

# **PROPOSED AMENDMENTS TO THE ASBESTOS PROHIBITIONS REGULATIONS**

## **Regulatory Impact Assessment (post-consultation)**

### ***PURPOSE AND INTENDED EFFECT***

#### **Issue**

1. This change is being made to align UK regulations with the relevant EU Directives. At present, the UK Asbestos (Prohibitions) Regulations ban the import of any asbestos containing material (ACM), whether the asbestos is naturally present or intentionally added. Whereas the prohibition on the supply and use of asbestos products in the UK only applies to those products to which asbestos has been intentionally added. We believe that the current UK Regulations are in breach of EU Single Market Regulations due to the difference between the prohibition on supply and use and that on imports that could be seen as a restriction of trade.

#### **Objectives**

2. The objective of the amendments is to ensure that the prohibition on imports of asbestos and asbestos containing products is brought in to line with that on supply and use. This would ensure that the UK regulations would meet Single Market Treaty obligations.

#### **Risk assessment**

3. According to current EU requirements, set out in Directive 1999/45/EC and implemented by the UK's CHIP Regulations 1999, a mineral substance would only be required to be labelled for the presence of asbestos if it contained more than 0.1% of asbestos impurities by mass (this is a general requirement relating to all category 1 carcinogens). Without labelling, the end users will be unaware that asbestos is present and will not take any controls or precautions to mitigate their exposures, unless suppliers give additional information on asbestos control. In addition to this, Section 6 of the Health and Safety at Work etc. Act, 1974 places a general duty on importers and suppliers of products to provide adequate information about their health and safety risks. If enough asbestos is present in the material to give rise to a risk when it is subsequently used, then this information must be passed on to the user.
4. The health and safety effects of naturally present asbestos in minerals have been investigated by the Health and Safety Laboratory (HSL). Their findings show that much smaller percentages than the 0.1% labeling limit could give rise to asbestos exposures well over the control limit set when the material was subjected to a range of foreseeable uses. Such dangerous levels could occur even if the dust concentrations themselves are within nuisance dust limits. This suggests a 'safe' limit would have to be set well below the current labelling requirement, and HSL's initial findings suggest that a safe level could be as low as 0.001% by mass. The research also indicates that actually measuring asbestos concentrations well below 0.1% by mass could be technically difficult. Furthermore, enough samples would have to be taken to ensure that the concentration is representative of what would sometimes be many tonnes of material. Asbestos concentrations (if any) also vary considerably even for material mined from the same source, so regular testing would be required.
5. An initial assessment was carried out by HSL to determine the extent minerals supplied in the UK contain asbestos impurities. This work used microscopy to screen samples of the bulk material for larger fibres and bundles, and also X-ray diffraction analysis for the presence of any serpentine or amphibole minerals (from which the regulated asbestos types may form). This work

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identified ten minerals that may contain asbestos impurities and provided examples of their possible use.

### **Options considered**

6. The UK considered a number of options to meet the EU concerns, whilst maintaining health and safety standards, and also satisfying the concerns of UK Customs and Excise. These were explained in detail in Consultation Document (CD) 186 and can be summarised as follows:
  - a Prohibit all materials with a level of asbestos above a given amount. This would satisfy the EU's concerns, since individual governments can override competition rules if there is a significant health and safety concern.
  - b Align the UK regulations with the EU directive, and thus allow the importation of ACM into the UK if the asbestos has not been intentionally added.
  - c Do nothing.
7. The problems with option a were outlined in the CD, and are briefly summarised in this document. In particular, an economic appraisal is not possible without some indications of the limits, and also more data on minerals currently imported with naturally present asbestos. The Health and Safety Laboratory (HSL) have done some preliminary work, and believe that this would require considerable additional work by HSL specialists and HSE economists. The Department of Trade and Industry and also representatives of the quarrying industry have indicated that the costs of such a solution could be significant.
8. Option b was HSE's preferred option, with option a being stated in CD186 as HSE's proposed long-term intention. The economic consequences are discussed below (and compared in qualitative terms with option a). Option c was not considered feasible. In correspondence with the European Commission it became clear that an amendment to the regulations governing the import of asbestos is necessary.

### **Information sources**

9. Four of the major suppliers of minerals used in the construction industry have been contacted directly. The HSL research is also used here.

### **Costs and benefits**

#### **Business sectors affected**

10. Businesses that import a wide range of minerals are under scope of the Regulations and are *potentially* affected. All suppliers of imported minerals known to HSE are large firms. Firms downstream that go on to process, manufacture or use these minerals may be affected indirectly, but the probability of this is low. These firms are distributed among a wide range of industries including construction; agriculture; plastic, paper and rubber manufacturing; ceramics; iron and steel foundry; decorative aggregates; paint and metallurgy.

#### **Benefits**

11. Asbestos can be present in a wide range of minerals used in the construction industry. Many materials can be affected including dolomite, talc, vermiculite and olivine. These materials are usually imported in bulk state, and then processed by UK manufacturers to make intermediate building products which are either then used in construction in their supplied state, or may be further processed on site.
12. Under option a, *all* minerals would have to be tested to ensure they were below the limit (less than 0.1% asbestos by mass). A much lower limit would mean that each imported batch of

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materials would have to be far more exhaustively tested. There are two possible benefits. Firstly, the asbestos content of all materials would be better known. This would reduce the risk of a relatively high asbestos content material being inadvertently used. Secondly end users could switch to alternative materials, which they may not choose to use at present, in the knowledge that they were safe from asbestos.

13. However, while the health effects of occasionally high doses of asbestos can be significant, it is thought that such exposures through the routes discussed are rare. We would also not expect a great commercial benefit from a wider choice of minerals, since there are few occasions where a mineral cannot be supplied at present because it is thought it *may* contain asbestos, but is currently untested.
14. Option b is potentially positive in competition terms. This amendment to the regulations is a slight relaxation of current regulations, allowing minerals containing naturally occurring asbestos to be imported into the UK. A wider range of products could theoretically be available. However, judging from the response of the mineral suppliers, we believe it highly unlikely that an end user would switch to using a product known to contain a higher (or unknown) level of asbestos, and hence importers are highly unlikely to switch from their present suppliers to suppliers of marginally cheaper minerals containing asbestos. There is no market for these imports, and hence little scope for benefits from improved competition.

### Costs

15. Option a would almost certainly mean a significant increase in testing. At present, many minerals are imported from sources that have already been tested as asbestos free, and this finding is usually backed up by firm geological evidence. Minerals with small amounts (i.e. less than 0.1%) of asbestos do not currently have to be labelled, but general obligations do exist on suppliers and importers both to carry out testing and to provide information to users about the hazards of the material. However, a much lower limit would mean that each imported batch of materials would have to be far more exhaustively tested (more samples would have to be taken). Such testing could easily require two days specialist work in the field and laboratory at a cost of around £600, which could be a significant addition to the cost of a single imported load, although this would be dependent on size of load.
16. Under option b, it is possible that there could be increased imports of materials that contain relatively high levels of naturally present asbestos. This could present importers with additional testing and labelling costs under the CHIP regulations and costs arising from compliance with the requirements in Section 6(4) of the Health and Safety at Work Act 1974 to provide information on the risks of the substance to those further down the supply chain. However, HSE believes that this is a highly unlikely scenario for two reasons. Firstly, large suppliers (and these represent the bulk of suppliers) of imported mineral products already have a rigorous testing and labelling regime in place, and will not face any extra costs in practice. HSE has contacted four of the UK's largest suppliers of imported mineral products. Taken together these companies supplied vermiculite, talc, dolomite and many other potentially affected mineral products. All of these suppliers maintained that all of their products were free of asbestos. Testing to ensure that this is the case was done both by those mining the products, and also in many cases by the UK suppliers themselves. New sources of materials that were known to be at risk of containing asbestos were tested by the UK suppliers to ensure that the product contained no asbestos. In many cases, this enabled minerals to be supplied with information stating that the material was 'asbestos free' (i.e. completely free from traces of asbestos), although there are no legal obligations to do this.
17. Secondly, the UK suppliers were keen to emphasize that neither they - nor the users of the supplied minerals - wanted to deal with material containing asbestos. It was the view of the suppliers that if they did attempt to supply a material that was labelled as containing asbestos it simply would not be sold at all. Therefore, even with the relaxation of current import regulations, there will probably be little change in the asbestos content of imported minerals as there is no

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market for minerals with naturally occurring asbestos. There will be no additional costs for importing firms.

18. The other possible cost associated with option b is an indirect cost to firms that process asbestos containing minerals into building products for use in the industries outlined in paragraph 10, and the commercial users themselves. HSE is running an awareness raising campaign that will run alongside the publication of the Amended Asbestos (Prohibition) Regulations. The campaign will ask these downstream firms to consider whether they use minerals that may contain asbestos, and if so whether the asbestos containing material (ACM) is used in a way that releases fibres and poses a risk to worker health. If material is being used in such a way, firms will need to ask their supplier to measure asbestos levels in the mineral and, depending on the findings, take precautions under the Control of Asbestos at Work (CAW) Regulations 2002 as appropriate. Under these Regulations, persons intending to use such a material would have to consider whether it was reasonably practical that an asbestos free material could be used instead. Also, under CAW Regulations, appropriate control measures would have to be taken to control the risk. Both these requirements would result in some additional costs compared with the present situation, and that if more materials containing asbestos are imported or supplied. If the material were still used despite these costs, then it would be because of the economic advantages of using this material.
19. Again, HSE judges that it is highly unlikely that downstream firms will incur significant costs under these circumstances. The large importers of minerals already conduct rigorous tests and label products under CHIP if necessary. In any case, they have said that they will not begin importing minerals with naturally occurring asbestos of more than 0.1% by mass (simply because they will now be permitted to do so) because there is no market for these minerals. As shown above, under CAW firms have an obligation to use asbestos free material if this is reasonably practical. The circumstances under which costs would be incurred have a very low probability: that a firm is found to be using ACM in a way that poses a risk to worker health, and also that firm's supplier finds upon testing that the mineral contains more than 0.1% asbestos, given present testing regimes and import standards (which are expected to remain the same despite this proposed relaxation). HSE believes that option b does not in practice present a notable cost to any user or supplier.

### **Compliance costs for a 'typical' business**

20. There are no net compliance costs to importing firms. Any costs incurred by downstream processors/users under CAW Regulations in using minerals containing asbestos would be incurred as a matter of choice, and only if the economic benefit made it worthwhile. In any case, we expect this scenario to be highly unlikely.

### **Costs to HSE and other enforcing authorities.**

21. Under option b there is the potential for some additional enforcement costs to both HSE and HM Customs and Excise, if a wider range of products containing asbestos were imported. There will be greater enforcement costs under option a, due to increased testing by the enforcement authorities.

### **Uncertainties**

22. These are as discussed in the text. We have not been able to quantify costs or benefits given current information, and the work already done by the Health and Safety Laboratory indicates that considerable further work would need to be done on option a (the *de minimis* limit), even if it is technically feasible to set such a limit. The effects of adopting option b are considered to be minimal. This conclusion is subject to uncertainty, although it was drawn after discussions with the mineral industry.

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23. It is not entirely certain that all imported minerals used in the UK will be entirely free from asbestos, although materials with asbestos concentrations of 0.1% or higher would be very unusual. Asbestos can be present in a batch of material mined from what was thought to be an asbestos free seam. Also, contamination at very low concentrations can simply be missed, despite competent testing. This is a risk inherent to regulation of asbestos containing material.

### **Equity and Fairness**

24. No groups will be disproportionately affected by this proposal.

### **Small Firms' Impact Test**

25. Importers of quarried aggregates are large firms. There may be small firms downstream that process asbestos containing minerals, or use it as an industrial input. The former group could include ceramics manufacturers and manufacturers of decorative aggregates, and the latter group could include small builders who use loft insulation, or farmers using asbestos containing fertilisers. However, two factors militate against conducting a detailed impact test for these firms. Firstly, for the reasons discussed in the Costs section, they are not expected to incur any significant additional costs as a result of this amendment. Secondly, HSE, in conjunction with the Small Business Service, has tried to identify suitable firms. However, finding small firms in these sectors that also use asbestos containing minerals has proved very difficult and, given HSE's expectation that they will not incur much cost (if any), does not justify further resource allocation.

### **Competition Assessment**

26. This amendment relaxes current regulations governing imports of minerals, bringing the UK in line with EU single market regulations. Minerals containing naturally occurring asbestos will now be permitted for import into the UK. In theory this should improve competition – with more imports competing with minerals mined in the UK. In practice, there is very little probability of a change in competition because new imports are not expected. Industry has assured HSE that there is no demand for slightly cheaper minerals, because of the greater health risks and compliance costs (CHIP, CAW) that accompany them. There will be no impact on the minerals market structure.

### **Enforcement and sanctions**

27. Responsibility for enforcement of the Asbestos (Prohibitions) Regulations as a whole lies with both HSE and HM Customs and Excise. Customs and Excise enforce the importation prohibition and HSE the supply and use prohibition. HSE does so within its existing enforcement regime.

### **Consultation**

28. Twenty-eight concerned firms and organisations have been consulted, including: four of the UK's largest suppliers of imported minerals, downstream users of such minerals in industries including construction, transport and horticulture, and firms involved with asbestos removal. None of these consultees objected to the conclusions of the RIA. Several affirmed that, despite the relaxation in import standards, the proposed change was unlikely to significantly increase ACM imports in practice. Most consultees expressed support for the long-term aim of a de minimis limit.

### **Arrangements for monitoring and evaluation**

29. This amendment will be reviewed at an appropriate time following further work by the Health and Safety Laboratory. Further research would be required on the practicality of setting an absolute limit on the concentration of asbestos permitted in minerals. Detailed information on the prevalence of naturally present asbestos in imported minerals would also be needed.

**Summary of costs and benefits and recommendation**

- 30. Judging the cost-benefit balance of option a is extremely difficult, and would require considerable additional work. The health effects of occasionally high doses of asbestos can be significant, however it is thought that such exposures through the routes discussed are rare. We would also not expect a great commercial benefit from a wider choice of minerals, since there are few occasions where a mineral cannot be supplied at present because it is thought it *may* contain asbestos, but is currently untested. Against this, the ongoing cost of extra testing (and supplying safety information) could be significant, and there would also be an increase in enforcement costs. It is worth noting, however, that some type of *de minimis* limit on asbestos levels is HSE's long-term intention.
- 31. As an interim arrangement, however, HSE recommends option b. While the scope for competition benefits from this option is limited, this option does not present notable costs to any supplier or user, and will ensure that the UK is not in breach of EU Single Market Regulations. Option b therefore appears to be the most suitable in the absence of sufficient research to identify a *de minimis* limit.

**Ministerial declaration**

**DECLARATION**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister.

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Date.....

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