

Management of Asbestos in Non-domestic Premises

A new regulation, Regulation 4 of the Control of Asbestos at Work Regulations 2002, requires employers and some landlords to be aware of any asbestos in their properties and to manage it in such a way as not to put anyone at risk. The regulation comes fully into force in May 2004.

Following the shocking, but not unexpected, discovery in 1995 that asbestos is the biggest industrial killer ever in the UK, the government has acted, albeit reluctantly and without much haste. The first step in 1999 was to ban asbestos imports and the further use of asbestos. Now, a new regulation has been introduced which is meant to ensure that asbestos in public buildings is managed safely.

The new regulation does not go far enough in its requirements and scope (asbestos surveys as required are not thorough enough and domestic and other premises are excluded). With the full implementation date of May 2004 nearly 10 years have elapsed from the discovery of the true extent of asbestos-related illness to the start of real action.

The new regulation does set explicit requirements on those with responsibilities for buildings, i.e. employers and landlords. There is an ideal opportunity to revisit the issue of asbestos management at every UK workplace, backed up with some legislative teeth.

This factsheet deals only with the new duty to manage asbestos in buildings [Regulation 4 of the revised Control of Asbestos at Work Regulations 2002 (CAW)]. It does not deal with other aspects of CAW such as work on asbestos materials, prevention of inhalation of asbestos dust by workers and others, the prevention of the spread of dust during asbestos work, etc.

Why is asbestos dangerous?

Asbestos dust can cause fatal diseases even when someone is exposed only to minute quantities. The more dust you are exposed to the more likely you are to become ill. Further details are given in our previous factsheets (see later).

Where is asbestos?

Asbestos was used in many building products including wall panelling, fireproofing, ducting covers, pipework etc. and in some unusual places such as in thermoplastic floor tiles and decorative wall coverings (Artex, etc.). Millions of tons were used. The location and condition of most of it are not known. Buildings built in the 1950s, 1960s and 1970s are likely to contain large quantities of asbestos. Asbestos can only be properly identified by specialist techniques. Further guidance on identifying asbestos can be obtained from the HSE booklet MDHS100 (see later).

Who is at risk?

Most at risk are those who maintain or demolish buildings such as electricians, plumbers, carpenters, and decorators, but also included are caretakers and odd-job staff, anyone who is likely to cut, drill, smash or disturb asbestos and create dust in any way. People in the vicinity of such work can also be affected (office workers when an office is being rewired for telephones or computers, tenants when plumbing repairs are being done in service ducts on their property).

The new regulation

The new regulation is backed up by an Approved Code of Practice (ACoP) and by a Guidance booklet (see later).

REGULATION 4(1). Defines who is a "dutyholder", i.e. who is legally responsible under this regulation. It includes everyone who has any obligation, either by being the landlord or by a contractual arrangement, for maintaining or repairing non-domestic premises. Where there is no contract or tenancy the person in control of non-domestic premises is the dutyholder. Shared arrangements are defined. The Guidance says where a change in ownership or tenancy occurs relevant information about the presence of asbestos should be passed on.

REGULATION 4(2). Everyone is required to co-operate with the dutyholder. The Guidance identifies architects, surveyors, building contractors, etc. here.

REGULATION 4(3). The dutyholder must carry out a suitable and sufficient assessment of whether asbestos is present in any premises. The HSE allow a system of informed guesswork to comply with this regulation. Although this methodology is a useful starting point the regulation is weak in that it does not require a full professional survey consisting of safe sampling of substances and professional analysis. This method is to be preferred.

REGULATION 4(4). In making the assessment such steps as are reasonable in the circumstances shall be taken and the condition of any asbestos present shall be considered.

REGULATION 4(5). The dutyholder shall also:

- ▲ take into account building plans, other relevant information and the age of the premises.
- ▲ inspect the reasonably accessible parts of building.
- ▲ review the assessment if there is reason to believe it is no longer valid or there has been a significant change to the premises.

REGULATION 4(7). The dutyholder must record the conclusions of the assessment including any reviews.

REGULATION 4(8). Where the assessment shows that asbestos is present or liable to be present the dutyholder shall:

- ▲ **determine the risk from that asbestos.**
- ▲ **have a written plan or drawing of where the asbestos could potentially be found.**
- ▲ **specify in the plan the measures to be taken for managing the asbestos risks.**

REGULATION 4(9). The plan should include adequate measures for:

- ▲ **monitoring the condition of any asbestos or any material suspected of containing asbestos.**
- ▲ **ensuring any such substances are properly maintained or where necessary safely removed.**
- ▲ **ensuring information about the location and condition of the above is provided to any person likely to disturb it and to the emergency services.**

The Guidance gives two examples of how plans may be managed, representing two distinctly different approaches:

- 1 a full professional survey with sampling and professional analysis leading to once and for all removal of asbestos.
- 2 a presumption that all likely materials do contain asbestos plus an intention to deal with it as needed. Have systems in place that prevent any work being done on anything that might contain asbestos until professional analysis is carried out and any necessary removal completed safely before work commences.

The HSE comments that most situations are likely to lie somewhere between these two examples.

The ACoP states no one must work on asbestos-containing materials unless the requirements of CAW are complied with.

The Guidance says as a minimum the condition of the material should be checked every 6-12 months even if it is in good condition and not likely to be disturbed. The Centre recommends a three-monthly

inspection cycle as a minimum, backed up by a damage reporting system.

The Guidance suggests the labelling of all asbestos as one way of alerting people.

REGULATION 4(10). The dutyholder must:

- ▲ **review the plan regularly and also when there is reason to suspect it is no longer valid or there has been significant change to the premises**
- ▲ **ensure measures specified in the plan are carried out**
- ▲ **ensure measures taken to implement the plan are recorded**

The Guidance states that as a minimum, the arrangements should be reviewed every six months even if there have been no changes

Other legislation

There is other legislation, notably the Defective Premises Act 1972 and the Environmental Protection Act 1990, that may be useful in circumstances not covered by the new regulation where asbestos is present in buildings, particularly rented domestic accommodation.

Safety representatives

Where there are trade union safety reps at a workplace the employer is legally bound to consult with them in good time on the planning and implementation of systems to meet the requirements of this or any other regulation (Regulation 4A, Safety Representatives and Safety Committee Regulations).

Resources

The management of asbestos in non-domestic premises, ACoP and Guidance, HSE, L127. £9.50

Managing asbestos in premises, HSE, INDG 223, free

A comprehensive guide to managing asbestos, HSE, HSG 227, £9.50

Work with asbestos insulation, asbestos coating and asbestos insulation board, Control of Asbestos at Work Regulations 2002 ACoP, HSE, L28, £9.50

Work with asbestos which does not normally require a licence, Control of Asbestos at Work Regulations 2002 ACoP, HSE, L27, £9.50

Surveying, sampling and assessment of asbestos-containing materials, HSE, MDHS 100, £18.00

Introduction to asbestos essentials – comprehensive guidance on working with asbestos in the building and maintenance trades, HSE, HSG12, £12.50

Asbestos essentials, task manual – task guidance sheets for the building maintenance and allied trades, HSE, HSG 210, £8.50

Having construction work done? Duties of clients under the Construction (Design and Management) Regulations 1994, HSE, Misc 193

HSE publications are available from: HSE Books, PO Box 1999, Sudbury, Suffolk CO10 2WA. tel: 01787 881165; fax: 01787 313995

Asbestos – no hiding place. Hazards Campaign and TUC. Copies available free from local Hazards Centres and similar organisations or download for free at: www.hazardscampaign.org.uk

Asbestos Hazards Handbook. London Hazards Centre. Free. www.lhc.org.uk/members/pubs/books/asbestos/asb_toc.htm

Asbestos in the home – part 1. London Hazards Centre. Free. www.lhc.org.uk/members/pubs/factsht/56fact.htm

Asbestos in the home – part 2. London Hazards Centre. Free. www.lhc.org.uk/members/pubs/factsht/57fact.htm

Useful contact. **AsbestosRegister.com** provide an on-line database service for recording and accessing information on asbestos locations in buildings. Further information at www.asbestosregister.com