

Control of Asbestos Regulations 2012 - General enforcement guidance and advice

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Target audience: HSE Inspectors and Local Authority Enforcement Officers

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Summary

This Operational Guidance provides advice to HSE inspectors and Local Authority enforcement officers on interpretation of the Control of Asbestos Regulations 2012 (CAR 2012) including enforcement benchmarks for licensed and non-licensed asbestos work and the management of asbestos in buildings. It also includes information on inspection

Introduction

The Control of Asbestos Regulations 2012, together with ACOP L143 'Managing and working asbestos'[1] set out the framework for controlling exposure to asbestos and managing asbestos in buildings.

A revised version of ACOP L143 was published at the end of 2013. This incorporates the previous publication of ACOP L127 (The management of asbestos in non-domestic premises) and takes account of the 2012 Regulations. The revised ACOP was published as part of the overarching review of ACOPs which was conducted under the Löfstedt Review.

Action

General application of EMM to asbestos

Due to the long latency of asbestos-related diseases, an inspector cannot take account of an individual worker's susceptibility since this will not be known. Therefore, an approach based on the most credible health outcome is necessary.

The resultant enforcement outcome should be preventive, aimed at dealing with the particular situation confronting the inspector, who may not know the details of a worker's previous exposures or likely future changes to exposure patterns. In weighing up the quality of evidence available, inspectors will use their judgement about the nature of the exposure to risk and where necessary seek advice and support from Specialists, HSL, relevant Directorate Units. [2]

Exposure to asbestos can lead to a number of diseases, including asbestosis or fibrosis (scarring) of the lungs; lung cancer and mesothelioma. These diseases are irreversible, disabling and in most cases eventually fatal, and therefore come into the descriptor 'serious health effect'. This is comparable with the safety equivalent of 'risk of serious personal injury'. Exposure to asbestos accounts for more occupationally related deaths than any other single cause. Likelihood of developing the disease is affected by several factors - the type of asbestos fibre; age when a worker is first exposed; the quantity of fibres breathed in; duration and frequency of exposure.

The risk matrix below sets out the four 'exposure likelihood' types that lead to 'serious health effect':

Asbestos risk matrix

	Application / Interpretation	Exposure Likelihood			
		Probable	Possible	Remote	Nil / Negligible
SERIOUS HEALTH EFFECT	Asbestosis Lung Cancer Mesothelioma	Exposures to multiples of the control limit	Exposure above the control limit likely	Control limit for amphibole forms [1] and for chrysotile [2]	Benchmark [3]

Notes in risk matrix

1. Based on 5 years exposure (typical worker aged 30-35)
2. Risks from chrysotile exposure have been shown to be less than for amphibole forms but are still to be deemed remote at the control limit. This takes into account:
 - Compliance requires reduction of exposure so far as is reasonably practicable and below control limit.
 - HSE's position statement on asbestos that aims to promote awareness of the risks of casual exposure and to encourage the adoption of a more precautionary approach by industry
3. The Law requires the prevention of exposure to asbestos, but where it is not reasonably practicable to prevent exposure, exposure has to be reduced to the lowest level reasonably practicable. The employer must choose the most effective methods or combination of methods that minimise fibre release and thereby reduce exposure to below the control limit; in addition suitable RPE must be worn. The RPE must reduce exposure as low as reasonably practicable below the control limit.

For most asbestos related work, the benchmark should be a 'nil or negligible' likelihood of serious personal injury. This is based on all necessary control measures being in place and working such as:

- suitable enclosure;
- correct equipment - cleaned and in good working order;
- most appropriate techniques e.g. well planned and executed wet removal;
- employees wearing suitable RPE which has been properly selected including face fitting;
- adequate information, instruction, training and supervision; and
- suitable decontamination procedures in use to prevent spread etc.

CAR 2012 requires prevention of exposure or reduction to the lowest level reasonably practicable. In practice, this means that the 'risk gap' will be either 'substantial' or 'extreme' when work is carried out at or above the control limit.

Where there is a risk of serious health effects, from uncontrolled or poorly controlled exposure to asbestos then inspectors should consider issuing Prohibition Notices.

Exposures to asbestos can be considered as potentially leading to a serious health effect as set out in OC130/5 [2]. This is equivalent to "serious personal injury" and needs to be present for a PN. The risk identified is usually the 'risk of cancer'. The matters giving rise to the risk are uncontrolled or poorly controlled work that may give rise to exposures above the control limit.

Inspectors should assess the controls used and whether they are sufficient to reduce exposure. It is sufficient to identify potential risk from the absence of controls that would be required to reduce exposure 'below' the control limits. A PN is to prevent risk of serious health effect, regulation 11 and 16 are the key.

Remember that respiratory protection will only protect the wearer and there may be others at risk.

Where a PN is served prosecution should be considered in line with EMM figure 3.

Table 5.1 of EMM suggests an initial enforcement expectation (IEE) of issuing an Improvement Notice for both 'substantial' and 'extreme' risk gaps, and consideration of a prosecution in the case of an 'extreme' gap. Where there is an extreme risk gap and the standards are either defined or established, prosecution should be considered in line with the EMM figure 4.

Whilst this approach guides inspectors to a firm enforcement line on risks from exposure to asbestos, it should be remembered that some breaches remain administrative in nature (see EMM Table 5.2), such as the failure to have carried out an assessment; lack of records of RPE or equipment maintenance. These are key parts of the management arrangements and are good indicators of the level of compliance, but their absence in isolation does not demonstrate a 'serious health risk'.

If there is no risk assessment, while this may be a compliance issue, it would be difficult for an employer to show that they have an adequate POW and control regime. In this case, inspectors should scrutinise controls, equipment and work practices to ensure risks are adequately controlled.

Ancillary hazards such as risk of fall from height or working in confined space may need also to be assessed and control measures implemented.

In all cases inspectors need to make a judgement on how far the dutyholder has missed the benchmark.

'All Regulations and where the ACOP gives the dutyholder specific instruction are considered as defined compliance standards. Otherwise guidance sections of the ACOP and HSG and INDG series publications are considered to be 'Established' compliance standards for the purposes of **Enforcement Management Model (EMM)**. The following sections list the key aspects of asbestos inspection work. Each section provides specific enforcement indicators for that type of work to show what compliance should look like in practice.

Note: Local Authority Enforcement officers should be aware that asbestos has not been identified as an activity / sector suitable for proactive inspection by local authorities *except where local intelligence indicates poor performance at which point a decision should be made as to the most appropriate form of intervention.

* This will denote a reference to a periodically updated list of activities/sectors for proactive inspection by LAs – this list is currently out for consultation as part of the National LA Enforcement Code consultation and will be available via the HSE website.

The categories of asbestos inspection

1. Management of asbestos in premises

a) Duties under Reg 4(1):

The specific Reg 4 duty (as opposed to the generality of the Health and Safety at Work etc Act) require those who have responsibilities for maintenance activities in non-domestic premises (not always an individual dutyholder) to take all of the following actions to prevent fibre release and thereby prevent exposure:

- take reasonable steps to find asbestos in the premises and assess the condition of these materials;
- presume that materials do contain asbestos unless there is strong evidence that they do not;
- prepare a record of the location and condition of asbestos-containing materials (ACMs) and assess the risk from them;
- prepare and implement a plan to manage those risks;
- ensure that ACMs are managed in-situ by controlling maintenance work;
- prioritise work for those ACMs that require to be sealed, encapsulated or repaired;
- safely remove ACMs that cannot be managed in-situ;
- provide information on the location and condition of the material to anyone who is liable to disturb it; and
- regularly review the condition of ACMs in order to ensure that the plan remains up to date.

b) Application:

(i) Non domestic premises:

This term applies to commercial, industrial and public buildings as well as 'common parts' of domestic premises, such as the entrance lobby, stairs, lifts, roof spaces, storerooms, communal outbuildings and gardens.

(ii) Rented sector:

Even though Reg 4 does not apply to the majority of domestic premises (e.g. it does not apply to the privately occupied parts of domestic premises) there is still some responsibility on the part of the landlord or managing agent, who are employers, to identify (and control) asbestos. Other relevant parts of CAR (e.g. Reg 5), HSWA, CDM Regulations (Reg 10) and/or the Management of Health and Safety at Work Regulations 1999 should be used to ensure that an appropriate asbestos survey, including sampling, is commissioned by the employer or client initiating the work, before building, refurbishment, maintenance or demolition work takes place in any domestic or non-domestic property. There is an HSE advisory note for social landlords on refurbishment of housing stock that is likely to contain asbestos [3].

(iii) Owner-occupiers:

Owner-occupiers may be responsible for the maintenance and or repair of the common parts of an otherwise domestic property (e.g. buildings with multiple private dwellings). Our advice to these dutyholders should be to carry out a presumptive survey themselves (if they feel competent to do so) and to document the location of presumed ACMs. This information should then be passed on to any contractors brought to work on the premises and given to any new tenants or owners. Where damaged materials are found further work will be

needed to test for the presence of ACMs and steps taken to prevent exposure where necessary.

(iv) Further information on asbestos in schools can be found on the HSE website [4] [5] [6] [7].

c) Intervention priorities:

Priority should be given to the application of Reg 4 to occupied workplace buildings and to where there is refurbishment work planned or in progress.

The following types of premises should be seen as a low priority:

- (i) Premises controlled by domestic tenants or owner occupiers who get together or act separately to have work done in the common parts of a domestic premises e.g. for the stairwell in a flatted tenement building. Enforcement of other parts of CAR12 may be more effective in achieving safe working practices for contractors on site once it is brought to our attention that work is ongoing e.g. regs 6 and 11.
- (ii) Structures other than buildings, e.g. roads, bridges, street furniture.
- (iii) Unoccupied buildings, contaminated land and premises without buildings – A survey as required by CDM Regulations should address most contaminated land projects and the most hazardous forms of asbestos will usually be found within the fabric of a building.

A summarised enforcement guide for DTM can be found in Table 1 below, with more detailed guidance in ACOP L143 [1].

Table 1 – Compliance and administrative guidelines for duty to manage in non domestic premises

Example of evident concern	Risk gap (EMM table 4)	Compliance standard (EMM table 3)	Regulation / ACOP	Initial Enforcement Expectation (IEE) (EMM table 5.2)
No management plan	Absent	Defined	Regulation 4	Improvement Notice
Inadequate management plan	Inadequate	Defined	Regulation 4	Improvement Notice
No assessment	Absent	Defined	Regulation 4	Improvement Notice
Assessment not suitable and sufficient	Inadequate	Defined	Regulation 4	Improvement Notice
No inspection of premises	Absent	Defined	Regulation 4	Improvement Notice
Inadequate inspection of reasonably accessible parts of premises	Inadequate	Defined	Regulation 4	Improvement Notice
Failure to cooperate with duty holder	Absent	Defined	Regulation 4	Improvement Notice
Failure to record assessment/plan	Absent	Defined	Regulation 4	Improvement Notice
Failure to review/update assessment	Inadequate	Defined	Regulation 4	Improvement Notice
Failure to implement the measures	Absent	Defined	Regulation 4	Improvement Notice
Failure to pass on info to person liable to disturb asbestos e.g. workers, new tenants	Absent	Defined	Regulation 4	Improvement Notice

etc (i); emergency services (ii)				
Dutyholder has failed to appoint competent person to manage	Inadequate	Defined	Regulation 4	Improvement Notice

Please note: Table 1 should be used where there is no risk of serious personal injury, that there is no exposure to asbestos fibres. Where exposure to asbestos fibres has been found this should be treated as risk based using EMM table 2.1

2. Non-licensed asbestos work: enforcement indicators

Some non-licensed work is subject to additional notification requirements known as notifiable non-licensed work (NNLW). (NNLW)' is covered in the next section, whilst the below information covers 'non-licensed work'. Further information on these categories of work can be found in the Background section (p.19) and examples of work that can be classed as either NNLW or non-licensed can be found on the website [8].

- a) Non-licensed asbestos work is exempt from the requirements to:
 - i) notify work with asbestos to the relevant enforcing authority;
 - ii) carry out medical examinations;
 - iii) maintain registers of work (health records);
 - iv) hold a licence; and
 - v) to prepare procedures to deal with accidents, incidents and emergencies (see Reg 15(3)).

- b) For work to be classed as non-licensed the following conditions must apply:
 - i) exposure is sporadic and of low intensity; or (see note below) or
 - ii) it is foreseeable that the Control Limit will not be exceeded; or
 - iii) it is not work on asbestos coating; or
 - iv) short duration work (as shown in the risk assessment) on asbestos insulation or asbestos insulating board i.e. when work with these materials will take no more than two hours in any seven day period, and no one person works for more than one hour in that two hour period.
 - v) For the work not to require notification it must also involve work that is:
 - short non-continuous maintenance activities on non-friable asbestos materials;
 - removal of materials firmly linked in a matrix;
 - encapsulation or sealing of ACMs in good condition;
 - air monitoring/analysis.

Note: Work on asbestos coatings (including sprayed coatings or asbestos lagging should never be classed as non-licensed (or NNLW) as it is foreseeable that the Control Limit will be exceeded and exposure will not be sporadic and of low intensity (SALI).

The main guidance for non-licensed asbestos tasks can be found in 'Asbestos Essentials' (HSG210) [9]

Table 2 below outlines the key issues that may lead to enforcement action being considered.

Table 2 – Risk based enforcement guidelines for non-licensed work

Example of evident concern	Risk gap (EMM table 2.1)	Compliance standard (EMM table 3)	Regulation / ACOP	Initial Enforcement Expectation (IEE) (EMM table 5.1)
Work not controlled causing exposure to asbestos fibres and/or spread of ACM	Extreme	Defined	Regulation 11, 16	Prohibition Notice and Improvement Notice
Damaged ACMs - highly likely exposures would occur affecting most people	Extreme	Defined	Regulation 4, 11, 16	Prohibition and/or Improvement Notice
Contamination already occurred highly likely exposures would occur affecting most people	Extreme	Defined	Regulation 6,7,11, 12, 15, 16	Prohibition and/or Improvement Notice
Plan of work or asbestos essentials task sheets not followed/inadequate and work ongoing	Extreme / Substantial	Defined	Regulation 7, 11, 16	Prohibition and/or Improvement Notice
Plan of work non-existent and work on going	Extreme / Substantial	Defined	Regulation 7, 11, 16	Prohibition and/or Improvement Notice
No RPE Face-fit test or certificate and RPE in use	Extreme	Defined	Regulation 11	Prohibition and/or Improvement Notice
RPE/PPE not used and work on going	Extreme	Defined	Regulation 11	Prohibition and/or Improvement Notice
RPE/PPE not maintained and RPE in use	Extreme / Substantial	Defined	Regulation 11 13	Prohibition and/or Improvement Notice

Controls not in use and work on going	Extreme	Defined	Regulation 11,12, 16	Prohibition and/or Improvement Notice
Controls inadequate and work on going risking exposure and/or spread.	Substantial	Defined	Regulation 11,12,13,14,16	Prohibition and/or Improvement Notice
Failure to prevent the spread of asbestos	Extreme	Defined	Regulation 16	Prohibition and/or Improvement Notice
Inadequate wash / decontamination for work activity	Extreme / Substantial	Defined	Regulation 11, 16, 23	Prohibition and/or Improvement Notice
No Cleaning procedures (following work) risking exposure and/or spread of ACM	Extreme	Defined	Regulation 11,16,17	Prohibition and/or Improvement Notice
Inadequate Cleaning Procedures risking exposure and/or spread of ACM	Extreme / Substantial	Defined	Regulation 11,16,17	Prohibition and/or Improvement Notice
Persons carrying out work not adequately trained risking exposure and/or spread of ACM	Extreme	Defined	Regulation 10, 11, 16	Prohibition and/or Improvement Notice
Where work on ACMs is underway, suspected, planned, or about to start, and persons could be exposed to asbestos fibres, e.g. no/inadequate RPE No/inadequate control measures	Extreme	Defined	Regulation 6, 11, 12, 16	Prohibition and/or Improvement Notice

Table 3 below outlines the key issues that may lead to enforcement action being taken for administrative concerns for non-licensed work.

Table 3 – Compliance and administrative guidelines for non-licensed work

Example of evident concern	Risk gap (EMM table 4)	Compliance standard (EMM table 3)	Regulation / ACOP	Initial Enforcement Expectation (IEE) (EMM table 5.2)
No plan of work or asbestos essentials sheet available. Work planned but not started	Absent	Defined	Regulation 7	Improvement Notice
No RPE Face-fit test or certificate. Work planned but not started	Absent	Defined	Regulation 11	Improvement Notice
No risk assessment. Work planned but not started	Absent	Defined	Regulation 6	Improvement Notice
Persons carrying out work not adequately trained	Inadequate	Defined	Regulation 10	Improvement Notice
Inadequate risk assessment	Inadequate	Defined	Regulation 6	Improvement Notice
RPE/PPE not maintained. Work planned but not started	Absent	Defined	Regulation 13	Improvement Notice

3. Notifiable non-licensed asbestos work – enforcement indicators

Notifiable non-licensed work was introduced in the 2012 Regulations – further information can be found in the Background section (p.19) of this document.

Most evident concerns for both risk based and compliance and administrative issues for notifiable non-licensed work are covered in table 2 and 3. The guidance below specifically relates to NNLW compliance and administrative issues.

- a) Notifiable non-licensed work (NNLW) is exempt from the requirements to:
 - i) hold a licence; and
 - ii) to prepare procedures to deal with accidents, incidents and emergencies (see Reg 15(3)).

- b) But employers are required to:
 - i) notify work with asbestos to the relevant enforcing authority;
 - ii) carry out medical examinations; and
 - iii) maintain registers of work (health records);as well as comply with all other regulations.

These requirements will apply to any non-licensed work which does not meet the following requirements (from Regulation 3(2)):

- It is a short non-continuous maintenance task, with only non-friable materials (friability describes how likely an ACM is to release asbestos fibres when worked on, so non-friable materials will only release a small number of fibres during work); or
- It is a removal task, where the ACMs are in reasonable condition and are not being deliberately broken up, and the asbestos fibres are firmly contained within a matrix, e.g. the asbestos is coated, covered or contained within another material, such as cement, paint or plastic; or
- It is a task where the ACMs are in good condition and are being sealed or encapsulated to ensure they are not easily damaged in the future; or
- It is an air monitoring and control task to check fibre concentrations in the air, or it is the collection and analysis of asbestos samples to confirm the presence of asbestos in a material.

Table 4 below outlines the key issues that may lead to enforcement action being taken for administrative concerns for notifiable non-licensed work.

Table 4 Compliance and administrative guidelines for notifiable non-licensed work

Example of evident concern	Risk gap (EMM table 4)	Compliance standard (EMM table 3)	Regulation / ACOP	Initial Enforcement Expectation (IEE) (EMM table 5.2)
Work not notified	Minor	Defined	Regulation 9	Verbal Warning
No medical examinations/health records	Minor	Defined	Regulation 22	Verbal Warning

4. Licensed asbestos removal work – enforcement indicators

- a) For the first time the 2012 Regulations have explicitly defined licensed work, but the scope of licensed work remains unchanged and is not extended. Most work with asbestos insulation, sprayed coatings (but not textured decorative coatings) and asbestos insulating board (AIB) must be carried out by a licensed contractor. However, there are exceptions for asbestos insulation and AIB where the work is short duration (short duration is defined in CAR12 Reg 2(3)).
- b) For licence holders two forms of action taken can be:
 - enforcement
 - amendment or revocation of their licence

These actions may or may not be linked. Any enforcement will be indicated by the EMM and licence action can be taken in liaison with ALU and the ALAARG [11].

- c) Using the control methods and techniques specified in ACOP L143 [1] and in HSG247 [10], it should be possible to reduce exposure to a level where there is 'nil or negligible' residual risk. The employer must first choose the most effective method or combination of methods that minimise fibre release and thereby reduce exposure to the lowest level that is reasonably practicable. The employer should ensure that effective control is sustained for the whole job by means of thorough preparation, planning and monitoring. Work should be stopped when an unforeseen increase in fibre release occurs, e.g. lagging becomes detached. The control measures should be reviewed and further action taken to reduce exposure. Any changes to the plan of work should be explained to the workers and significant changes should be notified in writing to the enforcing authority.

- d) Suitable RPE should be worn where exposure will not be reduced below the control limit by other measures. The RPE used must reduce exposure as low as reasonably practicable below the control limit. RPE should be face-fit tested (where appropriate), well maintained and correctly worn. A respirator with a protection factor of 40 (such as a power-assisted full face-piece respirator with a P3 filter, or equivalent 'hood' or 'blouse') should be used for licensed work inside enclosures.
- e) A combination of all the above practicable controls should achieve the EMM benchmark of 'nil/negligible' risk when fully operational and used correctly.
- f) There may be some circumstances where a higher standard of RPE is necessary. These would include: use of wet-blasting techniques (e.g. grit blasting) to remove well-bonded residual asbestos or methods used to achieve a smooth finish on metal pipes etc. In such situations airline-fed RPE should be used. Workers will require specific training in the use and maintenance of such equipment.
- g) During conventional work requiring a licence the following examples would give fibre concentrations that far exceed the control limits causing the actual risk to quickly rise to 'probable' (i.e. exposure to multiples of the control limit).
 - i) Dry stripping/using power tools;
 - ii) Inadequate or ineffective control;
 - iii) Failure to prevent spread;
 - iv) Inadequate RPE - none worn, badly fitted, disposable masks instead of full face power respirators;
 - v) No face fit testing of tight-fitting RPE or inaccurate fit test results;
 - vi) No enclosure or inadequate (leaking, no airlock and/or baglock etc);
 - vii) Decontamination unit absent / not connected;
 - viii) Inadequate plant e.g. no class 'H' vacuum cleaners or LEV; no or inadequate negative pressure unit(s);
 - ix) Lack of water/power; and
 - x) No/inadequate training.

All inspections on licensed asbestos work should be recorded in line with the IRF.

Note: ALU should be informed of all action taken (including letters) with licensed contractors. ALU needs to be aware of all matters raised with licensed contractors particularly to identify patterns of deficiencies and management issues.

Table 5 and 6 below outline the key issues that may lead to enforcement action being considered for licensed work (in addition to those listed in Table 2).

Table 5 Outline enforcement guidelines for licensed work

Example of evident concern	Risk gap (EMM table 2.1)	Compliance standard (EMM table 3)	Regulation / ACOP	Initial Enforcement Expectation (IEE) (EMM table 5.1)
Inadequate or ineffective controls (e.g. not in line with ACOPs, equipment not BS8520 compliant) risking exposure and/or spread of asbestos fibres	Extreme	Defined	11,12,16	Prohibition and/or Improvement Notice
DCU absent, inadequate or defective / decontamination not followed risking exposure and/or spread of asbestos fibres	Extreme / Substantial	Defined	23,11,16	Prohibition and/or Improvement Notice
Inadequate clean up of work and transit areas risking exposure and/or spread of asbestos fibres	Extreme / Substantial	Defined	11, 16, 17	Prohibition and/or Improvement Notice
Inadequate Clearance Procedures risking exposure and/or spread of asbestos fibres	Extreme / Substantial	Defined	11, 16, 17	Prohibition and/or Improvement Notice
No clearance procedures risking exposure and/or spread of asbestos fibres	Extreme	Defined	11,16 17	Prohibition and/or Improvement Notice

Training does not comply with ACOP	Substantial	Defined	10, 11	Prohibition and/or Improvement Notice
Persons not competent to work in enclosure, and working there and there is risk of exposure to, or spread of asbestos fibres.	Extreme	Defined	11,16, 18	Prohibition and/or Improvement Notice
Inadequate / defective RPE and in use	Extreme	Defined	11	Prohibition and/or Improvement Notice

Table 6 – Compliance and administrative guidelines licensed work

Example of evident concern	Risk gap (EMM table 4)	Compliance standard (EMM table 3)	Regulation / ACOP	Initial Enforcement Expectation (IEE) (EMM table 5.2)
Carrying out licensed work without a licence.	Absent	Defined	Reg 8	See EMM table 5.3 and contact ALU
Work not notified	Absent	Defined	Regulation 9	Improvement Notice
No medical examinations/ health records	Absent	Defined	22	Improvement Notice
No RPE Face-fit test or certificate work planned but not started.	Absent	Defined	Regulation 11	Improvement Notice
No risk assessment but no work activity	Absent	Defined	Regulation 6	Improvement Notice
Persons carrying out work not adequately trained	Inadequate	Defined	Regulation 10	Improvement Notice
Inadequate risk assessment	Inadequate	Defined	Regulation 6	Improvement Notice
RPE/PPE not maintained but no work activity	Absent	Defined	Regulation 13	Improvement Notice

Handling enquiries on inadvertent exposure to asbestos

People who believe they may have been exposed to asbestos are understandably anxious and concerned about the possible effects on their health. Many cases of inadvertent, short-term exposure to asbestos will most likely have led to minimal exposure to fibres, with little likelihood of any long-term ill health effects.

If the person is concerned about possible exposure to asbestos from work activities, advise them to consult their GP and ask for a note to be made in their personal record about possible exposure, including date(s), duration, type of asbestos and likely exposure levels (if known).

If they require more information, direct them to the [FAQs](#) on the asbestos website.

Background

Summary of main provisions in the Regulations and associated ACOPs

Controlling exposure

- If existing asbestos containing materials are in good condition, they may be left in place; their condition monitored and managed to ensure they are not disturbed.
- There is a single Control Limit in the regulations of 0.1f/cm³ (equivalent to 0.1 f/ml) for all types of asbestos. There is also a Short Term Exposure Limit (STEL) within the ACOP of 0.6f/cm³ over 10 minutes.

Licensed work with asbestos

- CAR12 does not change any of the requirements of licensed work. Regulation 2 defines 'licensable work with asbestos' as work:
 - where the exposure to asbestos of employees is not sporadic and of low intensity; or
 - in relation to which the risk assessment cannot clearly demonstrate that the control limit will not be exceeded; or
 - on asbestos coating; or
 - on asbestos insulating board or asbestos insulation for which the risk assessment:
 - demonstrates that the work is not sporadic and of low intensity; or
 - cannot clearly demonstrate that the control limit will not be exceeded; or
 - demonstrates that the work is not short duration work.

Non-licensed work with asbestos

- The 2012 Regulations also introduce new wording into Regulation 3(2), to take account of the EC Reasoned Opinion that the UK had not fully implemented the Asbestos Directive in the 2006 Regulations. In the EC's view, the omission of two terms, 'non friable' and 'without deterioration of non-degraded material', from CAR06 had the effect of widening the scope of the exemption from licensing. This meant that CAR06 allowed more types of work to be exempt from requirements (notification of work, medical examinations and record keeping) than was intended by the Directive.
- This change means that some non-licensed work is subject to additional notification requirements known as notifiable non-licensed work (NNLW).
- The key factors for employers/workers to consider when deciding if work is NNLW or non-licensed are:
 - **The type of work they are planning to do:**
 - **'Maintenance'**, e.g. drilling holes to attach fittings or pass cables through, painting, cleaning etc. Maintenance includes asbestos removal where it is incidental to the main task, e.g. removing an AIB ceiling tile to allow inspection, removing a light fitting or a damaged gasket; or
 - **'Removal'**, e.g. as part of a refurbishment or redesign project; or
 - **Encapsulation**, e.g. work to enclose or seal asbestos materials in good condition; or
 - **Air monitoring and control, and the collection and analysis of samples.**
 - **The asbestos type:**
 - Is it **friable?** - the more friable a material is, the more likely it will release asbestos fibres when worked on and the greater the risk of exposure. Work which disturbs more friable materials e.g. asbestos insulation, will tend to be NNLW and work which disturbs lower friable materials e.g. 'short duration' AIB removal and asbestos cement can normally be treated as non-licensed work; and
 - **How firmly is the asbestos bonded in a matrix?** (For 'removal' work only) – Asbestos-containing materials (ACMs) where the asbestos is coated, covered or contained within another material, such as cement, paint or plastic are considered to be firmly bonded in a matrix, ACMs of this type in good condition can usually be treated as non-licensed work but where they are significantly damaged, and so more likely to release fibres, they will need to be treated as NNLW.
 - **The material's condition:**
 - **Has the material been damaged or is it in poor condition?** – removal of ACMs in poor condition e.g. due

to flood or fire damage, will normally need to be treated as NNLW (but note that weathered AC is not regarded as significantly damaged); and

- **Will the materials' matrix be destroyed when worked on?** – e.g. deteriorating textured decorative coatings e.g. 'Artex' with gel or steam to remove it, and AC roofs that are "dropped" or "munched" off will normally need to be treated as NNLW..
- It is the responsibility of the employer to assess the ACM to be worked on and decide if the work is NNLW or non-licensed work. This will be a matter of judgement in each case, dependent on consideration of the above factors. There is a flowchart in Asbestos Essentials sheet AO [12] to help them decide, plus further information on the asbestos website.
- If work is notifiable non-licensed asbestos work, the employer is required to notify the enforcing authority. This notification has to be before the work starts but there is no minimum time period in advance.
- They also have duties to ensure workers undergo periodic medical surveillance, and that health records are kept. The requirement is for a medical to be carried out every 3 years, and it can be carried out by a non-appointed doctor, e.g. the employee's GP. The medical surveillance requirement for NNLW commenced in April 2015.
- All non-licensed work, whether notifiable or not, needs to be carried out with the appropriate precautions in place, in line with the advice in Asbestos Essentials (if available and specific to the task).

Information instruction and training

- Any workers that either specifically work with asbestos, or who are liable to be exposed to asbestos as part of their job, are required to have been given adequate information, instruction and training. This should be appropriate to the work or role being undertaken. There are three main types of information, instruction and training; licensed, non-licensed and awareness training.
- HSE does not approve individual training providers nor training associations, nor does it approve the content of courses.
- Employees may have a copy of their training certificate (if they have received formal training and one is provided). It should be noted, however, that possession of a training certificate is not a specific legal requirement of CAR12, although many training providers issue them on course completion.

Duty to manage asbestos

- Dutyholders in non-domestic premises have the ‘duty to manage’ asbestos, i.e. identifying the location and assessing the condition of any asbestos in their premises, and taking steps to ensure it is sealed, enclosed or removed, as appropriate, and advising any tradesmen who might disturb it of its presence.

Asbestos analysts

- Analyst organisations must have accreditation under ISO 17025 and 17020 in order to carry out four-stage clearances.
- Air monitoring and the collection and analysis of samples are non-licensed work and therefore do not need to be notified.

Asbestos prohibition

- The prohibitions on the import, supply and use of asbestos are now contained in Section 6 of Annex XVII of the REACH Regulations [13].

The REACH Enforcement (Amendment) Regulations 2013 which came into force on 16 December 2013 grant The Health and Safety Executive (HSE) and Office for Rail Regulation (ORR) the powers to issue an exemption from the prohibition imposed by REACH, for articles which were installed and/or in service before 1 January 2005, subject to a set of conditions to be applied to the exemption certificate to ensure a high level of protection of human health.

HSE will only grant an exemption where there is a valid justification for the requirement of an exemption and if it can be demonstrated that a high level of protection of human health can be ensured [14].

Organisation

Timing

Ongoing topic – to be dealt with in line with operational priorities.

Work recording

Work recording practices should follow normal COIN arrangements and be in line with the latest Work Recording Operational Minutes (OM).

Further references

1. ACOP L143 – Managing and working with Asbestos – Control of Asbestos Regulations 2012

2. OC 130/5 - Enforcement Management Model (EMM) - General guidance on application to health risks
3. Advisory Note on the refurbishment of housing stock likely to contain asbestos
4. Managing asbestos in schools – Frequently asked questions
5. Asbestos checklist for schools
6. Guidance for duty holders produced by the HSE Asbestos in Schools ‘CLASP’ Working Group – March 2007
7. Asbestos Management in schools
8. HSE’s asbestos website
9. Asbestos Essentials task/Equipment and method sheets- free to download individual sheets HSG210
10. HSG247 - Asbestos: the licensed contractors’ guide - Comprehensive guidance for licensed contractors
11. HSE50 - Asbestos licence assessment, amendment and revocation guide (ALAARG)
12. Asbestos Essentials Sheet AO
13. OC253/11 REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) – Guidance on the Regulation
14. REACH exemption certificates
15. INDG223 - Managing asbestos in buildings: A brief guide
16. HSG264 - Asbestos: The survey guide