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HEALTH AND SAFETY COMMISSION

Results from the asbestos consultation and seeking a steer on the way forward for asbestos regulations and an ACoP

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Issue

To report back to the Commission on the consultation on proposals for revised asbestos Regulations. To confirm all the proposals consulted upon, including that to remove work with textured decorative coatings containing asbestos (TCs) from the asbestos licensing regime. In addition to agree a new proposal on the implementation of 'sporadic and low intensity exposure' as required by the Asbestos Worker Protection Directive (AWPD).

Timing

1. Urgent. AWPD should have been implemented by the 15th of April 2006. To have regulations in force for the common commencement date after this deadline (October), draft Regulations will need to be put before the Commission in July.

Recommendation

2. The Commission agree that TCs become unlicensed materials and that HSE's proposed approach to the implementation of 'sporadic and low intensity' is an acceptable way forward to meet the concerns raised during consultation.

Background

3. The Consultative Document (CD) was published in November 2005 with the aim of implementing the AWPD, tightening controls to provide further protection for those working with asbestos and simplifying the regulatory regime. The proposal to remove TCs from the licensing regime was based on research carried out by the Health and Safety Laboratory (HSL), which showed that exposure to asbestos fibres when working with these asbestos containing materials (ACMs) is much lower than for other licensed materials, and similar to exposures arising from work with asbestos cement, which is an unlicensed material. Maintaining TCs within the licensing regime, which is intended solely for higher risk activities, conflicts with HSC's position as a risk-based regulator. Furthermore, de-licensing should increase competition and reduce costs, particularly in areas such as social housing where the cost of licensed removal of TCs is high. Licensing is not a requirement of the directive.
4. The consultation attracted a high level of interest and 504 replies were received. A summary of the responses is provided in Annex A. Stakeholders across the range expressed very strong support for the majority of the proposals, which are intended to increase worker protection and simplify the regulatory regime. There was a campaign

against some of the proposals – notably that on TCs - which attracted media attention, an adjournment debate, and an early day motion signed by 119 MPs. Broadly, responses from the trade unions, victim support groups and licensed removal contractors opposed the proposal on TCs, while responses from the wider business community, including the Confederation of British Industry, and local authorities/housing associations were more supportive on the basis of the evidence. Concern was also expressed about the need to define better ‘sporadic and low intensity’ work involving materials containing asbestos. The Commission was given an update on the results of consultation at the March 2006 meeting.

Argument

5. **Textured Coatings** - As a result of early criticisms of the initial research carried out by HSL, some further research was undertaken during consultation. This assessed exposure levels as a result of using both the controls proposed in the draft ACoP for working with TCs and using poor control methods (see summary in Annex B – full report available on HSE web site at www.hse.gov.uk/research/hsl_pdf/2006/hsl0619.pdf). The research further demonstrated that exposure levels are below the proposed Control Limit when removing TCs in accordance with good practice. The research also showed that a visual clearance (i.e. a visually clean area) would be adequate to ensure that building inhabitants will not be exposed to unacceptable levels of asbestos fibres following removal work.
6. The WATCH Committee made an assessment of exposure, informed by the initial HSL research. The publicly available draft of the minutes of the meeting states that ‘0.08f/ml (4hr TWA, as chrysotile fibre, is the most reliable estimate of the upper end of the range of potential exposures that could arise for operatives engaged in the removal of asbestos-containing textured decorative coatings, under conditions specified in the draft Control of Asbestos at Work (CAW) Regulations 2006.’ This is below the new Control Limit, and does not take any respiratory protection into account.
7. All the evidence shows that the levels of fibres released when working with TCs in accordance with good practice are low. Even poor control does not normally lead to exposure levels above the proposed new Control Limit except during sanding which is completely unacceptable and is illegal for the removal of any ACMs, including asbestos cement. All work with ACMs whether licensed or unlicensed must be undertaken by trained workers following a risk assessment and in accordance with appropriate controls to prevent exposure to fibres.
8. The main arguments against the proposal have remained constant – de-licensing TCs would send the message that TCs are ‘safe’, that appropriate controls will not be used by unlicensed contractors; and HSE will not be able to enforce. Some respondents have suggested that asbestos cement should be brought into the licensing regime – a view that HSE believes to be disproportionate in the context of risk based regulation.
9. The legislative package is intended to reduce worker exposure to asbestos fibres through measures such as a reduced control limit and mandatory training for all those working with asbestos. In accordance with the concept of risk and evidence based regulations, it is proposed that TCs are removed from the licensing regime. HSE believes that to maintain TCs within the scope of licensing would ignore the evidence and risks undermining the licensing regime.

10. Nonetheless we recognise the very real concerns that have been raised. To address them we propose additional measures to increase compliance:
- In order to encourage a sensible approach and reduce possible anxiety we intend to provide guidance for those in buildings where TCs are being removed (e.g. householders and other occupiers) to inform them of the control measures that should be adopted.
 - We will make it absolutely clear that appropriate controls must always be used when working with TCs. HSE is also proposing that all contractors working with TCs use a dedicated type-H vacuum cleaner, and must provide confirmation that the site has been visually inspected, and is clean and clear of ACMs.
 - We have provided in both our Construction and Disease Reduction programmes that FOD, Construction and LA inspector time is available to check effective enforcement of the Duty to Manage Regulations.

These are measures on top of the controls specified in the draft ACoP on which we consulted.

11. Continued criticism of HSE/C is expected, no matter which route the Commission chooses – those who have campaigned against the removal of TCs from the licensing regime will probably maintain their efforts if the change is made, whereas the decision to disregard the evidence and keep TCs within the licensing regime is likely to attract criticism from those who have seen the evidence and expect HSC to regulate on the basis of risk.
12. **Sporadic and low intensity exposure** – This concept is taken from AWPDP, which allows Member States to lay down practical guidelines for the determination of sporadic and low-intensity exposure. Some consultees felt that ‘sporadic’ should be interpreted to mean ‘infrequent jobs’, thereby disqualifying almost all the work carried out on ACMs. However, the AWPDP refers to sporadic exposure and not sporadic work. Many are uncomfortable with the term in general, feeling that it will be misinterpreted by employers, wilfully or otherwise, resulting in more employees working with asbestos without adequate controls. It has therefore been suggested by some that the concept should be removed from the Regulations.
13. HSE accepts that further explanation of the term ‘sporadic and low intensity’ may be necessary. We are proposing that a specific definition is given in the ACoP such that if the risk assessment demonstrates that a peak exposure level of $0.6\text{f}/\text{cm}^3$ measured over a ten-minute period could be exceeded in a working day, then the work cannot be considered to give rise to sporadic and low intensity exposure. This is equal to the existing short-term exposure limit for amphiboles, and is equivalent to a quarter of the proposed Control Limit.
14. It must be emphasised that such an exposure level is a ‘trigger’ for licensing, notification and medicals, and is not in itself a Control Limit. The Control Limit of $0.1\text{f}/\text{cm}^3$ (4hrTWA) applies to all work with asbestos. This approach should remove any doubt over the meaning of the term but HSE intends to also set out the type of work that cannot be considered to give rise sporadic and low intensity exposure in the ACoP.

Consultation

15. The CD was subject to a consultation period of more than 12 weeks and was distributed to over 3000 stakeholders, as well as being made available on request and on the internet. HSE has met with stakeholders, including trade unions, trade associations and support groups at a number of seminars and events as well as at both pre- and post-consultation meetings to discuss their concerns.

Presentation

16. Further interest in this issue is expected, from stakeholders, the media, and ministers. A summary of our communication strategy is attached at Annex C which details proposed communication activities. Furthermore, a press release will be published following the meeting and the chair intends to write to MPs.

Costs and Benefits

17. The costs and benefits of the initial proposals were detailed in the RIA attached to the consultative document. This indicates cost savings to the economy from de-licensing of £206 to £365 million over 50 years. The savings arise as the current cost of removing textured ceiling coatings containing asbestos is between £900 and £2,000 and the estimated cost for removing such ceilings under the proposed regime is estimated to be £500 to £1,300. Overall, the costs of the new legislation over 50 years are estimated to be between £1171 & £1659 million and the costs and benefits are probably in balance with each other.

Financial/Resource Implications for HSE

18. The main resource implications for HSE arise from communicating the requirements of the new Regulations. However, this is closely tied to the asbestos strand of the Disease Reduction Programme, for which resources have already been allocated.

Other Implications

19. The proposed Regulations implement 2003/18/EC amendment to the Asbestos worker Protection Directive 83/477/EEC.

Action / Next Steps

20. Following the Commission decision on whether TCs become unlicensed materials and whether HSE's proposed approach to the implementation of 'sporadic and low intensity' is an acceptable way forward, we will revise the Regulations and ACoP and develop guidance. It is recommended that the Commission advise Ministers on its decision and reasoning as soon as possible after the meeting.

Contact

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