



ASBESTOS AT WORK

Your Practical Guide



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This document has been produced with the intention of providing general information on the revised Control of Asbestos at Work Regulations 2002 (CAW). It is not therefore a definitive or exhaustive statement of legal issues. Accordingly, specific independent professional legal advice (or technical advice) should be sought on any issue or course of action you may be considering and this summary should not be relied upon as a substitute for specific legal advice

Introduction

AXA has produced this document to provide our practical summary information on the revised Control of Asbestos at Work Regulations 2002 (CAW) and the new duty to manage the risk from asbestos in non-domestic premises contained in regulation 4.

It explains some of the duties of building owners, tenants and other parties who have legal responsibility for the premises. It also gives information on what is required from people who have a responsibility to co-operate with the main duty-holder. (The term duty-holder applies to the owner, tenant, landlord, managing agent or other party who maintains or owns the building).

The duty to manage asbestos in premises applies to common parts of premises i.e. areas frequented by members of the public and includes housing developments and blocks of flats, but it does not place any direct duties on landlords in respect of individual houses or flats.

Some of the typical methods that have been used to help manage the risk posed by asbestos in premises are included. The main aim is to help protect contractors' employees, tenants and others who may come across asbestos in the course of their day-to-day activities. However, you should seek separate, independent legal and/or technical advice before taking any steps.

What is Asbestos?

Asbestos is a naturally occurring mineral with exceptional heat insulation and fire resistant properties.

Asbestos-containing products have been widely used in buildings as construction materials, for fireproofing, thermal insulation, electrical insulation, sound insulation, decorative plasters, roofing products, flooring products, heat-resistant materials, gaskets, and friction products etc.

In 1985 the use of any construction materials containing blue or brown asbestos was banned and in 1999 the use of white asbestos in any building products was also banned.

The three main types of asbestos material used in Britain were:

Blue – which is known as ‘Crocidolite’ asbestos

Brown – which is known as ‘Amosite’ asbestos

White – which is known as ‘Chrysotile’ asbestos

Why is Asbestos Dangerous?

When asbestos is moved or disturbed, it releases microscopic dust or fibres into the air. These have the potential to be inhaled deep into the lungs which can lead to serious health problems.

There are three main diseases that have been linked to exposure to asbestos dust or fibres. In most cases, the chances of developing the disease are increased with the amount of exposure to the dust or fibres.

Asbestosis – asbestos particles build up in the lungs and over a period of time cause thickening, scarring and inflammation. This degrades the ability of the lungs to function, eventually to the extent that the patient will be starved of oxygen.

Mesothelioma – this is a highly aggressive cancerous tumour. It attacks mesothelial cells that form a protective lining over the lungs, heart and abdominal organs.

Pleural Plaques – this disease involves the thickening of the lining of the lung or the lung pleura and, as with asbestosis, it degrades the lungs' ability to function.

Asbestos diseases have a latency period – the time from exposure to asbestos until the time when symptoms of the disease manifest themselves – which has generally been found to be at least 10 years, but it is not uncommon for it to be as much as 40 years.

The diseases vary in terms of severity but complete cures are rare. The most aggressive forms of asbestos disease can be fatal within two years of diagnosis.

The types of work that release fibres include drilling holes with power tools and sawing or sanding material. Simply working near to material containing asbestos may also result in the release of fibres, particularly if the asbestos is in poor condition.

Asbestos Containing Materials (ACMs) are still present in many buildings, and people can cut, sand or drill into them or near them without being aware of what they are.

The Control of Asbestos at Work Regulations 2002

The Control of Asbestos at Work Regulations 2002, specifically regulation 4, require duty-holders to:

take all 'reasonable steps' to find any materials in the premises likely to contain asbestos and to check the current condition of them.

Broadly speaking, this means that duty-holders should carry out investigative research and a physical survey to determine if any asbestos materials are present in the building.

Who is the Duty-holder?

*The term duty-holder means anyone who is legally responsible under the Regulations to comply with the statutory requirements contained in **regulation 4 of the Control of Asbestos at Work Regulations 2002.***

The primary duty for complying with Control of Asbestos at Work Regulations 2002 rests with the person who is in control of maintaining the building fabric and controlling and/or organising maintenance activities in the non-domestic premises. This could be the occupier, landlord, sub-lessor or managing agent.

Where there is no formal tenancy agreement, lease arrangement or contract, or where the premises are unoccupied, then the duty to comply with regulation 4 is placed on the person in control of the premises.

The extent of this duty is determined by the degree of responsibility over the upkeep of the building fabric and the maintenance activities that are carried out. Theoretically, this can involve two or three individuals and responsibility to comply with Control of Asbestos at Work Regulations 2002 would then be split between the parties. In this situation it is extremely important for the parties involved to co-operate and co-ordinate their activities.

It is common for the owner to rent or lease out workplace premises under rental agreements where the tenants are responsible for some or all of the alterations as well as for maintenance and repairs in the premises. In this case, each tenant will have to carry out an assessment and implement the necessary arrangements for the areas under their direct control.

Where the owner is responsible for maintaining, repairing and controlling access to the building by maintenance employees and contractors, the owner must himself carry out the work required by regulation 4.

This means that the duty-holder will be required to perform certain activities such as:

- carrying out an assessment to see if there is any asbestos material present and assessing its condition
- recording the results of the assessment and ensuring that these are passed on to the occupier of the premises
- consulting with the occupier and others to prepare and implement a management plan that will control the risk from the asbestos-containing materials posed by any working activities
- ensuring that anybody who is potentially at risk receives information on the location and condition of the asbestos-containing materials.

In some cases the sole responsibility rests with the owner of the premises – for example in the common areas of multi-occupied buildings, or where no tenancy agreement or contract exists, or in any premises that are unoccupied or are occupied solely by the owner.

The detail of any contracts/tenancy agreements must always be referred to when trying to determine who is responsible for the different aspects of the requirements. Some good examples of tenancy arrangements and how responsibilities must be shared are set out in *The Management of Asbestos in Non-Domestic Premises Approved Code of Practice L127*, published by HSE books.

Types of Survey

Three types of survey are recommended by the HSE in their publication MDHS100 (Methods to Determine Hazardous Substances). These are:

1. A **Type 1** survey, normally referred to as a 'visual' survey, is used to determine the location and condition of asbestos and asbestos containing materials present in the building. It does not involve sampling to confirm types of asbestos.
2. A **Type 2** survey, normally referred to as a 'sampling' survey, follows the same methodology as a Type 1, but collects samples for analysis to confirm the presence of asbestos and asbestos-containing materials identified in a Type 1 survey. A Type 2 survey will provide the basis for a definitive risk assessment.
3. A **Type 3** survey is normally referred to as an 'intrusive' survey. This aims to sample and identify 'as far as reasonably practicable' all asbestos and asbestos-containing materials. It will involve some partial demolition/damage to gain access to all areas in order to sample materials. It is used to estimate the quantity of asbestos materials prior to removal.

All three types of survey are normally expected to cover all areas of buildings, including but not limited to:

- Outhouses
- Basements
- Roof voids
- Boiler rooms
- Ducting
- Structural steelwork
- Fire separation walls, doors and fire blankets
- Water tanks, pipes and gaskets
- Plasterwork.

Documenting the Survey

You should maintain a written record of the location and condition of asbestos and presumed asbestos-containing materials (ACMs) and keep the record up to date. This is normally easier to do if you mark the location of asbestos on any drawings of the building that may be available.

If this is not possible, then you need to keep a register detailing the area, condition, location and type of asbestos, together with any essential information that may be relevant.

The register needs to include certain information such as:

- where the material is located
- what condition the material is in, i.e. damaged, friable, good condition etc.
- what form the material is in, i.e. cement tiles or panels, insulation board, sprayed insulation etc.
- what the material looks like, i.e. how it is recognised, whether it is painted or encapsulated, what colour it is.

The plan or register must also identify areas that have not yet been subjected to inspection and that may contain asbestos material.

Assessing the risk

If asbestos material is found you must have its condition assessed.

To do this properly and without risk, it is best to employ a competent person or organisation. The Health and Safety Executive (HSE) maintain a list of accredited laboratories and surveyors, a copy of which can be down loaded from the HSE web site at www.hse.gov.uk/campaigns/asbestos/index.htm

The duty-holder should always presume that materials used in building construction contain asbestos unless there is strong evidence to suggest that they do not. An accurate presumption can be made based on the age of the building. For example, buildings constructed prior to 1999 will almost certainly contain asbestos or asbestos-containing materials (ACMs) of some kind.

You must also assess the risk of anyone being exposed to asbestos material. This needs to take account of tenants, contractors, cleaners, maintenance personnel and others – for example, the emergency services.

The **Control of Asbestos at Work Regulations 2002** require a duty-holder to prepare and put a plan in to effect to manage the asbestos risk. The plan must ensure that certain measures are taken, including the following:

- Material known or presumed to contain asbestos must be kept in a good state of repair
- Material that contains or is presumed to contain asbestos is removed if:
 - it is assessed as being in a poor condition
 - in its current location it is likely to be damaged
 - in its current location it is likely to expose someone to a potential risk

An approved and licensed HSE contractor must carry out the removal of asbestos materials.

- Information concerning the location of asbestos or asbestos containing materials must be made available to all parties who require this information, including the emergency services, tenants and employees
- Asbestos materials can be identified by means of a label, but the labels must be checked from time to time as they may become obscured or fall off. Labelling should conform to the Health and Safety (Safety Signs and Signals) Regulations 1996.
- Periodic checks must be carried out to ensure that all the arrangements that the duty-holder has put in place to manage asbestos or asbestos-containing materials are being maintained, and are effective. How often the duty-holder undertakes this check needs to be determined by the experience of the duty holder in relation to the condition of the materials.

A Word About Contractors

Research into disease causation factors carried out by the HSE has identified that those employees most at risk from Asbestos-related diseases are building maintenance employees and contractors who may be brought in to supplement or assist with building repairs.

Employers of building maintenance and repair workers are required to carry out a risk assessment before undertaking any work which exposes, or is liable to expose, employees to asbestos. They must then implement the most appropriate controls required by the **Control of Asbestos at Work Regulations 2002** to prevent or control the exposure to employees.

In the majority of cases, the contractors and their employees have little or no information about the premises where they will undertake work, and will not be aware if any asbestos-containing materials are present.

As a consequence, it is difficult for contractors to assess the risks accurately and take the most appropriate precautions. To address this difficulty, the duty to manage the risk from asbestos in premises has been added to the **Control of Asbestos at Work Regulations 2002**.

In addition to their duty to manage asbestos, all employers must:

- undertake risk assessments before beginning work which exposes, or is liable to expose, employees or contractors to asbestos or materials containing asbestos
- produce a plan of work detailing how the work is to be carried out
- either prevent exposure to asbestos or reduce it to as low a level as is reasonably practicable
- make any relevant information available so that employees and contractors also know of the presence of asbestos and asbestos-containing materials, and do so as soon as possible so that they can carry out their own accurate risk assessments on the work to be carried out
- comply with a range of other legislative requirements, for example on the use and maintenance of control measures and personal protective clothing, and the duty to prevent the spread of asbestos.

The regulation 4 duty complements the above duties and makes general legal duties specific so as to ensure that all the risks from asbestos are properly addressed.

Contracting out an Asbestos Survey

If the dutyholder or owner of the premises chooses to employ a third party to carry out an asbestos survey, it is vital to make sure that the contracted party has adequate experience and training.

If the contracted party is an organisation, this can be done by checking whether it:

- is accredited by one of the recognised bodies in the UK to undertake surveys for asbestos-containing materials
- complies with ISO17020.

Alternatively, individual surveyors require personal certification for asbestos surveys from a certification body that has been accredited by a recognised accreditation body under EN45013. The United Kingdom Accreditation Service (UKAS) is currently the sole recognised accreditation body in Great Britain.

The technical guidance document published by the HSE – known as MDHS100 – specifies different levels of competence for each of the three types of survey listed above.

Before employing anyone to undertake a survey, checks should be made that the person or organisation has the relevant accreditation for the type of survey that is requested and has practical experience of the type of building to be surveyed.

There are some differences between the accreditation scheme for organisations and the personal certification scheme, although both ensure that the contracted party will have a suitable measure of competence.

- Company accreditation provides assurance that an organisation employs competent individuals, that there is a quality management system and that individuals are required to work within its current outline
- Personal surveyor certification provides an assurance that an individual has demonstrated a pre-defined level of competence to carry out specific survey activities, but it does not look at the quality management system within which they will work.

When employing an organisation or individual surveyor to identify asbestos-containing materials through on-site sampling and analysis, the organisation must be accredited by UKAS, under either ISO17025 or ISO17020 as appropriate. This will indicate that they are likely to be competent to carry out the work in a professional manner.

Currently the HSE only recognise one body as being qualified to assess the competence of asbestos surveyors: The Asbestos Building Inspection and Certification Scheme (or ABICS). All independent asbestos surveyors therefore need to prove that their competence has been assessed by ABICS.

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