

Information on Duty holders and changes to the Building Regulations

Effective from 1st October 2023



Overview

From 1 October 2023 significant new updates to the Building Regulations legislation have come into effect, which introduced changes to the Building Regulations application process, and impose dutyholder responsibilities on applicants, agents, and builders.

The key changes are: -

The introduction of a new Building Control regime for Higher Risk Buildings (HRBs). Building Regulations applications for building, extending or altering residential buildings, including care homes and hospitals over 18m or 7 storeys high, must now be made directly to the Building Safety Regulator (BSR) and can no longer be submitted to local authority or private sector building control.

New duty holder roles and responsibilities are specified in the regulations for individuals involved in procuring, planning, designing, managing, and executing building projects. The goal is to place a stronger emphasis on complying with regulations for both design and construction work.

- the applicant is now referred to as the 'Client, this includes Domestic Clients
- an agent is now referred to as the 'Principal Designer'
- a builder is now referred to as the 'Principal Contractor'

Emphasis on Competence – having 'appropriate skills, knowledge and behaviour'.

- Persons undertaking design, construction and refurbishment work must be competent for their role.
- Organisations must have appropriate capability - management policies, procedures, systems and resources – to fulfil their roles
- Anyone who appoints a person or organisation has a legal duty to ensure they are competent. *The overall responsibility to show compliance with the Building Regulations* lies with the Client, the Principal Designer, and the Principal Contractor.

Other notable changes that will affect your projects are: -

Changes to submitting an application – Additional information is required to enable your application to be validated, including contact details for dutyholders and information about the project.

A new definition of ‘commencement’ of work for existing and new buildings - For new buildings and extensions this would usually be the date at which the foundations and ground floor structure is complete, or for other works a date and description of a point where 15% of the work is due to be complete.

Notification of starting work and commencement – You must notify building control when you start work on-site so we can carry out the necessary inspections. You must also notify us when works are ‘deemed commenced’ (within 5 working days) – for buildings and extensions this is when the foundations are constructed, and the structure of the lowest floor level is complete. For all other works, where 15% of the overall work has been constructed.

Notice of completion - A notice of completion must be submitted to us within 5 days of the work being completed. Please complete our on-line Notice of Completion form.

An automatic lapse of building control approval – for projects that do not meet the definition of commencement within three years from when the building control approval was granted.

Changes to enforcement for all buildings - The Building Safety Act 2022 strengthens enforcement of building regulation breaches and enables local authorities and the Building Safety Regulator to issue compliance and stop notices where building regulations have been breached. Compliance notices will require specified remedial action by a set date. These changes apply to all building projects covered by the Building Regulations 2010, not just higher-risk buildings (HRBs).

The New Dutyholders

The new dutyholders introduced under the Building Regulations etc. (Amendment) (England) Regulations 2023 are: -

The Client
a person for whom the
project is carried out

Domestic Client
a person for whom the project is carried out
but not for the furtherance of a client's
business

The Principal Designer (PD)
usually, the lead designer

The Principal Contractor (PC)
usually, the lead contractor

There are also new duties placed on Designers (including sole or lead designers) and Contractors (including sole contractors).

These roles became effective from 1 October 2023,

The aim is to ensure that at each stage in a building project, dutyholders are identified, and the roles, responsibilities and expectations are clear.

Dutyholders must ensure they possess the necessary skills, knowledge, experience, and behaviour to carry out their design and construction work. They must also stay within the limits of their competence.

Additionally, the Client must take reasonable steps to confirm that the dutyholders they appoint are competent, and dutyholders themselves must decline appointments for work they aren't competent to handle.

Dutyholders are required to collaborate with other dutyholders, coordinate their work, and share information with each other.

It is possible for a dutyholder to hold more than one duty-holding role, if they are competent to do so.

The Client

Client means any person for whom a project is carried out.

Project means a project which includes or is intended to include any building work (may include change of use) and includes all planning work, design work, management or other work involved in a project until the end of the construction phase.

The Client's duties cannot be subcontracted to a third party. Where there is more than one client, one person must be named as the Client for the project, The Client

MUST: -

- Ensure they make suitable arrangements for planning, managing and monitoring the project to ensure it complies with the Building Regulations, during design, construction and for the lifetime of the project.
- Ensure they appoint a competent Principal Designer and Principal Contractor for the work and sign a declaration that they have done so.
- *We will require the names, phone numbers, addresses, and email addresses of the Principal Designer and The Principal Contractor.*
- Advise Building Control of the start date of the work, and date and description of 'commencement'. This information is required at the application stage.
- Give notice to us if there is a change of client after a building control application is made or a building notice is given. Please complete our appointment or change of dutyholder form.
- The Client has overall control over the project and, therefore, they are ultimately responsible for the provision of information to others involved in the project. For HRB's this is known as The Golden Thread - both the information that allows you to understand a building and the steps needed to keep both the building and people safe, now and in the future - but it is important to keep an information trail for all building work.
- If any of the designers or contractors change, there should be a handover of information. The new person in charge then notifies the relevant authority, explaining that they're doing work on behalf of the domestic client. Whilst the client can ask others to do certain tasks, they cannot pass on the overall responsibility, and they must make sure the people they choose are qualified for the job.

The Domestic Client

Domestic Client means a client for whom a project is being carried out which does not form part of a business project.

- When it comes to home projects, the client will not usually have enough expertise to handle all the key Client responsibilities. So, most of the duties related to the project's safety and compliance will fall on those doing the design and construction work.
- Where there is more than one person working on different aspects of the project, a Domestic Client should appoint a Principal Designer to be in control of design work and a Principal Contractor to be in control of the building work.
- If a Domestic Client does not appoint either a Principal Designer or Principal Contractor, then the designer in control of the design phase of the project is the Principal Designer and the contractor in control of the construction phase of the project is the Principal Contractor.
- On minor projects, where there is no designer, the Principal Contractor may take on the role of both Principal Designer & Principal Contractor.
- The Domestic Client must provide the designers or contractors with any information that they have, or it would be reasonable for them to obtain, relating to the project.
- They must co-operate with anyone working on or in relation to the project, to enable them to comply with their duties or functions.

The Principal Designer

Definition

Principal Designer is a designer who is an organisation (or individual designer) appointed by the client to take control of the pre-construction phase of any project.

A principal designer must be appointed in writing before the construction phase begins, or for building control approval for a higher-risk building, before submitting an application.

You must:

- Plan, manage and monitor the design work during the design phase.
- Take all reasonable steps to ensure the design work carried out by them and anyone under their control is planned, managed and monitored so that the design is such that, if built, it would comply with all relevant requirements of the Building Regulations.
- Ensure that they, and all those working on the project, cooperate, communicate and co-ordinate their work with the client, the Principal Contractor, and other designers and contractors.
- Liaise with the Principal Contractor and share information relevant to the building work.
- Assist the Client in providing information to designers.
- Review the arrangements of any previous Principal Designer.
- Where applicable, sign the declarations as referred to above in the Client's duties when work is complete.

The Designer

Designer means any person, who in the course of a business - (a) carries out any design work, or
(b) arranges for, or instructs, any person under their control to do so; (including a client, contractor or other person referred to in Part 2A of the Regulations)

You must:

- Plan, manage and monitor design work so that if the building work were carried out, it would comply with the Building Regulations.
- Co-operate with the Client, designers, and contractors to the extent that if the building work were carried out, it would comply with the Building Regulations.
- Not start any design work unless you are satisfied that the Client is aware of the duties owned by the Client.
- Carry out design to ensure that if building work were carried out, the design it would comply with the Building Regulations.
- Provide sufficient information about the building's design, construction and maintenance to allow the Client, other designers and contractors to comply with the Building Regulations.
- Consider any other design work and report any compliance concerns relating to the design compliance to the Principal Designers and Client.
- Must advise the Principal Designer or the Client whether any work they are designing is Higher-Risk building

The Principal Contractor

Principal Contractor is usually the main contractor and is appointed under Regulation 11D (principal designer and principal contractor) to perform the duties of a Principal Contractor and where there is more than one contractor.

You must:

- Plan, Manage and Monitor the building work during the construction phase.
- Co-ordinate matters relating to building work to ensure the building work complies with the Building Regulations.
- Ensure co-operation amongst all Dutyholders.
- Ensure all building work is coordinated so that it complies with the Building Regulations.
- Ensure contractors comply with their duties.
- Liaise with the Principal Designer as required.
- Have regard to comments from the Principal Designer concerning compliance with the Building Regulations.
- Assist the Client in providing information to contractors.
- Review the arrangements of any previous Principal Contractor.
- Sign the declarations as referred to above in the Client's duties when work is complete.

The Contractor

The Contractor any person including a client, but not a domestic client, who carries out, manages or controls any building work

You must:

- Plan, manage and monitor design work so that if the building work were carried out, it would comply with the Building Regulations.
- Co-operate with the Client, designers, and contractors to the extent that if the building work were carried out, it would comply with the Building Regulations.
- Not start any design work unless you are satisfied that the Client is aware of the duties owed by the Client.
- Carry out design to ensure that if building work were carried out, the design would comply with the Building Regulations.
- Provide sufficient information about the building's design, construction and maintenance to allow the Client, other designers and contractors to comply with the Building Regulations.
- Consider any other design work and report any compliance concerns relating to the design compliance to the Principal Designers and Client.
- Must advise the Principal Designer or the Client whether any work they are designing is Higher-Risk building work.

Failure to comply with the building regulations

If you do not follow the building control procedures set out for handling your building work, or you carry out building work which does not comply with the requirements contained in the building regulations, you will have contravened the regulations.

Where applicable, the client, designer and contractor all have a clear legal duty under section 2A of The Building Regulations 2010 to comply with the relevant requirements of the building regulations.

Ignoring the relevant requirements of the building regulations is a criminal offence and may lead to a conviction, an unlimited fine and imprisonment, by the courts.

Prosecution and enforcement notices

A local authority has a general duty and statutory function to enforce the building regulations in its area and will seek to do so by informal means wherever possible. If informal enforcement does not achieve controlled works that are compliant with the relevant requirements of the regulations the local authority has multiple formal enforcement powers which it may use in appropriate cases.

If a person carrying out building work contravenes the building regulations, including failing to obey with a compliance or stop notice, the local authority may prosecute them in the Magistrates' Court or Crown Court where an unlimited fine or imprisonment may be imposed (section 35 of the Building Act 1984).

Prosecution is possible up to ten years after the completion of the offending work. This action will usually be taken against the person carrying out the work (builder, installer or main contractor).

However, if a client, has not appointed a designer, or contractor, then the legal duties falls back onto the client.

Compliance and stop notices

Local authorities may issue a compliance notice within 12 months of a contravention taking place, requiring non-compliant building work to be remedied within a specified period. This involves the recipient taking prescribed steps to fix a contravention and can often be issued while work is ongoing.

If the contravention is deemed to create risk of serious harm unless fixed, then the authority will produce a stop notice (section 36C of The Building Act 1984). When a stop notice is issued, any work specified in the notice cannot be completed until the breach, or potential breach of building regulations is remedied. Ignoring a compliance or stop notice issued by a local

authority is a criminal offence may lead to a conviction and imprisonment.

Work without permission

If work is completed without the appropriate building control application in place, the authority can require the owner pull down or remove the work by issuing a section 36 notice. Alternatively, the owner can make the necessary alterations to comply with the regulations specified in the notice.

If the owner (or other dutyholder) fails to comply with the compliance or stop notice within 28 days, or a longer period if agreed, the building control authority can remove or alter the work accordingly, with any costs incurred being recovered from the owner.

A section 36 notice can be issued up to 10 years after the completion of the building work.

A local authority cannot take enforcement action under section 36 if the work which you have carried out is in accordance with a valid full plans' application.

Appeals against notices

An appeal against a section 35 or 36 notice may be made (within 21 days) to the appropriate court or tribunal under section 39, 40 or 102 of the Building Act..

Impact on Selling the Property

Notwithstanding the possibility of enforcement action, you should bear in mind that if the local authority or registered building control approver considers that building work carried out does not comply with the building regulations and it is not rectified, no completion/final certificate will be issued and this is likely to come to light through a local land search enquiry when you wish to sell your property.

Changes to HRBs

As well as changes to roles and responsibilities called Dutyholders, there's a new building control process for Higher Risk Buildings (HRB's)

The new regime applies to buildings that are at least 18 meters in height or have at least 7 storeys (Start counting from ground level) and have at least two residential units. It also applies to care homes and hospitals meeting the same height threshold during design and construction.

HRBs are defined (within the Building Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023.) as those buildings with seven or more storeys or at least one storey with a finished floor height more than 18m above ground level and contain two or more residential units. Hospitals and care homes meeting the same height thresholds are also considered HRB's during the initial design and construction phase only.

If you're proposing a new HRB or making changes to a HRB that's requires a building control application, you now must get in touch with and tell the new Building Safety Regulator (BSR). Please note that a new building (that does not meet the above criteria) that is however linked to an existing HRB may need to be referred to the BSR.

www.hse.gov.uk/building-safety/regulator.htm

The Building Safety Regulator (BSR) will carry out its function as the building control authority for a Higher-Risk Building (HRB) through a team that includes a Registered Building Inspector (RBI) and any other specialists required to assess a submission. These will be called Multi-Disciplinary Teams (MDT). They recognize the complex nature of HRB's and the range of disciplines required. A separate MDT will be brought together for each HRB project.

The BSR will lead this team as appropriate to:

- ensure effective regulatory decisions.
- guide the structure of an inspection schedule; and
- provide input to any requirements (conditions) that may be applied to an approval.

The MDT will be involved throughout the construction process through onsite inspections, interventions, and assessments of further information, and through the change control process. The MDT will set an inspection schedule and will provide a lead contact for applicants throughout the process.

Accountable Person

After completion of any new residential high-rise building, it is mandatory to designate a 'Principle Accountable Person' (PAP) or 'Accountable Person'(AP). This person bears the legal responsibility of ensuring building safety once it is inhabited.

The AP will usually be an organisation or business but could also be an individual. The AP will have a duty to take all reasonable steps to:

- prevent a building safety risk happening, with building safety risk defined as 'Spread of fire and/or structural failure'
- reduce the seriousness of an incident if one happens.

If a building has more than one AP, the AP responsible for the structure and exterior of the building will be the principal accountable person (PAP). When buildings have a single AP, that entity or person is the PAP.

See the [HSE website here](#) for more information.

Building Regulations Applications

As well as the usual application form, site plan, plans, and the information already submitted to facilitate our Building Control service, all Building Control Bodies will require supplementary details:

When submitting a building control application

- Confirmation that the building is not classed as a Higher-Risk Building.
- The height of the building.
- The construction phase start date – this is the date at which works start on site. This should not include site set-up, demolition or enabling works.
- Building Regulations “Commencement” or meaningful start – This is the date at which the works achieve suitable criteria to implement the Building Regulations application as “commenced”.

For a complex building when the foundations supporting the building and the structure of the lowest floor level of that building are completed (but not the other buildings or structures to be supported by those foundations).

Where the work consists of -

- (a) the construction of a building that is not complex; or
- (b) the horizontal extension of a building,

work is to be regarded as commenced when the sub-surface structure of the building or the extension, including all foundation basement levels (if any) and the structure of the ground floor level, is completed.

Where the work consists of any other building work (ie. no foundation or substructure work), then work is to be regarded as commenced when the initial work is completed (“initial work” means the work set out in the application, which the client considers amounts to 15% of all the work described

Before Completion of a Project

Dutyholder notification

- For Domestic projects, the lead designer or contractor submitting the application must provide a Dutyholder notification to the Building Control Body.
- For commercial projects, the client shall provide a Dutyholder notification. This should include the current and any previous Building Control Principal Designer(s) for the works.
- Each Dutyholder should provide a compliance statement for their responsible work
 1. Client Compliance Declaration.
 2. Principal Designer Compliance Declaration.
 3. Principal Contractor Compliance Declaration.

Note: All compliance declarations should be signed by each person listed above and include:

- Name, address and contact details of each Dutyholder.
- A statement by the client confirming that works are complete and that to the best of the client's knowledge "the works comply with the applicable requirements of the Building Regulations".
- A statement by each Principal Contractor (or sole contractor) confirming the dates of their appointment and that they have fulfilled their duties as a Principal Contractor under Part 2A (Dutyholders and competence) of the Building Regulations etc. (Amendment) (England) Regulations 2023.
- A statement by each Principal Designer (or sole or lead designer) confirming the dates of their appointment and that they have fulfilled their duties as a Principal Designer under Part 2A (Dutyholders and competence) of the Building Regulations etc. (Amendment) (England) Regulations 2023.

On Completion of a Project

- The duty holders involved in the construction phase (client, principal designer, principal contractor) must provide compliance declarations to us confirming they have fulfilled their duties and that, to the best of their knowledge, the works comply with the Building Regulations. The declaration must contain the following information: -
- Client contact details - name, address, telephone number and email address.
- Principal Designer and Principal Contractor contact details - names, addresses, telephone numbers and email addresses.
- A statement from the client that the building work is complete, and to the best of their knowledge, the building work complies with the building regulations.
- A statement from each Principal Designer and Principal Contractor that they have fulfilled their duties under the building regulations.