

Number 4

## Asbestos

### **New “duty to manage asbestos” regulations come into force in May 2004**

As you may be aware the rules governing the management of asbestos in property have been fundamentally strengthened by the Control Of Asbestos at Work Regulations 2002 (“CAW”). A crucial element of CAW is the introduction of a “duty to manage asbestos” which will become enforceable from May 2004. This will place a new duty on commercial property owners, occupiers and those providing maintenance and repair services to such properties to institute and maintain a proactive asbestos management policy. This will include a responsibility to find out whether asbestos is present in the first place.

### **Why is this necessary?**

Asbestos related diseases can take up to 60 years from the date of exposure to take effect. Health and Safety Executive figures estimate that 3000 people die from such diseases annually and they expect the figures to increase over the next 10 years.

### **Why are these new regulations necessary?**

Well, it’s widely known that asbestos was commonly used in buildings during the 1960s and 1970s, but it would be dangerous to assume that no other buildings are affected. Asbestos cement, for example, was used in buildings up to 1999 and it has been estimated that anywhere between 1.5 and 4 million work places contain asbestos in one form or another.

One of the first issues to consider is to identify what new responsibilities, if any, will fall to be performed by you under the new regulations.

A duty holder could be anyone who owns, manages, occupies or has responsibility for the maintenance and repair of commercial premises. Primarily it is thought that the duty will fall on employers as tenants of commercial property; however, responsibility will largely be determined by who is responsible for maintenance or repair under the terms of the relevant tenancy agreement. For example, landlords of multi-let buildings are likely to find themselves burdened by the new duty in respect of the common areas and structure. However, even where tenants are clearly the duty holders, anyone with any relevant information is under a duty to provide them with this information and to co-operate in the performance of their duties.

### **What will the duty involve?**

In brief the main duties are as follows:-

- Find out if there is asbestos in the building. The duty holder must make reasonable efforts to identify whether asbestos is present and this may involve an expert survey. However, what is required to comply with this duty will differ in each case and will in part depend on whether the duty holder has grounds to believe reasonably that asbestos may be present. For example, if a building was built before 1985 then it is quite likely to contain asbestos and more comprehensive enquiries would be required.

One key element of this duty is that, if in doubt, the duty holder must presume that material within the property contains asbestos unless there is strong evidence to suggest otherwise.

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# BRIEFING

- Keep records. If asbestos is located then information such as the location and condition of the asbestos material must be recorded. These records must then be made available to anyone who is liable to come in contact with or disturb the asbestos material, such as staff and contractors.
- Whether or not the duty holder has a duty to remove any asbestos found will depend on the condition of the asbestos identified and whether in its present condition it constitutes a risk. Removal of asbestos is a specialist job and for most types of asbestos material this should be carried out by a Health and Safety licensed contractor. A list of these contractors is available from the Health and Safety Executive.
- Management of the risk. The duty holder is under an obligation to put in place and carry out a plan to manage the asbestos risk. This plan should be updated regularly to update the policies being implemented to minimise the risk and monitor the condition of any asbestos which has been identified. An important element of the plan should be to ensure that anyone who may be at risk from the asbestos in the property is informed as to the location and condition of the asbestos material.

Clearly there is plenty for the “soon to be” duty holder to do. May 2004 may seem a long way off but, depending on your circumstances, you are likely to require the services of experts to survey your property and if necessary remove or make safe any asbestos identified. These experts are going to be increasingly busy in the coming months and their availability cannot be taken for granted. It may therefore pay to put the wheels in motion sooner rather than later.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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