

Transposition Note

1. This note sets out the way in which the Control of Asbestos Regulations 2006 (the ‘Asbestos Regulations’) and an associated Approved Code of Practice (ACoP) transpose the main elements of Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work (the Asbestos Worker Protection Directive – or AWPD) as amended by Council Directive 91/382/EEC and, in particular, Directive 2003/18/EC.
2. The Asbestos Regulations are made under the Health and Safety at Work etc Act 1974 and therefore apply only in Great Britain. Northern Ireland and Gibraltar will bring forward separate measures necessary to implement the Directive in those territories. As explained in the table below, the Maritime and Coastguard Agency are implementing the extension of the Directive to sea transport (see Article 1(2)).
3. The provisions of AWPD which have not been amended by Directive 2003/18/EC, have been brought forward into the Asbestos Regulations unchanged. This Transposition Note nevertheless indicates where all the provisions of AWPD have been transposed while highlighting (**in bold**) the changes made to implement the provisions of AWPD amended by Directive 2003/18/EC.
4. The Asbestos Regulations and the associated ACoP do what is necessary to implement AWPD and the amendments Directive 2003/18/EC makes to it. However, like earlier Regulations, they continue to go beyond the requirements of the Directive in three important respects. First, they retain requirements that work with certain materials containing asbestos where the risks of exposure to asbestos fibres are considered high (eg work with asbestos insulation board), must be carried out by contractors licensed by the Health and Safety Executive (HSE). This regime has been in place since 1983 as a result of domestic, UK policy that it is necessary to have such a regime over and above the requirements of AWPD.
5. Second, they retain the duty to manage asbestos in non-domestic premises (regulation 4). The duty to manage was introduced in 2004 and addresses the need for those who have control of non-domestic premises to identify whether asbestos is present, and if so, put into action a plan of work to ensure that anyone who might be exposed to asbestos fibres is protected.
6. Third, our implementation of the amended Article 8. Article 8 requires employers to ensure that workers are not exposed to airborne concentrations of asbestos in excess of 0.1 fibres per cm³ as an **8-hour** time-weighted average. However, the definition of “control limit” in regulation 2(1) defines this as 0.1 fibres per cm³ as a **4-hour** time weighted average. This is tighter than the Directive and has been done to reflect normal working practice in determining levels of airborne concentrations of asbestos.
7. As explained in the Explanatory Memorandum, the Asbestos Regulations makes a change to the licensing regime by aligning the scope of these requirements with the scope of those (such as notification) that are derived from AWPD. Regulation 3(2), which implements Article 3(3), also disapplies the licensing requirements from work which is likely to be “sporadic and of low intensity”. This change has no effect, in practice, on the types of materials containing asbestos which are subject to the licensing regime. However, it does have the effect of removing most work with textured decorative coatings containing asbestos (TCs) from the licensing regime. Almost all work with such materials is likely to be “sporadic and of low intensity” and, as a result, the ACoP advises that most work with TCs no longer requires a licence. It also means that only licensed work will be notified and only licensed workers will need health records and medicals.

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Asbestos Worker Protection Directive (AWPD) as amended by Directive 2003/18/EC			
Article	Objective	Implementation	Responsibility
Article 1	Sets out the aim of AWPD – the protection of workers from the risks arising from exposure to asbestos.	Many provisions place duties on employers to protect their employees eg regulation 6. Regulation 3(1) applies Regulations to self-employed persons.	Secretary of State
Article 1(2)	Disapplication to sea and air transport deleted by Directive 2003/18/EC.	Asbestos Regulations applies to air transport but contains a disapplication in relation to activities on board ship (regulation 3(6)). This reflects the responsibility for health and safety that the Maritime and Coastguard Agency (MCA) has. The MCA are covering the application to sea transport under separate regulations on which consultation finished in July.	Secretary of State and MCA
Article 2	Defines the various types of asbestos – amended by Directive 2003/18/EC	Regulation 2(1) – see Note 1 below	Secretary of State
Article 3(1)	Application of Directive to activities in which workers may be exposed to asbestos dust.	Implicit in regulations as a whole	Secretary of State
Article 3(2)	Requires the assessment of risk of exposure to asbestos	Regulation 6(1)	Secretary of State
Article 3(3)	Provides a derogation from compliance with provisions in Article 4, 15 and 16. – amended by Directive 2003/18/EC.	Regulation 3(2) – see also Explanatory Memorandum	Secretary of State
Article 3(3) bis	New provision introduced by Article 2003/18/EC requiring Member States (MS) to lay down practical guidelines for the determination of sporadic and low intensity exposure (Article 3(3)).	Regulation 3(3) provides power for HSC to establish practical guidelines which are specified in the associated Approved Code of Practice. (see also Explanatory Memorandum)	Secretary of State. For ACoP, the HSC with the consent of the Secretary of State
Article 3(4)	Risk assessment to be the subject of consultation with workers and/or their representatives	Implemented through the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996	Secretary of State
Article 4(1)	Requires notification of work with asbestos to an enforcing authority (except where provided for by Article 3(3))	Regulation 9	Secretary of State
Article 4(2)	Requires notification before	Regulation 9(1) and Schedule 1	Secretary of

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Article	Objective	Implementation	Responsibility
	work commences and for the notification to include a description of the work. Amended by Directive 2003/18/EC		State
Article 4(3)	Provides for access for workers and/or their representatives to notification documents	Implemented through the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996	Secretary of State
Article 4(4)	Amended by Directive 2003/18/EC by requiring a new notification each time changes in working conditions may result in an increase of exposure to asbestos.	Regulation 9(2)	Secretary of State
Article 5	Prohibits the application of asbestos by spraying. Amended by Directive 2003/18/EC by adding prohibition on activities which expose workers to asbestos during extraction, manufacture or processing of asbestos products or products with asbestos intentionally added.	Regulations 25, 26, 28 and 29	Secretary of State
Article 6	Directive 2003/18EC replaces original Article 6 with new provision requiring exposure of workers to asbestos to be reduced to a minimum and in any case below the limit value (control limit) laid down in Article 8. This to be achieved in particular through a number of specific measures such as limiting the number of workers.	Regulation 11, 14, 17 24 and 30	Secretary of State
Article 7	Directive 2003/18/EC replaces original Article with new provision requiring sampling of asbestos in the air to ensure compliance with control limit laid down in Article 8. Sampling to be done by suitably qualified personnel and by the WHO recommended method.	Regulations 2(1) (definition of control limit), 19 and 20. Provision on consultation implemented through the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996	Secretary of State

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Asbestos Worker Protection Directive (AWPD) as amended by Directive 2003/18/EC			
Article	Objective	Implementation	Responsibility
	Sampling to be carried out after consultation with workers and/or their representatives.		
Article 8	Directive 2003/18/EC replaces original Article. Requires employers to ensure that workers are not exposed to airborne concentrations of asbestos in excess of 0.1 fibres per cm³ as an 8-hour time-weighted average. This single limit for all forms of asbestos replaces separate limits for amphiboles and chrysotile	Regulations 2(1) (definition of control limit) and 11 (see paragraph 6 above)	Secretary of State
Article 9	Provisions relating to the adaptation of the Directive to technical progress.	Not applicable	Not applicable
Article 10(1)	Amended by Directive 2003/18/EC by requiring that the reasons for any exceeding of the single control limit (Article 8) are identified and appropriate measures taken as soon as possible.	Regulation 11(5)	Secretary of State
Article 10(2)	Requires determination of asbestos in air concentrations to ensure measures taken are effective	Regulation 11(5)	Secretary of State
Article 10(3)	Directive 2003/18/EC replaces original provision by providing that where exposure cannot be reduced by other means, then the use of RPE should be used, but that this should be kept to a minimum. Requires the provision of appropriate breaks from working with RPE where necessary in consultation with workers and/or their representatives	Regulation 11. This is supported by an ACoP which draws attention to the need to comply with the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State. For ACoP, the Health and Safety Commission with the consent of the Secretary of State
Article 10(a)	New provision inserted by Directive 2003/18/EC requiring employers to take necessary steps to identify materials containing asbestos before carrying out demolition or maintenance work.	Regulation 5	Secretary of State

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Asbestos Worker Protection Directive (AWPD) as amended by Directive 2003/18/EC			
Article	Objective	Implementation	Responsibility
Article 11(1)	Amended by Directive 2003/18/EC requiring employers to put in place measures to protect workers from the spread of dust arising from asbestos outside the premises	Regulation 16	Secretary of State
Article 11(2)	Requires consultation with workers and/or their representatives on measures required by Article 11(1)	Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State
Article 12(1)	Requires a plan of work to be drawn up before work with asbestos in started	Regulation 7	Secretary of State
Article 12(2)	Amended by Directive 2003/18/EC by adding to the measures that the plan of work should specify	Regulations 7 and 17	Secretary of State
Article 12(3)	Requires the plan of work to be notified to enforcement authorities when requested	Covered by s.20(2)(k) of the Health and Safety at Work etc Act 1974	Secretary of State
Article 12(a)	New Article inserted by Directive 2003/18/EC requiring employers to provide appropriate training for all workers who are likely to be exposed to asbestos. Training to be provided at regular intervals, be sufficient to provide the necessary knowledge and skills and must cover certain elements	Regulation 10	Secretary of State
Article 12(b)	New Article inserted by Directive 2003/18/EC requiring firms carrying out demolition or removal work to provide evidence of their ability to do so.	Regulation 8 for licensable work. For non-licensable work regulations 10(1)(b) and 7 supported by ACoP	Secretary of State. For ACoP, the Health and Safety Commission with the consent of the Secretary of State
Article 13	Prescribes the demarcation of asbestos work areas, the facilities and equipment to be provided with these areas and the activities limited within them.	Regulations 14, 18 and 23	Secretary of State
Article 14	Prescribes the information to be given to workers and/or their	Regulation 10 and Safety Representatives and Safety Committee	Secretary of State

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Asbestos Worker Protection Directive (AWPD) as amended by Directive 2003/18/EC			
Article	Objective	Implementation	Responsibility
	representatives on work with asbestos and the results of the measurement of the concentration of asbestos fibres	Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	
Article 14(2)(b)	Amended by Directive 2003/18/EC by requiring the provision of information to workers should the control limit be exceeded.	Regulations 2(1) (definition of control limit), 10(2)(c) and 11(5)(b)	Secretary of State
Article 15	Subject to Article 3(3) requires an assessment of workers health prior to work with asbestos.	Regulation 22	Secretary of State
Article 15(3)	Amended by Directive 2003/18/EC by adding a requirement for continuing medical surveillance should the doctor or authority responsible think it necessary	Regulation 22(9)	Secretary of State
Article 16(1)	Subject to Article 3(3), requires records of exposure to asbestos to be made.	Regulations 19(3) and 22	Secretary of State
Article 16(2)	Amended by Directive 2003/18/EC by increasing the length of time an employer must keep the record from 30 to 40 years	Regulation 22(1)(b)	Secretary of State
Article 16(3)	Amended by Directive 2003/18/EC by requiring that the medical records be made available to the responsible authority in cases where an undertaking ceases trading.	Regulation 22(8)(c)	Secretary of State
Article 16(a)	New Article inserted by Directive 2003/18/EC requiring MS to provide for adequate sanctions in the event of breach of the requirements of AWPD	No change needed to Regulations. Sanctions for breaches of health and safety law are dealt with under the Health and Safety at Work etc Act 1974.	Secretary of State
Annex I (deleted)	Annex I set out details on the reference method for measuring the concentration of asbestos fibres in the air. This has been replaced by the reference to WHO recommended method (Article 7)	Regulation 2(1) (definition of control limit)	Secretary of State
Annex II	Sets out practical recommendations for the clinical assessment of workers	These are only recommendations so there is no need for implementation. However, the provisions carried	Health and Safety Executive

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Article	Objective	Implementation	Responsibility
	(Article 15). Minor changes made by Directive 2003/18/EC to point 3.	forward in regulation 22 covers health examination in overall terms and this is supplemented by guidance for doctors issued by HSE	

Note 1. Regulation 2(1) elaborates the amended definition. This is to rectify an inaccuracy in the way in which the Directive now defines asbestos. The Directive places a (*) against each number and indicates that this refers to the number in the CAS Registry. The CAS Registry applies the (*) to all numbers except that for chrysotile – hence the lack of a (*) against this substance in regulation 2(1).