

CONTROL OF ASBESTOS AT WORK REGULATIONS 2002

The Control of Asbestos at Work (CAW) Regulations 2002 have established a specific legal duty, taking effect from May 2004, to identify and manage risks due to asbestos in workplace premises. INTO has been calling for such a duty to be introduced for many years and fully supports the introduction of the Regulations. This INTO briefing gives guidance on ensuring duty holders comply properly with the "duty to manage", including a checklist for use by INTO representatives in their discussions with employers, and on sources of further guidance.

1 THE "DUTY TO MANAGE" ASBESTOS RISKS

The CAW Regulations' requirements apply to those who own, occupy, manage or have responsibility for premises which may contain asbestos (referred to as "duty holders") and require duty holders to take the following actions:

- Take reasonable steps to determine the location and condition of likely asbestos-containing materials (ACMs);
- Presume that materials contain asbestos unless there is strong evidence that they do not;
- Assess the likelihood of anyone being exposed to fibres from these materials;
- Prepare a written plan setting out how the risks from the materials are to be managed, and take the necessary steps to put the plan into action;
- Maintain an up-to-date record of the location and condition of ACMs or presumed ACMs in the premises and 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.

The CAW Regulations also require those in control of premises to either manage the risk from asbestos materials or co-operate with whoever manages that risk.

In discharging their responsibilities under the CAW Regulations, duty holders must also comply with other relevant statutory obligations. In particular, obligations to consult and provide information to trade union safety representatives must be complied with.

2 DUTY HOLDERS IN EDUCATION ESTABLISHMENTS

Regulation 4 of the CAW Regulations defines the duty holders under the Regulations as "every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises" and goes on to state that "where there is more than one duty holder, the relative contribution to be made...will be determined by the nature and extent of the maintenance and repair obligation owed by that person".

The ultimate overall responsibility for health and safety matter affecting employees and others rests with the employer.

The INTO advises, therefore, that employers are required under the CAW Regulations to take the lead in ensuring that the "duty to manage" asbestos is complied with in schools where they are the employer. Governing bodies and principals of such schools are, in turn, required to co-operate with the employer and follow its advice at all times. The INTO also advises that, for practical reasons, the ELBs should also be prepared to fulfil this role in relation to those schools in which the governing body is in law the employer.

An INTO checklist indicating the steps which ELBs should take to meet this requirement is set out in section 5 below.

3 INTO GUIDANCE ON COMPLYING WITH THE "DUTY TO MANAGE"

The following considers three specific aspects of ensuring duty holders' compliance with the "duty to manage":

- Determining the presence of asbestos with particular reference to conducting asbestos surveys;
- Preparing asbestos management plans; and
- Conducting consultation with employees.

Determining the Presence of Asbestos

The "duty to manage" does not specifically require asbestos surveys to be carried out. The regulations require "reasonable" steps to be taken to identify potential asbestos.

The HSE advises, however, the surveys may be needed depending on what is found during an initial assessment.

The INTO believes that asbestos surveys should be carried out in all schools unless there is good reason not to do so (e.g. the age of the premises makes it very unlikely that asbestos will have been used in its construction or maintenance).

Some education employers will previously have carried out some form of survey, in particular for the "condition surveys" required under the Asset Management Planning process. It should not, however, be assumed that such surveys satisfy the requirements of the "duty to manage".

Surveys should be undertaken by competent personnel. The HSE advises that they can either be external consultants or in-house staff who have received sufficient appropriate training.

Where potential asbestos-containing materials are identified, the HSE sets out three options for duty holders in determining the action to be taken. Depending on the size and complexity of the premises, any or a combination of these steps may be taken:

- To presume that all potential asbestos-containing materials do in fact contain asbestos unless this can be specifically ruled out;
- To establish in each case whether asbestos is actually present or not by sampling;
- To conclude that no such materials contain asbestos (this, however, is only permissible on the basis of strong evidence e.g. records of building plans or age of the building).

Where surveys are carried out, the information obtained must be recorded in writing and set out whether ACMs/presumed ACMs are present, their locations and condition and, if known, the type of asbestos involved.

HSE guidance document **MDHS100** published in July 2001 includes detailed guidance on surveying, sampling and assessment of asbestos-containing materials and on related issues such as informing employees and recording and presenting survey data.

Preparing Management Plans

Duty holders must prepare written plans setting out how the risks from any potential asbestos material are to be managed.

Such plans will need to cover the following:

- Decisions and rationale on options for managing risks;
- Timetable and priorities for action on removal or encapsulation;
- Arrangements for monitoring materials to be left in place;
- Responsibilities of staff;
- Arrangements for informing and training staff (including contractors);
- Timetable and procedure for review of management plan;
- Dealing with emergency situations.

Management plans should in all cases provide that information about the location and condition of presumed asbestos and will be provided to all employees and others who are liable to disturb it and also to the emergency services.

Duty holders should take immediate action to deal with identified damaged/disturbed materials before preparing the above plan. Duty holders should also ensure that safe systems of work are in place to prevent the disturbance of potential asbestos materials before the management plan is in place.

The options for managing risks from presumed asbestos will range from adopting a "once and for all solution", whereby competent specialists identify and remove asbestos, to recording information about presumed asbestos and set up a system of monitoring and review in case of deterioration.

The HSE's present advice is that **"if asbestos-containing materials are in good condition and are unlikely to be damaged or disturbed, then it is better to leave them in place and to introduce a system of management."**

Consultation with INTO

When duty holders consider their management plan, they must determine who is going to oversee the process and also how to consult with employees and keep them informed.

Trade union safety representatives have the right under the Safety Representatives and Safety Committees Regulations 1978 to be consulted on matters affecting employees they represent.

The INTO therefore has the right to be consulted, via its accredited safety representatives, about employers' proposals to undertake work to meet the requirement of the "duty to manage" and to see any records made in connections with this work or any other records relevant to asbestos issues. This will be of assistance to INTO in the context of discussions with employers about their strategic role in this area; and to safety representatives in the context of casework relating to individual schools.

4 CHECKLIST FOR INTO SAFETY REPRESENTATIVES

The following checklist will assist safety representatives in ensuring that their employer is taking appropriate action to implement the Regulations.

General

- Has the employer issued guidance on the new "duty to manage" asbestos to principals, governing bodies and safety representatives?
- Has the employer issued guidance to voluntary-aided and foundation schools including guidance on the full extent of their responsibilities?
- Has the INTO been consulted on such guidance and previously on matters relating to asbestos management and removal?

Determining the Presence of Asbestos

- Has the employer already surveyed schools in order to determine the location and condition of asbestos containing materials?
- If so, has the INTO received the reports of all individual school surveys?
- Has the employer allocated adequate funding centrally for the identification of potential asbestos, including the costs of further surveys where appropriate?
- Does the employer intend to survey all schools for the presence of asbestos?
- If not, what system is proposed to determine whether surveys are necessary in individual schools?
- Will the employer itself organise asbestos surveys of schools, using appropriately qualified/trained staff to carry out such surveys?
- If not, what process will be in place to verify that identification work and surveys have been carried out appropriately?

Preparing Management Plans - Removing Asbestos

- Will the employer commit itself to the terms of INTO policy that asbestos will be removed from schools unless this is **completely** impractical?
- Will the employer allocate adequate funding for the removal of asbestos?

Preparing Management Plans - Managing Asbestos

- Will the employer issue detailed guidance to schools on management plans for managing asbestos?
- Will the employer maintain an up-to-date record of the location and condition of materials containing asbestos or suspected asbestos which are left in place in schools?
- Will the employers' guidance to schools on management plans for managing asbestos include adequate arrangements for the following:
 - Maintaining an up-to-date record of the location and condition of materials containing asbestos or suspected asbestos?
 - Monitoring and reviewing the location and condition of those materials?
 - Ensuring that employees are informed about the location and condition of those materials?
 - Ensuring that contractors are informed about the location and condition of those materials?
 - Dealing with emergency situations?
 - Recording incidents of actual or possible exposure of employees to asbestos?
- What arrangements will be in place for employer monitoring and verification of individual schools' compliance with guidance on managing asbestos?
- Will there be an agreed timetable and procedures for reviewing the employer's management plan and guidance to schools?

Consultation with INTO

- Has the employer consulted, or has it agreed to consult, the INTO with regard to its guidance to schools on asbestos management?
- Will the employer's guidance to schools emphasise the right of INTO safety representatives to be consulted at school level on asbestos management?

5 FURTHER INFORMATION

HSE Guidance

The Health and Safety Executive (HSE) asbestos campaign website, which contains information on the "duty to manage" and other aspects of the 2002 regulations, can be found at www.hse.gov.uk/campaigns/asbestos while the general HSE asbestos website can be found at www.hse.gov.uk/asbestos/.

"A Short Guide to Managing Asbestos", HSE guidance for employers on the "duty to manage" is available (free for single copies) from HSE Books via www.hsebooks.co.uk. The HSE Approved Code of Practice, "L127: The management of asbestos in non-domestic premises", and HSE Guidance Notes, "MDHS 100: Surveying, Sampling and Assessment of Asbestos Containing Materials" on asbestos surveys, are available from HSE Books.

INTO members who require further support and information should contact their Northern Committee or CEC representative or the Northern office on 028 9038 1455.

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