant requirements (there is a similar obligation for design)
- cooperating with other dutyholders to ensure that the work is in compliance with all relevant requirements (again, there is a similar obligation for design).

“Additional duties” for specific dutyholders

Each type of dutyholder also has “additional duties” over and above their “general duties” - and where the project involves HRBs, some of the dutyholders have further duties still.

Client

“Any person for whom a project is carried out”. Duties include:

- making suitable arrangements for planning, managing and monitoring a project to ensure compliance with all relevant requirements
- providing building information as soon as practicable to every designer and contractor
- cooperating with any other person working on or in relation to the project
- if there is more than one contractor, appoint a principal designer to control the design work and a principal contractor to control the building work.

If the client is “domestic” (“for whom a project is being carried out... not in the course or furtherance of a business of that client”), their duties pass to another dutyholder - the contractor, principal contractor, or principal designer.

Designers

Any person who “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”. Duties include:

- not starting design work unless satisfied that the client is aware of its duties
- when carrying out design work, taking all reasonable steps to ensure that - if built - the building work will comply with all relevant requirements
- in providing a design, taking all reasonable steps to provide sufficient information about the design, construction and maintenance of the building to certain dutyholders
- if carrying out only part of the design, considering other design work and reporting any concerns about compliance.

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Principal designer

The designer appointed to perform the principal designer duties. Duties include:

- to plan, manage and monitor the design work during the design phase
- coordinating matters relating to the design work
- taking all reasonable steps to ensure the designers cooperate with the client, principal designer, principal contractor and each other
- taking all reasonable steps to ensure all design work is coordinated so that - if built - the building work will comply with all relevant requirements
- liaising and sharing information with the principal contractor.

Contractors

Any person “who, in the course of a business, carries out, manages or controls any building work”. Duties include:

- not starting building work unless satisfied that the client is aware of its duties
- ensuring their work complies with all relevant requirements
- taking all reasonable steps to provide sufficient information about the work to assist certain dutyholders
- if carrying out only part of the building work, considering other work and reporting any concerns about compliance.

Principal contractor

The contractor appointed to perform the principal contractor duties. Duties include:

- to plan, manage and monitor the building work during the construction phase
- coordinating matters relating to the building work
- taking all reasonable steps to ensure the contractors cooperate with the client, principal designer, principal contractor, and each other
- taking all reasonable steps to ensure the building work of all contractors is coordinated so that the works comply with all relevant requirements
- liaising and sharing information with the principal designer.

Additional responsibilities for HRBs include:

The client must:

- Appoint the principal designer and principal contractor before the building control approval application is made (ie before Gateway 2)
- Ensure all designers and contractors are fully aware that they are working on an HRB project
- Create and maintain the golden thread of information about the building and its construction.

The principal contractor and principal designer must:

- Put in place processes to support a mandatory occurrence reporting regime.

All dutyholders must:

- Identify and share information about the nature of the HRB project to ensure all dutyholders comply with the new regulatory regime for HRBs
- Work together to provide the Gateway 2 information to the Building Safety Regulator.

New competency requirements

Competency is a key part of the new regime - everyone carrying out design or building work must be competent and demonstrate their competence to do the work in a way that complies with the building regulations.

The competency requirements apply to both individuals and organisations:

- for individuals - any person carrying out building or design work must have the necessary skills, knowledge, experience and behaviours
- for organisations - they must have “organisational capability”, including appropriate management policies, procedures, systems and resources to ensure individuals under their control comply with their obligations.

BSI has published a suite of built environment competence standards to raise standards of competence across the built environment and improve the safety of residents and the workforce. These standards set out competence requirements for building safety management, including individual principal designers and principal contractors.

Key points to note about competency

- The roles of principal designer and principal contractor working on HRBs may require enhanced competence.
- Before appointing a person for HRB work, the dutyholder making the appointment must investigate whether, in the last five years, the proposed appointee has a “serious sanction” and whether their previous conduct calls into question their competence. A “serious sanction” includes the issue of a compliance or stop notice, or a conviction under certain legislation (eg the Health and Safety at Work etc. Act 1974 or Regulatory Reform (Fire Safety) Order 2005.)
- Records must be kept of appointments made, including the steps taken to determine if there has been a serious sanction.
- When submitting a building control approval application for a new HRB or work on an existing HRB, the client or its representative must provide this information by way of a competence declaration.

For more on building safety visit our **Building Safety Hub**.



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