



Key changes coming into force 1 October 2023

Duty holding regime for all building work and higher risk buildings from 1 October 2023,

Any building work to which the Building Regulations apply will be subject to the new Duty-Holding Regime. This change imposes new requirements on clients, principal designers, principal contractors, contractors, and designers. The duty-holding requirements are similar, but parallel to existing requirements under the CDM Regulations 2015. The new requirements focus on ensuring that building work complies with all relevant requirements of the building regulations rather than just health and safety on site.

Summary of the Changes

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Clients must now ensure they provide adequate time and resources to execute design or construction work so that it is compliant – they must provide evidence to prove that they have checked that the people they appoint are competent.

A general duty requires all identified duty-holders to:

- **collaborate**
 - **share information**
 - **manage their own competence**
 - **manage the competence of the people they appoint; and**
 - **take steps to ensure the work they undertake is compliant.**
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- Designers and contractors must step away from any work they believe to be non-compliant. Designers must raise concerns about the compliance of work of other designers with the principal designer; and contractors must ensure they provide suitable supervision of operatives and employees.

- There are now specific duties for Principal Designers, Principal Contractors, Designers and Contractors and if you are involved in design work or contracting for building work you should familiarise yourself with these duties as set out in the amendments to the Building Regulations.
<https://www.legislation.gov.uk/uksi/2023/911/contents/made>
- Duty-holders must not undertake any work for which they are not competent.
- In Higher-Risk Buildings there is an additional duty-holder known as the Accountable Person (or Principal Accountable Person) responsible for the safety of the building in operation; there are also additional duties for Principal Designers, Principal Contractors, Designers and Contractors.
- The requirements for competence will be enforceable in the same way as all other requirements of the Building Regulations.

New Regime for Higher Risk Buildings

From 1 October 2023, all existing Higher-Risk Buildings (HRBs) (over 18m, containing two or more residential properties) need to be registered with the Building Safety Regulator (BSR). This includes all care homes and hospitals over 18m. All building control applications for building work on HRB's will now need to be submitted directly to the BSR. You will not be permitted to make an application to the Local Authority or use an Approved Inspector.

For new HRBs, or building work to HRBs, a new regime will need to be followed. For building projects already in motion there are some transitional provisions.

- For building work on HRB under the new regime there are a series of Hard Stop Gateways which build on Planning Gateway One. This is already in operation within the planning system.
- Gateway 2, prior to commencement of work, requires the appointment of both a principal contractor and principal designer. Alongside this a full suite of documentation must be submitted to the Building Safety Regulator to demonstrate compliance. Work must not commence until the plans have been approved. There are also additional requirements on duty-holders to manage and evidence competence.
- Once construction begins new requirements for change control plans, change control logs and mandatory incidence reporting, aligned with the golden thread of information, will fundamentally change the way that construction projects need to be managed.

- Gateway 3 requires building owners to submit a safety case, explaining how the building will be managed safely in operation. This is in addition to a full suite of project documentation that evidences how the building complies with the Building Regulations. Owners will also need to obtain certification for their HRB once building work is complete and this must be obtained prior to occupation.
- Once a building is occupied there are requirements for ongoing certification, resident engagement, and mandatory occurrence reporting. This is among the other duties on the Accountable Person to maintain a building's safety with a focus on serious fire and structural safety related matters.

Key recommendations for designers and contractors

Competence

- Ensure that you and your employees are members of appropriate professional bodies, or certification schemes, so you can attest to your competence to undertake work.
- Ensure that you undertake annual personal development planning to establish what CPD and training you need. Ensure you execute the plan and most importantly record your CPD and your learning outcomes.
- Consider whether you need additional independent certification, or assessment, to provide the regulator and clients with further assurance. This is particularly relevant if you are working on higher-risk buildings.
- Ensure that your business has policies to check the competence of your employees and supply chains. Make sure that people are competent to undertake the tasks allocated to them.
- Consider how your organisation can demonstrate organisational capability – including third party certification such as ISO 9001/99001 – to plan, manage and monitor compliance with duty-holding requirements.
- Make sure that your clients understand their duties before you start work.

New Building Regulations Regime

- Make sure that you understand the new duty-holding regime and how it applies to you and all the building work you undertake in England and Wales

- Review your record keeping procedures to ensure that you can evidence how you have complied with new requirements for all building work given the longer time scales for enforcement and liability under the Defective Premises Act (15 years going forward) as well as meeting the specific golden thread requirements for higher-risk buildings.
- Review changes to enforcement and sanctions. Do not forget to check with your insurers as to what they require you to do under the new regime.
- There is no longer any time limit on enforcement action for non-compliance with the building regulations – so focus hard on how you can ensure compliance with the functional requirements of the building regulations; and remember that statutory guidance may not always be adequate to ensure compliant outcomes.
- Apply the precautionary principle where possible – adopt additional levels of mitigation if you have doubts about outcomes and advise your clients accordingly.
- If you are submitting building control applications on behalf of your client you will need to provide full contact details of the client (i.e. person procuring the work) and the client will have to provide a separate signed and dated statement of consent confirming that they agree for building regulation application to be made on their behalf.