

The presence of asbestos in commercial and residential properties is a major concern for many property firms and owners. The management and removal of asbestos is one of the most highly regulated industries in the UK, with a plethora of Approved Codes of Practice, Regulations and Official Guidance Notes. November 2006 saw the introduction of the 'Control of Asbestos Regulations 2006' (CAR 2006). These Regulations bring together the three previous sets of regulations covering the prohibition of asbestos, the control of asbestos at work and asbestos licensing.

### Changes introduced by CAR 2006

- The Control Limit was reduced to 0.1 fibres/cm<sup>3</sup>. CAR 2006 forces the contractor to make a risk assessment to determine if the proposed works will exceed the 0.1 fibres/cm<sup>3</sup>. If it does then a licensed contractor is required. It is therefore essential that the unlicensed contractor has the knowledge and experience to make that assessment;
- Asbestos training for unlicensed contractors is formalized;
- Asbestos awareness training is required for all persons who work on buildings who have the potential to come into contact with asbestos whilst working;
- Textured coatings removed from the requirement of licensing, in practice it is still the licensed asbestos removal contractors who are still doing the work, albeit without having to give 14 days notice to the enforcement officer. Whilst removing thin textured coatings are almost certainly not licensed work removing a thicker application maybe.
- Asbestos containing materials such as textured coatings need not be removed from buildings prior to demolition.

### Compliance with the Regulations

The legislation applies to all non-domestic premises. This includes all commercial, public and industrial premises. It also applies to common parts of domestic premises, for example stairwells, lift shafts and corridors in blocks of flats. All types of property owners, both leasehold and freehold, including management companies, landlords, housing associations and public sector bodies, are required under the regulations to demonstrate that they are aware of the location, type and extent of any asbestos in their buildings and to have produced and implemented an Asbestos Management Plan. They are also required to maintain a register detailing the probable exposure to asbestos of employees and third-party contractors for a period of 40 years. Those not holding or making instructions to have surveys and Management Plans in place will find it difficult to show compliance with the legislation.

A Management Plan does not necessarily mean the removal of asbestos from a property, although there are significant tax incentives for the replacement of Asbestos Containing Materials (ACMs).

### The Duty to Manage

The duty of care is an obligation to protect those people who may be exposed to asbestos fibres during their day to day work, such as plumbers, electricians, cable layers, gas fitters, painters and decorators, and to allow them to take suitable precautions. Anyone with responsibility for the maintenance and/or repair of non-domestic premises have duties under the regulation. The extent of the legal duty is determined by the terms of any tenancy agreement or contract that applies. In the absence of any such agreement, the degree of control the party has over the premises will be considered.

The regulations also include a duty to co-operate which, for example, requires a landlord to pass information on asbestos to a new tenant. Similarly, a tenant must co-operate by allowing a landlord to gain access to a building, for example to carry out a survey. A building surveyor or architect who has plans which shows information on the whereabouts of asbestos is expected to make these available to the duty holder at a reasonable cost.

### Responsibilities of the Duty Holder

The duty holder is required to take reasonable steps to find asbestos in the premises and assess the condition of these materials. The duty holder must:

- Presume that materials contain asbestos unless there is strong evidence that they do not;
- Prepare a record of the location and condition of these materials and assess the risk from them;
- Prepare and implement a management plan to manage those risks and annually monitor the condition of any remaining ACM's;
- Provide information on the location and condition of the material to anyone who is liable to disturb it.

Any employees involved in building maintenance work and any contractors working on the premises should know if the building contains or may contain asbestos. They should also be told where it is and that there are potential risks to their health if they disturb it.

Some types of ACM are perfectly stable and do not present a health hazard. However, asbestos can be found in many common construction materials such as artex ceilings, suspended ceiling tiles, old electrical switchgear, thermal insulation products, toilet cisterns, thermoplastic floor tiles and bituminous products.

### How can Stiles Harold Williams assist?

Our Building Consultancy division is authorised to carry out asbestos survey inspections and assists clients to produce Management Plans. We can provide the following services:



- Type 1 Asbestos Surveys - non sampling/assumptive inspections (the bare minimum required to comply with the regulations).
- Type 2 Asbestos Inspections - samples are taken but the survey does not usually allow for opening up works to the structure.
- Desk top studies of leasehold/dilapidation liabilities.
- MDHS 100 compliant site inspections
- Asbestos sample analysis..
- Risk assessments of proposed asbestos work or management.
- Specifications for asbestos removal work.

- On site supervision, including monitoring and quality of work.
- Project management.
- Health and safety duties required under the Construction, Design and Management Act 2007.
- Management Plans and advice on internal policy making.

**For further information contact:**

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