NFRC
LEADING ROOFING EXCELLENCE

Contractual responsibility and statutory Building Regulations design duties

Part 2A applies beyond higher-risk buildings

Although the Building Safety Act 2022 is often associated with higher-risk buildings, its reforms extend much further. Part 2A–Dutyholders and Competence–sits within the Building Regulations 2010 and applies more widely to building work in England, subject to limited exemptions. This can include roof refurbishment and overlay work where it constitutes building work. NFRC GN70[1] provides an overview of Part 2A of the Building Regulations 2010.

Designers and the Principal Designer

A Designer is any person or organisation that prepares or modifies a design, specification, detail or calculation. This can include contractors, manufacturers, system suppliers, architects and consultants, but only in relation to the design work they undertake.

Where there is only one Contractor and only one Designer, regulation 11D(7)(a) requires that designer to fulfil the duties of the Principal Designer. The Designer must therefore have the necessary competence and organisational capability to undertake the role.

A manufacturer or system supplier preparing a project-specific roof specification may be a Designer in relation to that system, but should not automatically be assumed to have the competence, organisational capability or control necessary to act as Principal Designer for the overall project. If this is the case, their design role's limitations should be clearly communicated to the Client. The Client should then ensure that a suitably-competent professional, such as an architect, surveyor or other appropriately qualified Designer, is engaged to control and coordinate the wider design work.

Appointment of a Principal Designer does not transfer responsibility for individual design decisions away from the designers who make them. Each designer remains responsible for the design work and information they provide.

Contractors and the Principal Contractor

A Contractor is responsible for ensuring that the building work it undertakes complies with the Building Regulations. Where more than one Contractor is involved, the client must appoint a Principal Contractor to be in control of the building work.

Where only one Contractor is working on the project, regulation 11D(6) of the Building Regulations 2010 treats that Contractor as the Principal Contractor. The Contractor must therefore have the competence and organisational capability to plan, manage and monitor the building work for compliance with the Building Regulations, and if not, they should recommend that the Client appoints a competent Principal Contractor.

Appointment of a Principal Contractor does not remove the responsibilities of other Contractors for the building work they undertake.

Building Regulations and CDM dutyholders

The Building Regulations 2010 and the Construction (Design and Management) Regulations 2015 establish separate but overlapping dutyholder regimes.

Under the Building Regulations, dutyholders are responsible for ensuring that design and building work complies with the applicable requirements of the Building Regulations. Under CDM 2015, their duties relate primarily to planning, managing and controlling health and safety risks arising from construction work.

A person or organisation may be a dutyholder under both regimes, depending on the work or functions they undertake. Where the same person or organisation is to act as Principal Designer or Principal Contractor under both regimes, the Client appointments must be confirmed appropriately and they must have the necessary competence and organisational capability for each role.

Appointment under one regime should not be assumed to constitute appointment under the other, and compliance with one set of duties does not necessarily demonstrate compliance with the other.

Contractual responsibility and statutory duties

Under JCT, NEC and similar forms of contract, roofing contractors are commonly given contractual design responsibility for their works and for coordinating or integrating those works with adjoining elements and other trades. The Contractor may therefore have a contractual responsibility for their scope of works. NFRC **GN50**[2] offers further contract guidance.

However, contractual responsibility and statutory design responsibility are not necessarily the same. The terms and conditions of a contract may impose certain contractual obligations on a roofing contractor, but it does not remove or transfer the statutory duties of other parties that undertake design work. Responsibility for the design work undertaken remains with those undertaking the design.

Where a manufacturer or system supplier develops the roof build-up, prepares the project-specific specification and confirms that it is within the scope of the relevant test and classification evidence, the manufacturer or system supplier is the Designer of that roof system. A roofing contractor that installs the specified system in accordance with that design does not become responsible for the manufacturer's system design or supporting evidence merely because within the project terms of contract they undertake design responsibility for their scope of works.

The roofing contractor will, however, become a Designer for any decisions it makes; for example, where it selects the system, develops project-specific details, determines interfaces, substitutes components or otherwise modifies the specified build-up. If the Contractor changes any part of the manufacturer's design, it must establish that the change remains compliant and within the scope of the relevant evidence. A Contractor accepting contractual ***"design responsibility"*** must therefore clearly establish the extent of the design it is expected to undertake and must not accept work beyond its competence or organisational capability. It should not be required to assume responsibility for design decisions, testing or classification evidence produced and controlled by others. For further clarity on working in line with the Building Safety Act as a Contractor, refer to NFRC **GN61**[3].

Professional indemnity insurance

Where a roofing contractor undertakes or accepts responsibility for design work, they should ensure that they have professional indemnity insurance appropriate to the nature, scope and value of that work. The Contractor should confirm with its insurance broker or adviser that the activities it is undertaking fall within the policy's scope of cover, including any relevant exclusions, limits and requirements for maintaining cover.

Where the Contractor appoints another person or organisation to undertake design work, it must take reasonable steps to ensure that they have the necessary competence and organisational capability. They should also establish the extent of their design responsibility in writing and verify that they maintain professional indemnity insurance appropriate to the work they have been appointed to undertake.

Part 2A requires competence and organisational capability, but does not itself prescribe a particular level of PI insurance. The required cover may also differ according to the design scope, contract value, risk and policy terms.

Each party remains responsible for the design work and information it provides. The Building Regulations Principal Designer must identify and coordinate these respective responsibilities so that the complete roof design, including its interfaces and supporting evidence, demonstrates compliance.

Conclusion

Construction contracts may require a roofing contractor to undertake design responsibility, but this does not make the Contractor the sole statutory Designer or transfer to it the duties of manufacturers, system suppliers, consultants or others who undertake design work.

Each designer must work within their own competence and remains responsible for the design work and information they provide. The Principal Designer has the additional role of planning, managing, monitoring and coordinating the design work, but this does not relieve other designers of their individual duties. Contractors should therefore establish clearly, before accepting an appointment, what design work they are expected to undertake, whether they have the necessary competence and organisational capability to accept the level of design required, and whether their professional indemnity insurance is appropriate for that work.

Further information and references:

NFRC guidance

[1] NFRC Guidance Note GN70—Overview of Part 2A of the Building Regulations 2010: https://www.nfrc.co.uk/resource/nfrc-gn70-overview-of-part-2a-of-the-building-regulations-2010--mrk274--pdf.html

[2] NFRC Guidance Note GN50—Design Responsibility and Liability: https://www.nfrc.co.uk/resource/nfrc-gn50-design-responsibility-and-liability--mrk2328--pdf.html

[3] NFRC Guidance Note GN61—Working in line with the Building Safety Act as a Contractor: https://www.nfrc.co.uk/resource/nfrc-gn61-bsa-contractor--mrk245--pdf.html

Legislation and official guidance

Building Regulations 2010: Part 2A—Dutyholders and Competence: https://www.legislation.gov.uk/uksi/2010/2214/part/2A

SI 2023/911—The Building Regulations etc. (Amendment) (England) Regulations 2023: https://www.legislation.gov.uk/uksi/2023/911/contents/made

Building Safety Regulator—Design and building work: meeting building requirements: https://www.gov.uk/guidance/design-and-building-work-meeting-building-requirements

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