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HEALTH AND SAFETY COMMISSION

Proposed Control of Asbestos Regulations: Recommendations following consultation

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Issue

1. Approval of the package comprising the proposed Control of Asbestos Regulations and two associated Approved Codes of Practice (ACoPs) following public consultation. The package implements an EC Directive (Directive 2003/18/EC), which amended the Asbestos Workers Protection Directive (AWPD), and also makes changes to requirements of GB origin – in particular, the removal of work on textured decorative coatings containing asbestos (TCs) from the licensing regime.

Timing

2. Urgent. The amendments to AWPD should have been implemented by 15 April 2006. Approval of the proposed Regulations is needed at this meeting if the new Regulations are to come into force at the next common commencement date (1 October 2006).

Recommendation

3. Further to earlier discussions of this proposed package following public consultation, that the Commission:

- a) Agree that work with TCs should no longer require a licence.
- b) Approve the draft Control of Asbestos Regulations at **Annex 1** for submission to the Minister – drafted to remove work with TCs from the licensing regime;
- c) Approve a concentration of 0.6 fibres per cm³ in a 10- minute reference period during any working day as being the level of exposure to asbestos which cannot be considered to be sporadic and low intensity under regulation 3(2) so that it can be published in the proposed ACoP (see sub-paragraph (d));
- d) Approve proposed ACoP material providing guidance on compliance on the draft Regulations (other than regulation 4 - the duty to manage) – **Annex 2** (text in **BOLD** is ACoP material – the Regulations are included in italics and some further guidance is included in plain text for information);
- e) Approve the existing ACoP 'The management of asbestos in non-domestic premises' under the new Regulations – **Annex 3** (text in **BOLD** is ACoP material);

- f) Note the partial Regulatory Impact Assessment (**Annex 4**) which is unchanged as a result of consultation. This will be finalised once the decision has been made on whether TCs remain in the licensing regime;
- g) Approve the draft letter and background note from the Chair to Lord Hunt submitting the Regulations and ACoPs (**Annex 5**);
- h) Note the action we intend taking on other guidance, training and measures to aid compliance to support the new Regulations and ACoPs (see paragraphs 12-15).

Background

4. The results of consultation were discussed at the Commission's meetings on 14 March 2006 and 9 May 2006 (see HSC/06/49 and the summary of responses at Annex A of that paper). Briefly, this reported strong support for the majority of the proposed changes – in particular the single control limit; the move to mandatory training; and the simplification of the regulatory framework by replacing 3 sets of regulations with one. However, more contentious were the proposals relating to the implementation of a derogation from the full requirements of the AWPDP where exposure is “sporadic and of low intensity”, as well as those on the removal of work on TCs from the licensing regime.

Annex 6 summarises the more significant comments together with the HSE response.

5. At the 9 May meeting, the Commission confirmed most of the proposed changes to the Regulations, including those relating to the “sporadic and low intensity exposure” derogation. It also confirmed that there should be a risk-based approach to the licensing of asbestos with licensing reserved for high risk products and processes, but asked for a further paper on a wider range of issues around asbestos licensing and relative areas of risk before making a final decision on the removal of TCs from the licensing regime.

6. At the meeting on 4 July (HSC/06/55), the Commission noted the further work done in response to its request on the comparative risks from different materials containing asbestos and with other non-asbestos related risks; and HSE's conclusion from this work that the level of risks involved in work with TCs does not warrant their inclusion within the licensing regime. The Commission also agreed a modification to the proposed approach on implementation of the “sporadic and low intensity exposure” derogation through the inclusion in the Regulations (rather than the ACoP) of a power for the Commission to approve a “peak exposure” level of fibres in the air. Exposure above this level could not be considered to give rise to “sporadic and low intensity exposure”.

Argument

7. Following the above discussions, the elements of the package which remain to be discussed and noted or agreed are as follows:

Textured Coatings

8. On the basis of the evidence discussed at previous HSC meetings, we recommend that the Commission agrees to the removal of work with TCs from the licensing regime. The legislative package has been drafted on this basis as agreed at the meeting on 9 May.

Regulations

9. The changes made to the Regulations following consultation are:

- a) to the definition of asbestos to ensure it matches the amended definition in AWPDP;
- b) the inclusion of a power for HSC to approve a peak exposure level;

- c) the inclusion of a duty to maintain respiratory protective equipment;
- d) the inclusion of a lead-in period of six months before the requirement for accreditation to certain ISO standards for people issuing clearance certificates following four stage clearance of asbestos applies. This is to allow for sufficient numbers of people to become accredited to comply with the requirement;
- e) the inclusion of a power to exempt the emergency services from the requirements to have a plan of work and notify work on asbestos and other changes clarifying the powers to issue certificates of exemption and to recognise exemption certificates issued under the old regulations which are still current; and
- f) clarification of the requirements of the Regulations dealing with the supply, manufacture and use of asbestos.

Approved Codes of Practice

10. It is proposed that the Asbestos Regulations will be supported by two ACoPs:

- a) one which covers all the requirements of the new Regulations relating to work with asbestos other than regulation 4 (the duty to manage asbestos in non-domestic premises). This replaces two existing ACoPs which, respectively, deal with work on licensable materials and unlicensed work;
- b) the other, which covers the duty to manage. This will be unchanged in substance from the current ACoP on this duty, but will need to be approved under the new Regulations. This ACoP is aimed at a different audience namely those who have responsibility for for the duty to manage asbestos in non-domestic premises.

11. The former ACoP has been revised to incorporate new code material where the legal requirements have changed. In particular, there is significant additional code material to explain the provisions in relation the “sporadic and low intensity” derogation and to ensure that work with TCs is still done to all the other requirements necessary for such work even though it has been removed from the licensing regime. We are currently consulting with key stakeholders on these changes and will report the results at the Commission meeting.

Other guidance

12. As well as the two ACoPs, there is a great deal of asbestos guidance currently available as detailed in **Annex 7**. We have already consolidated some guidance into the Licensed Contractor’s Guide (HSG 247 - which sets out the criteria contractors have to meet to be licensed) and the Analysts Guide (HSG 248 - which sets out guidance on what analysts need to do to meet the relevant sampling and analysis requirements). As part of the Disease Reduction Programme (DRP) we intend to continue with this consolidation, working with stakeholders to provide a more effectively focussed range of guidance material. For non-licensed work, we are revising Asbestos Essentials (HSG 210 and HSG 213) which will be made freely available on the web, thus providing full, practical guidance for those carrying out such work including more detailed guidance for work with asbestos cement and TCs. We are also developing an asbestos portal on HSE’s web site.

Training

13. As well as detailed training requirements now included in the Regulations, more guidance is given in the ACoP on the training necessary for both licensed and unlicensed asbestos workers and on asbestos awareness. Also, improvements in training standards have been achieved for the licensed sector in recent years by working in partnership with

the Asbestos Training Providers' Working Group (ATPWG) which includes training providers (including trade associations) who deliver asbestos training courses. This group represents a cross-section of training providers who are listed on HSE's asbestos website as complying with the standards set out in the training chapter of the Licenced Contractor's Guide. They have worked together with HSE and HSL to develop a Code of Conduct and have recently agreed to extend it to cover training providers who deliver asbestos awareness training and other non-licensed asbestos training.

Compliance

14. HSE is continuing with a programme of work for the inspection of licensed work. Inspectors also carry out inspections of contractors carrying out repair and refurbishment work and other awareness and promotional activity. Asbestos issues are raised as part of the 'height aware' campaign and as a specific topic at some 'Safety and Health Awareness Days'. HSE is also working with the manufacturing sector and their 'step up' campaign to cascade asbestos messages within this sector. Together with health and safety enforcement officers within Local Authorities, HSE inspectors continue to include the duty to manage asbestos (DTM) as a key activity in their inspection visits. In support of this, HSE Health and Safety Officers will also be undertaking DTM visits, seeking to raise awareness amongst dutyholders in small and medium enterprises (SMEs) of DTM and the risks from incidental exposure to asbestos.

15. As part of the Disease Reduction Programme a number of different interventions are planned. There will be a 'campaign' later in the year which will include trade directed media interventions on asbestos for plumbers and heating and ventilation workers. There will also be direct mail interventions to around 100,000 dutyholders in SMEs. This campaign will be supported with other products which will include packs of cards with safety messages on asbestos and a pack on DTM which can be obtained by telephone or from the asbestos website and given out during visits.

Consultation/Presentation/Costs and Benefits

16. These were addressed in HSC/06/49.

Financial/Resource Implications for HSE

17. This was addressed in HSC/06/55.

Other Implications

18. The proposed Regulations implement Directive 2003/18/EC which amends AWPD.

Action / Next Steps

19. The Commission is asked to take action as set out in paragraph 3 above.