



Fact sheet (2,500 words) issued 2 Jun 2004

New duty to identify asbestos in your workplace

Simple but effective - the new asbestos regulations

This factsheet tells you:

- About the new requirements on duty holders to record the presence of asbestos in the workplace;
- Your rights and role as a safety rep; and
- What you need to do to make sure your employer complies with the law

Asbestos is deadly

It is estimated that past exposure to asbestos is responsible for at least 3,500 deaths a year. This figure is set to rise - it can take between 15 and 60 years after first being exposed before the onset of an asbestos-related disease. Academic research estimates that it could rise to 10,000 deaths a year by 2015.

Materials that contain asbestos are only dangerous when they are damaged or disturbed in such a way that harmful fibres are released into the air. The fibres are like microscopic daggers and, when inhaled, lodge themselves into lung tissue. The body's defences cannot break them down, so increased or prolonged exposure can cause a build up of fibres, which work their way deeper into the lungs and can cause disease.

The three main diseases caused by asbestos are asbestosis, mesothelioma and lung cancer. The levels and duration of exposure and the type of asbestos involved all affect the likelihood of contracting an asbestos-related disease. All the diseases are potentially fatal and almost always incurable.

Banned but not gone

The import and new use of asbestos and asbestos containing materials is now banned but it is still with us. It is estimated that some half a million non-domestic premises contain asbestos, and, worryingly, over 25 per cent of the people now dying from asbestos-related disease once worked in the building or maintenance trade. Plumbers, electricians and other maintenance workers could be unwittingly working with or around asbestos every day. The critical importance of managing asbestos risk is clear.

The new regulations

On 21st November 2002 the Control of Asbestos at Work Regulations 2002 came into force. These regulations revised previous regulations on the management of asbestos ensuring that European directives on controlling asbestos were properly implemented in UK legislation. There were two major changes from previous legislation in this area. The first was regulation 4 on Duty to manage asbestos in non-domestic premises. The other was regulation 20 on Standards for analysis. Regulation 4 came into force on 21 May 2004 and regulation 20 comes into force on 21 November 2004.

This fact sheet gives information for safety reps, trade union members and other workers about Regulation 4 and the effect it will have on them and their workplace. It does not go in to the details of the rest of the regulations much of which are already in place and with which your employer should be complying already.

What the regulations say

The Control of Asbestos at Work Regulations 2002 introduced the new duty to manage asbestos in non-domestic premises. Although the new duty does not become law until 21 May 2004, duty-holders have been encouraged to start complying with the new duty from the introduction of the regulations

The aim of regulation 4 is to help protect the largest group who are today at risk of exposure to asbestos, building and maintenance workers, thereby helping to prevent thousands of asbestos-related deaths.

Regulation 4 requires those who have responsibilities for maintenance activities in non-domestic premises to assess whether there is any asbestos in their premises, and, depending on its condition, either remove it or manage it - making sure that maintenance activities carried out subsequently do not expose the workers to any avoidable risk. They must ensure that information on the location and condition of these materials is given to anyone likely to disturb it.

The Health and Safety Executive advises that it would be sensible to mark or indicate the area where ACMs have been found. This could be done with an adhesive asbestos hazard label and these are commercially available. This would make it clear to anyone that there was a hazard in that area and they needed to get advice before starting work.

The duty holder

The duty-holder in this case means every person who, either by contract or tenancy, has an obligation of any kind to maintain and/or repair non-domestic premises, in other words, workplaces. It also applies to the means of access and egress of a building or workplace.

But the regulation spreads the duty even wider by saying that even if there is not a contract, a person who has control over a workplace or part of it also carries that responsibility.

That seems clear enough but things do get a little more confused when there is more than one occupier or duty-holder. The duty holder may well be the landlord, tenant or a

managing agent, depending on the circumstances, and of course there may well be more than one tenant. An example may be old warehouses that have been converted to offices or workshops. The extent of responsibility will be determined by the extent of the person's or organisation's obligation to maintain and repair the premises.

The regulation also includes a duty to cooperate, which applies widely. This will, for example, require an employer who is a tenant to allow a landlord to gain access to a building to carry out a survey. Also a building surveyor or architect who had plans which show information on the whereabouts of asbestos would be expected to make these available to the duty holder at a reasonable cost.

Information and training

In order to do this the employer and/or duty holder may need information and training to ensure that they are carrying out their responsibilities properly. They also need to ensure that employees and others have received appropriate information and training to ensure that they can comply with the requirements of the duty holder.

What about the workers?

That's the background to the regulations, but how does it affect you as a union rep or trade union member or worker?

As a trade union safety rep you have rights under the Management of Health and Safety Regulations 1999 to request and receive information on measures that may affect your members health and safety. You also have the right to be involved in the employer's risk assessment and to be consulted on any possible changes that the employer wants to put in place as a result of the risk assessment. You also have the right to receive union training and information to ensure that you are up to date on health and safety law and practice.

As an employee you have the right to be consulted on health and safety measures by your employer.

So first step - ask

Ask your employer if they are aware of the new asbestos regulations. They should have been making preparations since November 2002. Remember, these regulations apply to all non-domestic buildings and that includes care homes. If a registered business is being run from those premises, it's non-domestic.

Ask to be involved in the survey process. As a union safety rep you have the right. Ensure that whoever is going to do, or has done, the survey is competent to do so.

Ask for a copy of the asbestos location survey if it has already been done. Check that it is accurate and clear for those who may need to know where asbestos is located.

Find out what condition the ACM is in and whether or not it needs to be removed. Remember, this can only be done by licensed contractors. If it's in good condition - leave it alone. The point of these regulations is to record the presence of asbestos and pass on that information to those whose lives it could save.

Second step - check

Check that you employer has consulted all those affected by the regulations, the building owner (not all employers own their own premises), architects and surveyors or their maintenance contractor. Information about possible use of asbestos in the premises may be located in a number of places.

Satisfy yourself that the way in which that information is being stored is satisfactory and that your employer has the procedures in place to pass that information on to the relevant people and at the proper time - for example, not after they have already started drilling or taking the ACM apart.

If you are satisfied that the survey is accurate it should not need reviewing constantly but it should not get lost at the bottom of a manager's draw. The employer must also draw up a plan on how they will deal with the hazards that the survey has thrown up. This does need to be kept under review as circumstances change. This is a 'live' and important document. Make sure that it is being appropriately filed or stored.

Planned Removal

Asbestos is dangerous and can be deadly. Why wait for the ACM to be damaged or disturbed later on? If the survey has revealed the presence of ACM, safety reps should be discussing with their employer whether a planned removal programme needs to be established. The programme would set out where, how and when ACM removal could take place. Planned removal may be needed where the ACM is likely to be damaged because of regular activity in that area or it is known that access will be needed for maintenance or similar purposes and/or extensive ACM has been found, and its continuation in a good condition across the whole can not be guaranteed. The development of a planned removal programme cannot be used as an excuse for not dealing immediately with damaged ACM.

Third step - talk to members

Trade union reps also need to talk to their members and keep them informed of their discussions with the employer and ensure the employer is keeping staff informed. Members may need to be assured that their premises are safe for them to work in, so you need to be sure as well.

And for contract workers

If you are a maintenance worker, a telephone or IT engineer, a plumber, in fact anyone who may be required to saw, drill or otherwise disturb building fabric, you need this information as well. So, for instance, if you work for a maintenance firm or an engineering company or a utilities company, ask your supervisor for the asbestos survey of the site you are going to work on. If the survey says there is no asbestos fine but still get a copy. If it says there is asbestos do not start work until you are sure that your employer has ensured the removal of the asbestos or put in place all the appropriate control measures.

If you work for such a business check that your company is aware of these new regulations and that they are asking for the asbestos survey from their clients as a matter of course. It should go alongside the contract and your work docket.

In summary

The **duty to manage** requires those in control of premises to:

- take reasonable steps to determine the location and condition of materials likely to contain asbestos;
- presume materials contain asbestos unless there is strong evidence that they do not;
- make and keep an up to date record of the location and condition of the ACMs or presumed ACMs in the premises;
- assess the risk of the likelihood of anyone being exposed to fibres from these materials;
- prepare a plan setting out how the risks from the materials are to be managed;
- take the necessary steps to put the plan into action;
- review and monitor the plan periodically; and
- provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

A trade union **safety rep** should:

- request to be involved in the asbestos survey. If it has been done already -
- get a copy of the survey
- check the competency of the person doing the survey
- check it is accurate
- discuss the survey and the precaution arrangements with the employer and members
- be satisfied with the employers plans for dealing with asbestos hazards and are kept under review.
- If you work for a contractor make sure your employer knows about the regulations and takes all precautions before work commences.

And finally - use this handy checklist to quiz your employer or the duty holder

1. Have you checked whether asbestos is present in your buildings?

- a survey/inspection has been planned for(date);
- a survey/inspection has been done to find materials that might have asbestos in them;
- an expert has checked and confirmed whether or not the materials have asbestos in them; or
- it has been assumed that unknown materials contain asbestos.

2. Have you got a record or drawing which clearly shows where in your buildings the asbestos is and what condition it is in?

- a record or drawing showing where it is and what it looks like has been done;
- a register has been drawn up listing all the asbestos materials and their condition; or
- this will be done when the survey/inspection is finished.

3. How are you managing the asbestos in your buildings?

- the badly damaged asbestos has been removed, or sealed to stop fibres being released;
- the undamaged asbestos has been labelled/colour coded;
- a nominated person controls maintenance work;
- building and maintenance workers are told where the asbestos is before they start any work; or
- the ACM is regularly checked to ensure it's not deteriorated or been damaged.

4. How are you warning people who might work on or damage the asbestos in your buildings?

- workers are told where the asbestos is and whether the asbestos is damaged or undamaged;
- workers are given a plan with this information on;
- workers are told the building may contain asbestos and they should treat the material as if it does; or
- workers have been/will be given awareness training so that they do not disturb/damage the asbestos and know what to do if they find damaged material.

5. How are you checking that your management systems that are meant to prevent exposure to asbestos actually work and continue to do so?

- the arrangements to control the risk are periodically reviewed as a matter of course;
- spot checks are done to make sure the building/maintenance worker is getting the right information and working safely; or
- any changes in the use of the building or the condition of the asbestos are dealt with.

If your employer or the duty holder cannot answer your questions, or gives you another answer, then 'warning bells' should sound

Remember - as a safety rep you have a right to this information and to be consulted about what your employer is doing to manage the risks of asbestos exposure

Further Information

For on the spot help go to your Amicus safety rep, or contact your regional office, details of which can be found at <http://www.amicustheunion.org/main.asp?page=53> or by calling the Membership Department on 020 8462 7755. For general health & safety information visit the Amicus health & safety pages at <http://www.amicustheunion.org/main.asp?page=38>

Further information, about these regulations and about the hazards of asbestos in the workplace contact your local Health Safety Executive office or go to their website at www.hse.gov.uk/campaigns/asbestos/index.htm. There is also the TUC Risks website www.tuc.org.uk/h_and_s/index.cfm?mins=262 as well as Hazards magazine www.hazards.org/haz85/index.htm which has covered many aspects of the asbestos issue.