

Call of duty: The dutyholder regime



Mishcon de Reya

It's business. But it's personal.

The dutyholder regime came into force on 1 October 2023 and **affects all types of building works**, not just projects involving a higher-risk building (HRB, as defined below).

This new regime is one of the major changes brought about by the Building Safety Act 2022 (BSA). It aims to regulate and hold to account those involved in the design and construction of a building to ensure that it complies with the Building Regulations. The regime sets out the dutyholders' responsibilities and seeks to ensure they are competent to fulfil their roles.

What buildings does the dutyholder regime apply to?

The dutyholder regime catches **all building works** which require Building Regulations approval (with the exception of certain minor works where the work is not notifiable as building work or is exempt). There are additional duties for HRB projects.

What is a higher-risk building?

Broadly speaking, a "higher-risk building" is defined as a building which is:

- at least 18 metres in height, or has at least seven storeys; and
- contains at least two residential units;

It **includes** care homes and hospitals, but **excludes** residential institutions and hotels. The applicability of this statutory exclusion is outside the scope of this guide, but note a hotel will only be excluded from the HRB regime if the relevant building comprises entirely of a hotel (i.e. is not part of a residential building, and does not contain serviced apartments).

Who are the dutyholders?

These are the client, designers, principal designer, contractors and principal contractor, and therefore mirrors the approach set out in the existing Construction (Design and Management) Regulations 2015.

The same person can be appointed under the CDM Regulations and the Building Regulations, provided they are competent to carry out both roles.

For HRBs, principal accountable persons and accountable persons will need to manage the fire safety risks of the HRB once occupied.

What are the new responsibilities of the dutyholders?

These are separated into general and specific responsibilities.

General duties

During the design and construction phase, all dutyholders must:

- plan, manage and monitor the work to comply with all relevant requirements;
- cooperate with the other dutyholders to the extent necessary to ensure such compliance; and
- ensure they and the people they appoint are competent and have the necessary skills, knowledge and experience to carry out design work and building work they are engaged to do, and only undertake work within the limits of that competence.

Specific duties

We have summarised below some of the key duties which also apply to each of the dutyholders:

- **Client** – often the developer or the building owner (although not always the case), the client must appoint the right people with the right competencies for the work, and make sure they have systems in place to ensure compliance with the Building Regulations. If there is more than one contractor, the client must appoint a principal designer and principal contractor to be in control of the design work or building work (as applicable).
- **Designer** – the designer is any person who carries out any design work, or arranges for or instructs someone under their control to carry out design work. Duties of the designer include not to start any design work unless satisfied that the client is aware of its duties and to take all reasonable steps to ensure the design or building work (if built) complies with all relevant requirements.
- **Contractor** – the contractor is any person who manages or controls any building work. Duties of the contractor include not to start any building work unless satisfied that the client is aware of its duties and to ensure the building work they carry out complies with all relevant requirements.
- **Principal designer** – appointed to be in control of all of the design work and has overall responsibility for ensuring compliance with the Building Regulations during the design phase. Duties include to plan, manage and monitor the design work and co-ordinate matters relating to the design work to ensure that it complies with Building Regulations.
- **Principal contractor** – appointed to be in control of the whole project during the construction phase and has overall responsibility for ensuring compliance with the Building Regulations during this phase. Duties include to plan, manage and monitor all the building work and co-ordinate matters relating to the building work to ensure that it complies with Building Regulations.

Compliance declaration

The client, principal designer and principal contractor must provide a signed compliance declaration within five days of completion of the works confirming that:

- to the best of the client's knowledge, the work complies with the applicable requirements of the Building Regulations; and
- the principal contractor and principal designer have fulfilled their duties under the Building Regulations.

For HRBs, the provision of the signed compliance declaration forms part of the submission of the completion certificate application required for Gateway 3. Please see our separate [guide on the Gateway regime](#).

Key points to note:

- If there is more than one client, the parties must agree who is the lead client for the purposes of the Building Regulations.
- The Building Regulations set out procedures to be followed when a dutyholder changes and who should be notified when a dutyholder ceases to be competent.
- Dutyholders can delegate some of their dutyholder functions, but the dutyholders' duties cannot be delegated and they retain statutory liability in respect of their dutyholder role.
- The Government has relented on its original proposal to impose strict liability on the principal designer for a breach of their dutyholder duties (so there would be no need to prove fault). The Government recognised this could potentially cause problems for design professionals (namely, architects), in obtaining professional indemnity insurance and so a qualified obligation has been placed on the principal designer to "take all reasonable steps" to ensure the design of the building works comply with Building Regulations.
- Contractors, however, remain subject to a strict obligation under the dutyholder regime and must ensure that the building work is "compliant with all relevant requirements".
- Different rules apply to domestic clients, which are beyond the scope of this note.

What about higher-risk buildings?

There are additional requirements for HRBs, which include the following:

- The client must appoint the principal designer and principal contractor **before the building control application is made** (i.e. before Gateway 2) and keep a written record of the steps taken to ensure such parties are competent.
- The client must ensure all designers and contractors are aware they are working on a HRB and periodically review the design and building work to identify whether it is HRB work.
- The client must also manage the Gateway 2 application and maintain the golden thread of information. Please refer to our [guide regarding the Golden Thread of Information](#) for further details.

What are the competency requirements?

Anyone who appoints persons to carry out design or building work must take all reasonable steps to ensure they meet the competence requirements for their respective dutyholder roles.

- An individual must have the necessary skills, knowledge, experience and "behaviours" (see below) to carry out the design or building work in accordance with all relevant requirements.
- An organisation must have the appropriate management policies, procedures, systems and resources to ensure its employees have the appropriate skills, knowledge, experience and behaviours.

Individuals or organisations must not carry out work or ask others to carry out work on their behalf if it is beyond their skills, knowledge or experience. Where an individual does not have the necessary competence, they must seek the assistance of others with the relevant competence for the particular tasks or functions.

The British Standards Institute has published recommended competence requirements for principal designers and principal contractors. Complying with these is likely to help demonstrate that a dutyholder has complied with its duties under the new regime, but does not guarantee it.

Government guidance confirms that formal training and a portfolio of work detailing relevant experience and knowledge may help demonstrate competence.

For HRBs, the dutyholder making the appointment must also investigate whether a "**serious sanction**" has occurred to the person they are appointing in the past five years. This includes a breach of Building Regulations or other regulatory requirements relating to fire safety, health and safety or building safety legislation.

What are the sanctions for breach?

A breach of the dutyholder regime is a criminal offence which can result in unlimited fines and/or up to two years' imprisonment. The detailed procedure for Building Regulations enforcement is outside the scope of this note.

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