

Inspection Pack for Duty to Manage Asbestos in Premises

**Strategic Delivery Programme: FIT3 (Disease Reduction Programme)
Parent Project: Cancer (Asbestos) Project
Intervention Strand: Duty to Manage Asbestos Initiative 2008/9**

Updated July 2008 – Model notices are now in OC 265/50

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1. Why managing asbestos is a priority

1.1 There were over 2,000 deaths in 2005 due to the asbestos-related cancer mesothelioma. In addition, it is estimated that there were a similar number due to asbestos-related lung cancer. The annual number of asbestos-related deaths currently exceed 4,000.

The latest projections of mesothelioma deaths suggest that they will peak somewhere between current levels and 2450 deaths between the years 2011 and 2015. Due to the 30-40 year average latency period between the exposure to asbestos fibres and the onset of these diseases, currently occurring cases relate to exposure in the past when asbestos was less well regulated than today and more widely used in industry. The key messages are:

- At around 4000 deaths per year (15 times the fatal accident rate) asbestos related diseases are still the largest occupational killers in the UK;
- The number of mesothelioma deaths continue to rise and should peak between 2011-2015;
- Approximately 25% (taken from the Peto Study of 1995) of those dying from asbestos related disease have worked in the building, maintenance and repair trades at some time during their working lives.

1.2 As other high-risk activities, such as installing asbestos products, have mostly ceased, the maintenance sector now constitutes the biggest group at risk. Construction Division will deal with the maintenance employers whilst the rest of FOD needs to tackle the owners and occupiers of the premises in which they work.

2. Legal requirements

2.1 The duty to manage asbestos in premises was introduced into law on 21 May 2004 and is enforced under regulation 4 of The Control of Asbestos Regulations 2006.

2.2 The duty requires those who have responsibilities for maintenance activities in non-domestic premises to assess whether there is any asbestos in their premises, and, depending on its condition, either remove it or manage it — making sure that maintenance or other activities carried out subsequently do not expose the workers to any avoidable risk. They must ensure that information on the location and condition of these materials is given to anyone likely to disturb them.

2.3 This duty requires the duty holder to take the following key actions:

- to take reasonable steps to find any asbestos in the premises and assess the condition of these materials;

- to presume that materials do contain asbestos unless there is strong evidence that they do not;
- to prepare a record of the location and condition of these asbestos-containing materials (ACMs) and assess the risk from them;
- to prepare and implement a plan to manage those risks, e.g. fibre release from friable AIB panels; and
- to provide information on the location and condition of the material to anyone who is liable to disturb it;
- to monitor the condition of the material left in place, and to review the assessment of risk periodically.

The Dutyholder

2.4 Regulation 4(1) places a duty on all parties who have, by virtue of any contract or tenancy agreement, an obligation of any extent in relation to the maintenance or repair of premises or of access or egress to premises. These parties might include owners of buildings, tenants, managing agents, etc. It is intended that the existing contractual arrangements for dealing with building related matters should be reflected in respect of the duty to manage asbestos.

2.5 Regulation 4(2) places a duty on all others (including surveyors, architects etc) to cooperate with the duty holder in order that they are able to comply with their duties under the regulation 4, for example passing on information about the presence of asbestos on the premises.

Domestic premises

2.6 The duty to manage asbestos only applies to non-domestic premises. This includes all commercial, industrial and public buildings as well as the common parts of domestic premises. Appendix 3 includes a table produced in consultation with the Royal Institution of Chartered Surveyors which seeks to clarify, as far as it is possible to do so, what is and what is not included in the exemption for domestic premises. However, the guiding principle should be whether the premises' primary purpose is as a private dwelling.

3. 'Asbestos: the hidden killer' communications campaign

3.1 During February and March 2008, HSE together with key stakeholders will be running a campaign to target building maintenance and repair workers who are still at risk from exposure to asbestos. The primary aim of the campaign is to raise awareness amongst these workers that they are more at risk than they think from asbestos. Additionally it aims to encourage them to find out more about asbestos and the precautions they should be taking.

3.2 The Asbestos campaign: Hidden Killer [<http://www.hse.gov.uk/asbestos/campaign/index.htm>] uses the theme "You are more at risk than you think!" and includes a regional pilot in the North West

(England) together with national coverage in the trade press and activity delivered through Trade Unions, Trade Associations and Suppliers.

3.3 The campaign is focussed around National Action Mesothelioma Day (27 February 2008), although activity in the trade press, regional press and radio will run throughout February and March in order to attain maximum exposure.

3.4 The campaign comprises:

National activity

- articles in trade press magazines for tradesmen and those who influence tradesmen
- advertisements in trade press magazines for plumbers and electricians
- distribution of campaign material to tradesmen via stakeholders
- PR activity, including the use of case studies

Regional activity

- A media pilot in the North West (England) comprising radio advertisements, regional press advertisements, PR and the direct mailing of campaign packs to tradesmen
- PR activity, including the use of case studies

4. Enforcement expectations

General approach

4.1 In workyear 2008/9 HSE senior management are advocating a more proactive approach to enforcement of CAR 2006 to build on previous duty to manage inspections and awareness raising work. Full details can be found in SIM 03/2008/07 Inspection intervention on worker protection: Asbestos duty to manage (DTM).

4.2 During routine planned or reactive site inspections inspectors should consider enforcement action to deal with any immediate risks using the legislation detailed in OC 265/50 when they find the following circumstances:

- Where no survey has been carried out and there are no robust management systems in place implement the results of a presumptive survey;
- There is no management plan to deal with the asbestos risks;
- Maintenance workers or others working in a building being exposed or liable to be exposed to a significant risk from asbestos during maintenance operations;
- People using the building being exposed or liable to be exposed to a significant risk from ACMs in poor condition, e.g. walking past friable asbestos insulating board;

- Where no information and or training have been provided to those liable to disturb asbestos.

Dealing with matters of evident concern

4.3 Regulation 4 in isolation cannot deal with immediate risks from ACMs, such as persons found working in a contaminated area, and other parts of CAR will be needed instead (see Tables 2 and 3 of OC 265/50). If such risks are brought to the attention of HSE and there is no undertaking, refer the matter as soon as possible to the Local Authority for potential action under legislation such as The Building Scotland Act 2003 (disrepair notices), The Housing Act 1985 or The Environmental Protection Act 1990.

4.4 A summarised enforcement guide for DTM and non-licensed work can be found in Tables 1 and 2 of OC 265/50. OC 265/50 also provides access to model improvement and prohibition notices.

In addition to tackling the immediate risks, inspectors should consider 'tracking back' up the procurement chain to find out how the work was planned and which duty holders failed to manage the risks from asbestos.

The priorities

4.6 The scope of the general duties set out in regulation 4 mean that HSE risks getting drawn into areas where our involvement would be inappropriate. Priority should be given to the application of regulation 4 to occupied workplace buildings. The following types of premises should be seen as a low priority:

- Premises controlled by domestic tenants or owner occupiers who get together or act separately to have work done in the common parts of a domestic premises e.g. for the stairwell in a flatted tenement building. Enforcement of other parts of CAR may be more effective in achieving safe working practices for contractors on site once it is brought to our attention that work is ongoing e.g. regs 10 and 6.
- Structures other than buildings; e.g. roads, bridges, street furniture.
- Unoccupied buildings, contaminated land and premises without buildings – A pre-tender health and safety plan (CDM reg 13) should address most contaminated land projects and the most hazardous forms of asbestos will usually be found within the fabric of a building.

Preventative prosecutions

4.7 In line with the 08/09 SIM 3/2007/02 and the EMM there is an expectation that prosecutions will be taken without waiting for the occurrence of a specific asbestos 'incident', such as contamination of a work area during maintenance work. Further enforcement guidance can be found in OC 265/50, Tables 1 and 2.

4.8 Less experienced inspectors and enforcement officers may wish to use the following list of prosecution tips:

- **Identify the risk** - Look for serious failures to control risk from ACMs, e.g. ACMs in poor condition/damaged or ongoing maintenance activities on suspected ACMs.
- **Identify the duty-holders and their roles.**
- **Take photographs and samples** - When the target risk is identified take photographs immediately after alerting the duty-holder to the risk. HSE Band 4 inspectors should not take samples of ACMs unless it is simply a matter of picking up a piece of asbestos cement that is lying on the floor. HSE staff must follow the Sampling Protocol at all times.
- **Gather evidence of exposure** – Where you need to prove exposure you should gather information that will help the Occupational Hygienist to provide a ‘guestimate’ of exposure, including: exposure frequency and duration, the nature of the work and the type of tools in use, RPE used, the room dimensions (where appropriate) and the type, location and condition of the ACMs.
- **Take witness statements** - Obtain the names and addresses of all those at and risk and brief statements from key witnesses and from the person in control of the site eg premises manager and / or subcontractor foreman.
- **Take/copy documents** – Such as the DTM Management Plan, any surveys (what type?), method statements, training records, risk assessments or records of their safety officer’s visits or audits. Obtain copies of any letters or other enforcement action showing previous advice on this subject.
- **Engage a director** - Call a director or senior manager to the site of the problem and inform of him of the facts, action taken and action required. Advise that a report will be submitted for consideration of proceedings regarding the company, but that the company will be offered an interview before the final decision is taken to prosecute or a report is sent to the Procurator Fiscal (Scotland only).
- **Create an Inspector’s/enforcement officer’s statement** - As soon as possible prepare a draft statement about what was seen, heard and the action taken.
- **Interview the director etc** - Send a letter offering an interview to the suspect(s) as soon as possible after the site visit. Fax / email a copy, if possible, to the suspect(s) in addition to posting.
- **Record and report information gathered** - Record all documents obtained on the CPI List (see Appendix 4), prepare a report and submit it

with an EMM form to the Principal Inspector (HSE only) for consideration / approval.

5. Work recording

Information on work recording to follow.

6. Further guidance material

A list of guidance material can be found in OC265/50 and on HSE's asbestos website. Several examples of good practice are also available on the website.

Appendix 1 - Risk control indicators (RCIs)

All RCIs have been reviewed and condensed down into one overall descriptor for each topic for use on the Inspection Report Form (IRF1). The asbestos RCI reads as follows:

- have the survey results been addressed in an up to date management plan for ACMs?
- are there systems to implement, monitor and review the plan, including a responsible person to oversee ACM management?
- is maintenance work properly regulated?
- have employees/managers/contractors been trained (ACoP L143, Reg 10) and told about any ACMs present?

The RCI scoring system ranges from 1-6 with 1 being the highest score. The scores are set out in the table below and also defined on the IRF1 form. Enforcement action should be considered when scores of 4-6 are achieved

Risk Control Indicators – Assessment Scale: each risk control indicator should be assessed against the following 1-6 scale					
1	2	3	4	5	6
High Standards with some aspects meeting best practice	Good standards meeting minimal legal requirements	One or more shortcomings are present. As these shortcomings are not serious, they can be dealt with informally with oral advice.	Standards are patchy. It is necessary to address one or more shortcomings by giving formal instructions for remedial action to be taken. Formal instructions may be implemented by, e.g. obtaining a verbal undertaking from the company to take specific action, sending a letter, or physical removal/disposal of items.	Standards are generally unsatisfactory. Typically, at least one contravention that gives rise to a discernible risk gap	Standards unacceptable. Unless application of the EMM identifies duty holder factors that provide strong mitigation, the issuing of a notice and/or prosecution is likely to be appropriate

Appendix 2 - Aide memoire – dealing with immediate risk(s) on site

During the course of a routine inspection, there are indicators that the ACMs may not be being managed, or situations that arise, that provide you with the opportunity to quickly assess their approach. These are situations that call in to question the premises' approach to the management of asbestos. For example, if an electrician is fitting new wiring but has no knowledge of whether the materials being worked on contain asbestos, then ACMs are not being managed.

Indicators that ACMs may have been or could be disturbed

- 1 Ongoing or recently completed building work that may have disturbed the fabric of the building.
- 2 Building trades working on the fabric of the building on routine maintenance, such as replacing light fitting.
- 3 Evidence of mis-matched building materials, such as an old suspended ceiling, with one or two new ceiling tiles; or partly replaced pipework insulation.
- 4 Damaged building materials, which could contain asbestos (eg holes in wall panel). Even if you know it doesn't contain asbestos (eg fibreglass pipework insulation) , they may not?
- 5 Debris such as pipework insulation in the boilerhouse.
- 6 Building materials that could contain asbestos (eg pipework insulation, ceiling tiles etc).
- 7 Regular movement of traffic or personnel that could cause building materials to be damaged (eg forklift trucks damaging wall panels).
- 8 The premises look in a poor state of repair.

Questions to ask as appropriate

- 1 Who is responsible for the management of ACMs on your premises and what training have they had?
- 2 Did any ACMs have to be removed as a result of the building work?
- 3 Do you know the location of your ACMs and their condition?
- 4 Who controls maintenance workers to ensure they don't unknowingly work on ACMs?
- 5 What do you do if you find an ACM?
- 6 Could you have people working in areas where damaged ACMs exist?

They should be able to explain to you how they prevent building materials being worked on, where the content is not known, and what systems they have for monitoring the condition of the materials in the building.

Appendix 3 - Guidance table on definition of domestic premises

Chart showing whether a residential premises is likely to be classified as domestic or non domestic for the purposes of reg 4 CAWR 2002

n.b. this chart is only the current best interpretation of 'domestic premises' and caution should be used in its application.

TYPE OF RESIDENCE	MODE OF OCCUPATION	ROOMS/PARTS	DOMESTIC PREMISES?	
			YES	NO
Private House Single dwelling	owner/occupier	All	✓	
	let to single family	All	✓	
	Occupied by more than one family	Private rooms (eg bedrooms; living rooms)	✓	
	Occupied by more than one family	Shared rooms (eg kitchens, bathrooms, toilets)	✓	
	Rooms let to lodgers	Common parts used for access and circulation (eg entrance lobby and staircase)	✓	
Private rooms			✓	
Bed sits (one room flats with communal bathrooms)	Each let to single person	Common parts used for access and circulation (eg entrance lobby and staircase)		✓
		Private rooms	✓	
House converted into flats Whether rented, owner-occupied or mixed	Occupied by more than one family	Private rooms	✓	
	Occupied by more than one family	Common parts – for access, circulation & storage (eg entrance lobby and staircase/roof space)		✓
Garages	Integral/linked with residence	Private	✓	

TYPE OF RESIDENCE	MODE OF OCCUPATION	ROOMS/PARTS	DOMESTIC PREMISES?	
			YES	NO
Garages/parking spaces	Not allocated to a specific person	Common parts		✓
Block of flats Whether rented, owner-occupied or mixed	Occupied by more than one family	Individual dwellings	✓	
	Occupied by more than one family	Common parts (eg foyers, lifts, stairs, lobbies; boiler and plant rooms, roof spaces, communal yards, gardens, store rooms, external outbuildings, bike shelters)		✓
Flats over shop or office with or without separate entrance	Occupied by owner of shop or office	Private rooms	✓	
	Leased separately	Private rooms	✓	
		Access/egress & circulation areas		✓
Sheltered Accommodation, n.b. be careful of the definition – e.g. this does not include hospitals, hospices tec. See care homes, below.		Private rooms	✓	
		Communal rooms (dining/lounge)	✓	
		Work areas (eg central kitchen, staff rooms and laundries), lifts, staircases and circulation areas, boiler room, stores & roof spaces		✓

TYPE OF RESIDENCE	MODE OF OCCUPATION	ROOMS/PARTS	DOMESTIC PREMISES?	
			YES	NO
Hotel or Guest House including Bed & Breakfast accommodation when prime purpose. Halls of Residence. Hostels owned privately or by Local Authority. Care homes.		Private rooms occupied by owner	✓	
		Guest accommodation and common parts		✓
Tied cottage/accommodation	Leased or rent-free	All	✓	
Farm house	Leased or rent-free	All	✓	

Appendix 4 – CPL list of materials obtained during the investigation

CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 LIST OF ALL MATERIAL OBTAINED DURING THE INVESTIGATION									
DESCRIPTION	WHERE	CATEGORY (TICK BOX)				UNUSED (TICK BOX)			
		USED	UNUSED	IRRELEVANT	PRIVILEGED	3 NON-SENSITIVE		4 SENSITIVE	
HOLD DOWN TAB AT X TO ADD FURTHER ROWS						NOT ASSIST DEFENCE/ UNDER MINE PROS	ASSIST DEFENCE/ UNDER MINE PROS	NOT ASSIST DEFENCE/ UNDER MINE PROS	ASSIST DEFENCE/ UNDER MINE PROS
DTM Management Plan									
Results of ACM assessment									
Statement employee X									
Statement employee Y									
Statement Inspector X									
Method statement									
Photographs XX									
Details of samples taken									
Transcript of Interview									
HSE Guidance on X									
Letter of advice to dated									
PN / IN issued at visit									
Previous PN / IN dated									
FAX from contractor re action taken									
Letter from XXX re offer of interview									
Previous Convictions from HSE Database									

CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996 LIST OF ALL MATERIAL OBTAINED DURING THE INVESTIGATION

DESCRIPTION	WHERE	CATEGORY (TICK BOX)				UNUSED (TICK BOX)			
		USED	UNUSED	IRRELEVANT	PRIVILEGED	3 NON-SENSITIVE		4 SENSITIVE	
HOLD DOWN TAB AT X TO ADD FURTHER ROWS						NOT ASSIST DEFEN CE/ UNDER MINE PROS	ASSIST DEFEN CE/ UNDER MINE PROS	NOT ASSIST DEFEN CE/ UNDER MINE PROS	ASSIST DEFEN CE/ UNDER MINE PROS
									X

I, as disclosure officer, have to the best of my knowledge and belief, revealed to the prosecutor all material which has been retained, (and made available to me) in this case

NAME

SIGNATURE DATE