

| Health and Safety Commission Paper | | HSC/05/103 | |
|------------------------------------|---|-------------------|----------------|
| Meeting Date: | 11 th October 2005 | Open Gov. Status: | Partially open |
| Type of Paper: | Above the line | Paper File Ref: | |
| Exemptions: | Paragraph 8 under Section 36(2)(b)(i) and (ii) – prejudice to the conduct of public affairs | | |

HEALTH AND SAFETY COMMISSION

Proposals to consult on revised Asbestos Regulations and an Approved Code of Practice

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Issue

1. Publication of a Consultation Document on revised asbestos Regulations and an Approved Code of Practice (ACoP). The CD sets out our plans to:

- implement an EC Directive; and
- simplify and rationalise the legislative regime.

2. Most of the proposals should be welcome (they tighten the current regime) but there is significant trade union and asbestos licensed contractor concern about the HSE proposal that asbestos-containing textured decorative coatings (TCs) should come out of the list of materials in the ACoP that require a licence for removal work. The HSE view is that up to date scientific evidence suggests the risks presented by work with TCs is lower than previously thought, and substantially lower than the level required to attract a licence.

Timing

3. Urgent. It will be difficult to complete the consultation process in time to bring the Regulations into force by the EC implementation date of 15 April 2006.

Recommendation

4. The Commission is invited to approve the CD at Annex 1 for publication.

Background

5. All forms of asbestos are carcinogenic. There are currently around 3,500 deaths each year from asbestos-related diseases (largely determined by the level of exposure before the introduction in the 1980s of modern and more stringent regulations). The current changes in conjunction with those introduced in 2002 (especially the duty to manage) are intended to: (1) strengthen controls to reduce asbestos exposure; and (2) to increase employer and employee awareness of the presence of and risks from work with asbestos containing materials. Without such controls, it is estimated that from a baseline year of 2000, 7,800 individuals will go on to develop a fatal asbestos related disease as a result of new exposures over the next fifty years. In practice, both the regulatory regime and HSE's wider work to raise awareness and encourage the correct controls through its disease

reduction programme and asbestos campaign (see para 19) will help deliver improved worker protection.

6. Implementation of amendments to the Asbestos Worker Protection Directive (AWPD) requires changes to the Control of Asbestos at Work (CAW) Regulations 2002, the Asbestos (Licensing) Regulations 1983 (as amended) and the Asbestos (Prohibition) Regulations 1992 (as amended). HSE proposes to take this opportunity to update and simplify the current legislative regime in line with the wider Government agenda to reduce burdens on business, and to embed a consistent and risk-based approach.

7. The attached CD (Annex 1) includes a copy of the amending Directive (Annex A of the CD) and revised Control of Asbestos at Work Regulations (Annex B of the CD) which transpose the amending Directive in GB in relation to all industries except for water-borne transport which is the responsibility of the Maritime and Coastguard Agency (MCA).

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9. The proposals were presented to HSE's Better Regulation Challenge Panel, set up to ensure proposals for domestic legislation and emerging EU proposals meet the Government's new better regulation requirements. The panel was content but requested this paper flagged the possible delay in implementation (para 3); proposed changes in accreditation not based on the directive (para 14 (iii)); and plans for ensuring compliance in industries that encounter asbestos on a less regular basis (para 19).

10. Annex C of the CD contains a new ACoP that combines information from, and will replace, the current ACoPs L27 'Work with asbestos which does not normally require a licence' and L28 'Work with asbestos insulation, asbestos coating and asbestos insulating board' and some guidance material from 'A guide to the Asbestos (Licensing) Regulations 1983' (L11). HSE considers ACoPs rather than guidance to be the appropriate status for advice on work with asbestos, as ACoP material is used to cover those ways of working that HSE thinks are necessary in order to comply with the relevant Regulations.

Argument

11. Many of the Directive's requirements are met by current asbestos Regulations or ACoPs. However, where the requirements are currently within an ACoP, they largely need to be moved to a Regulation to comply with the Directive. Most of the requirements in current legislation will nevertheless remain unchanged as a result of transposition.

12. **Main changes arising from the Directive:** The main requirements of the Directive which require significant changes to UK legislation are:

- i. **A new concept of sporadic and low intensity exposure to asbestos, where such work is exempt from notifying HSE and worker medical surveillance.** This requires a move from the current exclusively materials based approach to a more risk based approach in legislation and also gets rid of the little understood 'action levels'. However, in practice the type of asbestos material is still very important and so for simplicity and ease of compliance, the ACoP continues to specify those materials and work practices that will require a licence.
- ii. **A single, lower 'Control Limit' of 0.1 fibres per cm³ of air.** This replaces and tightens the different limits for amphibole (blue and brown) asbestos (0.2 f/ cm³) and chrysotile (white) asbestos (0.3 f/ cm³). It is proposed to retain our 4 hour measurement period rather than the Directive's 8 hour period as this is more in line with current GB practice.

- iii. **A new, World Health Organisation asbestos fibre counting method.** This requires different asbestos fibre counting procedures so that in some cases more asbestos fibres will be counted. It also allows discrimination of asbestos fibres from non-asbestos fibres so that non-asbestos fibres can be discounted.

13. The summary of the CD provides a fuller outline of these proposals (see paragraph 7 of the CD at Annex 1).

14. **Main additional changes proposed by HSE:** The most notable additional changes *not* driven by the Directive, are:

- i. **The combination of CAW, ASLIC and the Prohibitions Regulations to form a single set of Regulations.** This simplifies the regulatory regime.
- ii. **The alignment of the criteria for an HSE asbestos licence and for notifying the enforcing authority of work with asbestos.** There is currently a mismatch between notification to the enforcing authority and licensing, and the proposal will mean that only those who carry out licensable work will have to notify the work in future.
- iii. **The introduction into Regulations of the requirement that those issuing clearance certificates for reoccupation after asbestos removal work is completed meet particular accreditation requirements.** This brings accreditation requirements into line with the 4-stage clearance procedure that was introduced into the CAW ACoP in 2002. An accreditation scheme was not ready in 2002 but has now been fully developed and laboratories that undertake this work are in the process of being accredited.

15. The summary of the CD provides a fuller outline of these proposals (see paragraph 8 of the CD at Annex 1).

16. The change detailed at paragraph 12(i) introduces a risk-based approach to define what comes within the new concept of sporadic and low intensity asbestos exposure. HSE proposes to take the opportunity to align the requirement to have a licence with this risk based approach to ensure a simpler and more consistent regulatory regime.

17. In practice, this alignment substantially maintains the status quo for the requirements to have a licence. However, the risk assessment which accompanies the RIA and recent research undertaken by HSL on the removal of TCs as part of wider work on AWPD (jointly sponsored by HSE and the ABI), has shown that exposure to asbestos during most work with TCs is significantly lower than previously believed, taking it below the level appropriate to make the work licensable. In order to maintain a credible regulatory regime that is based on sound science and proportionate risk-based solutions, we recommend that HSC consult on the removal of TCs from licensing requirements on the condition (in the regulations) that appropriate controls are in place to ensure that the work will not exceed the control limit. A summary of the risk assessment and the research and its implications are at Annex 2.

18. Removing TCs from the ACoP list of licensible materials is a controversial proposal: there are concerns from the TUC, TGWU, GMB and UCATT; the Asbestos Removal Contractors Association (ARCA); and some victim support groups that it will send the wrong message (ie that work with TCs is safe), and lead to reduced standards of worker protection. Others, however, have welcomed the risk-based approach and support the proposal based on the scientific evidence.

19. HSE recognises these concerns but does not accept that in law health and safety standards will be lowered. It has also included in the draft ACoP clear advice on how work involving TCs should be undertaken safely. HSE is looking to increase awareness and compliance with asbestos legislation amongst maintenance workers within its Disease Reduction Programme (DRP) (which is now broadening its focus from the duty to manage campaign to include the protection of maintenance workers). We are keen to engage the unions, ARCA, the Asbestos Control and Abatement Division of the Thermal Insulation Contractors Association (ACAD), and other stakeholders in the DRP to ensure all workers are adequately protected and this will include ensuring that appropriate controls for TCs are in place and adhered to. We want to continue to secure worker protection while taking appropriate opportunities to reduce unnecessary regulatory burdens and base regulation in sound science.

20. As drafted, the CD sets out the current scientific evidence; suggests the HSC's preference is to take TCs out of the licensible list of materials in the ACoP and gives advice on the safe removal of TCs; and asks consultees for their views and supporting reasons. Given the concerns raised about TCs (also see para 21 below), HSC may prefer to consult on the package including the questions on removing TCs from the need for a license, but without expressing its preference in respect of the outcome.

Consultation

21. Informal consultation has taken place with key stakeholders including the Asbestos Liaison Group with representatives from GMB and TGWU; ARCA and ACAD; UKAS Technical Advisory Committee; the Royal Institution of Chartered Surveyors (RICS); and representatives from local authorities. Overall consultees were content with the proposals and particularly welcomed the move to a single set of Regulations and a single control limit. The issue of removing the requirement to have a licence for work with TCs was the main area of controversy.

22. HSE undertook a small firms' impact test (detailed in the RIA, para 8.2) that indicated that the proposed changes would not impose a disproportionate burden on small businesses.

23. We suggest a three month consultation period from November 2005 to January 2006 to continue to try and meet the 15 April deadline for implementation (see para 3).

Presentation

24. The Commission will be aware that there will be robust opposition to proposals to remove TCs from the requirement to have a licence, and possibly to the proposal to introduce a single lower control limit, with attendant Ministerial and media interest. We do not expect other proposals to raise any significant opposition. We have already met key interested stakeholders and will be running targetted workshops to explain the proposals during consultation (as part of a stakeholder and media handling strategy).

Costs and Benefits

25. The costs and benefits are detailed in the RIA at Annex 3.

Financial/Resource Implications for HSE

26. The cost to HSE of developing the Regulations, ACoP and RIA and preparing for consultation is estimated to be £300,000 so far and completion of the regulatory package following consultation is estimated to cost a further £100, 000. Training of inspectors on recent asbestos developments is due in 2006 and the additional costs of training on the changes in the Regulations and ACoP will be minimal.

Environmental Implications

27. From July 2005, new Waste Acceptance Criteria (WAC) were introduced by the Environment Agency (EA) which require asbestos waste to be disposed of in landfill sites/cells containing no other types of waste. However, none of the changes required as a result of the amendments to AWPD are designed to affect the levels of asbestos removal taking place or the rate at which asbestos is removed in the future. Levels of disposal are therefore expected to be unaffected.

Other Implications

28. None.

Actions

29. The Commission is invited to approve the CD for publication.