

Notes on:

HSE Document: “Inspection Pack for Duty to Manage Asbestos in Premises”.

This document was prepared by



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In November 2007, the Health & Safety Executive (HSE) published a document entitled “Inspection Pack for Duty to Manage Asbestos in Premises”.

This document is fifty two pages long and appears to be a guide for HSE Inspectors on how to implement enforcement action on premises that do not have asbestos management plans in place.

Key Points:

- The duty to manage asbestos in premises was introduced into law on 21/05/2004, under Regulation 4 of the Control of Asbestos Regulations 2006.
- The duty requires those who have responsibilities for maintenance activities to assess whether there is any asbestos in their premises and either remove it or manage it. This duty requires the duty holder to take six key actions.
- In the work-year 2007/08 HSE senior management are advocating a more proactive approach to enforcement of CAR 2006. During routine planned or reactive site inspections inspectors should consider enforcement action to deal with immediate risks.
- “Preventative prosecutions” will be taken without waiting for the occurrence of a specific asbestos “incident”, such as contamination of a work area during maintenance work.
- Inspectors and enforcement officers are provided with a list of prosecution tips.
- In order to assist inspectors in enforcing the regulations, examples of “Model Notices” (seven Improvement Notices and eight Prohibition Notices) are included for guidance.

The document contains:

- Six parts;
- Four appendices; and
- Eight Model Notices.

Part 1. Why managing asbestos is a priority.

Part 2. Legal requirements.

Part 3. “Asbestos: don’t take the gamble” communication campaign.

Part 4. Enforcement expectations.

Part 5. Work recording.

Part 6. Further guidance material.

The following are relevant extracts from the document, that could affect your premises and your position as a Director or Senior Manager.

Part 2. Legal requirements.

- 2.1. The duty to manage asbestos in premises was introduced into law on 21/05/2004 and is enforced under regulation 4 of the Control of Asbestos Regulations 2006.
- 2.2. The duty 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 or other 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 them.
- 2.3. This duty requires the duty holder to take the following key actions:
- To take reasonable steps to find any asbestos in the premises and assess the condition of these materials;
 - To presume that materials do contain asbestos unless there is strong evidence that they do not;
 - To prepare a record of the location and condition of these asbestos containing materials (ACM's) and assess the risk from them;
 - To prepare and implement a plan to manage those risks, eg fibre release from friable AIB panels; and
 - To provide information to the location and condition of the material to anyone who is liable to disturb it;
 - To monitor the condition of the material left in place, and to review the assessment of risk periodically.

Part 4. Enforcement expectations.

General Approach

- 4.1. In the work-year 2007/08 HSE senior management are advocating a more proactive approach to enforcement of CAR 2006 to build on previous duty to manage inspections and awareness raising work --.
- 4.2. During routine planned or reactive site inspections inspectors should consider enforcement action to deal with immediate risks using legislation --- when they find the following circumstances:
- Where no survey has been carried out and there are no robust management systems in place implement the results of a presumptive survey;
 - There is no management plan to deal with the asbestos risks;
 - Maintenance workers or others working in a building being exposed or liable to be exposed to a significant risk from asbestos during maintenance operations;

- People using the building being exposed or liable to be exposed to a significant risk from ACM's in poor condition, eg walking past friable asbestos insulating board;
- Where no information and or training have been provided to those liable to disturb asbestos.

Preventative prosecutions.

- 4.7. --- there is an expectation that prosecutions will be taken without waiting for the occurrence of a specific asbestos “incident”, such as contamination of a work area during maintenance work. --.
- 4.8. Less experienced inspectors and enforcement officers may wish to use the following list of prosecution tips:
- **Identify the risk-** Look for serious failures to control risk from ACM's, eg ACM's in poor condition/damaged or ongoing maintenance activities on suspected ACM's.
 - **Identify the duty-holders and their roles.**
 - **Take photographs and samples-** Where the target risk is identified take photographs immediately after alerting the duty-holders to the risk. --.
 - **Gather evidence of exposure-** Where you need to prove exposure you should gather information that will help the Occupational Hygienist to provide a “guestimate” of exposure, including exposure frequency and duration, the nature of the work and the type of tools in use, RPE used, the room dimensions (where appropriate) and the type, location and conditions of the ACM's.
 - **Take witness statements-** Obtain the names and addresses of all those at and risk and brief statements from key witnesses and from the person in control of the site eg premises manager and/or subcontractor foreman.
 - **Take/copy documents-** Such as “duty to manage” (DTM) Management Plan, any surveys (what type?), method statements, training records, risk assessments or records of their safety officer's visits or audits. Obtain copies of any letters or other enforcement action showing previous advice on this subject.
 - **Engage a director-** Call a director or senior manager to the site of the problem and inform him of the facts, action taken and action required. Advise that a report will be submitted for consideration of proceedings regarding the company, but that the company will be offered an interview before the final decision is taken to prosecute or a report is sent to the Procurator Fiscal (Scotland only).
 - **Create an Inspector's/enforcement officer's statement-** As soon as possible prepare a draft statement about what was seen, heard and action taken.

- **Interview the director etc-** Send a letter offering an interview to the suspect(s) as soon as possible after the site visit. Fax/e-mail a copy, if possible, to the suspect(s) in addition to posting.
- **Record and report information gathered-** Record all documents obtained on the CPI list (see appendix 4), prepare a report and submit it with an EMM form to the Principal Inspector (HSE only) for consideration/approval.

Appendix 1- Risk control indicators

These indicators have been selected against which performance will be measured.

1. Precautionary approach adopted

- There is an asbestos record (register) and it is up to date;
- There is a responsible person to ensure all maintenance work is strictly regulated;
- ACM's known with system to check records or ACM's not known but system for checking the materials before work;
- Written procedures for task;
- Initial look/inspection for damage ACM'; remedial action taken when appropriate;
- Assessment performed by competent person;
- Maintenance workers trained on asbestos;
- System to check arrangements working.

The main problem is people working on ACM's unknowingly or being in the vicinity of those in poor condition. An initial inspection for damaged materials that may contain asbestos is very important. This is a quick inspection to find out if there are problems that need dealing with immediately.

- **A score of 1 should only be allocated when all the elements are in place and should represent a situation where the inspector believes that no further improvement is possible.**
- **A score of 4 should indicate that enforcement action is appropriate.**
- **For scores of 3 and 2 enforcement actions may be appropriate.**

2. Inspections and assessment of asbestos

- All documentary evidence obtained and checked;
- Other sources of information including employees consulted;
- Assessment inspections (ie survey) carried out to assess presence of asbestos or presumed asbestos;
- Survey quality and accuracy checked;
- Information recorded (register) on ACM's/suspect ACM's;
- Risk assessment of ACM's carried out and recorded.

- **A score of 1 should only be allocated when all the elements are in place and should represent a situation where the inspector believes that no further improvement is possible.**
- **A score of 4 should indicate that enforcement action is appropriate.**
- **For scores of 3 and 2 enforcement actions may be appropriate.**

3. Management plan prepared

- Written plan identifies areas with ACM's or presumed ACM's and risks;
- Responsible person appointed to co-ordinate ACM management;
- Plan specifies remedial action and management of asbestos in place (including unaccessed areas);
- Timetable for implementation of plan;
- Disturbance investigation and monitoring arrangements established;
- Mechanism for informing employees and contractors of locations of ACM's;
- System for checking arrangements work and plan reviewed.

The remedial action included in this and earlier stages should have gone a long way towards preventing exposure to asbestos. However, this management of ACM's must continue, ensuring that the condition and location of all ACM's is known and this information passed on to those liable to disturb them. Employees and anyone else working on site need to know their responsibilities, what action they should take if they find any damaged or deteriorated ACM's and how to work safely on them. A review of the management plan should typically be done every 12 months or where there is a significant change to the organisation or personnel responsible for its implementation.

- **A score of 1 should only be allocated when all the elements are in place and should represent a situation where the inspector believes that no further improvement is possible.**
- **A score of 4 should indicate that enforcement action is appropriate.**
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Appendix 2- Aide memoire- dealing with immediate risk(s) on site.

During the course of a routine inspection, there are indicators that ACM's may not be being managed, or situations that arise, that provide you with the opportunity to quickly assess their approach. These are situations that call into question the premises' approach to the management of asbestos. For example if an electrician is fitting new wiring but has no knowledge of whether the material being worked on contains asbestos, then ACM's are not being managed.

Indicators that ACM's may have been or could be disturbed.

1. Ongoing or recently completed building work that may have disturbed the fabric of the building.
2. Building trades working on the fabric of the building on routine maintenance, such as replacing light fitting.
3. Evidence of mis-matched building materials, such as a suspended ceiling, with one or two new ceiling tiles; or partly replaced pipework insulation.
4. Damaged building materials, which could contain asbestos (eg holes in wall panel). Even if you know it doesn't contain asbestos (eg fibreglass pipework insulation), they may not?
5. Debris such as pipework insulation in the boiler house.
6. Building materials that could contain asbestos (eg pipework insulation, ceiling tiles etc).
7. Regular movement of traffic or personnel that could cause building materials to be damaged (eg fork lift trucks damaging wall panels).
8. The premises in a poor state of repair.

Questions to ask as appropriate.

1. Who is responsible for the management of ACM's on your premises and what training have they had?
2. Did any ACM's have to be removed as a result of the building work?
3. Do you know the location of your ACM's and their condition?
4. Who controls maintenance workers to ensure they don't unknowingly work on ACM's?
5. What do you do if you find an ACM?
6. Could you have people working in areas where damaged ACM's exist?

They should be able to explain to you how to prevent building materials being worked on, where the content is not known, and what systems they have for monitoring the condition of materials in the building.

Finally.

In order to assist inspectors in enforcing the regulations, examples of eight "Model Notices" (seven Improvement Notices and eight Prohibition Notices) are included for guidance: (the Prohibition Notices are not included in this list, as they all relate asbestos removal processes that would be carried out by a licensed contractor).

Type of Notice	Statutory Provision Contravention	Reason for Contravention
Improvement	CAR 2006, Regulations 6, 7, 11. MHSWR 1999, Regulation 5.	That maintenance/ repair/ other (insert nature of work) work that is likely to disturb asbestos has not been assessed and a plan of work drawn up to reduce exposure to the lowest level reasonably practicable.
Improvement	CAR 2006, Regulation 4(3-10).	You failed to: a) Carry out a suitable and sufficient assessment of the presence of ACM's in the premises. b) Monitor the condition of any ACM's. c) Ensure that ACM's are properly maintained or where necessary safely removed.
Improvement	CAR 2006, Regulation 10.	You have failed to provide your employees, who supervise and or carry out work in connection your duties as an employer, with adequate information, instruction and training about the risks and precautions associated with working with asbestos containing materials.
Improvement	CAR 2006, Regulations 4(3), 4(4) and 4(5)(b).	You have not made an inspection of your premises that are reasonably accessible for the purpose of assessing whether asbestos is or liable to be present in the premises.
Improvement	CAR 2006, Regulation 4 (3)-(10).	You have failed to manage the risks from asbestos in non-domestic premises where you have an obligation for the maintenance or repair of these premises/where you are in control of said premises (delete as appropriate).
Improvement	CAR 2006, Regulations 4(8), 4(9) and 4(10).	You as a duty-holder have failed to: a) Draw up a plan to manage the asbestos or any asbestos containing substances in the premises. b) Record how the plan will be implemented.
Improvement	CAR 2006, Regulations 4(9)(c)(i) and 7.	Your plan to manage asbestos does not include suitable measures to ensure that information about the location and condition of any asbestos containing materials is provided to every person liable to disturb them.