

The Control of Asbestos at Work Regulations 2006 – Regulation 4

Background

Asbestos remains the largest single cause of work-related deaths in the UK and is prevalent in all but the newest of buildings since blue and brown asbestos were only banned in 1985 and white asbestos in 1999. It is estimated that some 2 million buildings in the non domestic sector contain asbestos.

What are the Regulations?

The Control of Asbestos Regulations 2006 came into force on 13 November 2006 but Regulation 4 which replaces word for word Regulation 4 of the 2002 was aimed specifically at dealing with asbestos lying undisturbed in the fabric of buildings by imposing duties to manage asbestos in business premises in order to reduce workers' exposure to asbestos-related illnesses and deaths.

The Regulations are aimed at protecting workers by providing them with information which will enable them to plan their work more safely and they apply to all non-domestic premises; this means all premises or parts of premises which are not private dwellings. In a block of flats for example, this would exclude the flats themselves but include the common parts such as the stairs and lifts.

Who is affected?

The Regulations require every person who has an obligation to maintain or repair all or a part of business premises under a contract or tenancy, irrespective of the length of term, to comply with the duties under the Regulations.

Where there is no contract or tenancy, every person who has to any extent control of the relevant part of those premises or any means of access to and from them will also have to identify where asbestos materials may have been used and comply with the duties under the Regulations.

Depending on the circumstances, the duty holder could be the landlord, tenant, managing agent, surveyor or architect.

There may be more than one person on whom the duty rests at any one time and the division of responsibility will depend on the degree of control that person possesses. In multi let premises, the landlord could be responsible for the external and common parts of the premises and the tenant for the internal parts. No one can 'contract out' of their duties under the Regulations.

Risk Assessment and Management Plan

Every duty holder is required to see that a suitable and sufficient risk assessment is carried out to identify whether asbestos is present in the premises. Where there is more than one duty officer there is an obligation to cooperate in the production of the risk assessment.

In making the assessment, the duty holder is required to take such steps as are reasonable in the circumstances. The condition of any asbestos which is or has been assumed to be present must be considered carefully. This could include a systematic search of all plans, drawings, specifications and maintenance records for the premises and a physical search of areas such as the roof voids and pipe ducts and inspection of fire doors and walls.

Any material which looks as if it might contain asbestos should be presumed to contain asbestos until further analysed.

If asbestos is identified, a written record must be kept of its location, quantity and condition. The record must also show whether there are any parts of the building which have not been assessed.

If the asbestos located is in good condition and unlikely to be disturbed then there is no obligation to remove it, but its location and condition must be recorded and monitored at regular intervals.

From this record, an assessment of the risk of exposure by an individual should be made and a management plan must be drawn up and reviewed at regular intervals. The management plan must be made available, not only to employees, tenants, occupiers and contractors, but also to potential purchasers, valuers, surveyors and the emergency services.

Failure to comply

The Regulations are enforced by the Health & Safety Inspectors, who conduct spot-checks on these management plans. Further information can be obtained from the Health and Safety Executive's website – www.hse.gov.uk

Failure to comply is a criminal offence and, if tried in the Crown Court, can lead to an unlimited fine and imprisonment for up to two years. If a death actually results from work activity involving asbestos, then manslaughter charges may be brought.

Summary

We recommend that if you have not already done so then you start acting now by:-

- a) taking steps to identify asbestos in your premises and checking its condition;
- b) presuming that any material about which you are uncertain contains asbestos, unless there is strong evidence to the contrary;
- c) making a written record of the location and condition of any asbestos or inspected asbestos and updating it at regular intervals;
- d) assessing the risk of exposure to other persons at the premises;
- e) preparing a management plan to ensure that the asbestos is either kept in good condition, repaired or removed as appropriate; and
- f) ensuring that adequate information is readily available to anyone that might need to refer to it.

Barlow Robbins LLP is a leading legal practice providing a full range of legal services to business and individuals. With offices at Guildford, Godalming and Woking, our partners and staff are committed to providing a first rate service combining professional and technical skills with extensive practical experience. Our offices below deal with commercial property work including sales and purchases, leases, tenancy agreements and rent reviews. You can find out more details about the practice and the work which it undertakes on our website at www.barlowrobbins.com.

Note:

This information sheet is provided for your general information only, and does not seek to set out the legislation in this area in detail or to provide specific advice. If you have any queries, or wish to discuss specific circumstances, please contact a member of the commercial property team based at Guildford or Woking.

Guildford

The Oriol, Sydenham Road
Guildford, Surrey GU1 3SR
☎ 01483 562901

Gordon Reid
Kathryn Shaw
Tanuja Sellahewa
Roger Davis

Woking

Concord House, 165 Church Street East
Woking, Surrey GU21 6HJ
☎ 01483 748500

Mike England	Victoria McDonagh
Helen Archibald	Elizabeth Hailey
Graham Wilson	Simon Fulford
Roger Smith	Angela Flanagan