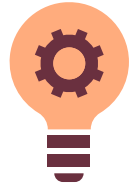


The Dutyholder Regime Under The Building Safety Act



The Building Regulations etc. (Amendment) (England) Regulations 2023 ("the Regulations") are a relatively new suite of regulations that were issued in connection with the Building Safety Act 2022

The basics



The Regulations introduce amendments to the Building Regulations 2010, which is set out in Part 2A of the Building Regulations.

The new regime applies when 'building work' is being carried out in England (save where the work is 'minor work') – both terms are defined in the Building Regulations 2010 but building work includes extensions, material alterations or the erection of a building.



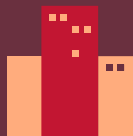
If 'building work' has not commenced before

06 April 2024

the new regime applies.



The Regulations apply to all building work that requires Building Regulation approval, not just higher-risk buildings (HRBs).



There are many similarities with the

CDM Regulations

2015 and the new building safety dutyholder regime and whilst the obligations are similar in that the CDM PD/PC can be appointed as a PD/PC under the dutyholder regime, they are different.



Transitional provisions

The new regime came into force on 01 October 2023. Transitional provisions state that the new regime is not applicable when:

- 'Building work' commenced before 01 October 2023; or
- Plans were deposited with the local authority before 01 October 2023 unless the plans were rejected or 'building work' has not commenced by 06 April 2024.

Key considerations & takeaways



Clients procuring building works should ensure they review their project arrangements to ensure that they comply with the new regime.



Clients must ensure they make relevant pre-appointment enquiries to satisfy them that all persons appointed are competent for perform the role they are appointed to.



Clients should ensure they have sufficient insurance cover in place to mitigate the increased risk of liability introduced by the Regulations.



Clients should review their contracts and consider whether any changes or amendments need to be made in light of the dutyholder regime.



While there is some confusion about how best to appoint a PD under different contract structures, being clear in writing about who the dutyholder is, is a good first step.



Sanctions for breaching Building Regulations can be serious.

Section 38 of the BSA 2022 provides that it is now an offence to contravene a provision of the building regulations which is punishable by an unlimited fine and/or imprisonment of **2** years.

Dutyholders



The Regulations places legal responsibilities on those who commission building work and participate in the design and construction process. During the design and construction phase, those people are called **dutyholders**.

Dutyholders must:

- **Plan, manage and monitor** work throughout the design and construction phase to ensure that the building work complies with Building Regulations.
- Ensure they appoint people that are **competent**.
- **Co-operate** with the other dutyholders which involves communicating, sharing information (note that for HRBs there is an additional layer of duties and roles including mandatory reporting requirements and creating and maintaining the golden thread of information).



The **Client** must make appropriate arrangements for planning, monitoring, and managing a project to ensure compliance with Building Regulations.

They are also responsible for appointing a Principal Designer and a Principal Contractor in circumstances where there is more than one contractor working on different aspects of the project. The client will also need to ensure that those appointed are competent to undertake that work.

*The duties applicable to commercial clients are different those a domestic client.

*If the client fails to appoint a PD or a PC then their responsibilities are retained by the client.



Once appointed by the client, the **Principal Designer** ("PD") has overall responsibility for ensuring compliance with Building Regulations and building safety throughout the design phase. They must liaise with the Principal Contractor to share all relevant information and assist the client in providing information to the designers and contractors.



Once appointed by the client, the **Principal Contractor** ("PC") has overall responsibility for ensuring compliance with Building Regulations and building safety throughout the construction phase. They must liaise with the Principal Designer to share all relevant information and assist the client in providing information to the designers and contractors.

Other **Designers** and **Contractors** must not start design or building work unless they are satisfied that the client is aware of their duties. They must also ensure that all design building work undertaken complies with the relevant requirements.

Competency requirements

(see the CIC competency guidelines)

A key part of the dutyholder regime is that everyone involved with the design or construction of building work must be competent. They must demonstrate their competence, to do the work in a way that complies with Building Regulations.



For **individuals** the competence requirement relates to their skills, knowledge, experience, and behaviours.

For **organisations**, this relates to their capability which enables them to carry out its functions under the Building Regulations correctly. It includes things such as:

- ✓ Having appropriate management systems, policies and process in place.
- ✓ Ensuring their staff have the requisite skills, knowledge, experience, and behaviours.

Anyone who appoints person to carry out the design or construction of building work must take **reasonable steps** to ensure that those they appoint meet the competence requirements of their roles.

NB: there are enhanced competency required for HRBs.

Our contentious construction team are well placed to provide advice in relation to the Building Safety Act 2022. For more information please contact Emma Preston or Chloe Wood.