



White Paper

Are the changes about to be rung for asbestos?

June 2022



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Following a government inquiry last year, on 21st April 2022 the Work and Pensions Committee published its report into, "The Health and Safety Executive's approach to asbestos management."

The introduction to the report conclusions states:

"Asbestos-related illness is one of the great workplace tragedies of modern times. Extensive use of asbestos in the twentieth century accounts for many thousands of deaths. The extreme exposures of the mid-to late twentieth century may be behind us, but its legacy lives on. Asbestos remains in many of our buildings. The current five-yearly statutory review of the asbestos regulations is an opportune moment for us to assess whether the regulatory framework - and HSE's contribution to this - is working as effectively as it might."

So how have we got to where we are today and what might the future be for our asbestos management?



1. What is asbestos?

Asbestos is a naturally occurring silicate mineral, that is typically formed in fibres. There are 6 varieties of asbestos recognised, deriving from two classes of mineral, these being crocidolite, asbestos grunerite/amosite, tremolite, anthophyllite and actinolite (Amphibole) and chrysotile (serpentine).

However, of these, three - crocidolite or blue asbestos, asbestos grunerite/amosite or brown asbestos and chrysotile or white asbestos - have been widely used in building and other products (notwithstanding some levels of contamination and specialist use of the other varieties).

Asbestos minerals occur across a wide geographical area and historically has been mined in countries as wide as Australia, Canada and South America. In 2017, Russia, China, Brazil, Kazakhstan and India were reported (US Geological survey figures for 2015/16) as being the largest producers of asbestos.

Increasingly numbers of countries have banned the use of asbestos, these include:

- Iceland (1983)
- Norway (1984)
- Saudi Arabia (1998)
- UK (1999)
- Uruguay (2002)
- All EU member states (not with previous bans) (2003)
- Australia, Argentina (2003)
- Egypt (2005)
- South Africa (2008)
- South Korea (2009)
- Japan (2012)
- New Zealand (2016)
- Brazil and Ukraine (2017)



2. Why is asbestos an issue?

Asbestos, whether used “raw” or mixed with other materials, possesses a number of properties, heat, chemical and electrical resistance and high tensile strength, making it “advantageous” as a material in a variety of building and other products. It was in the middle of the 20th Century seen as a “magic mineral”.

Such properties were recognised as far back as the Stone Age and asbestos has been used in many ways since. Cost (it is cheap) and availability saw its use increase dramatically in the UK in the 19th and 20th Centuries with thousands of tons of the mineral being imported and used. This decreased with the initial bans in the eighties and for non-specialist applications banned since 1999.

While health concerns were raised during the early 1900s, it was really after World War II that the adverse health effects of exposure to asbestos fibres were widely recognised.

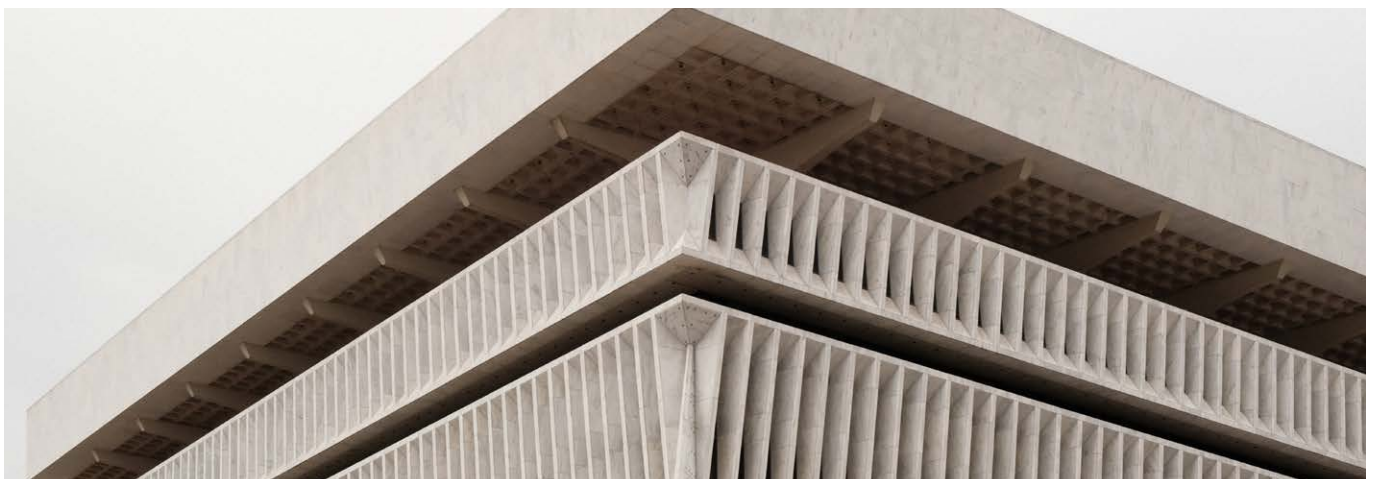
The risks related to inhaling asbestos fibres, which penetrate and remain in the lungs (although they can also migrate to other organs and parts of the body). Over time, the latency period for asbestos can be anywhere between 10 and 50 years it is estimated.

Overtime these fibres can cause scarring of the lungs and their linings, cancers such as mesothelioma and pleural plaques/effusions. Annually, the International Labour Organisation (ILO) say more than 107,000 people die from asbestos related diseases, with the World Health Organisation (WHO) estimating the number of people exposed to asbestos as being 125,000,000.

In the UK asbestos remains the single greatest cause of work-related deaths killing around 4500 people a year in Great Britain. The majority of this is due to past exposure to asbestos and where historically it affected those working directly with the mineral, as bans have come into force increasingly, we now see it is trades- people and other who through their work (and inadvertent exposure to the fibres) are exposed. This is now the key focus.

Health and Safety Executive figures published in 2021 highlighted:

- There were 2,369 mesothelioma deaths in Great Britain in 2019; this is 7% lower than the annual average number of 2540 over the period 2012-2018.
- There were 1,945 male deaths in 2019: this is 9% lower than the annual average number of 2,126 for males over the period 2012-2018.



3. How has our current regulatory framework for asbestos developed?

Following increasing concerns over asbestos exposure and illness in the early 20th Century, in 1931 The Asbestos Industry Regulations were introduced seeking to control the amount of asbestos dust in factories. The Factories Acts (1937, 1959 and 1961) as well as other industry specific legislation, such as The Shipbuilding and Ship-Repairing Regulations 1960, introduced wider considerations.

Coming into force in May 1970, The Asbestos Regulations 1969 (and made under the 1961 Factories Act) expanded both the works covered by the regulations as well as significantly strengthening the requirements. A voluntary ban was also introduced on the importation of crocidolite (blue asbestos) to the UK.

The 1980s saw a raft of regulations and activity with in 1980 a further voluntary ban in the UK on the import of asbestos grunerite/amosite (brown asbestos) and the introduction of:

- The Asbestos (Licencing) Regulations (1983)
- The Asbestos (Prohibitions) Regulations (1985) – formal bans on the import of blue and brown asbestos to the UK
- The Control of Asbestos At Work Regulations (1987) - providing greater protection to employees at work

This was followed in 1999 with the banning of chrysotile (white asbestos) in the UK, through the Asbestos (Prohibition) (Amendment) Regulations.

In 2002, The Control of Asbestos at Work Regulations 2002 came into force, and these further evolved with The Control of Asbestos Regulations in in 2006 and 2012.

The Control of Asbestos at Work Regulations 2002 initially framed the proactive management of asbestos containing materials (ACM) in commercial buildings and in particular Regulation 4 the "Duty to manage asbestos in non-domestic premises," which came into effect in May 2004. Under Regulation 4 in this and both the updated Control of Asbestos Regulations, dutyholders are required to:

1. Take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, its amount, where it is and what condition it is in;
2. Presume materials contain asbestos unless there is strong evidence that they do not;
3. Make, and keep up-to-date, a record of the location and condition of the asbestos containing materials - or materials which are presumed to contain asbestos;
4. Assess the risk of anyone being exposed to fibres from the materials identified;
5. Prepare a plan that sets out in detail how the risks from these materials will be managed;
6. Take the necessary steps to put the plan into action;
7. Periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up-to-date; and
8. Provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

Between the Control of Asbestos Regulations 2006 and 2012 a consultation was carried out, as aspects of the original EU Directive (2003/18/EC) were not fully implemented when the Control of Asbestos Regulations 2006 (CAR06) were introduced in the UK. In particular, the omission of two terms “non-friable” and “without deterioration of non-degraded material,” from Article 3(3) (a) and (b) of the Directive.

Article 3(3) provides exemptions for some types of lower risk work with asbestos from three requirements, these being notification of work, medical examinations and record keeping.

The CAR06 was itself a result of consolidating and combining previous regulations, in this case:

- The Control of Asbestos at Work Regulations 2002 (CAW), which governed the way all work with asbestos was carried out to make sure it was performed safely.
- The Asbestos (Licensing) Regulations 1983 (ASLIC), as amended, which required work with the more hazardous asbestos-containing materials to be carried by a contractor licensed by HSE.
- The Asbestos (Prohibitions) Regulations 1992 (Prohibitions Regulations), as amended, which banned the importation, supply and use of raw asbestos and asbestos containing materials (ACM).

As a consequence of the consultation CAR06 was revoked with the introduction of the 2012 regulations.



4. What are the recommendations from the latest Government report?

The House of Commons Committee report “The Health and Safety Executive’s approach to asbestos management” was published on the 21st April 2022 following consultation and inquiry in 2021.

The full report can be found at - The Health and Safety Executive’s approach to asbestos management - Work and Pensions Committee ([parliament.uk](https://www.parliament.uk))

The focus, as the report’s title suggests, is on the activities of the HSE, but within that there are also several possible clues into what may be expected from dutyholders in the future. The main recommendations from the report included:

- “that HSE and Government use the conclusions and recommendations from our report to inform both its immediate post implementation review of the asbestos regulations and its longer-term approach to asbestos management.”
- “that HSE develops and implements a robust research framework for the systematic measurement of current asbestos exposures in non-domestic buildings” (using a range of measurement and sampling techniques and informed by international experiences and approach). “It should ensure that adequate consideration is given to exposure measurement in schools and other public buildings.” HSE publishes its framework by October 2022 (and further findings thereafter).
- “that a deadline now be set for the removal of asbestos from non-domestic buildings, within 40 years. The Government and HSE should develop and publish a strategic plan to achieve this, focusing on removing the highest risk asbestos first, and the early removal from the highest risk settings including schools. This plan should, in the first instance, commit to improving urgently the evidence around safer asbestos removal and disposal, considering relative costs and benefits. It should integrate with—and take full account of—proposals for the upgrading of the built environment linked to net zero targets and wider waste management strategies.”
- “HSE work with others in the UK and devolved governments to continue to review and share the evidence relating to routine, environmental, air monitoring of asbestos fibres. HSE to provide and update in 12 months’ time.”
- “that HSE strengthens its work with, and guidance to, dutyholders to make clear their obligations to communicate asbestos information and risks to building contractors and users.”
- “that HSE works with others in government to develop a central digital register of asbestos in non-domestic buildings, describing its location and type.” (The concept of a central register could be tested with data from public buildings, schools and hospitals).
- “that HSE commits to a sustained increase in inspection and enforcement activity targeting compliance with the Control of Asbestos Regulations. HSE should also identify wider lessons from its planned inspection programme for dutyholders in 2022/23, considering whether it needs to specify minimum knowledge, training or other requirements for people performing this critical role.”
- “that HSE considers how it could consolidate, tighten, and simplify the current categorisation of asbestos works as part of its 2022 statutory review of the Control of Asbestos Regulations.”

- “that HSE makes it mandatory for all people conducting asbestos surveys to be accredited by a recognised accreditation body. We also recommend that HSE assesses the impact of making it a legal requirement for building owners or occupiers to commission accredited asbestos analysts to check asbestos work done on their premises and, by extension, making it illegal for asbestos removal contractors to do so.”
- “HSE ensures its current review of the Control of Asbestos Regulations includes a thorough written assessment of moves towards more stringent asbestos occupational exposure limits in Europe.”

Potentially therefore, there are significant changes to the future structures and objectives of your asbestos management plans, as well as the consequences for getting it wrong.



5. What might the recommendations mean for the future of your asbestos management?

With several the recommendations requesting further research and reviews of our existing controls and processes, some of the outcomes will be a way off. However, all appear to indicate a clear tightening rather than relaxing of requirements.

There are clues in other comments supporting the recommendations in the report as to the direction of activities, including:

- “that HSE conducts research which complements its inspection programme to identify the extent to which dutyholders are, in fact, complying with their obligations under the asbestos regulations.”;
- “that HSE works with others in Government to sponsor improvements in how information on asbestos in buildings is communicated and used, drawing on lessons from the use of digital technologies in building management and in the health response to the pandemic.”; and
- “HSE should commit to investing more in sustained campaigning work across a range of media, using multiple interventions and synchronising with the development of its wider strategy for asbestos management. It should employ robust evaluation methods to test what messages and which methods achieve the greatest impact on the behaviours of dutyholders and tradespeople.”

So, what should your processes look like in having your ACM properly managed in advance of any changes?

As with all effective tools, good information management is the key to success with managing asbestos. Once you have presumed or identified your ACMs (see points 1 and 2 in question 3), you need to proactively manage them (see points 3 to 7 in question 3) and make sure anyone likely to work on or disturb them is aware of their presence and condition (see point 8 in question 3).

The process requires active management, especially if there are more than one or two ACMs in relatively accessible parts of your building. An up-to-date register of asbestos containing/presumed asbestos containing materials is the start point, incorporating or accompanying an accurate material and priority assessment – this covers the condition and likelihood of disturbance for each ACM. In combination a material and priority assessment provide an overall risk assessment and score for each of the ACM or presumed ACMs present.

- What is the current situation for your asbestos risk assessment and register? Is it up to date?

Condition assessments should be routinely performed on your ACMs to identify if any change in condition or damage has occurred. The frequency of these checks should be governed by the location of the ACM and the potential for it to become damaged. For example, asbestos insulation board (AIB) panels in a regularly used corridor or office will need frequent inspection, where gaskets in boilers should need less attention for example. All condition assessment frequencies can vary and will need to be reviewed if other circumstances change (i.e. occupancy, change in maintenance regimes etc).

- When were your condition assessments/re-inspections last performed and what are they telling you about your ACM?

Most ACMs need no or only minor repair, encapsulation or protection, and can be left in place and managed. Removing asbestos is usually a last option and your risk assessment will determine the priority with which you should manage each individual ACM. Again, as changes occur to the premises or their use, the assessment of any relevant ACMs should be reviewed as the management strategy for them may also change.

If, however the recommendation to introduce a phased removal of all ACM is adopted, this will mark a fundamental change in your management actions, with your risk assessment now acting as the basis for your removal strategy.

Currently the HSE provide a range of information managing and carrying out work involving asbestos. These include "Managing my asbestos – A step by step guide to the duty to manage asbestos" and "Asbestos essential" task sheets covering, amongst other topics:

- Work with asbestos cement (AC) (non-licensed) – 10 activities listed;
- Working with textured coatings (TC) containing asbestos (non-licensed) – 4 activities listed;
- Strictly controlled minor work on Asbestos Insulating Board (AIB) – 7 activities listed;
- Safe work with undamaged asbestos materials – 3 activities listed; and
- Removal and replacement of other asbestos containing materials – 13 activities listed.

All this information is currently available to download from the HSE website:

- [Managing my asbestos \(hse.gov.uk\)](https://www.hse.gov.uk/management/myasbestos/)
- [HSE - Asbestos: Asbestos essentials](https://www.hse.gov.uk/asbestos/essentials/)

However again this could be subject to future change.

If you have any gaps in or questions about your current asbestos management provision, a high-level review of your objectives and management practices is a must. Exactly like the Government review process, it allows for reasoned thought on developing your future compliance strategy to best effect.

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