

Special Release

ASBESTOS - THE KILLER OF ABOUT 3000 PEOPLE EACH YEAR

DO YOU HAVE AN OBLIGATION TO MAINTAIN OR REPAIR NON-DOMESTIC PREMISES?

IF SO, FROM 21 MAY 2004 YOU WILL ALSO HAVE A DUTY TO MANAGE ASBESTOS IN THOSE PREMISES.

The Control of Asbestos at Work Regulations 2002 ("the Regulations") came into force, with certain exceptions, on 21 November 2002. One of those exceptions was Regulation 4, entitled "Duty to manage asbestos in non-domestic premises", which comes into force on 21 May 2004.

If you own, occupy, manage or have responsibilities for non-domestic premises (which include factories, shops, workshops, offices, institutional buildings such as hospitals, libraries, prisons and churches and the common parts of residential buildings) which may contain asbestos, you will have either :

- a legal duty to manage the risk from this material; or
- a duty to co-operate with whoever manages that risk.

If you have either duty you are a "dutyholder". The obligation can arise by virtue of a contract or tenancy. This could catch for example builders, maintenance contractors, management companies and managing agents as well as tenants. A dutyholder can be anyone who has control of non-domestic premises even where there is no such contract or tenancy. This will include owners and occupiers of various sorts. Virtually all employers will fall within the definition of dutyholder. The common parts of residential properties fall within the duty as whilst they may lead to residential flats, the common parts are "non-domestic" for the purposes of the Regulations.

Where is asbestos likely to be found in your premises?

- sprayed asbestos or loosely packed asbestos used as firebreaks in ceiling voids;
- sprayed asbestos mixed with hydrated asbestos cement used as fire protection in ducts, firebreaks, panels, partitions, soffit boards, ceiling panels and around structural steel work;
- moulded or preformed sprayed coatings and laggings used in the thermal insulation of pipes and boilers;
- ceiling tiles;
- certain textured coatings;
- asbestos cement products, which can be compressed into flat or corrugated sheets and used as wall cladding or roofing. Other asbestos cement products include gutters, rainwater pipes and water tanks;





- millboard, paper and paper products used for insulation of electrical equipment;
- insulating boards used for fire protection, thermal insulation, partitioning and ducts.

What is new about the duty to manage asbestos?

If you are an employer, you already have a legal duty to prevent the exposure of your employees to asbestos, or, if this is not possible, to reduce it to the lowest possible level. The duty to manage asbestos or the risk from asbestos will require you

- to find out if there is asbestos in the premises, its quantity and what condition it is in;
- to presume materials contain asbestos unless there is strong evidence that they do not do so;
- to make and keep up-to-date records of the location and condition of the asbestos/contaminated materials or presumed asbestos/contaminated materials in the premises;
- to assess the risk from the asbestos or contaminated materials;
- to prepare a plan setting out how the risks from the asbestos/contaminated materials are to be managed;
- to take the necessary steps to put the plan into action;
- to review and monitor the plan periodically;
- to provide information on the location and condition of the asbestos/contaminated materials to anyone who is liable to work on or disturb them.

As has been said, the duty to manage comes into force on 21 May 2004. The time until then should be used by anyone who is, or will be, a dutyholder to plan, and if necessary, budget, ahead. Removal of asbestos, whether emergency or planned, is expensive. It is far better to manage the risk and, if possible, leave the asbestos undisturbed but in a safe condition. The first step is to employ a competent and experienced person to survey your premises and locate, where possible, any asbestos. Then create safety procedures or a safety system to protect anyone working in the area of any asbestos and ensure that everyone likely to be affected in any way is aware and understands the procedure or system.



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This Special Release is designed to provide a summary of the subject matter. It does not purport to be comprehensive or a substitute for specialist legal advice in individual circumstances.

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