

## Duty holder regulations

Construction webinar: The new JCT – as easy as ABC, or is it?

### What is a 'duty holder'?

Introduced by the Building Safety Act 2022 and the Building Regulations etc. (Amendment) (England) Regulations 2023, SI 2023/911 (which introduced a new Part 2A to the Building Regulations 2010).

Creates specific obligations for individuals/ organisations involved in construction projects, focusing on compliance with building regulations.

### When does the duty holder regime apply?

Applies to all building works, except:

- 'Exempt works' (Regulation 9 and Schedule 2 of the Building Regulations 2010)
- 'Minor works' (Schedule 4 of the Building Regulations 2010)

### What is a 'higher-risk building' so we know to what type of buildings this additional layer of duty holder obligation applies?

Section 120D of the Building Act 1984: buildings in England that are:

- (a) at least 18 metres in height or has at least 7 storeys, and
- (b) of a description specified in regulations made by the Secretary of State.  
Regulation 7 of the Higher-Risk Buildings

(Descriptions and Supplementary Provisions) Regulations 2023: excludes:

- (a) a building that comprises entirely of—
  - (i) a secure residential institution;
  - (ii) a hotel;
  - (iii) military barracks;
- (b) a building that contains living accommodation provided by the Ministry of Defence (either alone or in combination with other accommodation)

### What are the general duty holder obligations?

- Planning managing and monitoring
- Co-operation
- Consideration before making appointments

### What are the additional duties for higher-risk buildings?

The client must:

- Regulation 11E – before appointing a person to undertake design and/ or construction works, the client must check whether a 'serious sanction' has occurred in the 5 years before the appointment, and consider any information that is available in relation to misconduct of that person.
- Regulation 11D – maintain a written record of the steps undertaken to satisfy the

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competency of the principal designer and principal contractor.

- Provide to the Building Safety Regulator:
  - » a 'competency declaration' within the application for building control approval, which sets out that the client has satisfied himself with the competence of any appointees.
  - » a 'construction control plan', which sets out the policies and procedures which have been followed to show compliance with Building Regulations and the duties of dutyholders.
  - » a 'compliance declaration' by the principal designer and principal contractor within the application for a (partial) completion certificate, which sets out compliance with their Building Regulation duties.

### **In terms of the duties, who is obliged to perform these duties and, of those duties, who picks up what responsibilities?**

Regulation 11A – the client is responsible for:

- planning, managing and monitoring the project to ensure compliance with all necessary requirements.
- providing to every designer and contractor the necessary 'building information'
- co-operating with other persons/ organisations working on the project

Regulation 11B – in relation to higher-risk buildings:

- ensuring that every designer and contractor are aware of the fact and nature of the higher-risk building works.

Regulation 11D – where there is more than one contractor, the client must appoint:

- a 'principal designer' (with overall control of the design)
- a 'principal contractor' (with overall control of the building works).

### **What are the duty holder roles of the 'Principal Designer' and 'Principal Contractor'?**

Principal Designer (Regulation 11M)  
Including, but not limited to:

- Plan, monitor and manage the design works during the design phase
- Co-ordinate matters with others as required
- Ensure co-operation with the client
- Ensure that the design work of all other designers is co-ordinated so that the building works are built in accordance with those designs
- Liaise with the principal contractor and share information

Principal Contractor (Regulation 11L)  
Including, but not limited to:

- Plan, monitor and manage the building works during construction
- Co-ordinate matters with others as required
- Ensure co-operation with the client
- Ensure compliance with duties and obligations
- Liaise with the principal designer and share information

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## What are the 'Competency Requirements'?

Chapter 3 of Part 2A, 'competence' is defined as:

- where they are an individual, having the skills, knowledge and behaviours necessary; or
- where they are not an individual, having the organisational capability to carry out their particular role.

'Necessary behaviours' include:

- compliance with requirements
- co-operation
- refusing to carry out work that is beyond skills, knowledge, and/ or experience

'Organisational capability' means having adequate policies, procedures, systems and resources in place to ensure compliance with requirements.

## Why are the duty holder roles so important in a contractual context in terms of the delivery of projects?

- Article 7 of the JCT D&B 2024 (unamended) assumes that the contractor takes on the roles of Principal Designer and Principal Contractor. Whilst this may be the intention of the parties, for projects concerning higher-risk buildings, the parties could inadvertently have the wrong individuals/ organisations fulfilling these statutory roles (who might not have the required competence, skills, knowledge, or experience).
- When appointing an individual/

organisation to the statutory roles of Principal Designer and/ or Principal Contractor, Employers (and their agents) need to be satisfied that those being appointed to these roles have adequate professional indemnity insurance in place, to cover against claims for negligence (if role is not fulfilled with reasonable skill and care).

- The JCT D&B 2024 is inadequate in setting out the services and obligations for the performance of the roles of Principal Designer and Principal Contractor (eg. recording and providing the required 'golden thread' information) and the alignment between provisions relating to Practical Completion and Building Safety sign-off. A responsibility to 'comply with statutory obligations' does not address 'how' and 'when' these obligations are to be complied with. This can be an issue, for example:
  - » before Practical Completion has been certified but after gateway three sign-off has been applied for, there is a delay/ backlog with the Building Safety Regulator. Who should take on the risk for time and/ or money whilst sign-off is issued? The Employer cannot occupy the building, and the Contractor could argue that the delay is not due to their act or omission.
  - » the Building Safety Regulator has not signed-off gateway three but Practical Completion has been certificated. The consequences of this are that (a) the Employer cannot occupy the building; and (b) there are no contractual sanctions that the Employer can

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- » pursue the Contractor for (eg. LADs).
- » Practical Completion has been certified, but the Building Safety Regulator has issued correcting direction. Are these corrections considered 'defects' for the purposes of the rectification period if the Contractor has built the building in accordance with the designs, Employer's Requirements, and Contractor's Proposals?

View the recording of the webinar at:

[www.cripps.co.uk/thinking/construction-webinar-the-new-jct-as-easy-as-abc-or-is-it/](http://www.cripps.co.uk/thinking/construction-webinar-the-new-jct-as-easy-as-abc-or-is-it/)

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