

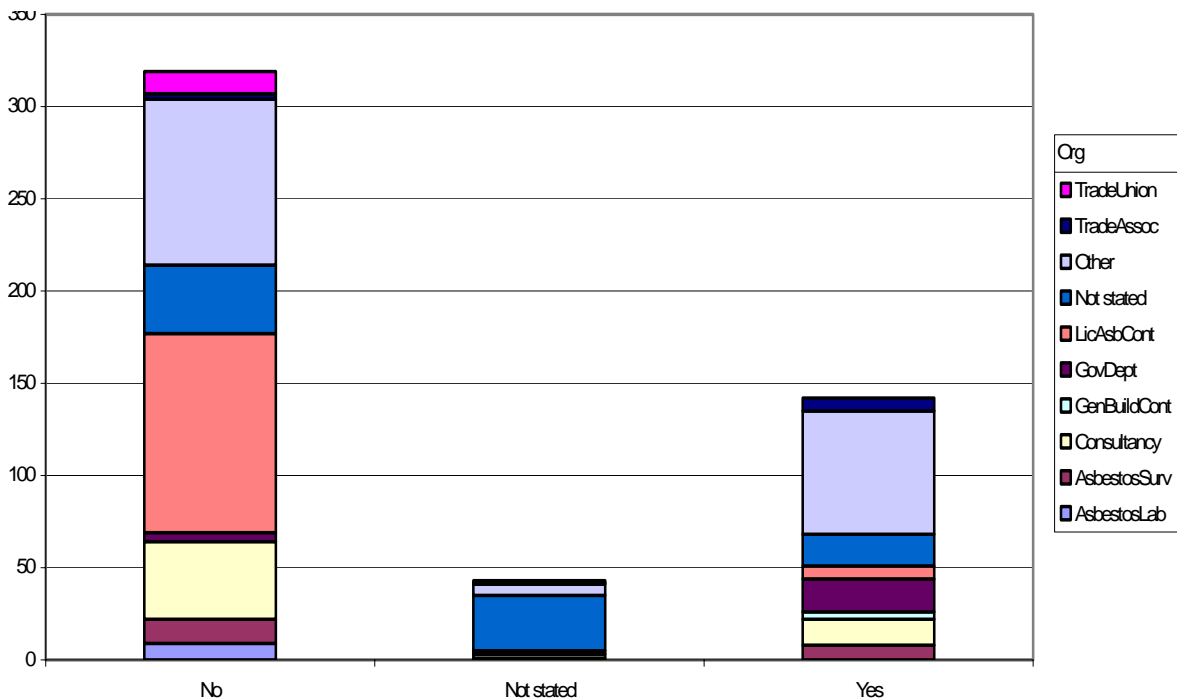
**Asbestos Consultation – Summary of responses**

**Total responses received = 504**

The results of the consultation are given below, along with a summary of the main comments received to each question – due to the large amount of comment provided, this is in no way comprehensive, but attempts to draw out the main issues raised and where possible the principle group(s) to make this comment have been noted – this does not mean that this comment is limited to a certain group. The comments made in response to questions 1 & 2 come primarily from those respondents hostile to these proposals: licensed asbestos contractors, analysts/consultants and trade unions. Many of the points raised are repeated across multiple responses, and are therefore difficult to attribute to particular groups.

**Q1 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?**

**Yes = 142 (28.2%) No = 319 (63.3%) Not stated = 43 (8.5%)**



Q1 Comment
We support the risk-based concept, but believe a better definition of Sporadic & Low intensity is required. <i>Local government/housing authorities, analysts/consultants.</i>
Agree that is is necessary to establish that exposure must exceed a threshold before harm is possible. We all die with environmental levels of asbestos in our lungs but the overwhelming majority of the population does not die of asbestos. <i>Trade Association</i>
S & LI too ambiguous and confusing, open to abuse and needs further interpretation/better definition. Could allow employers to dictate the type of work done.



**Question 2 – further analysis of figures**

**93** (19%) responses received from just 8 companies

From the generic nature of a number of the other response forms received, where the company/organisation type wasn't specified, it seems likely that a larger number of responses actually originated from single sources/were motivated by coordinated campaigns. 103 of the 'b' responses are from licensed asbestos contractors. 146 of the responses to 'b' have not specified the type of organisation for which they work, but a significant proportion appear to have been influenced by the campaign against the removal of textured coatings from the licensing regime.

In response to question 2, where a comment has been made, **145** (29%) of the comments are clearly based on 1 of 3 standard responses received. These responses are the result of a write-in campaign intended to influence the outcome of the consultation. **179** (36%) of the responses received giving option 'b' are clearly standard and/or come from one of the above 8 companies.

All responses have been taken in to account during analysis. However, the above raises the question, as mentioned in Commission paper HSC/05/11 on the Work at Height Regulations (Annex 1, Paragraph 8) as to the effect campaigns intended to influence the outcome of a consultation have on the credibility of the Commission's consultations generally. A quantitative analysis alone is easily manipulated, as demonstrated, and this must be acknowledged when addressing the results.

Of those supporting the proposal to remove textured coatings from the licensing regime, the most readily identifiable group is local councils & housing associations, 46 of which supported the proposal (this equals 40% of the positive responses- this is not clear from the graph provided in the summary, as many responded 'other' when asked to identify organisation type).

However, it must be noted that support from this group was not unanimous, with 11 respondents disagreeing with the proposal.

Comments critical of the proposal:

<b>Q2 Comment</b>
Unlicensed removal of TCs will result in inadequate control and potential for low level of exposure over significant periods of time as unlicensed contractors will not necessarily adhere to the regs (intentionally or otherwise), there will be insufficient/non-existent risk assessments and workers will not be properly trained or have proper equipment (eg PPE). Low levels of enforcement outside licensing will allow bad working practices to continue. <i>Widely received, Licensed contractors, trade unions, analysts/consultants, support groups.</i>
The use of the following proposed methods will result in higher exposure to workers and the public: No on site decontamination unit, no extraction equipment, 2 stage airlock instead of 3, no 4-stage clearance by UKAS lab (so no proof that all asbestos has been removed), no notification. No 4 stage clearance will result in residual ACM's

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<p>in buildings, exposing public to asbestos fibres (including children in domestic premises, schools etc) and possibility of repeated disturbance over time. <i>Widely received as above.</i></p>
<p>The initial research is flawed. Figures achieved in research are a result of good working practices as carried out by Licensed contractors under controlled conditions inc. negative pressure, 3-stage airlock, decon. facilities – supervised by HSL &amp; don't include high-release work such as from concrete. Also, sample pool was too small. <i>Widely received as above.</i></p>
<p>New regs. send wrong message to unlicensed contractors (and the general public) etc that TCs 'aren't dangerous' (and may undermine HSE's previous work on asbestos). Removing TCs from licensing whilst still requiring precautions will lead to confusion. Need simple, clear, consistent messages – contradicting previous messages will lead to doubt. <i>Licensed contractors, trade unions.</i></p>
<p>Housing Associations take their responsibility as an employer and a landlord very seriously, the safety of employees, tenants and contractors is paramount. However, the sector feels very strongly that the current licensing regime for working with or removing artex (and the cost that comes with it) is wholly disproportionate to the risk it carries, as suggested in existing research. We fully endorse the recommendations of this consultation to have stringent risk assessments, method statements and training for those who are likely to be in contact with the materials. <i>Housing Associations</i></p>
<p>Research suggests it is possible to reach 0.08fpcc, which is too close to the proposed control limit to support the removal from licensing. <i>Professor of Health and Safety</i></p>
<p>Suggested control regime is untested + HSE/HSL don't really know the accumulative effects of low-level chrysotile exposure. <i>Analyst</i></p>
<p>Should consider licensing other (or all) ACMs eg rope gaskets &amp; paper lining (up to 100% asbestos), CAF joints, asbestos cement etc. ACoP 38 (d) is incorrect, as fibres in these materials are not firmly linked in a matrix. All asbestos waste is disposed of in the same way, irrespective of type, it is all dangerous, so should all be licensed. Trade unions, licensed contractors, analysts/consultants.</p>
<p>I have seen no evidence that careful (or even careless) removal or textured coatings can result in a release of significant levels of asbestos fibres. <i>Asbestos surveyor.</i></p>
<p>Waste will not be properly disposed and non-removal before demolition will result in asbestos trapped in rubble, which is often re-used in construction. <i>Licensed contractors, analysts/consultants.</i></p>
<p>Unlicensed work will be carried out without insurance – public will be left without redress. Also, RIA doesn't address possible increased insurance costs for non-licensed firms working with TCs. <i>Licensed contractors, support groups.</i></p>
<p>Law would offer little protection to workers who refused to do work with TCs – causes anxiety. <i>Trade unions, support groups.</i></p>
<p>There should be a distinction between repair/small maintenance jobs involving TCs (unlicensed) and TC removal (licensed).</p>
<p>Some Artex contains 'clumps' of chrysotile so can't all be defined as S+LI. Fibre concentrations in samples vary (sometimes higher than 5%). Need to clearly define 'textured coatings' as some contain more fibres than 'artex'. Figure of 2-5% asbestos content of TCs is by weight, content by bulk is higher. Furthermore, page 15 para 58 c of the CD states that chrysotile is often contaminated by amphiboles. <i>Trade unions, analysts/consultants.</i></p>

An edited selection of negative comments from key stakeholders:

**Asbestos Removal Contractor's Association**

The Revised Regulations propose that the works will be carried out by non licensed contractors adopting the following method;

- 1 . No on site decontamination procedures for site personnel
2. No extraction equipment to reduce workers and occupants exposure during works
3. 2 stage airlock system for decontamination as opposed to the existing 3 stage airlock procedure detailed in the CA Regs.
4. On completion of the works the enclosure will be visually inspected by the contractor, there will be no requirement for a 4 stage clearance including visual inspection by independent UKAS Lab, thus leaving the occupier/client/contractor with no evidence to confirm the fibre levels within the air following completion of the works are acceptable levels and that asbestos debris has been removed as far as reasonably practical. Also there is reference for it being acceptable to 'open windows and doors' to prevent the build up of fibre concentrations. If this proposal is adopted the companies carrying out this work will operate without asbestos related insurance because it is only readily available to licensed contractors.

HSE argument is that the works will still be carried out under the CA Regs, however in our experience the majority of the construction industry have little or no knowledge of the requirements of the existing CAW Regs. or its control limits.

In summary if this is adopted the works will be carried out by unlicensed contractors, without relative insurance, with no Method Statement or Risk Assessment, with no notification to the enforcing authority or no independent validation either during or after completion of the works by a UKAS approved lab.

**Union of Construction, Allied Trades and Technicians**

UCATT does not support the removal of work on textured coatings from the licensing regime. The research which is quoted as justifying the removal was not done under practical conditions. UCATT does not accept that the levels of exposure demonstrated under controlled negative pressure conditions reflect the actual likely exposure levels which are encountered in the working environment, in particular where dry removal is attempted. Further research is currently underway and UCATT believes that it is inappropriate to make any decision to remove textured coatings until this can be considered.

While the risk from this activity is certainly lower than from many other asbestos related activities, it must be recognised that textured coating is to be found in millions of premises and some workers may spend considerable time on its removal when refurbishment of a housing estate is being undertaken. As such, exposure is not necessarily sporadic. While a figure of 2-5% asbestos is given for textured coatings, it should be remembered that this is by weight and the content by bulk is considerably higher. A medium sized room with walls and ceiling covered in textured decorative coatings can easily contain over a kilogram of asbestos

Although some processes with higher proportions of asbestos have been excluded from the current regime the exposure risks are not necessarily comparable and particularly in the case of asbestos cement, UCATT would like to see this included in the licensing regime.

If work on textured coatings were to be removed then a much greater level of control, protection and enforcement would be required to maintain the level of security which is given by the licensing regime.

**Federation of Master Builders**

While the FMB accepts that TCs are not as dangerous as some other forms of asbestos, the fact still remains that they cannot, and should not, be considered to be "safe". The FMB has a zero tolerance attitude to work related health risks, and

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believes that the "downgrading" of TCs risks creating confusion through sending mixed messages that, on the one hand, they are not as dangerous as was once thought, but on the other, they still have to be treated with extreme caution and are subject to strict controls.

The proposed reform will have to be managed very carefully or risk giving misleading impressions which will undermine the drive towards an industry which takes no risks with its asbestos control. The laudable desire to reduce administrative burdens cannot overshadow the fact that many firms will find the new regulations confusing and may end up trading without valid insurance as a result. The HSE is right to consider how to reduce the administrative burden on legitimate firms and should continue to do so. However, while levelling the playing field is of great help, the HSE does also need to consider how to take a more proactive approach to clamping down on the activities of firms in the informal economy.

Some of the positive comments received from local councils and housing associations:

The scientific research is clear so this requirement on business should be lifted.

Having been directly concerned with asbestos materials in Local Govt. Premises over the last 20 years I can say, without fear of redemption, that asbestos-contaminated textured coating materials have been the biggest problem we have had to deal with over the whole of that time.

Having spent an inordinate amount of time and money on sampling, monitoring, training general maintenance staff, equipping general maintenance staff, organising removal by licensed contractors etc. etc. I am glad to see that, finally, common sense has prevailed and that work with this material will hopefully be removed from the scope of the licensing regime.

NB. If this had been done years ago, as it should have been in my opinion, a lot of time and taxpayer's money could have been saved

As a Local Authority we are mindful of the enormous financial burden that the regulations in their present form impose on the rate payers, and feel that the levels of asbestos present in these textured coatings do not warrant the expensive precautionary processes that are currently necessary under the regulations. Whilst we accept and welcome the requirement to protect workers stripping ACMs, we remain unconvinced that an adequate evidence base exists to justify the existing regulations.

Housing Associations take their responsibility as an employer and a landlord very seriously, the safety of employees, tenants and contractors is paramount. However, the sector feels very strongly that the current licensing regime for working with or removing artex (and the cost that comes with it) is wholly disproportionate to the risk it carries, as suggested in existing research. The Federation would therefore welcome the proposals included in this consultation document and would fully endorse the recommendations of this consultation to have stringent risk assessments, method statements and training for those who are likely to be in contact with the materials.

The other group showing support for the proposals are consultants and surveyors, accounting for 24 of the positive responses (21%) – however, a significantly larger number from this group were against the proposals.

Some of the positive comments received from consultants and surveyors:

I have seen no evidence that careful (or even careless) removal of textured coatings can result in a release of significant levels of asbestos fibres.

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Considering that asbestos fibres content and release from textured coatings is much lower than that for asbestos cement, retention of textured coatings under licensing control appears to be unreasonable add possibly counter productive in terms of overall control credibility.

Given that we accept that this work is dangerous I perceive no higher level of risk of death than in many other construction activities. I refer only to textured coatings that have been shown by sampling and analysis to contain minimal % content of chrysotile.

Other stakeholders to support the proposal:

<p><b>Construction Confederation</b> The relative risks of work with asbestos-containing textured coatings seem to be based largely on work subject to rigorous control measures, and this is a little misleading. Work with TCs is very commonly undertaken by non-licensed contractors and undertaken (both intentionally and through ignorance ) without any control measures, which is why it is seen by many as a major problem. However, this reality means on balance that by bringing this work outside of the licensing regime HSE are better reflecting conditions on the ground. As long as the underlying knowledge relating to probable exposure levels is reliable, this holds out a greater prospect of improving standards by virtue of legitimising many of those who feel compelled commercially to undertake this work without a licence. Detailed guidance or ACOP material on control measures, allied to robust enforcement, is essential to avoid a reduction in standards.</p>
<p><b>Confederation of British Industry</b> a) is a proportionate response to the likely risks related to the activity.</p>
<p><b>Society of Occupational Medicine</b> This is supported by good evidence of exposure without respiratory protective equipment for work with textured decorative coatings.</p>
<p><b>Institute of Occupational Medicine</b> We think Option 2a) is the preferred option. However, this assumes that appropriate controls can be effectively enforced. A clear unambiguous definition of "textured decorative coatings" is required.</p> <p>The proposed change follows the right principle (of following the best available evidence and dealing with task according to their relative risk). However, the best evidence seems to be of limited availability.</p>

**Q3 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?**

**Yes = 449 (89.1%) No = 9 (1.8%) Not stated = 46 (9.1%)**

<p><b>Q3 Comment</b></p>
<p>Proposed wording does not align with CoSHH, which requires RPE as last option – regs 11 (1, 2 &amp; 3) address RPE in convoluted manner. Should replace 'reasonably practicable' with 'practicable' or 'normally/usually' for controls, particularly re. RPE. <i>Trade Association.</i></p>
<p>Proposed reg 3 conflicts with CoSHH requirement for a formal risk assessment and with reg 8 of MHSW regs 1999. Reg 19 would remove CoSHH requirement for air monitoring to measure cumulative exposure, removing validation of RAs. <i>Consultants</i></p>
<p>Mandatory use of airlines should be considered as filtration is not an adequate method of RPE. <i>Consultants.</i></p>
<p>Reg 11(1)(b) places a duty on an employer to ensure that the number of employees</p>

exposed at any one time is as low as is reasonably practicable without reference to any limit of exposure. *Trade associations.*

**Q4 Do you agree with the proposal to implement a single Control Limit of 0.1f/cm<sup>3</sup> as a 4-hour TWA as measured using the WHO method? If not, please give details.**

**Yes = 430 (85.3%) No = 24 (4.8%) Not stated = 50 (9.9%)**

Q4 Comment
4hr TWA instead of 8 is gold plating, doesn't reflect CoSHH or EU Directive, and adds additional costs and burdens in UK. <i>Occupational hygienist, consultants,</i>
Amphibole is a greater risk than serpentine, and control limits should reflect this. <i>Trade association, asbestos surveyor.</i>
Must also ensure that fibre counting method is failsafe so asbestos fibres are not inadvertently discounted: there are reservations about PCM. <i>Trade union</i>
Sampling for chrysotile is problematic - fibres are seldom seen on field samples – maybe because it is hydrophilic, electrostatically charged or carrying heavy levels of matrix attached to the fibrils, settling out very quickly and reducing the levels of airborne fibre for sampling purposes – may be a problem re. low counts with TC removal. <i>Asbestos surveyor.</i>

**Q5 Do you agree with the approach to the requirements for identification of asbestos?**

**Yes = 428 (84.9%) No = 21 (4.2%) Not stated = 55 (10.9%)**

Q5 Comment
No need to identify type of asbestos as there is one standard for all types. <i>Consultants.</i>
Employer should ensure the client has confirmed presence, type and <u>condition</u> . <i>Consultants.</i>
Type of material, not type of asbestos, is important. Material most commonly found should be reported where materials are presumed to contain asbestos. <i>Local councils, consultants.</i>
Needs to be clear in ACoP for Reg 5 that a Type 2 survey under Reg 4 is not adequate for demolition/refurb, and a Type 3 is necessary. Also need to address prospect of costly duplication of surveys carried out under both Regs 4&5. <i>Training provider, consultants.</i>
The test for water absorption needs rewriting and placing in a more suitable document. Paragraph 26 refers to a density determination but the method for this has now been adequately described in any document. <i>Asbestos laboratories.</i>

**Q6 Do you agree with the approach to requirements for the evidence of ability to do asbestos demolition and removal work?**

**Yes = 441 (87.5%) No = 9 (1.8%) Not stated = 54 (10.7%)**

Q6 Comment
There will be no advance assessment of competence of non-licensed contractors by HSE and no one will scrutinise the subsequent plans of work as there is no requirement for independent assessment of notification. Also, who will ensure compliance with training, insurance, waste disposal? – Should clients be able to demonstrate their ability

to oversee controls/plans of work...? <i>Licensed contractors.</i>
Should put a specific duty in Construction (Design & Management) Regs. for this. <i>Licensed contractor.</i>
Any breach should have heavy penalties. <i>Consultants.</i>

**Q7 Do you agree with the proposed approach to training requirements?**

**Yes = 442 (87.7%) No = 11 (2.2%) Not stated = 51 (10.1%)**

<b>Q7 Comment</b>
Refresher training every year is too onerous (every 3 years for first aid...). Should give guidance and allow employer to decide frequency of refreshers. <i>Trade associations.</i>
Need constraints for competency of trainers. Training bodies should be approved to ISO standards (eg BIOSH P405, P402). <i>Consultants.</i>
There is much poor training around (eg for surveyors) – HSE should produce an ‘approved’ list of training providers. <i>Consultants.</i>
Great care will need to be taken in ensuring that there is neither over or under reaction to the training and information requirement. There should be a lower level of training for ‘sporadic’ or maintenance type work. <i>Consultant.</i>

**Q8 Do you agree with the proposal that only those who are competent, as defined, to work inside an enclosure are allowed to do so?**

**Yes = 387 (76.8%) No = 63 (12.5%) Not stated = 54 (10.7%)**

<b>Q8 Comment</b>
There may some confusion between the terms of persons who work in enclosures and those who enter enclosure. The consultation makes reference to both terms. <i>Licensed contractor.</i>
Inspections by a ‘Contract Administer’ or other similar person such a Laboratory Technician should have the ability to enter the enclosure for inspection of progression and standards of work. <i>Consultants.</i>
There may be situations where a tradesman needs to enter an enclosure e.g. a plumber if there is a leak. This requirement should cater for such eventualities. Also, We need to ensure that fire and ambulance crews are aware and that surveyors and others are included to enter - possible enhancement of regulation 3 (2) (a), (b), (c).
Need a provision to allow trainees inside enclosures under supervision.
Definition of ‘competence’ should be in body of the Regs, as with WAH regs.

**Q9 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 Regulations?**

**Yes = 450 (89.3%) No = 8 (1.6%) Not stated = 46 (9.1%)**

<b>Q9 Comment</b>
The proposals are neither material based, as were the Asbestos Licensing Regulations 1983, nor risk based, as were the Control of Asbestos at Work Regulations 2002. HSC should take the opportunity to rationalise this situation having regards to the discussions on sensible risk management. <i>Occupational hygienist.</i>
Presentational issues - flow diagrams would be useful, to explain when client need

licensed contractor for example. Also, contents list should be more clearly set out to help reader.

**Q10 Do you agree with the proposal to produce a single Approved code of Practice to cover all Control of Asbestos Regulations including Licensing other than the management of asbestos in non-domestic premises?**

**Yes = 448 (88.9%) No = 10 (2%) Not stated = 46 (9.1%)**

Q10 Comment
Should also combine L127 (the management of asbestos in non-domestic premises) into new ACoP. If not, L127 will need amending to remain compatible with new regs. <i>Local council, consultant.</i>
Combined ACoP is too confusing, esp. for clients and general maintenance contractors. Previous system is clearer. <i>Consultants.</i>
Should sub-divide the combined ACoP in to licensed and non-licensed for clarity, or colour code different sections. <i>Licensed contractors.</i>
There should be a streamlining of 'Asbestos Guidance' publications, Also, Regs and/or ACoPs should refer specifically to guidance documents where relevant. <i>Local council.</i>

**Q11 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?**

<b>a)</b>	<b>b)</b>
<b>Yes = 448 (88.9%)</b>	<b>Yes = 418 (82.9%)</b>
<b>No = 3 (6%)</b>	<b>No = 27 (5.4%)</b>
<b>Not stated = 53 (10.5%)</b>	<b>Not stated = 59 (11.7%)</b>

Q11 Comment
After 3 yr period, companies should provide proof of work, training, accident rates etc before renewal of licence. <i>Consultant.</i>
Revocation of a licence is not sufficient – due to seriousness of asbestos exposure, any breaches should result in license being removed, and often in prosecution – not just in 'most serious cases'. <i>Unions.</i>
Disagree with b) – adds further burdens, and there is no case to do so. <i>Trade associations.</i>
There should be an on-site audit before licence renewal.

**Q12 Do you agree with the proposal that accreditation be required for someone to undertake a four-stage clearance certificate procedure?**

**Yes = 441 (87.5%) No = 9 (1.8%) Not stated = 54 (10.7%)**

Q12 Comment
All 3 <sup>rd</sup> party involvement in asbestos work should be subject o UKAS accreditation, including surveying. <i>Widely received - licensed contractors, surveyors, consultants.</i>
UKAS accreditation is an expensive burden that does nothing to improve standards. <i>Local council, consultant.</i>
Those undertaking 4-stage clearance should be totally independent from removers. <i>Consultant.</i>

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The requirement that laboratories be accredited to ISO17025 is ultra-vires as it is a quality system, and is therefore not a matter about which the Secretary of State is entitled to make regulations by the authority given to him under Schedule 3 of the HSW Act. *Occupational hygienist.*

Individuals should be more liable for their own errors, rather than employers – accreditation should be for individuals –this stops inexperienced analysts working. *Surveyor.*

**Q13 Do you agree with the proposal to remove the two STELs from the Regulations and include a peak exposure limit of 0.6 f/cm<sup>3</sup> over 10 minutes in ACoP such that no worker exposure, however short in duration should exceed that peak?**

**Yes = 429 (85.1%) No = 18 (3.6%) Not stated = 57 (11.3%)**

<b>Q13 Comment</b>
This is gold plating, and there is no scientific reason for it considering the nature of health effects from asbestos. <i>Occupational hygienist.</i>
This is unenforceable as the level of detection is higher than the limit – can't sample reliably at this level. <i>Occupational hygienist, consultant.</i>
Need better guidance on methodology of sampling to get accurate samples at this level.
Requirement that the limit is not exceeded 'for any duration however short' is not acceptable – how could an instantaneous concentration be measured? <i>Trade association.</i>
To remain consistent with CoSHH, should be 0.9f/cm <sup>3</sup> over 15 minutes. <i>Housing association.</i>
Should maintain STELs. <i>Trade union.</i>
Peak exposure limit should be in the Regs, not ACoP, regardless of European dimension, as this is a weakening of legislation – it is possible to exceed the requirements of the directive (which are insufficient) in our own law. <i>Trade unions.</i>