

Health and Safety Executive		Sector Information Minute	
Field Operations Directorate		SIM 03/2007/02	
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Target Audience:
HSE FOD Inspectors
Specialist Inspectors – Occupational Hygiene
Occupational Health Inspectors
Health and Safety Awareness Officers nationally

INSPECTION INTERVENTION ON WORKER PROTECTION: ASBESTOS DUTY TO MANAGE

This SIM informs Inspectors on the application of the Duty to Manage Asbestos in non-domestic premises (regulation 4 of the Control of Asbestos Regulations 2006). This SIM should be read in conjunction with the Asbestos Inspection pack 2007/8.

ASBESTOS DUTY TO MANAGE INTERVENTIONS

As part of FOD's contribution to the Fit3 programme and its commitment to dealing with high health risk issues, Band 4 inspectors are asked to pro-actively engage with duty holders in asbestos management issues. This work has been allocated to Band 4 inspectors to give them experience of inspecting a management system and of dealing with a high risk health issue. This work will also contribute directly to the work of the Disease Reduction Programme (DRP). Enforcement practice will follow the general principles and guidance in the EPS/EMM, and the more detailed guidance in the inspection pack and OC265/50v3

BACKGROUND

1 Asbestos is the biggest occupational health killer, responsible for 4000 deaths each year. Although these deaths are from past exposures (when asbestos was widely used and not regulated), it is vital that we protect workers now to prevent them dying from asbestos related cancer in the future.

2 It is estimated that more than 500,000 non-domestic premises, including schools, shops, offices, factories, etc, still contain some form of asbestos.

3 In 1995 research indicated that at least 25% of those people dying from asbestos related diseases have worked in construction and building operations. The building maintenance and repair sector now constitutes the group at greatest risk. A wide range of

these workers is potentially at risk from asbestos fibres including electricians, plumbers, carpenters, joiners and builders. Other people in buildings could also be at risk from asbestos, either when the asbestos is disturbed, or in some cases by its generally poor condition.

4 Many occupiers are unaware of the presence of asbestos in their building. It is of course not possible to know with absolutely certainty whether material contains asbestos unless it is analysed, however workers and duty holders can adopt a precautionary approach, assuming that the material they are working on contains asbestos unless it obviously does not, i.e. it's solid wood or brick.

ACTION REQUIRED

Inspectors (Band 4 & 3)

5 This work has been allocated to Band 4 inspectors (that is; those graded Band 4 on 1 April 2007 and who were in post on, or before, 8 May 2006 - some of these will be re-graded to Band 3 during the work year but they should continue to do this work as Band 3s for the year). This has been done to build on their experience of inspecting management systems, dealing with a high-risk health issues and applying the principles of the EPS/EMM to such high-risk issues.

6 When visiting duty holders as part of other inspections Band 4 inspectors should pro-actively explore with duty holder their compliance with Regulation 4 of the Control of Asbestos Regulations 2006, more commonly referred to as 'the duty to manage' or DTM. This work can easily be combined with other programme work such as falls from height, WPT, Noise etc. The intervention is not centred on a specific sector or activity but is premises based.

7 Band 3 inspectors should deal with the subject if it is a matter of evident concern (e.g. a building liable to contain asbestos is in a poor state of repair). Band 3 inspectors may also be required to provide mentoring support to Band 4s during enforcement action, particularly putting together a prosecution case.

8 Band 4 inspectors are not required to identify whether asbestos is present themselves but to assess the dutyholders compliance with DTM, which is primarily a management regulation. In particular, inspectors should check that the location and condition of asbestos containing materials (ACMs) has been established; that there is an asbestos management plan in place; and that the plan is being implemented.

RESOURCES AND TIMING

9 B3/4 ops inspector and occupational hygienist resource secured for this work is as outlined in the FOD Delivery Plan. There is no planned HSAO activity on this inspection initiative; however HSAOs should deal with the subject if it is a matter of evident concern at a visit they are undertaking (e.g. a building liable to contain asbestos building being in a poor state of repair). In these circumstances they should refer the matter to either a Band 2, 3, or 4.

10 This work is to take place throughout 2007/8 and during this time, Local Authorities will be carrying out similar work in LA enforced premises.

ASBESTOS CAMPAIGN

11 These direct interventions will be complimented by a publicity campaign (likely to be in Q4 2007/08), with up to 5 stakeholder events (TBC). The HSAO, limited B3/4 ops and OHI support agreed is also outlined in FOD's Delivery Plan. In addition, there may be a limited (~one day) amount of Band 2 resource required.

ENFORCEMENT

12 Inspectors should use their professional judgement when deciding upon enforcement action having due regard to the EMM and HSC/E Enforcement Policy (guidance is contained in OC265/50 and the training provided, as outlined below.

13 Band 2's should ensure that local liaison arrangement exists to ensure information exchange with colleagues in Construction Division, so that any ASB5 waiver requests, RIDDOR DOs or complaints received with information suggesting that tracking back is appropriate to identify possible management failures, can be followed up quickly. ASB5 14 day notice waiver applications can be indicative of poor management arrangements. The Asbestos Licensing Unit (ALU) will contact ALPIs nearer the start of the work year to give further details of how this could operate.

14 Where the duty holders elect for the 'presumptive approach' to asbestos management then arrangements should be in place to make sure that no one does any work without being informed that the materials may contain asbestos. The presence of ACMs should be confirmed by sampling. If confirmed it must then be decided if a licenced contractor is required for the work or it can be undertaken safely if the precautions in the appropriate guidance are followed. In addition, all presumed asbestos material is required to be maintained in good order.

15 The duty holder should also ensure that occupiers of the building have been made aware of the arrangements made to manage asbestos. Appropriate asbestos awareness training should be provided for persons who are liable to disturb asbestos while carrying out their normal everyday work, i.e. general maintenance staff, or for persons who may influence how the work is carried out. Inspectors should also be aware, including where the dutyholders elect for the presumptive approach, or have in house maintenance teams of the need to ensure that the appropriate level of asbestos awareness training has been received. The Regulations and ACOP lay down clear specific learning requirements

COMPLETION DATES

16 This phase programme work should be completed by 31 March 2008, notwithstanding any enforcement action that may go beyond this date

WORK RECORDING

17 COIN recording details will be notified by FOD.

INSPECTOR TRAINING

18 One-day regional tutorials will be provided for Band 4 staff involved in this work. These tutorials will provide information about the programme of work, the relevant standards, the enforcement expectation, sampling protocols and personal health and safety. The training will not cover the legal process of prosecution as this is covered in

core Band 4 training. Band 4s will be expected to have done some essential pre-course reading before attending the course. It is planned to run these tutorials in March/April 2007. Topic inspection packs and further supporting material will be made available at the event and on the intranet (see below).

HEALTH AND SAFETY

19 Asbestos only poses a risk when the fibres become airborne and are inhaled. During these visits you should not be exposed to asbestos fibres. The only circumstances where you may be at risk is if there are maintenance activities, refurbishment or other construction related work going on in the premises at the time of your visit. Visiting staff should review the information on asbestos on the intranet under 'Your Health and Safety' at <http://intranet/yourhealthsafety/health/asb-vis.htm>.

20 Where the information suggests that there may be disturbed ACMs then Inspectors should exercise extreme caution and not put themselves at risk. Inspectors should follow the guidelines contained in the relevant H&S policy supplement

MATTERS OF EVIDENT CONCERN

21 Regulations 11 (Control) and 16 (Prevention of spread of asbestos) are key to dealing with exposure that is encountered on site. Such situations may arise if asbestos present in the building is in poor condition. If you suspect material (e.g. lagging and insulation) is asbestos and is in poor condition do not enter any area where there is a risk of exposure to asbestos fibres. Action to deal with any immediate risks should be taken in line with the guidance given in OC 265/50. Regulation 4 in isolation cannot deal with immediate risks from ACMs.

FURTHER INFORMATION AND GUIDANCE

OC 265/50 - This OC provides advice to inspectors on interpretation of the Control of Asbestos Regulations 2006 including enforcement benchmarks for licensed and non-licensed asbestos removal work and the management of asbestos in buildings.

An Approved Code of Practice is available to support regulation 4: The management of asbestos in non-domestic premises L127 (second edition).

Guidance booklet: "A comprehensive guide to managing asbestos", HSG227.

Free leaflet INDG223 "A short guide to managing asbestos in premises". [Insert PDF icon]

Free leaflet "Managing risk from asbestos: a basic guide to dutyholders' legal responsibilities" [Insert PDF icon]

MDHS100 Surveying, sampling and assessment of asbestos containing materials (2001) ISBN 0 7176 2076 X (price £18.00) [Insert PDF icon]

Other useful information on asbestos and DTM can be found on the asbestos website

OC 265/48 Health Effects of Inadvertent Exposure to Asbestos: Guidance for FOD staff when responding to enquiries.

Dutyholder Packs produced as part of the recent 'Don't take the Gamble' Campaign are available. Packs (include a checklist, poster, punch-out cards etc.) are available centrally - B4 Inspectors who want campaign material to hand out during visits {or events} should contact Dave Dawick in CDS VPN 523 4085 dave.dawick@hse.gsi.gov.uk and/or the individual items are also available for download at <http://www.hse.gov.uk/asbestos/campaign/index.htm>

CONTACTS

22 For further information contact: Dave Dillon, VPN 523 4104 or via email: dave.dillon@hse.gsi.gov.uk.

23 If you have questions relating to Asbestos Licensing this can be referred, in the first instance to the local Construction Division Asbestos Licensing Principal Inspector (ALPI) or the Asbestos Licensing Unit (ALU) VPN 520 2135, Tel: 0131-247-2135.