

[2021 No. xxx]

BUILDING AND BUILDINGS, ENGLAND

The Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations [2021]

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

The Secretary of State has consulted the regulator and such other persons as the Secretary of State considers appropriate in accordance with section 120B(3) of the Building Act 1984(a).

The Secretary of State, in exercise of the powers conferred by section 1 of, and paragraphs 1D, 5A, 5B and 5C of Schedule 1 to, the Building Act 1984, makes the following Regulations.

PART 1
Preliminary

Citation, commencement, extent and application

- 1.—(1) These Regulations may be cited as the Building (Appointment of Persons, Industry Competence and Dutyholders) (England) Regulations [2021] and come into force on [date].
- (2) These Regulations extend to England and Wales.
- (3) These Regulations do not apply to buildings in Wales.
- (4) These Regulations do not apply to exempt work.
- (5) These Regulations do not apply to an individual intending to carry out building work on the dwelling where they live (or intend to live) where the work consists only of work described in Schedule 4 to the Building Regulations 2010(b) (descriptions of work where no building notice or deposit of full plans required).

Interpretation

- 2.—(1) In these Regulations—
- “the CDM Regulations” means the Construction (Design and Management) Regulations 2015(c);

(a) 1984 c.55. Section 120B was inserted by paragraph [xx] of Schedule [5] to the Building Safety [Act 2021 (c.[xx])]. Paragraphs 1D, 1F, 5A, 5B and 5C are inserted by sections [xx] of the Building Safety Act [2021 (c.[xx])].

(b) S.I. 2010/2214, as amended by S.I.s 2011/1515, 2012/718, 2012/3119, 2013/310, 2013/747, 2013/1959, 2014/579, 2015/767, 2016/285, 2016/361 and 2018/1230.

(c) S.I. 2015/51.

“building information” means information in the client’s possession or which is reasonably obtainable by or on behalf of the client, which is relevant to the building work or the design work, including information about—

- (a) the work;
- (b) planning and management of the project;
- (c) issues relating to compliance with any relevant requirement and how they were addressed;

“building work” has the meaning given in the Building Regulations 2010;

“business” means a trade, business or other undertaking (whether for profit or not);

“CDM principal contractor” means a contractor appointed as principal contractor under the CDM Regulations;

“CDM principal designer” means a designer appointed as principal designer under the CDM Regulations;

“client” means any person for whom a project is carried out;

“construction phase” means the period of time beginning when any building work on a project starts and ending when work on that project is completed;

“contractor” means any person (including a client, but not a domestic client) who, in the course of a business, carries out, manages or controls any building work;

“design” includes drawings, design details, specifications and bills of quantities (including specification of articles or substances) relating to a building, and calculations prepared for the purpose of a design;

“design phase” means any period of time during which design work is carried out for a project and may continue during the construction phase;

“design work” means design of any building work;

“designer” means any person (including a client, contractor or other person referred to in these Regulations) 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;

“domestic client” means a client for whom a project is being carried out which is not in the course or furtherance of a business of that client;

“exempt work” means—

- (a) the construction of any building or extension of a kind described in Schedule 2 to the Building Regulations 2010; or
- (b) the carrying out of any work to or in connection with such a building or extension, if after carrying out that work it is still a building or extension of a kind described in that Schedule;

“principal contractor” means the contractor appointed under regulation [6] (principal designer and principal contractor) to perform the duties of a principal contractor under these Regulations;

“principal designer” means the designer appointed under regulation [6] (principal designer and principal contractor) to perform the duties of a principal designer under these Regulations;

“project” means a project which includes or is intended to include any building work and includes all planning work, design work, management or other work involved in a project until the end of the construction phase;

“relevant requirements” means, to the extent relevant to the building work or design work in question, the requirements of regulations 4, 6, 7, 8, 22, 23, 25B, 26, 26A, 28, 36, 41(2)(a), 42(2)(a) and 43(2)(a) of, and Schedule 1 to, the Building Regulations 2010.

(2) References in these Regulations to an appointment under regulation [6] (principal designer and principal contractor) includes an appointment which is certified under regulation [6(2)].

PART 2

Client

Suitable arrangements to ensure compliance with requirements etc

3.—(1) A client must make suitable arrangements for planning, managing and monitoring a project (including the allocation of sufficient time and other resources) so as to ensure compliance with all relevant requirements.

(2) Arrangements under paragraph (1) are suitable if—

- (a) they ensure that the design work is carried out so that, if built, the building work to which the design relates would be in compliance with all relevant requirements;
- (b) they ensure the building work is carried out in accordance with all relevant requirements;
- (c) they enable the designers and contractors to cooperate with each other to ensure compliance with all relevant requirements; and
- (d) they provide for periodic review of the building work (and the design work) included or to be included in the project so as to identify whether it is higher-risk building work^(a).

(3) A client must ensure that the arrangements under paragraph (1) are maintained and reviewed throughout the project.

(4) A client must provide building information as soon as is practicable to every designer and contractor on the project.

(5) A client must cooperate with any other person working on or in relation to a project to the extent necessary to enable any person with a duty or function under these Regulations to fulfil that duty or function.

(6) Where there is more than one client in relation to a project—

- (a) one or more of the clients may undertake in writing to be treated for the purposes of these Regulations as the only client or clients;
- (b) except for the duties specified in sub-paragraph (c) only the client or clients who have made an agreement under sub-paragraph (a) are subject to the duties owed by a client under these Regulations;
- (c) the duties in the following provisions are owed by all clients—
 - (i) paragraph (4) to the extent that those duties relate to information in the possession of the client or which is reasonably obtainable by or on behalf of the client;
 - (ii) paragraph (5); and
 - (iii) regulation 4.

Arrangements as to information: higher-risk building work

4. A client must make suitable arrangements to ensure information is provided to the designers and contractors working on a project which includes any higher-risk building work to make them aware that the project includes higher-risk building work and the nature of the higher-risk building work.

Domestic clients

5.—(1) Where the client is a domestic client the duties in regulations [3(1) to (3)] and [7(2) to (5)] must be carried out by—

- (a) where there is only one contractor for a project, the contractor;

(a) Higher-risk building work is defined in section 91ZA of the Building Act 1984 (c. 55) which was inserted into the Act by section [xx] of the Building Safety Act 2021 (c. [xx]).

- (b) where there is more than one contractor for a project—
 - (i) the principal contractor; or
 - (ii) the principal designer where the client and the principal designer agree in writing the principal designer is to fulfil those duties.
- (2) If a domestic client fails to make the appointments required by regulation [6] (principal designer and principal contractor)—
 - (a) the designer in control of the design phase of the project is the principal designer;
 - (b) the contractor in control of the construction phase of the project is the principal contractor.
- (3) Regulation [6(5)] does not apply to a domestic client.

PART 3

Appointment of principal designer and principal contractor etc

Principal designer and principal contractor

- 6.—(1) Where there is more than one contractor, or it is reasonably foreseeable that more than one contractor will be working on a project, the client must appoint in writing—
- (a) a designer with control over the design work as the principal designer for the purposes of these Regulations, and
 - (b) a contractor with control over the building work as the principal contractor for the purposes of these Regulations.
- (2) A client complies with the requirement in paragraph (1) if instead of appointing a person for the purposes of these Regulations they certify, in writing, that the person (if any) who is the CDM principal designer or, as the case may be, the CDM principal contractor is treated as appointed as the principal designer or, as the case may be, the principal contractor, for the purposes of these Regulations.
- (3) The appointments under regulation must be made—
- (a) in relation to a project which includes higher-risk building work for which an application for building control approval must be submitted to the regulator, before that application is submitted;
 - (b) in relation to any other project, before the construction phase begins.
- (4) Where the appointment of a principal designer or the principal contractor ends before the end of the project, the client must appoint a new principal designer or new principal contractor, as the case may be, under this regulation as soon as reasonably practicable.
- (5) Where the client fails to appoint a principal designer (or a replacement principal designer) or, as the case may be, a principal contractor (or a replacement principal contractor), the client must fulfil the duties of the principal designer or the principal contractor, as the case may be, under these Regulations until they appoint another person to that role.
- (6) Where there is only one contractor working on a project and it is reasonably foreseeable that there will be only one contractor working on the project, that contractor must fulfil the duties of the principal contractor set out in these Regulations.
- (7) Where paragraph (6) applies and—
- (a) there is only one designer, or it is reasonably foreseeable that there will be only one designer working on a project, that designer must fulfil the duties of the principal designer set out in these Regulations; or
 - (b) there is more than one designer or it is reasonably foreseeable that there will be more than one designer working on a project at any time—

- (i) the designers must agree in writing which designer is to fulfil the duties of the principal designer set out in these Regulations (“the lead designer”);
- (ii) the lead designer must give a copy of the agreement to the client.

(8) In relation to a higher-risk building work, on appointing a principal designer, for each appointment the client must keep a record, in writing, of the steps it took under paragraph (2) to (4) of regulation [7] (considerations before a person carries out work).

(9) In relation to higher-risk building work, on appointing a principal contractor, for each appointment the client must keep a record, in writing, of the steps it took under paragraphs (2), (3) and (5) of regulation [7] (considerations before a person carries out work).

Considerations before a person carries out work

7.—(1) This regulation applies where a person (P) is proposing to use any person (A) to carry out any building work or design work.

(2) Before permitting A to carry out any work, P must take all reasonable steps to satisfy themselves that A—

- (a) fulfils the requirements in regulation [8(1) and (2)] (competence: general requirement), or
- (b) is an individual who is in training to fulfil the requirements in regulation [8(1) and (2)] and arrangements have been put in place to supervise A.

(3) Before permitting A to undertake any work, P must additionally take all reasonable steps to satisfy themselves that A is able to fulfil the duties of regulation [13] (general duty to plan, manage and monitor).

(4) Where A is to be appointed as the principal designer, the client must take all reasonable steps to satisfy themselves that A fulfils the requirements in regulations [8(1) and (2)] (competence: general requirement) and [9(1)] (competence: principal designer) in relation to the design work.

(5) Where A is to be appointed as the principal contractor, the client must take all reasonable steps to satisfy themselves that A fulfils the requirements in regulations [8(1) and (2)] (competence: general requirement) and [10(1)] (competence: principal contractor) in relation to the building work.

(6) A request to undertake any building work or any design work must not be accepted by A if A does not satisfy the requirements in regulation [8(1) and (2)] (competence: general requirement) at the time of the appointment (except where those requirements do not apply to it by virtue of regulation [8(3)]).

(7) A must not act—

- (a) as the principal designer in relation to any design work if A does not satisfy the requirements in regulations [8(1) and (2)] (competence: general requirement) and [9(1)] (competence: principal designer) at the time of the appointment;
- (b) as the principal contractor in relation to any building work if A does not satisfy the requirements in regulations [8(1) and (2)] (competence: general requirement) and [10(1)] (competence: principal contractor) at the time of the appointment.

PART 4

Competence

Competence: general requirement

8.—(1) Any person carrying out any building work or any design work must have—

- (a) where the person is an individual, the skills, knowledge, experience and behaviours necessary,
- (b) where the person is not an individual, the organisational capability^(a),

to carry out—

- (i) the building work in accordance with all relevant requirements;
- (ii) the design work so that, if built, the building work to which the design relates would be in accordance with all relevant requirements.

(2) Any person carrying out any building work as a contractor or any design work as a designer must have—

- (a) where the person is an individual, the skills, knowledge, experience and behaviours necessary,
- (b) where the person is not an individual, the organisational capability,

to fulfil the duties of a contractor or designer, as the case may be, under these Regulations in relation to the work.

(3) Subject to paragraph (5), the requirements in paragraphs (1) and (2) do not apply to an individual (T) who is in training to fulfil those requirements.

(4) The person who asked T to carry out any building work or, as the case may be, any design work must ensure T is adequately supervised when carrying out the work.

(5) Paragraph (3) does not apply to a principal contractor or a principal designer.

Competence: principal designer

9.—(1) A principal designer must have—

- (a) where the person is an individual, the skills, knowledge, experience and behaviours necessary,
- (b) where the person is not an individual, the organisational capability,

to fulfil the duties of a principal designer under these Regulations in relation to the design work included in the project.

(2) Where the principal designer (D) is not an individual, D must designate an individual under D's control who has the task of managing its functions as the principal designer.

(3) Before making the designation under paragraph (2), D must take all reasonable steps to satisfy themselves that the individual to be designated has the skills, knowledge, experience and behaviours necessary to manage the function of principal designer on behalf of D in such a way as to ensure D fulfils the duties of the principal designer under these Regulations in relation to the design work included in the project.

Competence: principal contractor

10.—(1) A principal contractor must have—

- (a) where the person is an individual, the skills, knowledge, experience and behaviours necessary,
- (b) where the person is not an individual, the organisational capability,

to fulfil the duties of a principal contractor under these Regulations in relation to the building work included in the project.

(2) Where the principal contractor (C) is not an individual, C must designate an individual under C's control who has the task of managing its functions as the principal contractor.

(a) See regulation [12] (interpretation of Part [4]).

(3) Before making the designation under paragraph (2), C must take all reasonable steps to satisfy themselves that the individual to be designated has the skills, knowledge, experience and behaviours necessary to manage the function of principal contractor on behalf of C in such a way as to ensure C fulfils the duties of the principal contractor under these Regulations in relation to the building work included in the project.

Ceasing to be competent: notification

11.—(1) Where at any time a person (A) ceases to satisfy the requirements in regulation [8(1)], [8(2)], [9(1)] or, as the case may be, [10(1)] in relation to any building work or any design work, A must—

- (a) in a case where A is the principal designer or the principal contractor, notify the client;
- (b) in a case where there is more than one contractor and A is a designer, notify the person who asked them to carry out the design work and the principal designer;
- (c) in a case where there is more than one contractor and A is a contractor, notify the person who asked them to carry out the building work and the principal contractor;
- (d) in any other case, notify the person who asked them to carry out the work.

(2) If at the time of the notification under paragraph (1)(b) there is no principal designer appointed, that paragraph has effect as if the reference to the principal designer were a reference to the client.

(3) If at the time of the notification under paragraph (1)(c) there is no principal contractor appointed, that paragraph has effect as if the reference to the principal contractor were a reference to the client.

Interpretation of Part [4] (competence)

12.—(1) For the purposes of this Part, “organisational capability” means appropriate management policies, procedures, systems and resources to ensure—

- (a) individuals under the control of the organisation who are carrying out any building work or any design work comply with—
 - (i) regulation [8(1) and (2)] (competence: general requirement),
 - (ii) in case of the principal designer, regulations [8(1) and (2)] and [9(1)];
 - (iii) in case of the principal contractor, regulations [8(1) and (2)] and [10(1)];
- (b) individuals under the control of the organisation who are in training to develop the necessary skills, knowledge, experience and behaviours are appropriately supervised.

(2) For the purposes of this Part the necessary behaviours include—

- (a) compliance with relevant requirements, including refusing to carry out—
 - (i) any building work which is not in compliance with any relevant requirement;
 - (ii) any design work if the building work to which the design relates cannot be carried out in compliance with all relevant requirements;
- (b) cooperation with other persons in relation to the work;
- (c) refusing to carry out work which is beyond their skills, knowledge or experience, and asking for the assistance of other persons where necessary.

PART 5

Duties of dutyholders

General duty to plan, manage and monitor etc

13.—(1) Any person carrying out any building work must take all reasonable steps to ensure the work carried out by them (and by any workers under their control) is planned, managed and monitored so as to be in compliance with all relevant requirements.

(2) Any person carrying out any design work must take all reasonable steps to ensure the design work carried out by them (and by any workers under their control) is planned, managed and monitored so that, if built, the building work to which the design relates would be in compliance with all relevant requirements.

(3) Any person carrying out any building work must cooperate with the client, designers and contractors (including the principal designer and principal contractor, if any) to the extent necessary to ensure that the work is in compliance with all relevant requirements.

(4) Any person carrying out any design work must cooperate with the client, designers and contractors (including the principal designer and principal contractor, if any) to the extent necessary to ensure that, if built, the building work to which the design relates would be in compliance with all relevant requirements.

Additional duties of designers

14.—(1) A designer must not start design work unless satisfied that the client is aware of the duties owed by the client for the building work to which the design relates under all relevant requirements.

(2) When carrying out design work the designer must ensure that, if built, the building work to which the design relates would be in compliance with all relevant requirements.

(3) In providing a design, a designer must take all reasonable steps to provide sufficient information about the design, construction and maintenance of the building to assist the client, other designers and contractors to comply with all relevant requirements.

(4) Where a designer is carrying out only part of the design of the building work which comprises a project, the designer must consider other design work which directly relates to that building work and report any concerns as to compliance with all relevant requirements to the principal designer.

(5) If requested to do so, a designer must provide advice to the principal designer or the client on whether any work, to which a design it is preparing or modifying relates, is higher-risk building work^(a).

Additional duties of contractors

15.—(1) A contractor must not start any building work unless satisfied that the client is aware of the duties owed by the client under all relevant requirements.

(2) A contractor must provide each worker under their control with appropriate supervision, instructions and information so as to ensure that the building work is in compliance with all relevant requirements.

Additional duties of a principal designer

16.—(1) The principal designer must—

- (a) plan, manage and monitor the design work during the design phase; and

(a) Higher-risk building work is defined in section 91ZA of the Building Act 1984 (c. 55) which was inserted into the Act by section [xx] of the Building Safety [Act 2021 (c. [xx])].

- (b) coordinate matters relating to the design work comprised in the project to ensure that, if built, the building work to which the design relates would be in compliance with all relevant requirements.
- (2) The principal designer must take all reasonable steps to ensure—
- (a) designers and any other person involved in relation to design work cooperate with the client, the principal designer, the principal contractor and each other (including any successor in a role);
 - (b) the design work of all designers is coordinated so that, if built, the building work to which the designs relate would be in compliance with all relevant requirements, and
 - (c) designers and any other person involved in relation to design work comply with the duties under these Regulations.
- (3) The principal designer must liaise with the principal contractor and share with the principal contractor any information relevant to—
- (a) the planning, management and monitoring of the building work, and
 - (b) the coordination of building work and design work for the purpose of ensuring compliance with all relevant requirements.
- (4) Where the principal contractor provides comments to the principal designer in relation to compliance with the relevant requirements the principal designer must have regard to those comments.
- (5) The principal designer must—
- (a) if requested, assist the client in providing information to other designers and contractors;
 - (b) when the principal designer's appointment ends, no later than [28] days after the end of the appointment, give to the client a document explaining the arrangements it put in place to fulfil the duties under paragraphs (1) to (3).
- (6) Where a replacement principal designer is appointed it must review the arrangements the previous principal designer put in place for fulfilling the duties under paragraphs (1) to (3) to ensure that, if built, the building work to which any design relates would be in compliance with all relevant requirements.

Additional duties of a principal contractor

- 17.—(1) The principal contractor must—
- (a) plan, manage and monitor the building work during the construction phase, and
 - (b) coordinate matters relating to the building work comprised in the project to ensure the building work is in compliance with all relevant requirements.
- (2) The principal contractor must take all reasonable steps to ensure—
- (a) contractors and any other person involved in relation to the building work cooperate with the client, the principal designer, the principal contractor and each other (including any successor in a role);
 - (b) the building work of all contractors is coordinated so that the work is in compliance with all relevant requirements; and
 - (c) contractors and any other person involved in relation to building work comply with the duties under these Regulations.
- (3) The principal contractor must liaise with the principal designer and share with the principal designer any information relevant to—
- (a) the planning, management and monitoring of the design work, and
 - (b) the coordination of building work and design work for the purpose of ensuring compliance with all relevant requirements.

(4) Where the principal designer provides comments to the principal contractor in relation to compliance with the relevant requirements the principal contractor must have regard to those comments.

(5) The principal contractor must—

- (a) if requested, assist the client in providing information to other designers and contractors;
- (b) when the principal contractor's appointment ends, no later than [28] days after the end of the appointment, give to the client a document explaining the arrangements it put in place to fulfil the duties under paragraphs (1) to (3).

(6) Where a replacement principal contractor is appointed it must review the arrangements the previous principal contractor put in place for fulfilling the duties under paragraphs (1) to (3) to ensure that the building work is in compliance with all relevant requirements.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Name

Minister of State

Date

Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to building work and design work, regulation 1 provides they do not apply to work which is exempt work under the Building Regulations 2010 and work listed in Schedule 4 to the Building Regulations 2010 when carried out by a person on their own dwelling but the requirements of the Building Regulations 2010 would continue to apply to such work.

Regulation 3 requires each client to make suitable arrangements in relation to the planning, managing and monitoring of any work.

Regulation 4 provides that where a project includes higher-risk building work the client must make arrangements to ensure designers and contractors are aware.

Regulation 5 explains which duties of these Regulations apply to domestic clients.

Regulation 6 makes provision in relation to the appointment of principal contractors and principal designers, including providing for the principal contractor or principal designer appointed under the Construction (Design and Management) Regulations 2015 to be treated as appointed under these Regulations.

Regulation 7 makes provision as to the considerations before a person is permitted to carry out any work.

Regulation 8 makes provision as to the competence of any person carrying out any building work or design work, these are skills, knowledge, experience and behaviours or organisational capability to carry out the work and the duties under these Regulations. Regulation 9 makes provision as to the competence of principal designers, and regulation 10 as to principal contractors. Regulation 11 makes provision as to notification where a person ceases to satisfy the competence requirements. Regulation 12 defines organisational capability.

Regulation 13 sets out the general duties on all persons carrying out work to plan, manage and monitor the work and cooperate with others. Regulation 14 provides additional duties for designers and regulation 16 provides further duties for the principal designer. Regulation 15 provides additional duties for contractors and regulation 17 provides further duties for the principal contractor.