

Asbestos Licensing Unit (ALU)
Asbestos Liaison Group (ALG)
ALG Memo 6.05

To: Members of the Asbestos Liaison Group

From: Trevor Johnson
Head of ALU

Date: 14 December 2005

Subject: **Asbestos (Licensing) Regulations 1983**
Hiring employees: Licensed Asbestos Labour Supply “Agencies”, etc.

1 The previous version of this memo (“Hiring employees”) was issued in December 2003 when it came up for automatic review. The information is still valid and the policy in respect of organisations that act as “agencies” for the supply of labour at operative level to other asbestos licence holders is unchanged. However the memo has been expanded to contain additional information about other lending situations. It will be available on the Internet shortly. It replaces the previous version of ALG Memo 7/03 and ALPI Memo 12/03, which should now be destroyed.

Background

2 From time to time, licence holders may need to hire temporary personnel to supplement labour. In such circumstances, in order to comply with the Asbestos (Licensing) Regulations 1983 (ASLIC), the licence holder must either recruit directly, or hire personnel from other licence holders (ie another licensed asbestos removal contractor), or from a company with an asbestos licence from HSE to supply labour. The arrangements are described below.

Licence holders who supply labour but undertake no work in their own right (“labour supply agencies”)

3 The requirements for the “labour supply” company and the licensed contractor to whom they supply labour are summarised in Annex 1.

4 Organisations who hold a licence to supply labour, but who do not actually undertake work themselves are not permitted to supply employees to supervise or manage the work being undertaken by other licence holders. The asbestos licensed contractor actually doing the work is responsible for supervising and managing the people and the work.

5 The conditions contained in “labour supply” licences (see paragraph 3 of Annex 1) differ from those included in usual licences. The normal 14 day notification period is not required of “labour supply” licensees. Instead they are required to notify details of their employees, their hire contacts etc, as specified in their licence condition, to the Head Office ALPI every three months in arrears. They must also obtain the exposure records for their employees whilst they were working for other licence holders and must retain the records for 40 years.

Licence holders who undertake work in their own right (ie “regular” licensed asbestos removal contractors) and supply labour

6 Licence holders in this category may supply their employees (ie operatives) to work under the supervision of other licensed contractors (these employees will not act in a supervisory or management capacity but see paragraph 9). If the licence holder supplies labour infrequently (defined as less than once a month), then they are not required to notify the enforcing authority about this. This is covered by the last sentence in standard licence condition 2 concerning notification – the salient part is in bold. “This condition will not apply to work carried out under regulation 3(2)(a) of ASLIC as amended **or when the licensee hires out employees (at operative level) to other licensees**”.

7 If the licence holder regularly supplies labour (defined as at least once a month) then they must inform the Head Office ALPI every three months in arrears. In these circumstances, standard licence condition 2 will be modified to remove the reference in bold above, and a further licence condition regarding hiring will be added as follows:

“Whenever any of your employees (at operative level) are hired out to other asbestos licence holders, you must supply the following information to the Asbestos Licensing Principal Inspector at the xxxx HSE office on a 3-monthly frequency, retrospectively: the name and address of the other contractor(s), employees’ names, date of commencement and duration of hire term(s)”.

(NB For ease of reference the standard licence conditions are included in Annex 2).

Exposure records

8 Licence holders who hire in labour, must record exposure levels for the period during which the temporary staff have worked for them and provide this information to the licence holder who supplied the labour. The licence holder supplying the labour must ensure that they obtain this information in order to complete their employees’ exposure records making sure that there are no gaps in the documentation. More details of responsibilities for licence holders who actually do the work and hire in labour are contained at paragraph 2 of Annex 1.

Supplying Supervisory or Management Personnel

9 If a licence holder supplies an employee to work in a supervisory or management capacity for another licence holder, then both licence holders are deemed to have responsibility for the work. In such situations, both companies are required to notify the enforcing authority at least 14 days before the work commences. Organisations who hold a “labour supply” licence are only permitted to supply personnel at operative level (paragraph 4 refers).

Employer’s Liability Compulsory Insurance

10 Although not an asbestos licensing issue per se, both the licensed “labour supply” company and the licensed asbestos removal company will require appropriate Employer’s Liability Compulsory Insurance, suitably extended to cover working with asbestos. Department for Work and Pensions solicitors have confirmed that it will be acceptable for the “agency” company to hold “contingent” cover (sometimes known as “secondary” cover), with the licensed removal contractor who actually does the work holding “primary” asbestos cover.

11 In checking that adequate cover is in place for licensed contractors (including “labour supply” companies), HSE inspectors are likely to ask to see the insurance schedule or policy, in addition to the ELCI certificate. The documentation for licensed “labour supply” companies should state that the company supplies trained asbestos operatives for work with other asbestos contractors

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ANNEX 1

Licence holders (“labour supply agencies”) who supply labour but undertake no work in their own right

1 Company A (ie the “labour supply agency” company who hire out operatives) will:

- (a) need a licence (a copy of which should be available for inspection at all work sites);
- (b) be responsible for their employees’ training (inc refresher), medical surveillance, face fit testing; RPE provision and maintenance of ongoing health records;
- (c) only supply their employees to work under the supervision of another licensed contractor (ie Company A’s employees would not act in a supervisory or management capacity);
- (d) be required to demonstrate their competence at initial assessment and supplement this at reassessment by providing practical examples of monitoring their employees’ health and safety, maintenance of employees’ records etc;
- (e) be required to vet the contractors for whom their employees would work to ensure the latter’s health and safety (not a licence condition — but an area to be covered at assessment. Eg we would expect Company A to make enquiries of Company B about their health and safety record; the extent of supervision on site; clarification of checks, recording keeping systems etc in order for them to feel confident that Company B is a reasonable contractor who will ensure the health and safety of Company A’s employees. This information should be recorded and made available for discussion at assessment);
- (f) require contracts which specify a range of health and safety issues eg ensuring the safety of their employees, rights for their employees to stop work should they have concerns about the standards/work practices they encounter on site; right to inspect working conditions of their employees including the right to enter enclosures; arrangements for examination and test of RPE etc;
- (g) supply Company B with face fit, medical, training etc records for their employees for purposes of on site documentation.
- (h) notify the Head Office ALPI on a 3 monthly frequency of their contracts, so that the level of work can be gauged and linked to visit reports for assessment purposes or on earlier occasions should problems arise.

2 Company B (ie the asbestos licensed contractor actually doing the work with asbestos) will be responsible for:

- (a) the plan of work and equipment specification;
- (b) all plant and equipment;
- (c) supervising, managing and being responsible for work practices/work on site;
- (d) supplying PPE for employees including hired personnel (the licence holder supplying labour will provide RPE for their own employees);

- (e) notifying the work (ASB5) to the Enforcing Authority;
- (f) checking that hired personnel have been appropriately trained, face fit tested for RPE, and have undergone medicals etc and copies of these records should be kept with other site documentation;
- (g) recording exposure levels for hired personnel and ensuring this information is provided to the licence holder who supplied the labour for maintenance of health surveillance records.

Licence conditions for Company A

3 The licence conditions for Company A (ie the “labour supply agency” company who hire out operatives) are as follows:

- (a) “this licence (including any Schedule), or a copy thereof, should be made available on request by the licensee for inspection by any person to whom the licensee submits a tender or quotation for work with asbestos insulation or asbestos coating or asbestos insulating board and shall be available for inspection at all work sites”;
- (b) “work under the terms and conditions of this licence will be restricted to the hiring out of employees, who have current training, medical and face fit test certificates, to other licensed asbestos contractors”;
- (c) “employees hired out under the terms and conditions of this licence will not act in a supervisory or management capacity and must be under the supervision of the licensed contractor doing the actual work with asbestos”;
- (d) “a record of each of your employee’s exposure to asbestos, while working for other licensed asbestos contractors, should be retained in compliance with regulation 18 of the Control of Asbestos at Work Regulations 2002”.
- (e) “whenever any of your employees are hired out to other asbestos licence holders, you must supply the following information to the Head Office Asbestos Licensing Principal Inspector at the HSE (xxx) office on a 3-monthly frequency: the name and address of the other contractor(s); employees’ names and date of commencement and expected duration of the loan term(s).”

There are no conditions in relation to notification (other than 3e) or provision of method statement/equipment specification.

ANNEX 2

Standard asbestos licence conditions

1	This licence (including any Schedule), or a copy thereof, should be made available by the licensee for inspection at the request of any person to whom the licensee submits a tender or quotation for work with asbestos insulation or asbestos coating or asbestos insulating board and shall be available for inspection at all work sites. A copy of the licence shall accompany each notification required by Condition 2.
2	The licensee shall give notice in writing of the work to the appropriate HSE or local authority office at least 14 days before the work is commenced, or such other period as the authority will allow. The notice shall specify the type of work to be carried out, the likely duration of the work, the address of the premises at which the work is to be carried out and the date of commencement of the work activity. The enforcing authority must be informed in writing as soon as possible if this information changes. This condition will not apply to work carried out under regulation 3(2)(a) of the Asbestos (Licensing) Regulations 1983 as amended or when the licensee hires out employees (at operative level) to other licensees.
2a	For licence holders who regularly hire out operatives, but also undertake work in their own right, condition 2 will end after "This condition will not apply to work carried out under regulation 3(2)(a) of the Asbestos (Licensing) Regulations 1983 as amended ". An extra condition (2a) will then be added as follows: Whenever any of your employees (at operative level) are hired out to other asbestos licence holders, you must supply the following information to the Asbestos Licensing Principal Inspector at the xxxx HSE office on a 3-monthly frequency, retrospectively: the name and address of the other contractor(s), employees' names, date of commencement and duration of hire term(s).
3	The notice of work required by Condition 2 above shall include: (a) a suitable and sufficient written statement of the method of work to be used. (b) a suitable and sufficient written specification of the equipment for the protection and decontamination of those engaged in asbestos work and also for the protection of other persons, as appropriate to your work.