HSC/05/103 I

HSC
Health & Safety
Commission

Proposals for revised Asbestos Regulations and Approved Code of Practice

This consultative document in issued by the Health and Safety Commission in compliance with its duty to consult, under section 16(2) of the Health and Safety at Work etc Act 1974.

Comments should be sent to:

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to reach there no later than ?? January 2006

The Commission tries to make its consultation procedure as thorough and open as possible. Responses to this consultation document will be lodged in the Health and Safety Executive's Information Centres after the close of the consultation period where they can be inspected by members of the public or be copied to them on payment of the appropriate fees to cover costs.

Responses to this consultation document are invited on the basis that anyone submitting them agrees to their being dealt with in this way. Responses, or part of them, will be withheld from the Information Centres only at the express request of the person making them (Under Code of Practice on Access to Government Information; Environmental Information Regulations 1992 and the Data Protection Act 1998). In such cases a note will be put in the index to the responses identifying those who have commented as asked that their views, or part of them, be treated as confidential.

Many business e-mail systems now automatically append a paragraph stating the message is confidential. If you are responding to this CD by e-mail and you are content for your responses to be made publicly available, please make this clear in the body of your response that you do not wish any standard confidentiality statement to apply.

CONSULTATIVE
DOCUMENT

Further copies of this document may be obtained from HSE Books – see back cover

Annex 1

Proposals for Revised Asbestos Regulations and Approved Code of Practice

CONSULTATIVE DOCUMENT

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PREFACE

The Health and Safety Commission (HSC) would like your comments on proposals for revised asbestos Regulations and a revised Approved Code of Practice. A form is included at annex F, at the back of this booklet to help you do this. It repeats the questions set out in the main text below. Please feel free to copy this consultative document more widely. Further copies are available from the address on the back cover and on the Internet on the Health and Safety Executive (HSE) home page at:

http://www.hse.gov.uk/consult/live.htm

Acknowlegements:

HSC wishes to thank all those who have assisted HSC and HSE with the development of these proposals.

Why are we consulting you?

The Health and Safety Commission seeks to inform its decision-making by consulting a wide range of interested bodies and individuals. HSC believes that this will enable an open and transparent approach to decision-making, which is essential if policies and decisions are to have widespread ownership and reflect the needs and aspirations of the people they will affect. HSC then decides on the best way forward based on an interpretation and analysis of the results of this exercise.

What we would like you to do:
We would like you to comment on these proposals by ?? January 2006. Please send your comments to:

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If you reply to this consultative document in a personal capacity, rather than as a postholder of an organisation, you should be aware that information you provide may constitute “personal data” in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the “data controller” and will process the data for health and safety and environmental purposes. HSE may disclose these data to any person or organisation for purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected. Please note all replies will be made public unless you specifically state you wish yours to be made confidential.

Responses in electronic form are welcome. Many business e-mail systems now automatically append a paragraph stating that the message is confidential. If you are sending your comments by e-mail please state clearly if you are not content for your response to be made public.

We have included a reply form at annex F summarising the areas where we would welcome your views; it will also help us to analyse responses. It is not intended to restrict the scope of the comments: we would welcome any comments you wish to make on the proposals.

What happens next?

We will acknowledge all responses and give full consideration to the substance of arguments in the development of proposals; we may also contact you again if, for example, we have a query.

Respondents should be aware that the UK is bound to implement EU Directives in full, and this is, in part, what these draft Regulations are intended to do. There is therefore limited scope to amend the draft Regulations where they directly transpose Directive requirements.

Making responses public:

To make our consultation process as transparent as possible we make the comments we receive available to the public at our information centre in Bootle. If you do not want your comments made publicly available please make this clear in your response. Copies will be made available at a small charge to cover costs, from the following address:

Health and Safety Executive
Bootle Information centre
Bootle
Merseyside L20 3QZ

Feedback, queries and complaints:

The Health and Safety Commission/Executive would also like to know what you think about this consultation, both the content and layout. Your views may help to improve further consultations. If you are not satisfied with the way in which this consultation exercise has been conducted you can complain by contacting:

Rachel Russell
Health and Safety Executive
Rose Court
2 Southwark Bridge
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SE1 9HS

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome, you can raise the matter with the Director-General of HSE at the Health and Safety Executive, Rose Court, 2 Southwark Bridge, London SE1 9HS. You can also

write to your MP to take up the case with us. Your MP may refer the matter to the Parliamentary Commissioner for Administration (the Ombudsman) who will investigate your complaint.

SUMMARY

1. This Consultative Document (CD) seeks views on draft Regulations and an Approved Code of Practice (ACoP) to implement amendments to the European Asbestos Worker Protection Directive (AWPD) and other changes to the existing asbestos regulatory framework.

2. There are currently three sets of regulations that control exposure to asbestos:

a) The Control of Asbestos at Work Regulations 2002 (CAW), which govern the way all work with asbestos is done, to ensure it is done safely[1].

b) The Asbestos (Licensing) Regulations 1983 (ASLIC), as amended, which require work with all the more hazardous asbestos-containing materials to be done by a contractor licensed by HSE[2].

c) The Asbestos (Prohibitions) Regulations 1992 (Prohibitions Regulations), as amended, which ban the importation, supply and use of raw asbestos and asbestos-containing materials[3].

3. The proposals repeal and replace CAW, ASLIC and the Prohibitions Regulations. In arriving at this proposal, we have taken into account the findings from a regulatory impact assessment (RIA). The RIA examines the impact of implementing the amendments to the Directive and other proposed amendments to current asbestos legislation on the relevant industries and on worker exposure to asbestos fibres over the next 50 years. The RIA is provided at the end of this CD (Annex D).

4. Asbestos is a naturally occurring mineral and was used extensively for about 150 years. It is versatile, plentiful and ideal as a fireproofing and insulation material. Three types have been extensively used in Great Britain (GB):

Crocidolite	'blue asbestos'	These two are part of a group of types of asbestos called amphiboles
Amosite	'brown asbestos'	
Chrysotile	'white asbestos'	

5. All forms of asbestos are considered to be carcinogenic. Inhalation of asbestos fibres can cause three main diseases: mesothelioma (a cancer of the lining of the lung), lung cancer and asbestosis. Asbestos currently causes around 3,500 deaths each year through these diseases.

6. In 2003 the European Union (EU) amended the AWPD to strengthen it and provide greater protection for maintenance workers, who are the group now most at risk. The final form of the amended AWPD is generally in line with the UK negotiating position.

7. The main proposals to implement the amendments to AWPD that require significant changes to legislation in GB are:

a) Currently certain requirements of CAW only apply if exposure to asbestos fibres is liable to exceed the Action Levels detailed in the Regulations. This system will be replaced by a new concept where the requirement to notify work to the enforcing authority (HSE or the Local Authority) and the requirement for medical surveillance of workers will not apply to certain specified types of work where (a) the worker exposure to asbestos fibres is sporadic and of low intensity and (b) it is clear from

[1] Control of Asbestos at Work Regulations 2002 SI N° 2675
[2] Asbestos (Licensing) Regulations 1983 SI N° 1649 as amended in 1998 SI N° 3233
[3] Asbestos (Prohibitions) Regulations 1992 SI N° 3068 as amended in 1999 SI N° 2373 and in 2003 SI N° 1889

the risk assessment that the control limit will not be exceeded. There will be specific guidance in the ACoP to explain what kinds of work should be considered to be likely to produce only sporadic and low intensity worker exposure to asbestos.

b) CAW regulation 10 requires employers to reduce exposure to as low as is reasonably practicable. The AWPD requirement is to minimise worker exposure to asbestos. We intend to amend the Regulations to better align with new wording included in the COSHH (Amendment) Regulations 2004[4].

c) A new, World Health Organisation (WHO) asbestos fibre counting method will be introduced to replace the current European Reference Method (ERM). Analytical laboratories that carry out air testing will transfer to this counting method. Under the ERM method, fibres are discounted if they touch particles greater than 3 microns wide, but under the WHO method, these fibres are not discounted.

d) The Control Limit is a level of asbestos fibres in air that, so far as is reasonably practicable, should not be exceeded in workplace air and which no-one's personal exposure should ever go above, measured over a set period of time. At present this level is 0.2 f/ml for amphibole asbestos and 0.3 f/ml for chrysotile. These will be replaced by a single Control Limit for all types of asbestos of 0.1 f/cm^3 (equivalent to 0.1 f/ml). AWPD suggests that the measurement be averaged over 8 hours, but the proposal is to measure the fibres in air level over 4 hours, in line with current practice but which is equivalent to the directive's 0.1 f/ cm^3 if the shift is 8 hours.

8. Additional proposed changes to the asbestos regulatory framework:

a) We propose to combine CAW, ASLIC and the Prohibitions Regulations into a single set of Regulations. Having three sets of Regulations is historical. Currently, in certain areas, the Regulations duplicate, for example in the notification requirement. Combining them will simplify the regulatory regime. We do not intend to make any amendments to the current requirements of the Prohibitions Regulations, other than to remove transitional derogations which have now expired and to introduce the AWPD amendment which specifically prohibits the extraction of asbestos and asbestos products.

b) We propose to have a risk-based approach to define what comes within the definition of sporadic and low intensity worker exposure (see paragraph 6.1 above) and intend to define which work will be exempt from requiring a licence on the same basis, aligning when a licence is needed with the requirement to notify work. The requirement to have a licence would be based on whether or not the worker exposure is likely to be sporadic and low intensity. For most work with asbestos this will maintain the status quo, however new research supports a proposal to remove work with asbestos-containing textured decorative coatings from the requirements of licensing.

c) We propose that employers using their own workers on their own premises will no longer be exempt from the licensing requirements. This exemption from the requirement to hold a licence originates from the time when there was still some manufacturing of asbestos-containing materials. It is no longer appropriate to maintain this exemption.

d) We propose to introduce into Regulations the requirement that those issuing clearance certificates for reoccupation after asbestos removal work meet the relevant

[4] The Control of Substances Hazardous to Health (Amendment) Regulations 2004 SI N^o 3386

accreditation requirements of ISO 17025 and ISO 17020. This is already the case for the air testing part of the clearance procedure and will be extended to apply to all the four stages of clearance certification.

e) CAW also currently includes Short Term Exposure Limits (STELs) to reinforce and support high standards of control such as wearing respiratory protective equipment (RPE). We intend to maintain a limit for peak exposures, otherwise it could be argued that RPE is not legally required so long as exposure does not exceed 2.4 f/cm^3 over 10 minutes (the equivalent of the proposed Control Limit over 4 hours). The proposal is to maintain a maximum peak level of 0.6 f/cm^3 over 10 minutes for all types of asbestos (the current STEL for amphibole asbestos) with the assertion that it is always reasonably practicable to carry out work such that no personal exposure to asbestos fibres, however short, exceeds this peak. We intend to include this as ACoP material rather than in Regulations, as STELs are not a requirement of AWPD.

9. To support these changes, we intend to publish a single ACoP that will update and consolidate the two dealing with work with asbestos currently available for the CAW Regulations and incorporate some aspects of the Guidance to the ASLIC Regulations. The draft text of this ACoP is attached at Annex C. We do not intend to amend the ACoP 'The mamgement of asbestos in non-domestic premises' which provides guidance on the duty to manage asbestos in regulation 4 of CAW.

10. HSC would particularly welcome your views on the main proposals listed above and questions on these follow each proposal. Questions on the issues are also included in the response form in Annex F.

11. Comments on other issues you consider important would also be welcomed, and space is available at the end of the form for this.

BACKGROUND

What Is Asbestos?

12. Use of asbestos has been known over 2000 years. Its natural form is found in rock and it is virtually indestructible, relatively cheap and plentiful. Because it can be used for sound and heat insulation and also to add strength to other materials, it lent itself readily to the manufacture of a wide range of products. Since commercial exploitation began in the 19th century there have been over 3000 different recorded uses. However, it has now been shown that exposure to asbestos fibres causes asbestos-related diseases, which are often fatal.

13. There are three types which were extensively used in GB:

Crocidolite	'blue asbestos'	These two are part of a group of types of asbestos called amphiboles
Amosite	'brown asbestos'	
Chrysotile	'white asbestos'	

14. Although these three most commonly used types are often referred to by their colours, these relate more to their raw state. In use, asbestos is usually mixed with other materials, which mask their colour. It is generally acknowledged that crocidolite and amosite are more hazardous than chrysotile, but all are designated carcinogens, as are the other regulated types of asbestos (see paragraph 28).

15. The importation, supply and use of blue and brown asbestos have been banned by law in the UK since 1985. In 1999 chrysotile was also banned with the exception of a very few specialised uses. However, asbestos materials have been put to many uses over the past century and many thousands of tonnes of asbestos used in buildings in the past are still in place.

What Are The Health Effects?

16. Asbestos is the single greatest cause of work related deaths in the UK. There is no cure for asbestos-related diseases. However, asbestos is only a risk to health if asbestos fibres are released in to the air and breathed in. The fibres are long and fine and when inhaled can lodge in the tissue of the chest resulting in three main diseases:

Mesothelioma	A cancer of the lining around the lungs or the stomach. It is always fatal
Lung cancer	Usually fatal
Asbestosis	A scarring of the lung leading to shortness of breath. It is very disabling and can be fatal

17. Mesothelioma currently causes 1800 deaths each year, virtually all of which are associated with exposure to asbestos fibres. The number of people who die from lung cancer attributable to asbestos is unclear, but best estimates are that there are one or two asbestos-related lung cancers for each mesothelioma. Approximately 160 people die from asbestosis annually. This brings the total number of people dying as a result of past exposure to asbestos to at least 3,500 each year.

18. There is usually a long delay between first exposure to asbestos and the onset of disease. The vast majority of those dying now were exposed to asbestos between the 1950s and the 1970s, when asbestos was less well regulated than today and very widely used in industry.

Only by preventing or minimising these exposures now will asbestos-related disease eventually be wiped out.

19. Many of those currently suffering from asbestos-related diseases will have been exposed to the fibres as a result of working in industries that used asbestos as a raw material, in docks when asbestos was imported, or by installing asbestos insulation in ships, railway carriages, industrial plant and buildings.

20. In 1995, research carried out by Professor Peto and HSE epidemiologists (The Lancet, Volume 345, 4th March 1995) indicated that at least a quarter of those people currently dying from asbestos have worked in construction and maintenance operations. As the other high-risk activities have now all ceased, the maintenance sector now constitutes the biggest group at risk.

What Is The Purpose Of This Consultation?

21. In GB, responsibility for proposing Regulations on health and safety at work falls to HSC. HSC has a statutory duty to consult appropriate organisations before it submits proposals for new Regulations to the Government. Therefore, the aim of this CD is to seek the views of interested parties on the draft Regulations and the ACoP that explain what these will mean for employers, employees and others.

22. This CD contains HSC's proposals to introduce new Regulations to control the risks from exposure to asbestos at work. The draft Regulations have been developed in order to comply with the European Union (EU) Directive 2003/18/EC which amends Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work – see Annex A for the text of the Directive. EU Member States have until 15 April 2006 to introduce Regulations.

Regulatory Impact Assessment

23. Before any new piece of legislation can be introduced HSC is obliged to carry out a regulatory impact assessment (RIA) of the costs it would impose on industry and the benefits it is expected to bring.

24. The RIA for these proposals and the ACoP is provided as Annex D of this CD. The RIA sets out the costs associated with full compliance with the proposed changes to the regulations. For most of the amendments proposed there is expected to be no significant change of working methods required from industry. Where costs are likely to be incurred, the majority of these are as a result of calculating the costs of full compliance with requirements already existing in GB regulation. However, there are some amendments that are expected to incur costs, such as familiarisation with the new arrangements and the costs of additional controls for licensed workers. In total the RIA estimates the costs of these proposals to be between £1,170 million and £1,658 million over the next fifty years.

25. If you have any comments on the RIA we would also welcome these.

PROPOSALS FOR IMPLEMENTATION OF THE ASBESTOS WORKER PROTECTION DIRECTIVE

Introduction

26. It is proposed that GB will implement the amendments to AWPD through new Regulations called the Control of Asbestos at Work Regulations 2006. The draft proposed Regulations and supporting ACoP are contained in Annexes B and C respectively. These Regulations would replace The Control of Asbestos at Work Regulations 2002, The Asbestos (Licensing) Regulations 1983 (as amended) and the Asbestos (Prohibitions) Regulations 1992 (as amended).

27. This section describes key issues and the proposals for how they will be implemented. We would like your views on how we propose to proceed. Specific questions are presented, but please do not hesitate to provide any other comments or raise other issues as you feel necessary. Please use the form at Annex F for your replies.

Definition of Asbestos

28. The amendment to AWPD redefines 'asbestos' to specify more exactly which minerals it covers. This amendment is not intended to change the materials the Regulations deal with. Asbestos is currently defined in regulation 2(1) of CAW and 2(1) of ASLIC. These definitions would be amended to:

a) Asbestos actinolite, CAS No 77536-66-4(9)

b) Asbestos gruenerite (amosite) CAS No 12172-73-5(10)

c) Asbestos anthophyllite, CAS No 77536-67-5(11)

d) Chrysotile, CAS No 12001-29-5(12)

e) Crocidolite, CAS No 12001-28-4(13)

f) Asbestos tremolite, CAS No 77536-68-6(14)

Replacement of Action Levels with a new, three part concept for exemption from certain regulations for lower risk work.

29. CAW 2002 limits the application of certain controls by using Action Levels. These are defined in the Regulations as limits of worker exposure to asbestos fibres in air, measured and averaged over 12 weeks. The Action levels are currently 48 fibre-hours per ml of air for amphiboles and mixtures of asbestos types, and 72 fibre-hours per ml of air for chrysotile.

30. The AWPD amendments replace the use of Action levels such that: "provided that worker exposure is sporadic and of low intensity, and when it is clear from the results of the risk assessment that the Control Limit will not be exceeded in the air of the working area, certain requirements of the AWPD may be waived (e.g. to notify and to have medical surveillance) where the work involves:

a) short, non-continuous maintenance activities in which only non-friable materials are handled,

b) removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix

c) encapsulation or sealing of asbestos-containing materials which are in good condition,

d) air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos."

31. We propose to implement this change by using similar wording to that used in the AWPD amendments (see paragraph 30 above), in the Regulations. The proposed new regulation 3(2) reads:

"Regulations 8 (licensing), 9 (notification of work with asbestos), 15(1) (arrangements to deal with accidents, incidents and emergencies), 18(1)(a) (asbestos areas) and 22 (health records and medical surveillance) shall not apply where -

a) the exposure of employees to asbestos fibres is sporadic and of low intensity;

b) it is clear from the risk assessment that the control limit for asbestos will not be exceeded in the air of the working area; and

c) the work involves—

(i) short, non-continuous maintenance activities,

(ii) removal of materials in which the asbestos fibres are firmly linked in a matrix,

(ii) encapsulation or sealing of asbestos-containing materials, or

(iv) air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos."

32. The proposal uses a simpler form of words than those in the Directive amendments. We believe that given that; the worker exposure must be sporadic and low intensity, the risk assessment must make it clear that the control limit will not be exceeded and detailed guidance will be provided in the ACoP, the additional descriptors included in the Directive are unnecessary and will only make it more complicated to comply with the requirements.

33. The ACoP will explain what types of work, and with what materials, would be accepted as likely to fulfill the conditions for regulation 3(2) to apply (see paragraphs 38 to 47 in Annex C). This has been determined on the basis of risk to the worker.

34. In addition to exemption from the requirements of notification and medical surveillance, we intend to link exemption from the requirement to hold an HSE licence to this three part concept. This is intended to align and simplify the Regulations and is explained in detail in paragraphs 100 to 105.

35. In almost all cases the ACoP guidance on what would fulfil the conditions for regulation 3(2) to apply is designed to maintain the status quo so that where work is currently exempt from these requirements, this will continue to be the case. Where work requires licensing, notification and medical records at present this will still be the case except in specific circumstances.

36. There are some ancillary and supervisory licence holders whose workers are not currently required to have medicals and who would need to do so under these proposals because they are exposed to asbestos and their work does not fit within the four listed types of work to which the exemption can be applied. However there are very few cases where workers only do this type of work and don't have regular medicals already.

37. The only major exception to this is the case of work with asbestos-containing textured decorative coatings (TCs). Work with these types of materials is currently specifically within the scope of licensing. Reviews and research undertaken by the Health and Safety Laboratory (HSL) have shown that exposure levels from work with TCs are of low intensity compared to other types of licensed ACMs and give rise to only sporadic and low intensity exposure to asbestos fibres. In a recent study of TC removal from 35 domestic properties where the

asbestos fibres were identified and counted, the average concentration of asbestos fibres in the samples with the highest fibre counts was 0.014 f/ml, almost an order of magnitude lower than the new proposed Control Limit (see the executive summary of the findings in Annex E(i)). Separate to this research, HSL also carried out a risk analysis of all licensed work with asbestos-containing materials. This shows work with TCs presenting less than 1/1000th of the total risk from all licensed asbestos work. This risk analysis used an average asbestos fibre concentration arising from work with TCs of 0.08 f/ml rather than the lower 0.014 f/ml average identified in the new research. We propose that, due to the much lower level of risk arising from work with TCs than previously indicated, work with TCs will no longer require a licensed contractor, to be notified, nor the maintenance of medical records. We also consider that removal of TCs prior to demolition or major refurbishment is unlikely to be reasonably practicable in most circumstances.

38. The proposal for work with TCs is that the ACoP contains clear requirements for the controls that must be in place when this work is undertaken. The proposed requirements are not as onerous as currently laid out for licensed work, as the level of risk does not warrant it. However, it is not normally possible to adequately control the release of dust when doing work with TCs and so controls appropriate to the material have been drawn up and are included in the draft ACoP in Annex C.

39. The proposed controls include where appropriate: enclosing the work area with plastic sheeting and tape, a two stage entry system ('airlock'), decontamination using an H-type vacuum cleaner and wet cloths inside the outer stage of the 'airlock', suitable RPE (disposable FFP3 or half-mask with P3 filters). Air sampling and decontamination units will not be required. In addition to these measures, where possible removal should include whole underlying plasterboard sheets or steam, a hydrating gel or a solvent free chemical to loosen the material before removal.

Question 1: Do you agree with the proposal to follow AWPD requirements such that there should be a new regime to exempt work that conforms to a new three part, risk based concept from the requirements of licensing, notification and medical surveillance?

Question 2: Which of the following most closely resembles your view of the proposal to remove work with asbestos-containing textured decorative coatings from the scope of licensing? Please give your reasons.

- **a) Work with asbestos-containing textured decorative coatings should be removed from the scope of the licensing regime and the controls proposed in this consultation document should be required.**
- **b) Work with asbestos-containing textured decorative coatings should remain licensable and the current level of controls required to do the work should be maintained.**
- **c) Neither of the above, another option should be considered (please give details).**

Extension of the information required in the notification form

40. The AWPD amendments detail the information required in the notification of work with asbestos. All of the information is already required under CAW Regulations or within the plan of work as required by HSE's licence conditions. This is therefore only a technical change to include those items currently required in the licence conditions within scope of the Regulations themselves. We do not expect this to have any impact on businesses.

Prohibition of extraction and manufacturing

41. The AWPD amendments prohibit extraction and manufacturing of asbestos and asbestos products, and asbestos spraying. There is no asbestos extraction industry in the UK and manufacturing and use have previously been banned by the Asbestos (Prohibitions) Regulations. Therefore, a technical change is required to the Regulations to comply with the Directive, but this is not expected to have an impact on GB industry.

Minimising worker exposure

42. Article 6 of the amended AWPD states that for all activities where workers may be exposed to asbestos, exposure must be reduced to a minimum and in any case below the Control Limit. CAW 2002, Regulation 10 already requires employers to reduce exposure to as low as is reasonably practicable but we intend to amend this regulation to align more closely with new wording included in the Control of Substances Hazardous to Health (Amendment) Regulations 2004 (COSHH).

43. COSHH Regulation 7 lays out a hierarchy of controls, in order of priority, which should be used to reduce exposure. This hierarchy is reflected in CAW 2006 regulation 11:

a) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials in order to avoid or minimise the release of asbestos;

b) the control of exposure at source, including adequate ventilation systems and appropriate organisational measures;

and so far as is reasonably practicable, the provision of suitable respiratory protective equipment in addition to these controls.

44. As COSHH already applies even if CAW does not, these amendments will simplify the regulatory regime and we don't expect them to impose any additional regulatory burden. In practice this change is unlikely to alter working practice, as it is designed to ensure that the current requirement for employers to continue to minimise exposure even after they have reached the Control Limit is fully implemented, rather than any new working methods adopted.

Question 3: Do you agree with the proposal to align CAW requirements for minimising worker exposure more closely with the COSHH hierarchy of controls listed in order of priority?

World Health Organisation (WHO) method of fibre counting

45. AWPD requires that there is a change in the fibre counting method used by analytical laboratories to measure the level of asbestos fibres in the air.

46. Currently the method used is laid out in Annex 1 of Council Directive 83/477/EEC (the original version of the Asbestos Worker Protection Directive), and is called the European Reference Method (ERM).

47. The new required method is the WHO method for fibre counting (or the use of any other method producing similar results). This method is detailed in 'Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)', WHO, Geneva 1997 (ISBN 92 4 154496 1).

48. This is a technical change, which most of the laboratories concerned are already preparing for. There are two main differences, when compared with the current method:

a) Currently fibres are discounted if they touch particles that are greater than 3 microns in width, but under the WHO method, these fibres are not discounted.

b) The current method, when used for regulatory assessment against the control limit does not allow discrimination of mineral fibre type. The WHO method allows discrimination of fibre type to ensure that only asbestos fibres are counted.

49. In most cases this is likely to slightly increase the measure of asbestos fibres in any given sample, but in some cases (where there are also other mineral fibres in the sample) the count might be reduced considerably.

A single, lower Control Limit

50. Article 8 of the amended AWPD introduces a single Control Limit (the maximum concentration of asbestos fibres in air to which a worker may be exposed) for all asbestos types and is also lower than the current Limits.

51. This new Control Limit is 0.1 f/cm^3 (equivalent to 0.1 f/ml). This reduces the limit for amphibole asbestos from 0.2 f/ml and for chrysotile from 0.3 f/ml.

52. No distinction is made between the Control Limit for amphiboles and chrysotile and we intend to implement the requirements of the Directive substantially as adopted because:

a) All forms of asbestos are classified as carcinogens and although the risk of contracting an asbestos-related disease from exposure to chrysotile is considered to be lower than that from other forms of asbestos, there is still a significant risk.

b) We believe that this Control Limit is technically achievable and reasonably practicable for all forms of asbestos.

c) In practice the asbestos removal industry rarely makes a distinction between types of asbestos and chrysotile is often contaminated (unknowingly) by amphiboles.

d) We believe that the emphasis should be on reducing exposure to as low as reasonably practicable and the new limit maintains the policy of continuing to bear down on asbestos exposure.

e) A single Control Limit simplifies matters, making planning and implementing the controls easier.

53. The AWPD amendments propose an 8-hour time frame over which to measure the exposure to asbestos. This means that the exposure is measured over eight hours and then averaged to get a level that can then be compared to the Control Limit to ensure it is not being exceeded.

54. In GB a 4-hour time frame is used to reflect normal working practice with asbestos in this country and we propose to require that measurements continue to use a 4-hour time-weighted average for the calculation of exposure levels. If an eight hour shift is worked, this will duplicate the requirement in the Directive of 0.1 f/cm^3 over 8 hours but if a 4 hour shift is worked, then, whereas the Directive would allow exposure during those 4 hours of up to 0.2 f/cm^3, the GB proposed limit would be 0.1 f/cm^3.

55. Therefore we propose the new GB Control Limit will be 0.1 f/cm^3 as a four-hour time weighted average (TWA).

Question 4: Do you agree with the proposal to implement a single Control Limit of 0.1 f/cm^3 as a 4-hour TWA as measured using the WHO method? If not, please give details.

Identification of the presence as well as the type of asbestos

56. The amended AWPD Article 10a requires employers to take all necessary steps to identify asbestos-containing materials before beginning work.

57. We propose to introduce a requirement for employers to undertake a suitable and sufficient assessment of the presence and type of asbestos prior to commencement of work within CAW regulation 5. This regulation currently only requires the employer to identify the type of asbestos.

58. The proposal includes the requirement that, where there is doubt as to whether asbestos is present, the employer assumes that asbestos is present and that it is not chrysotile alone and observes all the applicable provisions of the Regulations.

Question 5: Do you agree with the approach to the requirements for identification of asbestos? If not please give details.

Evidence of ability

59. A new Article 12b of AWPD requires that, before asbestos demolition or removal work, companies must have evidence of their ability to do the work. Most demolition or removal work must be carried out by licensed asbestos contractors and as such these companies must already prove to HSE their ability to undertake the work in order to be granted a licence.

60. In addition, the Regulations require that no work with asbestos be carried out without a written plan of work, which can be scrutinised by an HSE or Local Authority Inspector should they have any doubts concerning a firm's ability to carry out the work.

61. Therefore, we believe that this new requirement of the Directive has already been implemented into GB Reguations and no further change is needed.

Question 6: Do you agree with the approach to requirements for the evidence of ability to do asbestos demolition and removal work? If not please give details.

Amendments to the Plan of Work

62. In order to ensure compliance with the AWPD amendments, we propose two small changes to the requirements for inclusion in the Plan of Work.

63. In cases of final demolition or major refurbishment of premises, we propose that the plan of work specifies that asbestos shall be removed before any other major works begin unless removal would cause a greater risk to employees than if the asbestos had been left in place. This is already required in ACoP and the only change would be to bring it into regulation.

64. We propose that the plan of work shall also include the measures that the employer intends to take in order to comply with the requirements (already in regulation) to ensure that the premises, or those parts of the premises where the work was carried out, are thoroughly cleaned after the work is finished. This only re-emphasises the requirements of the current CAW Regulation 16 and ensures that clearance procedures are considered when the work is being planned.

65. We do not expect either of these amendments to have any impact on those already complying with CAW 2002.

Training Requirements

66. The amended AWPD introduces an explicit requirement that employers shall provide appropriate training for all workers who are likely to be exposed to asbestos. The training must enable workers to get the necessary knowledge and skills on a specified range of issues. These issues are:

a) the properties of asbestos and its effects on health, including the effect of smoking;

b) the types of materials likely to contain asbestos;

c) the types of work that could result in asbestos exposure and the importance of controls to minimise exposure;

d) safe work practices, controls and protective equipment;

e) the appropriate role, choice, selection, limitations and proper use of respiratory equipment;

f) emergency procedures

g) decontamination procedures

h) waste handling

i) medical examination requirements

67. CAW currently includes a range of general training requirements aimed at safeguarding employees. However, this list falls significantly short of the detail listed within the Directive. This level of detail is currently contained within the supporting ACoP.

68. We intend to augment the limited list of training requirements currently listed in the Regulations with the full list of training issues detailed above. As this was already included in ACoP we do not expect these amendments to have any significant impact on those already complying with CAW 2002.

Question 7: Do you agree with the proposed approach to training requirements? If not please give details.

69. To supplement this, we want to ensure that only those competent to do so are permitted to enter areas where higher risk asbestos work is going on.We intend to require that the employer ensure that their employees are competent before they can go into a 'respirator zone' as detailed in the Regulations and include a definition of competence in such circumstances. We have defined a competent employee as one who has received information, instruction and training in compliance with regulation 10 and this makes explicit what is implicit in this regulation, as anyone who enters a respirator zone is likely to be exposed to asbestos and must be trained. This will mean that only those deemed competent will be able to work inside asbestos removal enclosures. Also the employer should not permit anyone to supervise an employee working in the 'respirator zone', who is not competent to do so.

70. The proposed definition of competency is that, considering the task they are required to perform and taking account of the size and/or hazards of the job, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken.

Question 8: Do you agree with the proposal that only those who are competent, as defined, to work inside an enclosure are allowed to do so? If not please give details.

Summary of costs and benefits for the AWPD amendments

71. Most of the amendments introduced as a result of AWPD have negligible costs attached to them. However, there are costs connected with specific changes.

72. There are 70 ancillary licence holders and 67 supervisory licence holders whose workers are not currently required to have medicals and will be outside the new 'sporadic and low intensity' exemption for notification and medicals. These companies employ relatively small

numbers and the RIA estimated that this will cost up to £160,000 every two years. The fifty year present value is estimated to lie between £0.5 million and £2.0 million.

73. There is expected to be a cost saving related to the application of the 'sporadic and low intensity exposure' exemption to work with textured decorative coatings. Indicative estimates suggest that where the cost of removal of a decorative textured ceiling coating containing asbestos would currently be between £900 and £2,000, if our proposed amendments go ahead the comparative cost is estimated to be approximately £500 - £1,300. Given the number of these jobs taking place each year, the total fifty year present value of cost savings to the economy is between £206 million and £365 million. The first year saving is a minimum of £8.6 million.

74. The costs associated with the move to the WHO method of fibre counting will be quite small and will only apply to the specialist laboratories concerned, training an estimated 1000 analysts in 200 laboratories. The total cost of converting to WHO method is estimated at approximately £425,000.

75. The costs associated with the new, single, lower Control Limit are difficult to estimate, as it cannot be addressed in isolation from other requirements to reduce worker exposure. Where employers are complying with best practice there is likely to be little additional burden to comply with the new Control Limit. However the RIA estimates that the total present value cost of moving from the broad spread of current work practices to achieving 100% compliance with the amended Limit is likely to be between £0.62 billion to £0.92 billion for non licensed workers and between £37 million and £59 million for licensed workers over 50 years. The costs in the first year are estimated to be £28 million to £43 million.

76. It is the norm for an RIA to assess the costs to business of 100% compliance with any new requirements. In the case of the changes to CAW Regulations dealing with training, this means that the RIA estimates costs of £871 million. However, it should be highlighted that these costs relate to increased compliance with existing requirements only, and do not arise because of stricter legal requirements.

Issues for comment

77. The questions asked in the body of this section are repeated below;

Question 1: Do you agree with the proposal to follow AWPD requirements such that there should be a new regime to exempt work that produces only sporadic and low intensity exposure from the requirements of licensing, notification and medical surveillance?

Question 2: Which of the following most closely resembles your view of the proposal to remove work with asbestos-containing textured decorative coatings from the scope of licensing? Please give your reasons.

- **a) Work with asbestos-containing textured decorative coatings should be removed from the scope of the licensing regime and the controls proposed in this consultation document should be required.**
- **b) Work with asbestos-containing textured decorative coatings should remain licensable and the current level of controls required to do the work should be maintained.**
- **c) Neither of the above, another option should be considered (please give details).**

Question 3: Do you agree with the proposal to align CAW requirements for minimising worker exposure with the COSHH hierarchy of controls listed in order of priority?

Question 4: Do you agree with the proposal to implement a single Control Limit of 0.1 f/cm^3 as a 4-hour TWA as measured using the WHO method? If not, please give details.

Question 5: Do you agree with the approach to the requirements for identification of asbestos?

Question 6: Do you agree with the approach to requirements for the evidence of ability to do asbestos demolition and removal work?

Question 7: Do you agree with the proposed approach to training requirements?

Question 8: Do you agree with the proposal that only those who are competent (as defined) to work inside an enclosure are allowed to do so?

78. Please feel free to include any additional issues, not addressed here on which you wish to comment in your response.

ADDITIONAL AMENDMENTS TO THE ASBESTOS REGULATIONS

Introduction

79. We are taking this opportunity to simplify and clarify the regulatory framework for asbestos. We propose to combine three sets of regulations and amend the licensing and notification regulations to create a consistent, risk-based system of control.

80. We also propose to bring accreditation requirements for analysts doing clearance certifications in line with earlier changes to ACoPs now that appropriate accreditation schemes have been developed.

Transfer of regulatory authority for sea transport

81. Following a review of river safety since the 1989 "Marchioness" disaster, Lord Justice Clarke's Report on the Thames Safety Inquiry called for the rationalisation of health and safety legislation in relation to non-sea-going ships. It recommended that merchant shipping health and safety legislation should apply to non-sea-going ships, and for this to be enforced by the Maritime and Coastguard Agency (MCA).

82. It was decided that it would be most consistent for MCA to become the regulatory authority concerning health and safety for all ships, including inland waterway vessels.

83. Under this proposal ships will not be subject to CAW 2006 (although work on ships in dock will be) and will instead be subject to requirements of marine legislation. CAW 2006 will continue to apply to ships of the Royal Navy because the Merchant Shipping Act does not apply to them.

Combining CAW, ASLIC and the prohibitions Regulations to create one set of asbestos Regulations

84. We propose to combine the requirements of CAW, ASLIC and the Prohibitions Regulations to form a single set of Regulations. The asbestos licensing regime has been in existence since 1983; before the CAW Regulations came into force. Its separation from CAW

is therefore historical. Now that virtually all supply and use of asbestos is banned, we believe it makes sense to consolidate all the requirements to make a single, cohesive set of Regulations.

85. Currently in certain areas CAW and ASLIC duplicate, for example in the requirement to notify. Combining the Regulations will simplify the current asbestos regulatory regime. The simplification will be particularly noticeable where it is currently not immediately clear whether a job requires licensing (ASLIC), notification (CAW and ASLIC) or in some cases neither of these. A single set of Regulations should make the legislation easier to understand and therefore easier to comply with. There will also be a single definition of asbestos.

86. We propose to call these new regulations the Control of Asbestos at Work Regulations 2006. This is not intended, in itself, to change any regulatory requirements.

Question 9: Do you agree with the proposal to clarify and simplify the asbestos Regulations by bringing the requirements of ASLIC and the Prohibitions Regulations into CAW and creating one combined set of Control of Asbestos at Work Regulations?

Combining L27, L28 and L11 to form one Approved Code of Practice for asbestos work

87. We propose to consolidate most of the asbestos ACoP material into one publication. This will detail guidance for both licensable and non-licensable work with asbestos. We are, however, not intending to amend the ACoP dealing with the management of asbestos in non-domestic premises (L127).

88. Currently there are three formal guidance documents dealing with licensing and work with asbestos, as follows:

a) L27 – Work with asbestos which does not normally require a licence

b) L28 – Work with asbestos insulation, asbestos coating and asbestos insulating board

c) L11 – A guide to the Asbestos (Licensing) Regulations 1983 as amended

89. As detailed in paragraphs 84 to 86, above we are proposing to combine the sets of Regulations. In conjunction with this, we believe that combining L27 and L28 into a single ACoP for the Control of Asbestos as Work Regulations and introducing some of the guidance in L11 into this ACoP would help clarify the requirements for undertaking work with asbestos.

90. L27 and L28 currently contain large amounts of duplicate information and research into sales data has revealed that the majority of purchasers buy both publications. It would therefore be cost efficient for most customers if information on both licensed and non-licensed work were included in one document.

Question 10: Do you agree with the proposal to produce a single Approved Code of Practice to cover all Control of Asbestos at Work Regulations including Licensing other than the management of asbestos in non-domestic premises?

Changes to the asbestos removal licence

91. We want to clarify the terms under which an asbestos removal licence is issued.

92. The current wording on the limitations on issuing an asbestos licence is “with or without a time limit”. This allows for too much unnecessary flexibility. It is impractical to allow an indefinite time period and common practice is that licenses are issued *with* a time limit of one to three years. We propose to amend the regulations so that a licence may be granted by HSE for a maximum of three years.

93. Currently HSE may impose a time limit on a licence where none had been imposed previously and where there is a limit, HSE may vary or remove it. If the legislation is changed to allow a maximum time limit of three years for a licence there would be no need for this requirement and we propose to remove this option.

94. We propose that the exemption from holding a licence for employers using their own employees on their own premises should be removed. This exemption hails from the time when there was still some manufacturing and use of materials containing asbestos; it was not designed to apply to asbestos removal and maintenance work. This exemption is no longer appropriate as importation, supply and use of materials containing asbestos is now banned under the Prohibition Regulations.

95. HSE proposes to revise its revocation policy, as laid out in guidance, in order to provide more flexibility in revoking and re-applying for asbestos licences. Revocation is only an option in the most serious cases, but at present the system is unwieldy and time consuming and does not address the needs of HSE, licence-holders or those re-applying for licences.

Question 11: Do you agree with the proposed changes to licensing such that

- **a) licences have a maximum time limit of 3 years**
- **b) removal of the exemption from licensing for employers using their own staff in their own premises for licensable work**

Accreditation for analysts undertaking four-stage clearance certifications

96. We propose to introduce into Regulations the requirement that those issuing clearance certificates for reoccupation after asbestos removal work meet the relevant accreditation requirements of ISO 17025 and ISO 17020.

97. In 2002, significant changes to the role and function of laboratories carrying out clearance certification after asbestos removal were introduced into ACoP. The ACoP required that removal of asbestos material be followed where appropriate by a four-stage process of site clearance certification to ensure that the whole site is thoroughly clean. However, some parts of this 4-stage clearance certification procedure are not covered by current accreditation arrangements, and this could undermine the overall clearance process.

98. To address these problems, HSE worked with UKAS to develop a credible assessment and accreditation regime for the full four-stage process, which was completed in 2004. We therefore now propose to amend the Regulations to require that laboratories contracted to issue clearance certificates be accredited to the ISO standards for all four stages of the process.

99. Fairly recently, some 90 laboratories had applied for an extension of the scope of their present accreditation to include the full four-stage process and approximately 73 of were going through the assessment process.

Question 12: Do you agree with the proposal that accreditation be required for someone to undertake a four-stage clearance certificate procedure?

A risk-based approach to define what is exempt from licensing

100. The current licensing regime requires that employers or self-employed persons hold an HSE licence if they intend to work with specific material types: asbestos insulation, asbestos coating or asbestos insulating board. There is an exemption for work of very short duration (not more than 1 hour for one worker and 2 hours for all employees on a job in any seven days). Work with other types of asbestos-containing materials does not need a licence.

101. As outlined in paragraph 31, we propose to introduce a risk-based approach to define what comes within the definition of what would fulfil the conditions for regulation 3(2) to apply. We intend to define work which will be exempt from requiring a licence on the same basis. The proposal is that there is a requirement to have a licence to do all work which exposes workers to asbestos fibres, unless the worker exposure will be sporadic and low intensity. The intention is that for most work with asbestos this will maintain the status quo.

102. This proposal aligns the requirements for notification and licensing so that work will either need to be undertaken by a licensed contractor AND be notified to the relevant authority, or will require neither of these. Which category the work falls into will be decided on the basis of the level risk to the workers from exposure to asbestos.

103. The draft ACoP lays out clear guidelines for what types of work would require a licensed contractor and in the vast majority of cases there would be no change from the current situation. The proposed new system was designed having given serious consideration to the risks of particular types of work with different material types and the small amount of change to what is and is not licensable confirms that the previous system was broadly reasonable in terms of when a licence was required.

104. A risk-based system in regulation allows for future developments in technology, or new scientific findings, to be taken into account without requiring changes to the Regulations. For example, if automated or remotely-controlled equipment were to be designed that could undertake (currently licensable) work without releasing asbestos fibres and could be shown to reduce worker exposure so far as to be considered sporadic and low intensity, the ACoP could be updated so that such work would no longer require a licensed contractor without changes to CAW being needed.

105. This proposal also allows work with TCs to be removed from the licensing regime, following new research undertaken by HSL, which concluded that work with TCs gives rise to very low intensity and sporadic release of asbestos fibres. See annex E for more details.

106. Questions 1 and 2, which address these issues, are repeated here for your convenience.

Question 1: Do you agree with the proposal to follow AWPD requirements such that there should be a new regime to exempt work that produces only sporadic and low intensity exposure from the requirements of licensing, notification and medical surveillance?

Question 2: Which of the following most closely resembles you view of the proposal to remove work with TCs from the scope of licensing?

- **a) Work with TCs should be removed from the scope of the licensing regime and the controls proposed in this consultation document should be required.**
- **b) Work with TCs should remain licensable and the current level of controls required to do the work should be maintained.**
- **c) Neither of the above, another option should be considered (please give details).**

The Removal of STELS from regulation

107. CAW currently includes Short Term Exposure Limits (STELs), measured over ten minutes, to reinforce and support high standards of control such as wearing respiratory protective equipment (RPE). At present these STELs are 0.6 f/ml for amphiboles and 0.9 f/ml

for chrysotile. We intend to maintain a limit for peak exposures, whilst removing the two STELs currently in regulation.

108. With no peak exposure limit, exposure could be allowed to reach 2.4 f/cm^3 as long as the worker is not exposed for more than 10 minutes (the equivalent of the proposed Control Limit over 4 hours).

109. The proposal is to require a maximum peak level of 0.6 f/cm^3 over 10 minutes (the current STEL for amphibole asbestos) for all types of asbestos with the assertion that it is always reasonably practicable to carry out work such that no personal exposure to asbestos fibres, however short, exceeds this peak. We intend to include this maximum peak level in ACoP rather than in the new Regulations, as AWPD does not include STELs.

Question 13: Do you agree with the proposal to remove the two STELs from the Regulations and include a peak exposure limit of 0.6 f/cm3 over 10 minutes in ACoP such that no worker exposure, however short in duration should exceed that peak? If not, please give details.

ACoP to require DCU maintenance record on site

110. Where de-contamination units (DCUs) are used (mainly for licensed work) we propose to include a requirement in ACoP that the maintenance records for those DCUs (or copies of them) are kept on site so that they are available for inspection by the enforcing authority if required. This only formalises industry good practice and is not expected to impose any significant change on the asbestos removal industry.

Summary of costs and benefits for additional amendments to CAW

111. The changes proposed mainly clarify and simplify the regulatory system and are not expected to have any significant cost implications for the businesses concerned.

112. The only substantial change proposed is that accreditation will be required to undertake a four-stage clearance certification procedure. It is our view that there will be no significant cost directly attributed to this. Some 50% of those laboratories accredited to the 'two-stage' process have already applied to UKAS for extension of scope to all four stages. We anticipate that the majority of the remaining accredited laboratories will also seek extension before the new CAW Regulations come into force.

113. The cost savings associated with the application of the 'sporadic and low intensity exposure' exemption to work with TCs are included in paragraph 73.

Issues for comment

114. The questions asked in the body of this section are repeated below

Question 9: Do you agree with the proposal to clarify and simplify the asbestos Regulations by bringing the requirements of ASLIC and the Prohibitions Regulations into CAW and creating one combined set of Control of Asbestos at Work Regulations?

Question 10: Do you agree with the proposal to produce a single Approved Code of Practice to cover all Control of Asbestos at Work Regulations including Licensing?

Question 11: Do you agree with the proposed changes to licensing such that

- **a) licences have a maximum time limit of 3 years**
- **b) removal of the exemption from licensing for employers using their own staff in their own premises for licensable work**

Question 12: Do you agree with the proposal that accreditation be required for someone to undertake a four-stage clearance certificate procedure?

Question 13: Do you agree with the proposal to remove the two STELs from the Regulations and include a peak exposure limit of 0.6 f/cm3 in ACoP such that no worker exposure, however short in duration should exceed that peak? If not, please give details.

115. Please feel free to include any additional issues, not addressed here on which you wish to comment in your response.

INVITATION TO COMMENT

The Health and Safety Commission would welcome comments on proposals set out in this CD. For convenience, all the questions are repeated in a form (Annex F) set out at the back of this document that you may find helpful to use for your reply. We will acknowledge receipt of all comments sent to us and will give careful consideration to all comments received in developing our proposal. We may contact you, for example, if we have a query.

If you reply to this CD in a personal capacity, rather than as a postholder of an organisation, you should be aware that information you provide may constitute "personal data" in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the "data controller" and will process the data for health and safety and environmental purposes. HSE may disclose these data to any person or organisation for purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for inaccurate data to be corrected. Please note all replies will be made public unless you specifically state you wish yours to be made confidential.

Annex 1

CONSULTATIVE DOCUMENT

The full text of this and other Consultative Documents can be viewed and downloaded from the Health and Safety Executive web site on the internet:

www.hse.gov.uk/consult/

Consultative Documents are available from:
HSE Books, PO Box 1999
Sudbury, Suffolk CO10 2WA
Tel: 01787 881165
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