

Control of asbestos regulations

Asbestos is a material used in buildings, construction, and fire-resistant materials, which can lead to serious health implications.

Asbestos became increasingly popular among manufacturers and builders in the late 19th century until the 1980s because of its sound absorption, average tensile strength, its resistance to fire, heat, electrical and chemical damage, and affordability. It was used in such applications as electrical installation and in building insulation. When asbestos is used for its resistance to fire or heat, the fibres are often mixed with cement – so it can be all around us.

Many regulations over the years have been implemented by the Government to tackle the use, control, and management of asbestos, including its removal.

The Control of Asbestos Regulations 2012 [1] came into force on 6 April 2012, updating previous asbestos regulations to take account of the European Commission's view that the UK had not fully implemented the EU Directive on exposure to asbestos (Directive 2009/148/EC).

In practice, the changes to previous regulations are limited. They mean that some types of non-licensed work with asbestos now have additional requirements, i.e., notification of work, medical surveillance and record keeping.

All other requirements remained unchanged. We, therefore, will concentrate on the 2006 Regulations in this briefing note.

The Control of Asbestos Regulations 2006 came into force on 13 November 2006 and brought together three previous sets of regulations covering the prohibition of asbestos, control of asbestos at work and asbestos licensing. This briefing note should not be relied upon as legal advice, and you should contact a surveyor for advice on your specific circumstances.

We are not able to give you any legal advice on your conformity with the regulations, and this note is merely a guide to bring to your attention the importance of having a survey and the main requirements of the regulations.

What are your requirements?

You have under the 2006 regulations a duty to manage asbestos in any premises where you are a duty holder. You are in control of premises if you are in occupation. Be careful, therefore, if you are a tenant, the part you occupy under a lease is your responsibility, not your landlord (unless the landlord has accepted responsibility which they rarely will).

Regulation 4 of the Control of Asbestos Regulations 2006 obliges the 'duty holder' to manage the risk from asbestos in non-domestic premises to ensure that workers, visitors, and anybody on the premises are no longer knowingly exposed to any potential or real risk.

In many cases, a duty holder is clearly the person or organisation in charge of business premises, that is, non-domestic premises. Your responsibility for a particular part will be defined in your lease or contract. In an office block, therefore, an owner (freeholder) may be responsible for the common parts of a building whilst the leaseholders take care of the parts that they occupy.

In some circumstances, the duty may even be passed to a third party, such as a managing agent. If this is the case, here is also a requirement for occupiers to co-operate to allow the duty holder to comply with the regulations.

What are your main responsibilities with asbestos?

Duty holders must:

- Take reasonable steps to identify asbestos within their premises, including how much is there and its condition. This will require an asbestos survey, and the cost is the responsibility of the duty holder – so, if you're taking a lease or buying a business, you're not responsible until completion.
- Assume materials contain asbestos unless there is evidence that they do not and have proof that they do not contain asbestos.
- Complete a written record of the location of the asbestos or presumed asbestos. This should be contained in the survey.
- Carry out a risk assessment. Again, the surveyor will provide this, but it is your responsibility to maintain and to update this where necessary or where it comes to your attention that asbestos is present where it was assumed none was.
- Prepare a plan setting out how any risk will be managed.
- Implement the plan and ensure that any work carried out does not expose people to asbestos.
- Pass on information about asbestos-containing materials to those who need it.
- Monitor and review all the above arrangements periodically.
- The 2012 regulations have slightly increased obligations on duty holders regarding licensed work to premises, the removal of asbestos and the requirement for anybody working with asbestos being under the surveillance of a doctor.

Are there any punishments for non-compliance?

Non-compliance with Regulation 4 is a criminal offence, punishable with a fine of up to £20,000 and/or imprisonment for up to 12 months.

It is advisable that you do not merely pay lip service to the asbestos regulations. They are important and will land you in trouble for non-compliance, financially, as well as possible prison time.

For more information and advice, please always instruct a surveyor and for practical assistance, visit:
<http://www.hse.gov.uk/asbestos/regulations.htm>.

For advice on arranging a survey or for your obligations under the regulations, contact our specialist team at enquiries@solegal.co.uk.