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## The principal designer for building safety – will architects rise to the challenge?

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The Building Safety Bill was introduced to Parliament on 5 July 2021 by the Secretary of State for Housing, Communities and Local Government Robert Jenrick. Once the Bill has passed through the parliamentary stages, it is expected to become law towards the middle of next year. The resulting Building Safety Act will bring extensive reforms to the regulatory system governing UK construction projects. The aim of the Building Safety Act is to implement the recommendations set out by Dame Judith Hackitt's Independent Review of Building Regulations and Fire Safety following the Grenfell Tower tragedy on 14 June 2017. It will represent the most significant changes to building safety legislation for over 40 years and heralds the advent of “a new era of accountability” for those who design, construct and manage “higher-risk buildings”.<sup>1</sup>

Architects are central to the proposed reforms for building designers. The Building Safety Act will give further powers to the Architects Registration Board to regulate the competency of architects by ensuring they have the necessary skills, knowledge, experience and behaviours (“SKEB”) to perform their services. The ARB Competency Guidelines for Fire and Life Safety Design were published in March and comprise 16 core competencies expected of architects.<sup>2</sup> The Act will also include amendments to the Architects Act 1997 to enable the ARB to impose tougher sanctions on those who fail to meet the required criteria.<sup>3</sup>

The RIBA has gone beyond these minimum standards set by the regulator in unveiling its own plans to implement a regime of compulsory testing for UK Chartered Members. From 2023 onwards, architects will be required to demonstrate an understanding of seven core areas including fire safety, design risk management and personal safety in order to renew their RIBA membership. The plans for implementing “Mandatory Competence in Health and Life Safety” will be subject to further consultation with members until mid June.<sup>4</sup>

In addition to these significant advances for raising competency standards, the Building Safety Act will impose further statutory obligations on architects, under the new dutyholder regime proposed for the lifecycle of higher-risk buildings. The Bill implements Dame Judith Hackitt's recommendation to replicate the existing titles assigned to dutyholders under the Construction (Design and Management) Regulations 2015 (CDM 2015) to achieve what she described as “consistency and clarity across all regulatory requirements, to avoid unnecessary confusion”.<sup>5</sup>

<sup>1</sup> The definition of “higher-risk buildings” is yet to be finalised and may be subject to the building's size, design or purpose. The Bill suggests the scope will encompass buildings with a top storey of 18 meters or more above ground (or more than six storeys) that contain two or more dwellings or two or more rooms for “residential purposes” (including student accommodation, boarding schools, care homes, secure institutions, hotels, hospitals etc).

<sup>2</sup> The ARB Safety and Sustainability Guidelines were published 25 March 2021.  
[www.arb.org.uk/architect-information/guidance-notes/arb-safety-sustainability-guidelines-architects/](http://www.arb.org.uk/architect-information/guidance-notes/arb-safety-sustainability-guidelines-architects/)

<sup>3</sup> The MHCLG's consultation on proposed amendments to the Architects Act 1997 was published 4 November 2020.  
[www.gov.uk/government/consultations/consultation-on-proposed-amendments-to-the-architects-act-1997/proposed-amendments-to-the-regulation-of-architects](http://www.gov.uk/government/consultations/consultation-on-proposed-amendments-to-the-architects-act-1997/proposed-amendments-to-the-regulation-of-architects)

<sup>4</sup> RIBA Mandatory Competences survey is available online for members until 17 June 2021.  
[www.architecture.com/knowledge-and-resources/resources-landing-page/mandatory-competences](http://www.architecture.com/knowledge-and-resources/resources-landing-page/mandatory-competences)

<sup>5</sup> Building a Safer Future - Independent Review of Building Regulations and Fire Safety: Final Report, p34, Recommendation 2.1.  
[Building a Safer Future: Final Report \(publishing.service.gov.uk\)](http://Building.a.Safer.Future:Final.Report(publishing.service.gov.uk))

The new Principal Designer role in particular, is likely to have far reaching implications for architects. As with CDM 2015, the Principal Designer can be an organisation or an individual, and is described as being the Designer “in control of the pre-construction phase”. The PD dutyholder is described as being a suitably qualified “guiding hand” empowered to ensure the design intent in relation to building safety is understood, maintained and delivered to the point of handover through “The Golden Thread” of building information. In response to the Hackitt Review’s criticism of fragmented project teams under Design and Build procurement and the widespread use of “siloes” subcontracting, the Principal Designer role is intended to enforce a “robust ownership of accountability” for the responsibility of managing design. Under the Building a Safer Future Consultation, the MHCLG stated:

*“The PD HRRB should be part of the role of the lead designer, who will often be an architect but should always be the designer with the most appropriate professional background for the project.”<sup>6</sup>*

[PD HRRB is the Principal Designer on a High-Risk Residential Building].

It has been suggested the Principal Designer role could mark a significant turning point for the architectural profession which has become increasingly marginalised over the last 30 years due to the rise in project management and the dominance of Design and Build procurement. The enhanced competency requirements could serve as a positive declaration of quality and professionalism when compared against other designers. The RIBA has endorsed this position and stated in a professional practice feature published in March 2021:

*“An architect is the best person to fulfil the Principal Designer role. When the Building Safety Bill becomes law, architects should rise to the challenge of increased responsibility”.<sup>7</sup>*

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### “There remain fundamental questions concerning how the duties of the Principal Designer could be performed in practice”

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But in the post-Grenfell climate, which has seen architects’ Professional Indemnity Insurance (PII) premiums increase by as much as 300% over the last three years, it is not clear whether there is much appetite within the profession for taking on the significant liabilities associated with the Principal Designer role. Many architects have also found they are now unable to obtain PII cover for issues relating to fire safety and increasingly seek to exclude this area of design liability from their appointments. Concerns were raised with the Draft Bill published in July last year over the lack of clarity provided for dutyholders with much of the detail for the new regulatory regime yet to be determined under unpublished secondary legislation. The final Bill introduced this week will now be subject to further scrutiny to determine whether these concerns have been allayed. Previous consultations have suggested the Principal Designer’s duties will include obligations to:

<sup>6</sup> Building a Safer Future Proposals for reform of the building safety regulatory system, A consultation, Ministry of Housing, Communities & Local Government, June 2019, p153, para 6.0  
[BSP\\_consultation.pdf \(publishing.service.gov.uk\)](#)

<sup>7</sup> ‘Who should be responsible for the safety of a building?’ article published by the RIBA for members on 18 March 2021.  
[www.architecture.com/knowledge-and-resources/knowledge-landing-page/who-should-be-responsible-for-the-safety-of-a-building](#)

- Plan, monitor and manage the pre-construction phase and coordinate all matters relating to building safety with Designers and the Client;
- Satisfy themselves that those involved in supporting the Principal Designer are competent and have appropriate organisational capability;
- Take reasonable steps to ensure that Designers are discharging their statutory duties and promoting the statutory objective;
- Liaise with the Principal Contractor and share information relevant to the planning, management and monitoring of the construction phase and the co-ordination of building regulations and building safety during the construction phase; and
- Co-sign a declaration of compliance confirming that, to the best of their knowledge, the building complies with Building Regulations and that an appropriate handover of information to the occupation dutyholder has taken place.

There remain fundamental questions concerning how these duties could be performed in practice.

- The dutyholder framework established under CDM 2015 has been criticised for presenting an overly simplistic and linear approach to design which does not adequately address the more complex and overlapping relationships experienced outside of traditional procurement. The HSE's defined splits in responsibilities between the pre-construction and construction phases, and the notion that the Principal Designer role mirrors that of the Principal Contractor, were intended to capture a variety of project types including small scale domestic works. However, this rarely reflects the contractual arrangements involving multiple parties on more complex schemes.
- When architects are engaged as lead designers, they carry additional responsibilities for coordinating information with other designers and managing the process of design. However, they are rarely able to influence the choice of designers employed by the client or contractor, determine at what stage in the design programme they are appointed and have limited contractual powers to compel their performance. They are also not required to carry detailed knowledge of design work carried out by other parties or be responsible for approving information "by others" outside of their defined scope. It is therefore difficult to see how an architect could be expected to satisfy themselves as to the competency of other designers or sign a declaration to confirm their work complies with Building Regulations without employing a host of other specialists with the relevant skills, knowledge and experience to advise them. It is also unclear whether the declaration of compliance would be confined to building safety aspects or extended to cover all parts of the Building Regulations. This suggests the role may be more suited to larger multi-disciplinary companies and preclude smaller practices where the cost of engaging sub-consultants is likely to be cost prohibitive in terms of PII.
- The CDM Principal Designer role remains problematic under Design and Build procurement where much of the design remains to be completed by specialist subcontractors employed by the Principal Contractor during the construction phase. This has led to D&B contractors often taking on the CDM Principal Designer role themselves or engaging a health and safety specialist to perform the role on their behalf. This process of engaging peripheral health and safety consultants or "Non-Active Designers" is exactly what the HSE had intended to phase-out by introducing the Principal Designer role in

CDM 2015. Their intention had been to instigate a cultural change to ensure the “Active Designers” best placed to influence and control design on construction projects were responsible for managing risk. The HSE had intended that by 2020, the lead designer (typically the architect) would automatically be taking on the CDM 2015 Principal Designer role without additional support. Although the RIBA introduced a standard form of appointment for the CDM Principal Designer under their 2018 suite of Professional Services Contracts, there remains a reluctance for widespread adoption by the profession to take on these additional liabilities which are now subject to tougher enforcement measures.<sup>8</sup>

### **Conclusion**

It remains to be seen how chartered architects will respond to the RIBA’s call to rise to the challenge of the Principal Designer role for Building Safety. Two key questions will need to be addressed during the transition period following the introduction of the new Act:

Will the secondary legislation offer much needed clarity over the dutyholder’s obligations?; and,

Will there be an insurance market to support architects wishing to take on the Principal Designer role?

If you require any further information, please contact Paul Jolly at [pauljolly@hka.com](mailto:pauljolly@hka.com).

<sup>8</sup> The Sentencing Council’s Definitive Guideline for Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences was published on 1st February 2016 which has seen significant increases in fines and custodial sentences for convictions brought under CDM 2015 in order to “secure compliance”.