

Britain: New asbestos law puts legal onus on employers

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Successive British governments have consistently failed to address the risks and consequences of exposure to asbestos for the past century, but now they may be forced to give workers the protection they need.

The Control of Asbestos at Work Regulations 2002 (and its supporting Approved Codes of Practice) is likely to be put into place by the end of the year, with a compliance date of March 2004. This is required to bring the UK into line with the European Chemical Agents Directive and makes employers accountable for declaring the amount, type and safety of any asbestos-based materials in their premises. While the law is to be broadly welcomed, it has arrived 106 years too late, as asbestos has been recognised as a killer since 1898.

Although the supply and use of asbestos was almost entirely banned in the 1980s, recent figures suggest that asbestos-related diseases are likely to have killed about 5,000 people this year in the UK alone. The number is set to double over the next 20 years to become the most common cause of early death among adult males. Those who were exposed in asbestos related industries in the 1960s and 1970s are only now succumbing to the onset of asbestosis and lung cancer.

The Regulations proposed by the Health and Safety Commission (HSC) simply require employers to work out how much of this deadly material they have in their buildings, and devise a plan for dealing with it. Health and Safety Executive (HSE) research suggests that this process, although it can be costly, will save many thousands of lives.

Even though the use of asbestos in the construction or refurbishment of any premises is now illegal, it is estimated that as many as 4.4 million buildings (1.4 million of which are commercial properties) may still have asbestos contained in their internal structure because they were built before bans on asbestos began in the early 1980s. Although the last form of asbestos was only banned in 1999, millions of tonnes of the substance remain in buildings all over Britain. Materials containing asbestos may have been used for a number of diverse purposes including insulation, lagging, fire protection, tiling and roofing. Where still in place, this material will pose no danger to health—provided it is in good condition and is not disturbed. However, should the material become damaged, asbestos fibres may be released into the air where they can be

inhaled, posing a serious and even fatal risk to those who inhale them.

The new rules will consolidate existing legislation and introduce new controls on the way asbestos is handled in the workplace. At present employers are under a general obligation to ensure that their employees are not exposed to asbestos, but in circumstances where it is accepted that this is not reasonably practicable the employer must only ensure that any exposure is reduced to the lowest level reasonably practicable. The 2002 Regulations will, in addition, impose a new duty on every employer to carry out an assessment to establish whether asbestos is likely to be present in any non-domestic premises either owned or occupied by him, such as leased premises. A duty is also imposed on any other person with any obligation to maintain or repair the premises, including landlords who will have to ensure that tenants are given sufficient information and access to enable a proper assessment to be made. But there are already worries that landlords will shirk their responsibility and put the onus on tenants to carry out asbestos assessments at their own expense and time, which most tenants are unlikely to do.

It is employers who have a primary duty to manage the risks posed by exposure to asbestos by carrying out an assessment with respect to both their employees and “any other person, whether at work or not, who may be affected by the work activity.” A duty will be owed to subcontractors and tradesmen who may do work on the premises, as well as members of the public.

If asbestos is discovered during the building inspection, the employer must assess its condition and determine its potential to release fibres into the air. If the material is in a poor condition, it must either be removed or repaired. If the material is in good condition and it is unlikely that it will be disturbed, the employer is permitted to leave it in place but must record its location and inform the relevant employees. The employer must also assess the likelihood of any asbestos being disturbed and prepare a scheme to manage the potential risks.

Without controls over the huge quantities of asbestos still remaining in commercial premises, asbestos campaigners fear a “fourth wave” of people could become exposed to the deadly fibre.

The “first wave” consisted of people directly handling raw asbestos such as dockers and those manufacturing asbestos products; the second, were workers installing asbestos products, especially lagging for boilers in ships and buildings; and the third wave were construction workers engaged in repairs, renovation and removal of asbestos.

The “fourth wave” could now include teachers, nurses, factory staff, shop assistants and office workers—indeed, anyone who works in a building containing asbestos faces a potential risk.

People have already begun to develop mesothelioma, a form of cancer caused by asbestos, from such exposures. In one case a retired teacher diagnosed as suffering from mesothelioma, 66-year-old Jean Whitwam, said she believed she contracted the disease from exposure to asbestos fibres during 24 years working at Outlane Infant School in Huddersfield. Before she died Mrs Whitwam recalled how “puffs of dust” would billow from classroom walls if she tried pinning up pupil’s work. An inquest heard how asbestos had been found, treated or removed from the school in 1992.

Trevor and Joyce Ives ran the Cardigan Arms pub in Kirkstall, Leeds, for 18 years. They retired in 1996 with the prospect of quality time together, but six years on Mrs Ives, 64, is a widow. Her husband’s life was cruelly cut short by mesothelioma. Mrs Ives feels certain her husband came into contact with the lethal dust during his years as licensee at the pub. Much of his time was spent in the cellar, where asbestos was identified in 1983 and eventually removed in 1986 after regulations were tightened.

Roger Ricketts is living under a death sentence. At the age of 58, he has been diagnosed with mesothelioma and could have only months left to live. He worked for Woolworth as a store manager and believes he contracted the disease while simply doing his job as building work or renovations were carried out. He said, “I thought it was people who worked in factories which used these asbestos-related products, not ordinary people going about their business who were affected. I never gave it a thought, the furthest thing from my mind was dying of cancer.”

Eminent plastic surgeon James Emerson was another unwitting victim of asbestos, after being exposed to it while a junior doctor in London. The father-of-three, who worked at the Northern General Hospital, Sheffield, was only 47 when he died in August 1995 at the height of his career. He was diagnosed with mesothelioma the previous year. As a junior doctor at Middlesex Hospital in the early 1970s, he breathed in asbestos that was lining the pipes of an underground corridor connecting the main building and the school of medicine. Camden and Islington Health Authority admitted liability in 1998 and his family won £1.15 million in damages—a conclusion that is not afforded to all victims.

Throughout the history of controls on asbestos, spokesman for big business have often accused campaigners of scaremongering, or insisted that some asbestos is safe or at least

can be used safely, or that the burden of controlling asbestos outweighs the benefits in public health. They have always been proved wrong—if anything, the controls have been too cautious, too limited and too late.

Corporate America has consistently tried to ignore the asbestos problem. When the US equivalent of the Health and Safety Commission tried to ban asbestos, the asbestos industry used court action to overturn it. As a result, the US kept using asbestos when countries in Europe began restricting its use. The outcome can be seen in the high level of corporate bankruptcies in the US due to asbestos liabilities (although admittedly, compensation for asbestos victims is much more generous in the US than in Britain). The majority of recent Chapter 11 bankruptcies in the US this year have been due to just one cause—asbestos liabilities.

Britain’s Conservative opposition has raised a number of criticisms of the new asbestos regulations in a public letter from the shadow minister for work and pensions to the secretary of state in August, focusing on the claim that the new duties are aimed mostly at chrysotile (or white) asbestos, and this is not really very harmful, unlike blue and brown asbestos. This only provides a smokescreen for businesses seeking to avoid their responsibilities. While white asbestos is not as harmful as blue or brown asbestos, it is still a category one carcinogen—meaning that it kills. There is plenty of epidemiological evidence of the dangers of chrysotile (in one study it caused more than six times as many lung cancer deaths as would be expected in an unexposed population, and caused mesothelioma, which is only induced by asbestos) and many case studies of people only exposed to white asbestos who nevertheless developed asbestos-related diseases.

Furthermore, white asbestos has already been banned by the European Union as well as the UK on health grounds. When the main defenders of asbestos, the Canadian Government (much of the world asbestos trade is based in Canada) challenged the French ban through the World Trade Organisation, they lost. Other national and international bodies agree that white asbestos is dangerous, especially the world’s main body in the field, the International Agency for Research into Cancer.

In any case, many of the commercial properties with asbestos in them were built before blue and brown asbestos were banned in the early 1980s, and even where a building is supposed to contain only white asbestos, in many cases it will be contaminated with other, more dangerous forms of asbestos.



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