



The Building Safety Act and Competence Requirements

INTRODUCTION

The Building Safety Act (BSA) applies to all building work needing either a Building Notice or the deposit of full plans. Competence requirements will mirror the requirements of The Construction (Design and Management) (CDM) Regulations 2015 and apply to all building work, not just the additional measures acquired for higher-risk buildings. **Section 35 of the BSA¹ provides for regulations on the competence of those undertaking design and construction work. It requires duty holders to have building safety competencies (skills, knowledge, experience and behaviours), including the organisational capability they need to carry out their roles.**

The following Publicly Available Specification(s) (PAS) outline the expected skills, knowledge, experience, behaviours and ethics, additional competences for higher-risk buildings (HRBs) and limits of competence for the Principal Designer (PD) and Principal Contractor (PC). They have been published based on the core competence criteria set out in BSI Flex 8670 framework, which is focused on the competence of individuals working within the built environment, and covers recommendations for sector-specific competence frameworks, core behavioural and ethical competences, and core competences for building safety.

PAS 8671:2022 Built environment–Framework for competence of individual Principal Designers–Specification² specifies competence thresholds that individuals are expected to meet when delivering or managing the dutyholder functions of the PD, and additional competencies for working on higher-risk buildings.

PAS 8672:2022 Built environment–Framework for competence of individual Principal Contractors–Specification³ specifies competence requirements for the dutyholder role of PC, and also describes additional requirements for those undertaking the role on higher-risk buildings.

DEFINITION OF PD AND PC

Principal designer (PD)

A building regulations principal designer can be an individual or an organisation. They are a designer in control of the design work, and can be, for example:

- An architect
- An engineer (*structural and others*)
- A surveyor.

Principal contractor (PC)

A PC is a contractor in control of the building work, and can be, for example:

- A construction company
- An individual contractor, such as a roofing contractor.

The role of the PC

The PC must plan, manage, and monitor the building work, cooperate, coordinate, and communicate to ensure the building work complies with building regulations. They are expected to take responsibility for their site and should manage the flow of information to all relevant parties.

Monitoring is frequently overlooked, therefore the PC should have arrangements to monitor the work, and record this to make sure it complies with legislation, including liaising with the PD to agree any changes.

Summary of PC competence for all buildings

- **Legal and contractual requirements in relation to the discharge of their duties:** Ability to understand applicable legislation and recognise obligations regarding building safety.
- **Managing building work:** Competency to manage the works including knowledge of risks (*fire and structural safety*) and how to mitigate these.

- **Planning and organising production:** The competence to select competent contractors and suppliers. Competence to procure quality materials, products and building systems.
- **Managing construction processes/production:** Ability to coordinate and monitor contractors, suppliers and service providers, specifically:
 - Identification, assessment, inspection and testing of safety critical materials, components and building systems
 - Ensuring any time or budgetary pressures do not impact building safety.
- **Leadership, decision making and change management:** Competency to lead a building project using learning, experiences, and knowledge of standards and best practice. The Principal Contractor will be able to take control of a build and manage change control, but also delegate, and empower others.
- **Liaising with the Client, other dutyholders, and regulatory bodies:** Develop a trusting, open and honest relationship with the key parties (*Client, PD, Regulator*).
- **Developing people and teams:** Define the competencies required on a project and develop others to address any gaps.
- **Managing the quality of building work:** Competencies to effectively manage build quality through communicating with and monitoring contractors' work. The PC will also need competencies to recognise and manage alterations or deviations.
- **Managing information:** Competency to retain accurate and reliable documented information. In most cases, this will require the competency to develop digital systems for the building information management.

How to demonstrate competence

Competence can be demonstrated through:

- **Formal training:** for example, to increase your knowledge about fire and structural safety.
- **Experience:** for example, in identifying and managing building safety risks (*fire and structural safety*).
- **Knowledge:** for example, the law and operational practices needed to plan, monitor, and control building safety.

Are you adequately insured to undertake the work?

Construction Professional Indemnity, also known as Design and Construct Professional Indemnity, is a policy designed to protect contractors and subcontracted specialists, for allegations relating to errors in their work or incorrect design.

The policy covers the contractor's legal defence costs and any damages awarded in relation to alleged errors in the design or the construction of a project, for instance the incorrect design, a project not being fit for purpose or a contractor not using the correct materials as detailed in the specification.

A standard Professional Indemnity policy may exclude any claims relating to an incorrect design, build, maintenance, or installation. However, a Design and Construct wording is specially designed to cover these types of claims. A Design and Construct Professional Indemnity policy will provide **Rectification Cover:** costs incurred in remediation work or mitigating a loss or potential loss that may otherwise result in a claim.



Please note

It is critical that you engage with your insurance provider/broker to agree the correct policy and policy wording dependent on the circumstances and the scope of work to be undertaken.

Behaviour and ethics

The PD and PC should have high levels of personal integrity. This includes being honest about the limits of their own competence and refusing to carry out work which is beyond this (*or asking for assistance*). They should never accept non-compliant design or building work.

It is important to understand that one of the stated aims of the BSA is the provision for stronger sanctions against those who breach building regulations, or the new building control regime established by the BSA.

In addition, as the Explanatory Notes to the BSA explain, the majority of those carrying out duties under the Building Act 1984 and the new BSA building control regime will be corporate bodies rather than individuals. However, since corporate bodies operate by the actions of individuals, an offence by a corporate body must be attributable, by some measure, to the personal failure of those individuals with decision-making powers.

Accordingly, the BSA will eventually extend liability for such breaches to individual directors, managers, secretaries or other similar officers of the corporate body, or partners within a partnership, where the breach is committed with their 'consent or connivance' or is attributable to any neglect on their part.

The rationale for extending liability to such individuals is to 'bring home' the importance of building safety responsibilities to those individuals who are responsible for directing companies.

This is also noticeable with the changes to the penalties that will be implemented for breaching building regulations. **Section 35 of the Building Act⁴** was previously a summary-only, fine-only offence limited to a fine of £5,000, and a maximum daily fine of £50 for each day on which the default continues after the date of conviction.

The amended section 35 provides for an unlimited fine, and also provides for imprisonment of up to two years as a possible sentencing option.

It is advisable to seek assistance from your insurance broker to check what insurance cover the company has or may be able to put in place in relation to their liabilities under the BSA, even though you cannot insure against fines under the BSA, and insurance is of no use in the event of a prison sentence. However, a Directors and Officers (D&O) Liability policy should provide directors and employees in a managerial or supervisory position with cover for regulatory expenses and defence costs and in respect of any subsequent civil claims. In addition, companies should check whether there are any other employees who have a defined role under the BSA that may need to be expressly added to the policy.

This summary of the competence requirements applies for individuals who take on the PD and PC roles as outlined in the Building Safety Act, PAS 8671 and PAS 8672. It does not cover the health and safety competence requirements set out in the Construction (Design and Management) Regulations 2015. Information on skills, knowledge, experience and training for CDM 2015 can be found at www.hse.gov.uk/construction/cdm/2015/.

This guide compliments NFRC guidance note (GN41) outlining the role and scope of the Building Safety Regulator.



Further information

¹ *Section 35 of the Building Safety Act:*

<https://www.legislation.gov.uk/ukpga/2022/30/section/35>

² *PAS 8671:2022 Built environment–Framework for competence of individual Principal Designers–Specification:*

<https://www.bsigroup.com/en-GB/industries-and-sectors/construction-and-the-built-environment/built-environment-competence-standards/pas-8671/>

³ *PAS 8672:2022 Built environment–Framework for competence of individual Principal Contractors–Specification:*

<https://www.bsigroup.com/en-GB/industries-and-sectors/construction-and-the-built-environment/built-environment-competence-standards/pas-8672/>

⁴ *Section 35 of the Building Act*

<https://www.legislation.gov.uk/ukpga/1984/55/section/35>

Published by

NFRC

020 7638 7663

helpdesk@nfrc.co.uk

nfrc.co.uk

@TheNFRC

December 2023



Note: Although care has been taken to ensure, to the best of our knowledge, that all data and information contained herein is accurate to the extent that they relate to either matters of fact or accepted practice or matters of opinion at the time of publication, NFRC, the authors and the reviewers assume no responsibility for any errors in or misrepresentations of such data and/or information or any loss or damage arising from or related to their use. Data and information are provided for general guidance only and readers must always take specific advice in relation to the use of materials, techniques and/or applications.