

# How to competently assess competency: New Building Regulations requirements

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# Building Regulations etc. (Amendment) (England) Regulations 2023

- Updates the Building Regulations 2010
- Came into force 1 October 2023
- Introduces new dutyholder positions and new duties
- Applies to all building work, including HRBs

## **Building (Higher-Risk Buildings Procedures) (England) Regulations 2023**

- Sets out the new building control processes for HRBs
- Includes duties on the new dutyholder positions introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 where projects relate to HRBs

## New Dutyholder Positions

- **Client**
  - Any person for whom a project is carried out
- **Principal Designer**
  - A designer appointed to have control over all design work
- **Principal Contractor**
  - A contractor appointed to have control over all building work

## Important Definitions for new Regulations

- Building
  - Any permanent or temporary building (or part thereof), but not and other kind of structure or erection. Or, for HRBs, the meaning as defined in Regulation 4 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023.
- Building work
  - The usual definition in the Building Regulations under Regulation 3.
- Design work
  - The design of any building work.
- Project
  - A project which includes or is intended to include any building work, including all planning work, design work, management or other work involved until the end of the construction phase.
- Relevant requirements
  - Regulations 4, 6, 7, 8, 22, 23, 25B, 26, 26A, 28, 36, 41(2)(a), 42(2)(a), 43(2)(a), 44A, 44ZA, 44ZC and Schedule 1.

## Client Duties

- Duty to make suitable arrangements for planning, managing, and monitoring a project.
- Arrangements are suitable if they:
  - ensure design work complies with all relevant requirements
  - ensure building work is carried out in accordance with all relevant requirements
  - enable designers and contractors to co-operate with each other
  - (if the project relates to HRB work) include a suitable facility to hold the golden thread data
- Where there is to be more than one contractor on a project, the Client must appoint a Principal Designer and Principal Contractor in writing.

## Client Duties (cont.)

- Before appointing the Principal Designer and Principal Contractor, a Client must take all reasonable steps to satisfy themselves that they fulfil the general and specific competency requirements to undertake their roles.
- If the work relates to an HRB:
  - Clients must undertake checks for serious sanctions and misconduct
  - Submit signed declarations regarding Principal Designer and Principal Contractor competence for building control approval applications

## General Competence Requirements

- Any person undertaking design or building work must have:
  - The skills, knowledge, experience and behaviours necessary: or
  - The organisational capabilityto carry out:
  - The building work in accordance with the relevant requirements; or
  - The design work so that, if built, it would comply with the relevant requirements.
- Where acting as a contractor or a designer, then a person must have the skills, knowledge, experience and behaviours necessary or organisational capability to fulfil the duties of that role.
- Therefore, all contractors and designers (not just principals) must be assessed.



## Principal Designer Competence

- In addition to the general competence requirements, Principal Designers must:
  - have the skills knowledge, experience and behaviours necessary, or the organisational capability, to fulfil the duties of the Principal Designer;
  - Designate an individual with the task of managing the Principal Designer functions;
  - Take all reasonable steps to satisfy themselves that the designated individual has the skills knowledge, experience and behaviours necessary to manage the role.

## Principal Contractor Competence

- In addition to the general competence requirements, Principal Contractors have similar requirements; they must:
  - have the skills knowledge, experience and behaviours necessary, or the organisational capability, to fulfil the duties of the Principal Contractor;
  - Designate an individual with the task of managing the Principal Contractor functions;
  - Take all reasonable steps to satisfy themselves that the designated individual has the skills knowledge, experience and behaviours necessary to manage the role.

## Organisational Capability

- For the purpose of Part 2A, means

*‘appropriate management policies, procedures systems and resources to ensure (a) individuals under the control of the organisation who are carrying out any building or design work comply with:*

- (i) Regulation 11F [general competence requirements]...*
- (ii) in the case of principal designer, regulations 11F(1) and (2) and 11G(1) [Principal Designer specific competence requirements];*
- (iii) In the case of principal contractor, regulations 11F(1) and (2) and 11H(1) [Principal Contractor specific competence requirements]’*

- Interpretation of this is unclear as to whether competence can be maintained by sub-contracting out competence to a third party.
- Devonshires’ interpretation is that sub-contracting competence is permissible under ‘*organisational capability*’, provided that the Client ensures they ascertain how that third party competence is assessed by the Contractor.

## How do Clients assess competence?

- No single, mandated way of assessing.
- PAS 8671 and 8672 provide a framework for competence of Principal Designers and Principal Contractors
  - But, it is not mandatory and does not provide any practical means to assess – only signs of what indicates a competent party.

## How do Clients assess competence? (cont.)

- Categories that need to be assessed for a Principal Designer:
  - Understanding of the legislative and regulatory framework for compliance
  - Management of design and other designers to ensure compliance with Building Regulations
  - Understanding of technical guidance, codes of practices and standards to provide an overarching assessment of work.

## How do Clients assess competence? (cont.)

- Categories that need to be assessed for a Principal Contractor:
  - Understanding of the legislative, regulatory and contractual requirements regarding building safety
  - Management of building work and other contractors and supply chains to ensure compliance with Building Regulations and quality of products
  - Understanding of technical guidance, codes of practices and standards to provide an overarching assessment of work
  - Decision making and change control management
  - Processes and procedures for managing information

## How do Clients assess competence? (cont.)

- Competence can be demonstrated through:
  - Formal qualifications
  - Experience
  - Demonstration of knowledge

## Practical Assessment Method

- Competence Assessment documents
- No standard form – the document you have received is prepared specifically for Echelon.
- Other Clients may approach the exercise differently, but all need to assess the same competencies.



## Competence Assessment - Example

- All designers must understand their legal duties, regulations that govern their work and purpose for the new obligations
- For example, need to demonstrate understanding of:
  - The duty to not act if they do not believe that they fulfil the requirements;
  - The duty to not act if they believe the Client doesn't fully understand their duties;
  - What the “relevant requirements” of the Building Regulations are;
  - The new building control procedure for work relating to HRBs.

No.:	Question	Word Count	Response
<b>Legal and Technical understanding</b>			
Bidders should demonstrate their understanding and approach to applicable legislation and the duties placed on the Principal Designer.			
8	Please demonstrate your understanding of the duties required of Designers and Principal Designers under the legislative and regulatory framework, including how it relates to the design of HRBs and the duties of other dutyholders. Please include reference to relevant PAS documents where appropriate.	[X words]	
9	Please demonstrate your understanding of the purpose, structure and scope of the legislative and regulatory framework for appraising designer competence.	[X words]	

## Competence Assessment - Example

- Must show knowledge of the law, but also that you are actually competent to comply with it
- For example:
  - Do you hold any formal qualifications?
  - What experience do you have in acting as a dutyholder and complying with the regulatory duties?
  - Demonstrating how, in practice, you record information and co-operate with other parties
  - Explaining how you review your own work for building safety issues and how are issues remedied
  - Provide details of the processes and procedures internally in place to ensure individuals' competence is maintained and developed

Competency			
Bidders must demonstrate their competence to undertake the Designer and Principal Designer role under the Building Regulations 2010.			
13	If relevant, please detail any accredited independent assessments or certification, which is aligned with the relevant PAS document, that demonstrates Principal Designer competency.		
14	Please describe your approach to the planning and management of design work and how compliance with the Building Regulations was assured.  Where you have acted as a Principal Designer, include details of processes used to ensure consensus from designers to ensure a coordinated and compliant design. Include any examples where you have assisted other contractors or designers to comply.	[X words]	

## Competence Assessment - Example

- Competence requirements apply to all building work (HRB and non-HRB)
- There are additional requirements when work is to HRBs which Clients will need to confirm competence in before appointment. E.g.:
  - Whether there have been any serious sanctions against, or misconduct by, a designer or contractor before appointment
  - Principal Contractors are required to maintain change control logs
  - Principal Designers must contribute to the Golden Thread with designs before construction beings
  - Principal Dutyholders must establish a mandatory occurrence reporting system

### 5 Additional Considerations

5.1 Please advise whether your organisation, or any individual within your organisation, has received any serious sanction (as defined by Regulation 11E of the Building Regulations 2010) or whether there has been any misconduct within the last 5 years. If so, please provide details.

No.:	Question	Word Count	Response
43	Please advise whether your organisation, or any individual within your organisation, has received any serious sanction (as defined by Regulation 11E of the Building Regulations 2010) or whether there has been any misconduct within the last 5 years. If so, please provide details.		



## Summary

- Changes to the Building Regulations 2010 is only one part of a wider package to implement changes and deliver improvements under the Building Safety act 2022
- Intended to raise standards across the built environment
- Increases accountability and responsibility of all parties at all stages of a project
- Increased work at the outset of a project, but is now a necessary part

**Questions?**