

# The Control of Asbestos at Work Regulations 2012

## Background

Asbestos remains the largest single cause of work-related deaths in the UK and is prevalent in all but the newest of buildings since blue and brown asbestos were only banned in 1985 and white asbestos in 1999. It is estimated that some 2 million buildings in the non domestic sector contain asbestos.

## What are the Regulations?

The Control of Asbestos Regulations 2012 came into force on 6 April 2012. These Regulations reduce the extent of the exemption from certain duties contained in the 2006 regulations by introducing requirements that only non-friable materials are handled and that where materials are removed this must be without any deterioration of non-degraded materials. The amendments mean that employers carrying out certain types of low risk, short duration work will need to:

- Notify the work to the relevant enforcing authority.
- Carry out medical examination of workers. There is a transitional period and relevant low risk workers need to have their first medical examination by 30 April 2015.
- Maintain a register for each worker of the nature and duration of the work they have undertaken with asbestos.

The Regulations are aimed at protecting workers by providing them with information which will enable them to plan their work more safely and they apply to all non-domestic premises; this means all premises or parts of premises which are not private dwellings. In a block of flats for example, this would exclude the flats themselves but include the common parts such as the stairs and lifts.

## Who is affected?

The Regulations require every person who has an obligation to maintain or repair all or a part of business premises under a contract or tenancy, irrespective of the length of term, to comply with the duties under the Regulations.

Where there is no contract or tenancy, every person who has to any extent control of the relevant part of those premises or any means of access to and from them will also have to identify where asbestos materials may have been used and comply with the duties under the Regulations.

Depending on the circumstances, the duty holder could be the landlord, tenant, managing agent, surveyor or architect.

There may be more than one person on whom the duty rests at any one time and the division of responsibility will depend on the degree of control that person possesses. In multi let premises, the landlord could be responsible for the external and common parts of the premises and the tenant for the internal parts. No one can 'contract out' of their duties under the Regulations.

### **Risk Assessment and Management Plan**

Every duty holder is required to see that a suitable and sufficient risk assessment is carried out to identify whether asbestos is present in the premises. Where there is more than one duty officer there is an obligation to cooperate in the production of the risk assessment.

In making the assessment, the duty holder is required to take such steps as are reasonable in the circumstances. The condition of any asbestos which is or has been assumed to be present must be considered carefully. This could include a systematic search of all plans, drawings, specifications and maintenance records for the premises and a physical search of areas such as the roof voids and pipe ducts and inspection of fire doors and walls.

Any material which looks as if it might contain asbestos should be presumed to contain asbestos until further analysed.

If asbestos is identified, a written record must be kept of its location, quantity and condition. The record must also show whether there are any parts of the building which have not been assessed.

If the asbestos located is in good condition and unlikely to be disturbed then there is no obligation to remove it, but its location and condition must be recorded and monitored at regular intervals.

From this record, an assessment of the risk of exposure by an individual should be made and a management plan must be drawn up and reviewed at regular intervals. The management plan must be made available, not only to employees, tenants, occupiers and contractors, but also to potential purchasers, valuers, surveyors and the emergency services.

### **Failure to comply**

The Regulations are enforced by the Health & Safety Inspectors, who conduct spot-checks on these management plans. Further information can be obtained from the Health and Safety Executive's website – [www.hse.gov.uk](http://www.hse.gov.uk)

Failure to comply is a criminal offence and, if tried in the Crown Court, can lead to an unlimited fine and imprisonment for up to two years. If a death actually results from work activity involving asbestos, then manslaughter charges may be brought.

### **Summary**

We recommend that if you have not already done so then you start acting now by:-

- a) taking steps to identify asbestos in your premises and checking its condition;

- b) presuming that any material about which you are uncertain contains asbestos, unless there
- c) is strong evidence to the contrary;
- d) making a written record of the location and condition of any asbestos or inspected
- e) asbestos and updating it at regular intervals;
- f) assessing the risk of exposure to other persons at the premises;
- g) preparing a management plan to ensure that the asbestos is either kept in good condition,
- h) repaired or removed as appropriate; and
- i) ensuring that adequate information is readily available to anyone that might need to refer to it.

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