

Asbestos Licensing Unit (ALU)
Asbestos Liaison Group (ALG)
ALG Memo 01/07

ALG memos are produced by the ALG to provide information and guidance to the asbestos industry and other interested stakeholders.

Date: 20 February 2007

Subject: Provision of Respiratory Protective Equipment

1. The purpose of this memo is to clarify the legal requirements with regard to the provision of respiratory protective equipment (RPE).
2. The Control of Asbestos Regulations 2006 (CAR) require the use of suitable RPE (so far as is reasonably practicable) when working with asbestos. Under Section 9 of The Health and Safety at Work Act 1974 (the Act), employers cannot charge employees (or allow employees to be charged) in respect of "anything done or provided in pursuance" of specific requirements of health and safety legislation.
3. The duty to provide appropriate RPE and ensure that it is adequately maintained rests with the employer.
4. Some workers may be considered to be self-employed for tax purposes. These workers are still likely to be classified as 'employees' under the Act. Anyone who could be considered to be a genuine sub-contractor and therefore taking responsibility for providing their own RPE, would be required to hold a licence to work with asbestos in their own right and comply with the relevant parts of CAR with regard to notifications, medicals etc.
5. In circumstances where employees bring their own RPE to work, the employer would still have the duty to ensure that the equipment was suitable. The employer would need to establish that the equipment was fit for purpose before any work was undertaken. Robust systems need to be in place to ensure it is used correctly and maintained appropriately. This must incorporate adequate documentation, including records of current face-fit testing. See paragraphs 218 to 225 of the Approved Code of Practice (L143, *Work with materials containing asbestos*). The employer retains the legal responsibility for RPE for the duration of the work.
6. With regard to labour supplied by a licensed Asbestos labour supply agency, the annex to ALG memo 6/05 refers. In short, the agency, as employer, is responsible for supplying RPE for employees; the agency must also supply current face fit records to the company actually carrying out the work with asbestos for the purposes of on-site documentation.
7. Enforcement action is liable to be taken against employers where evidence is found of charges being levied on employees for any form of protective equipment or clothing.
8. Employees also have a general duty under the Act to co-operate with the employer to enable health and safety requirements to be complied with. For example, an employee is required to store RPE appropriately, to wear it as designated by the employer and take reasonable steps to ensure that it is looked after through pre-use checks etc.

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