

Duty to Manage Asbestos in Non-Domestic Premises

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Frequently Asked Questions

What is asbestos?

Asbestos is a naturally occurring mineral and was used extensively for about 150 years. It is versatile, plentiful and ideal as a fireproofing and insulation material. But it is also deadly.

There are three main types of asbestos:

- crocidolite – ‘blue asbestos’
- amosite – ‘brown asbestos’
- chrysotile – ‘white asbestos’

All three types pose a risk of cancer and are now banned.

How is asbestos harmful?

Asbestos fibres can easily be released from materials, particularly insulation and insulating board, and become airborne. The fibres then lodge deep in the lungs and do not dissolve readily.

The risk of contracting an asbestos-related disease depends on the length of exposure, the type of asbestos fibre and the amount that was breathed in. Brown and blue asbestos (the amphiboles) are significantly more hazardous than white asbestos, but white is a Category 1 carcinogen and presents an unacceptable risk.

If asbestos is in good condition and is not likely to be disturbed, it poses no risk to health and should be left in place and managed.

What illnesses does asbestos cause?

There are three main asbestos-related diseases that can kill:

- **Mesothelioma**, cancer of the lining around the lungs or the stomach. There is no cure and it is always fatal. It is almost entirely associated with exposure to asbestos fibres.
- **Lung cancer**, which usually leads to death.
- **Asbestosis**, a disease resulting in the lungs becoming stiff and scarred, causing shortness of breath. It is very disabling and can be fatal.

In addition, working with asbestos can also cause lesser health problems:

- **Asbestos warts**, occurs when the fibres lodge in the skin and the skin grows over it.
- **Pleural plaques**, pleural effusions and diffuse pleural thickening - all benign changes in the lung and chest cavity that are often devoid of obvious symptom.

Asbestos-related diseases have a long latency period. Diseases may develop anything from 15–60 years after exposure with the average being about 35 years.

Until recently it was thought that those dying from asbestos-related diseases had been exposed to large amounts of asbestos fibres either regularly or during a continuous spell of work lasting from a few weeks to a few years. It is now recognised that relatively low level but repeated exposures, such as could occur during routine building maintenance, can also lead to asbestos-related diseases. It is also acknowledged that smoking can increase the risk.

There is no safe level of exposure to asbestos, although the more you breathe in, the more likely you are to develop one of the asbestos-related diseases.

How many people die as a result of asbestos?

We are dealing with the biggest occupational health problem ever encountered in the UK. Currently over 3,500 people die annually from asbestos-related diseases; around 1800 of those are from mesothelioma. All these deaths relate to exposure between 15 and 60 years ago when poor controls were in place. Many of those now dying worked in the asbestos manufacturing industry or installed asbestos insulation in ships, railway carriages, industrial plant and buildings.

The annual number of deaths is expected to peak somewhere in the range 4,000 to 5,000 (although the actual peak figure could be even higher), between the years 2011 and 2015. This timing corresponds with the peak of asbestos use in the 1970s.

Why is there still a problem?

Although asbestos is no longer imported or used, there is still cause for concern. The quantity of blue and brown asbestos imported and used has decreased year on year since the early 1970s but was not completely banned until 1985. It can therefore be present in any building constructed or refurbished between the 1950s and 1980s. White asbestos continued to be used until its ban in 1999.

Although much of this material has been removed over the years there are many thousands of tonnes of asbestos still present in buildings. It is estimated that about half a million non-domestic premises contain some form of asbestos.

Who is at risk?

A study carried out by Professor Peto and HSE epidemiologists in 1995 showed that building and maintenance workers account for approximately

25% of current annual deaths from asbestos-related disease. Due to the long latency period between exposure to asbestos and the onset of disease, this relates to exposure during the 1960s and 1970s. Improved working conditions and prohibitions on the supply and use of asbestos have virtually eliminated the risks for most workers, including high risk groups such as dockers, asbestos product manufacturers and railway workers.

However, building and maintenance workers are still at significant risk as they are often unaware that asbestos is present during maintenance work. Such workers may be unknowingly exposed to asbestos in the course of their work by cutting, drilling and sawing into asbestos containing materials (ACMs).

Those at risk include builders, carpenters, electricians, plumbers, burglar alarm installers and roofing contractors. In fact, any worker who has to work on materials in the fabric of a building could be at risk of disturbing asbestos.

What has been done already to protect people?

Regulations to control the exposure of workers to asbestos have been in place since 1931. These were radically strengthened in 1969, but still only applied to asbestos product manufacturing. In the 1970s a voluntary ban was agreed on the use of blue asbestos. In 1985 the Prohibition Regulations introduced a compulsory ban on blue and brown asbestos, regulations which were tightened in 1992.

The Control of Asbestos at Work Regulations (CAWR) 1987 fundamentally overhauled the 1969 regulations to include all work with asbestos. In 1998 the CAW Regulations were tightened again to make it clear that these Regulations apply to any worker likely to be exposed to asbestos, including those in the building and maintenance trades. Also in 1998 the Asbestos (Licensing) Regulations, first introduced in 1983, were amended to require that work with the most hazardous materials likely to release asbestos fibres should only be undertaken by a licensed asbestos contractor.

In 1999 the Asbestos (Prohibitions) Regulations were extended further to ban the supply, importation and use of chrysotile (white asbestos), the only remaining type of asbestos not already banned; with the exception of a few very limited uses.

Why more regulations?

Independent research showed that many organisations were not aware of the asbestos materials in their buildings and did not manage the risk. Meanwhile, evidence from HSE inspectors showed that time and time again building and maintenance workers were unknowingly carrying out work on asbestos-containing materials. One cannot know if material contains asbestos just by looking at it.

Although other pieces of general legislation, such as the Health and Safety at Work Act and the Management of Health and Safety at Work Regulations could have been used to control specific risks associated with work with asbestos, there was no law *explicitly* requiring the management of that risk.

HSC and HSE believe that a new regulation to require the proper management of the risk from asbestos in premises is essential. Without a specific legal requirement, there would not be enough information available to building and maintenance workers, or their employers, for them to plan their work safely.

Without a 'duty to manage', other workers, and in some circumstances members of the public, would continue to be exposed to asbestos in buildings.

What exactly is the new duty to manage?

This new duty, coming into force on 21 May 2004 following an eighteen month lead-in period, is part of the Control of Asbestos at Work Regulations 2002 (CAWR).

The duty is based on the sound principles of assessing and managing risk to protect workers and members of the public. It will require dutyholders to find out whether their premises contain or may contain asbestos, to assess the risk from such materials, and then take action to manage that risk.

If the asbestos is in good condition, it is best left in place and managed such that maintenance workers do not unwittingly disturb it. Information about the material must be given to anyone likely to disturb it. If the asbestos is in poor condition it may be best to remove it using licensed asbestos contractors.

What do the new regulations require of duty holders?

The duty to manage requires dutyholders:

- to take reasonable steps to identify asbestos in the premises they are responsible for and assess the condition of any asbestos containing materials identified;
- to presume that materials contain asbestos unless there is strong evidence that they do not;
- to prepare a record of the location and condition of any asbestos, or presumed asbestos materials, and assess the risk from them;
- to prepare and implement a plan to manage those risks;
- to provide information on the location and condition of the material to anyone who is liable to disturb it; and
- to monitor the condition of the material left in place, and to review the assessment of risk periodically.

Who is the dutyholder?

The regulation places a duty on those who have responsibility for maintenance and repair in non-domestic premises either through a contract or tenancy agreement or because they own the premises. These parties include owners of buildings, managing agents, occupiers, etc.

The existing contractual arrangements for dealing with building-related matters will be reflected in the duty to manage asbestos. In situations where no contract or tenancy agreement exists, the dutyholder will be the person or persons 'in control' of the premises.

The regulations also include a duty to cooperate, which applies to surveyors, architects and a wide range of other parties. This requires, for example, a landlord to pass on information to a new tenant.

In which premises does the duty apply?

The duty applies to all non-domestic premises, that is all commercial, industrial and public buildings. It also applies to the common parts of domestic premises, for example in a blocks of flats it could include foyers, corridors, lifts and lift shafts, staircases, boiler houses, vertical risers, shared gardens, yards and outhouses.

Once the duty to manage asbestos in non-domestic premises has "bedded down", HSE/C will consider whether it could be extended to some domestic premises, such as the rented sector.

Has HSE told people about the new duty?

Since 2001 HSE has been running a campaign to support the introduction and implementation of the new duty.

Elements of the campaign include:

- comprehensive guidance produced by HSE after consultation with key stakeholders including a free leaflet;
- presentational material, including a video, designed to promote the key messages of the campaign;
- a network of intermediaries to cascade HSE's campaign messages to dutyholders. This initiative has generated a partnership network of some 3,000 organisations, many of whom have delivered awareness/workshop style events using presenters' material prepared by HSE;
- information about asbestos on HSE's website, including a good practice guidance, as a means of ensuring the appropriate message is communicated to a wide range of duty holders;
- targeted guidance produced jointly by HSE and organisations including the Federation of Small Businesses, Asbestos Testing and Consulting and the Royal Institution of Chartered Surveyors;
- national and regional press conferences and other events to launch the new duty in early 2003;
- delivery of a national programme of asbestos awareness presentations for Environmental Health Officers (EHOs) in local authorities.
- an inspection programme that involves EHOs and HSE inspectors making visits to major dutyholders. An Inspection Plan was produced to support this and ensure a consistent approach, and the enforcement strategy was published on the HSE web site.
- letters sent to a number of key dutyholder organisations to confirm their responsibilities.

In addition to the ongoing awareness initiatives, the campaign was extended in 2003 to include HSE and Local Authority Inspectors making targeted visits to significant dutyholders, particularly those with large portfolios.

How are things going?

HSE carried out a review at the end of 2003 of the progress being made by dutyholders towards compliance with the regulation. The review found that although knowledge of the new regulation varied considerably, between half and three quarters of all dutyholders had an awareness of the duty to manage. It also suggested that between 25% and 40% of dutyholders already have management plans in place to deal with the possible risks from asbestos. These results were encouraging, at that stage of the campaign.

A more recent survey undertaken by the Federation of Small Businesses showed that 63% of its members are aware of the regulation and only 13% believed that the regulation would have a negative effect on their business. This is a positive sign that HSE is getting its message to this traditionally 'difficult to reach' group, but confirms there is still work to do to make sure that people are doing the right things and complying with the new regulation.

What will the duty to manage achieve?

The duty to manage has the potential to save the lives of about 5,000 building and maintenance workers over the next fifty years – people who would have been exposed to asbestos fibres. Eliminating asbestos exposure, encouraged by enforcement action where appropriate, will continue to be a priority for HSE in the years ahead.