

**Health and Safety Executive
Consultation on draft revised Approved Code of Practice (ACOP)
Managing and Working with Asbestos**



A response by the Association of Personal Injury Lawyers

September 2013

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have around 4,000 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

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Introduction

APIL welcomes the opportunity to respond to the Health and Safety Executive consultation on a draft revised Approved Code of Practice (ACOP) for *Managing and Working with Asbestos*. Whilst we welcome the additional detail in parts of the redrafted Approved Code of Practice, we do have a number of concerns with the draft. The Health and Safety Executive (HSE) has stated that the redrafting of the ACOP was not intended to change the standard of protection set out in the guidance, yet this is not entirely correct and we are concerned that in some areas, the standard of protection has been reduced. We have highlighted the changes between the old and redrafted ACOPs in a document which is attached as an appendix to this response.

The withdrawal of L127 *Managing asbestos in non-domestic premises*

Our biggest concern is that the proposed new ACOP for regulation 4 *Duty to manage asbestos in non-domestic premises* is now set to replace an entire ACOP (L127) for *Managing asbestos in non-domestic premises*. L 127 had numerous practical examples to help illustrate when a person has a duty to manage asbestos, and none of these appear in the new ACOP. Further, L 127 set out very clearly under the heading “What has to be done and how”, the five stages of compliance with regulation 4.

There is now a significant lack of detail on how to comply with the regulation governing the management of asbestos in non-domestic premises. A lack of examples and detail in the guidance, and an unclear lay out in the new draft could lead to employers not correctly following the regulations, putting employees and workers at risk. Practical examples and case studies are extremely useful in guidance, as they help the employer to apply the regulations in a real life context, ensuring full compliance and preventing dangerous workplace practices.

Removal of information from the ACOP

Some of the information previously contained in the ACOP has moved to the guidance section of the redrafted document, whilst other parts have been removed completely in the redrafted ACOP. For example, in the section on regulation 2, the paragraphs on “asbestos coating” and “asbestos insulation” have been moved from the ACOP to the guidance. In the section for regulation 11, the redrafted ACOP lacks specific information on “working with asbestos insulating board”, and “work on textured decorative coating containing asbestos”.

ACOPs have a special status, because although they are not in themselves legally binding, employers often look to them for the steps they need to adopt to ensure that they comply fully with regulations. The impression is given that if employers comply with an ACOP, then they are fully complying with the relevant regulations. When the ACOP becomes less detailed, and information moves from the ACOP to just “guidance”, the employer may not realise that they have additional obligations and the standard of compliance will fall. This is unacceptable, as the correct management of asbestos materials is incredibly important; asbestos is highly dangerous and exposure can have devastating health consequences.

Accessibility of the ACOP

On visiting the HSE website, the ACOP for managing asbestos is not clearly available anywhere and is therefore not easily accessible. The ACOP should be the starting point for anyone who would like information on how to comply with regulations – it is the core document, and should be easy to find.

Asbestos management in schools

In our view, wherever schools are referenced in this ACOP, there must be a link to the Department of Education website. The DfE website provides guidance on asbestos removal in schools, and providing a link to this will ensure that all of the relevant information is available. Most people looking for guidance on health and safety regulations will turn to the HSE as their first port of call, and if not properly re-directed, will miss valuable guidance which is available elsewhere. It is important that employers have access to as much information as possible to ensure that they properly comply with the regulations.

Improved detail: regulations 3, 9 and 16

The improved detail in the ACOP sections for regulation 3 *Application of these regulations*; regulation 9 *Notification of working with asbestos*; and regulation 16 *Duty to prevent or reduce the risk of the spread of asbestos* is welcomed. It is incredibly important that information on managing and working with asbestos is provided in suitable detail, to ensure that employers and employees are aware of their obligations and rights, and as such, accidental exposure and removal of asbestos by those who are not licensed can be prevented. We also welcome the addition, in the guidance for regulation 3, of examples of non-licensable work that will not normally be notifiable non-licensable work with asbestos. Asbestos exposure kills, and we welcome any attempts to ensure that employers have as much information as possible to create a safer working environment.

- Ends -

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Consultation on draft revised Approved Code of Practice (ACOP) Managing and working with asbestos

- = does not appear in the proposed revised ACOP or guidance
- = a new addition to the proposed revised ACOP or guidance
- = comments

Before the regulation is set out in each section in the **new** ACOP, there is a summary of the obligations that each regulation entails.

Current ACOP	Draft revised ACOP
<p>Regulation 2 – Interpretation</p> <p>(1) In these Regulations – “adequate” means adequate having regard only to the nature and degree of exposure to asbestos, and “adequately” shall be construed accordingly;</p> <p>“approved” means approved for the time being in writing by the Health and Safety Commission or the Executive as the case may be;</p> <p>(2) For the purposes of these Regulations, except in accordance with regulation 11(3) and (5), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the control limit, no account shall be taken of respiratory protective equipment which, for the time being, is being worn by that employee.</p> <p>Different wording in current ACOP</p> <p>Not in current ACOP</p>	<p>(1) In these Regulations - “adequate” means adequate having regard only to the nature and degree of exposure to asbestos, and “adequately” must be construed accordingly;</p> <p>“approved” means approved for the time being in writing by the Executive;</p> <p>Not in proposed new ACOP</p> <p>“asbestos cement” means a material which is predominantly a mixture of cement and chrysotile and which when in a dry state absorbs less than 30% water by weight;</p> <p>“asbestos coating” means a surface coating which contains asbestos for fire protection, heat insulation or sound insulation but does not include textured decorative coatings;</p> <p>“asbestos insulating board” (AIB) means any flat sheet tile or</p>

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<p>“relevant doctor” means an appointed doctor or an employment medical adviser;</p> <p>Was in the current ACOP –in the proposed new revised version this is now in the guidance section.</p> <p>Was in the current ACOP –in the proposed new revised version this is now in the guidance section.</p>	<p>“relevant doctor” means an appointed doctor or an employment medical adviser. In relation to work with asbestos which is not licensable work with asbestos and is not exempted by regulation 3(2) “relevant doctor” also includes an appropriate fully registered medical practitioner who holds a license to practice;</p> <p>Asbestos insulation</p> <p>12 The definition of 'asbestos insulation' in regulation 2(1) describes asbestos-containing materials, which were not in practice applied as coatings: those used for heat, sound, fire protection and other insulation purposes. This includes;</p> <ul style="list-style-type: none">• preformed sections of pipe insulation;• asbestos lagging and asbestos infill (asbestos used to fill the spaces between voids, applied between floors and packed) <p>Asbestos coating</p> <p>13 'Asbestos coating' describes the various mixtures containing asbestos, widely used as surface coatings for fire protection purposes or as both heat and sound insulation. Most of these coatings were applied by spray but some were applied by hand.</p> <p>14 'Asbestos coating' does not apply to the base material it is applied to even if that base material contains asbestos. (The base material may, however, fall within the definition of asbestos insulation or AIB.)</p> <p>Sporadic and low intensity exposure</p> <p>15 For the purposes of regulation 2(4), for exposure to be sporadic and of low intensity the concentration of asbestos in the atmosphere should not exceed or be liable to exceed the concentration approved in relation to a specified reference period by the Health and Safety Executive.</p> <p>16 This is 0.6 fibres per cubic centimetre (f/cm^3) in the air measured over a 10 minute period. Any exposure</p>
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which exceeds or is liable to exceed this is not sporadic and of low intensity.

17 The unit f/cm^3 is the same unit as f/ml. This 10-minute limit is sometimes called the short-term exposure limit or STEL. It refers to the highest level of concentration for any 10 minutes period of duration of the work

Licensable work with asbestos

19 Certain types of work with asbestos and asbestos containing materials (ACMs) can only be done by those who have been issued with a licence by HSE. This is work which meets the definition of 'licensable work with asbestos' in regulation 2(1).

The below appears in the guidance section
Deciding if work with asbestos is licensable

21 It is relatively easy to release asbestos fibres when working with asbestos insulation, asbestos coatings and AIB. In most cases, only those with a licence should carry out work with these materials. However, licensing will not apply to short-duration work where the risk assessment shows the work will only produce sporadic and low intensity exposure and will not exceed the control limit.

22 Employers need to consider whether the work meets the criteria set out in the definition of licensable work (see paragraph 19) and, if it does, a licence will be required. Licences are issued for a set period (usually three years) during which the licence holder can carry out licensable work. A licence does not need to be issued for each individual work activity.

23 Further information on applying for a licence from HSE is provided in paragraphs 182 to 190.

Table 1, gives examples of licensable and non-licensable work.

Regulation 3 – Application of

<p>these Regulations</p> <p>(1) These Regulations shall apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee.</p>	<p>This regulation states how the Regulations apply to duty holders (including the self-employed).</p> <p>(c) the work involves—</p> <p>(i) short, non-continuous maintenance activities in which only non-friable materials are handled, or</p> <p>(ii) removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix, or</p> <p>Exemption from the Regulations: An overview-this is much more detailed in the new ACOP than the old ACOP.</p>
<p>Regulation 4 – Duty to manage asbestos in non-domestic premises (Currently in its own ACOP, L127)</p> <p>38 If the duty holder decides to appoint a separate organisation or person to carry out some or all of this work, they should assess whether the individual or organisation</p>	<p>The old ACOP states that regulation 4 is dealt with in the ACOP for <i>Managing asbestos in non-domestic premises</i> (L127). L127 is to be withdrawn and the new ACOP for regulation 4 is to take its place. L127 has numerous examples to help illustrate when a person has a duty to manage asbestos, and none of these appear in the new ACOP. L127 also sets out very clearly under the heading “what has to be done and how” the five stages to compliance with regulation 4.</p> <p>Examples of how the new ACOP differs from L127 are below. The new ACOP is much less detailed than L127:</p> <p>95 The dutyholder must satisfy themselves that any person or organisation nominated to take responsibility for the duty to manage:</p> <ul style="list-style-type: none"> • can demonstrate suitable competence and training; • can demonstrate independence, impartiality and

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<p>concerned:</p> <ul style="list-style-type: none">(a) Has adequate training and experience in such work(b) Can demonstrate independence, impartiality and integrity(c) Have an adequate quality management system(d) Are carrying out any survey in accordance with recommended guidance, MDHS100 <i>Surveying, sampling and assessment of asbestos-containing materials</i> <p>43 The person with the duties under regulation 4 (whether they are the employer, self-employed person who is in charge of the workplace, or owner) should make sure that everyone who works in the premises knows who has been nominated and what tasks they have been given. This information should be disseminated to all employees whenever possible.</p>	<p>integrity;</p> <ul style="list-style-type: none">•has an adequate management system in place;•carries out any survey commissioned to locate ACMs in accordance with recommended guidance. <p>Where the dutyholder has nominated a person or organisation to undertake these responsibilities, they must make sure that those on the premises are aware who has been nominated and the tasks they have been given.</p> <p>The rest of L127 on regulation 4 is much more detailed than the new replacement ACOP. L127 also sets out, at paragraph 97, potential options for managing the risk of asbestos, and these do not appear in the new ACOP.</p>
<p>Regulation 5 – identifying the presence of asbestos</p> <p>51 The employer should not simply rely on the information provided by other dutyholders unless the dutyholder can produce reasonable evidence to confirm the validity of the information such as survey details (eg a type 3 survey is required for major refurbishment and removal work covered by the CDM Regulations - see MDHS100 <i>Surveying, sampling and assessment of asbestos-containing materials</i>) and provide information on the nature of suspect material (eg the analytical report and/or management plan for the area of work should be made available).</p> <p>52 If appropriate information for the scope of work to be undertaken is not available or is not in a reliable form, then before carrying out any work involving the potential disturbance of the fabric of a building the employer should either:</p> <ul style="list-style-type: none">(a) establish whether the part of the building that is likely to be disturbed contains asbestos,	<p>35 Before carrying out any work involving the potential disturbance of asbestos, an employer should find out if the part of the building likely to be disturbed contains asbestos and, if so, the type. This information can usually be found in reliable records of construction. If no records are available, or they are unreliable, the employer may need to arrange a survey and analysis of representative samples to determine the presence, type and condition of asbestos.</p> <p>136 Alternatively, the employer may assume that the part of the building to be disturbed contains the most hazardous types of asbestos, crocidolite (blue) or amosite (brown), and apply the appropriate control measures, etc. required by the Regulations, using a licensed contractor if required.</p>

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<p>and if so the type. This may require a survey and analysis of representative samples; or (b) assume that the part of the building being worked upon contains the most hazardous types of asbestos, crocidolite (commonly known as blue asbestos) or amosite (commonly known as brown asbestos) and take the precautions outlined in the Regulations and this ACOP for licensable work.</p>	
<p>Regulation 7 – plans of work</p> <p>78 In the case of final demolition or major refurbishment, the plan of work must specify that all asbestos is removed before any other major work begins where this is reasonably practicable and does not cause a greater risk to employees than if the asbestos had been left in place. Where removal of ACMs is time-consuming and resource-intensive and only involves a lower risk material such as textured decorative coatings containing asbestos, then removal prior to demolition or major refurbishment may not be reasonably practicable.</p> <p>83 In addition to the information specified above, when licensable work is being carried out, the plan of work should be site specific and cover in sufficient detail the following information:</p> <p>(a) the scope of the work as identified by the risk assessment;</p> <p>(b) details of the hygiene facilities, transit route and decontamination arrangements, vacuum cleaners, other equipment, air monitoring, protective clothing and RPE, communication between the inside and outside of the enclosure; and</p> <p>(c) details of the use of barriers and signs, location of enclosures and airlocks, location of skips, negative pressure units, air monitoring, cleaning and clearance certification, emergency procedures.</p>	<p>Below is a new edition to the new ACOP</p> <p>Demolition work</p> <p>171 In the case of demolition or major refurbishment, the plan of work must specify that all asbestos is removed before any other major work begins, where this is reasonably practicable and does not cause a greater risk to employees than if the asbestos had been left in place.</p> <p>Guidance 7</p> <p>172 Where removal of ACMs is time-consuming and resource-intensive and only involves lower-risk material such as textured decorative coatings containing asbestos, then removal before</p> <p>Purpose of the plan of work</p> <p>175 The suitable and sufficient plan of work will be a practical and useful document, describing a safe working method for employees to follow.</p>

176 It is an essential tool for senior managers. It shows that they have considered significant site risks (asbestos and otherwise) and produced a specific job plan to address them.

Who creates the plan

177 The plan should be drawn up by a suitably competent person, following a visit and full appraisal of the site. Thorough discussions with others, such as the building owner, dutyholder under regulation 4 of the Regulations, are an important part of the planning process. The most effective planning will involve input from employees, ie the operational staff who carry out/directly supervise the asbestos work.

How the plan of work is used

178 The plan is the record of how senior managers want the job to be done. Its main purpose is to guide site work and an up to date copy must always be on site. A copy should also be kept at the head office so management can effectively monitor performance.

Access to general procedures should also be available at site level, either as paper copies or electronically. The plan should be kept updated to reflect any subsequent changes to the work.

179 The plan is crucial to management control.

Managers should be able to measure the performance and progress of site teams against the plan. Unnecessarily lengthy and complicated documents are not required. The plan needs to guide employees in a practical way on the work in hand.

Format and content

180 It is impossible to be prescriptive about the precise form a plan will take. Plans are likely to include the following:

- details of the scope of the work;
- ant relevant details from the contract for the work;
- equipment, materials and controls;
- other relevant site-specific information;
- method of work;
- management arrangements.

181 Further information on the detailed requirements for the plans of work for licensed work with asbestos can be found on the Asbestos Licensing Group pages on the HSE website.

Communicating the plan of work

182 Work must not take place unless a copy of the plan of work is readily available on site. Employees must be told what the plan contains and instructed on the work methods and controls to use.

183 The plan of work must also be shown to anyone who needs to see it, including those carrying out the visual inspection and/or air clearance monitoring,

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	<p>once the work or section of work has ended. Employers must make a copy of the plan of work available on request to employees, safety representatives and other elected representatives of employee health and safety, as well as others who may be affected by the work</p>
<p>Regulation 8 – Licensing of work with asbestos</p> <p>The ACOP for regulation 8 is much more detailed in the old version of the ACOP</p> <p>Applications for licences</p> <p>93 You need to make applications for licences and for the renewal of licences on the approved form (FOD ASB1). The form is available from: The Health and Safety Executive Asbestos Licensing Unit Belford House 59 Belford Road Edinburgh, EH4 3UE Tel: 0131 247 2135</p> <p>94 The Regulations allow you to apply for a licence to do work with asbestos. Before the licence can be granted you will have to:</p> <ul style="list-style-type: none">(a) show adequate knowledge of the Health and Safety at Work etc Act 1974, the Control of Asbestos Regulations 2006, this Approved Code of Practice, and other guidance on work with asbestos materials;(b) demonstrate competence for the types of work you intend to carry out with asbestos;(c) intend to carry out work for which a licence is required within the licence period. <p>95 However, you may wish to work with only one type of material, e.g. asbestos insulation. In this case, the licence, if issued, may only allow you to work with this material alone.</p> <p>96 Your application will need to reach the Asbestos Licensing Unit at least 28 days before the date from which you wish the licence to run. In some circumstances, the HSE may be prepared to issue a licence in a shorter period. Renewal applicants should note that it is not possible to extend an existing licence beyond its expiry date.</p>	

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<p>97 The person(s) signing the application form will be required to declare that:</p> <ul style="list-style-type: none">(a) the information provided by the Asbestos Licensing Unit has been read and understood by (one of) the signatory, directors, partners, person responsible within the organisation for asbestos operations;(b) they have the appropriate authority within the organisation to represent and bind the company;(c) the organisation intends to carry out work with ACMs for which a licence is required under the Control of Asbestos Regulations 2006;(d) to the best of their knowledge the answers given in the application are correct; <p>Penalties</p> <p>116 If the case is heard in a Magistrates or Sheriff Court the maximum penalty is £5000 per convicted offence.</p>	
<p>Regulation 9 – Notification of working with asbestos</p> <p>Unless he has notified the appropriate office of the enforcing authority in writing of the particulars specified in Schedule 1 at least 14 days before commencing that work or such shorter time before as the enforcing authority may agree.</p> <p>(2) Where an employer has notified work in accordance with paragraph (1) and there is a material change in that work which might affect the particulars so notified (including the cessation of the work), the employer shall forthwith notify the appropriate office of the enforcing authority in writing of that change.</p>	<p>The below is more detailed than the current Regulation 9</p> <p>This regulation requires employers to notify the appropriate enforcing authority of proposed work which is either licensable (always notifiable) or NNLW (applies to some non-licensable work). It also outlines the requirements to notify any material change which might affect the particulars of the original notification, this is particularly important for licensed work.</p> <p>(1) For licensable work with asbestos, an employer must notify the appropriate enforcing authority of:-</p> <ul style="list-style-type: none">(a) the particulars specified in Schedule 1 in writing at least 14 days (or such shorter time before as the appropriate enforcing authority may agree) before undertaking any licensable work with asbestos: and(b) any material change, which might affect the particulars notified in accordance with (1) (a) (including the cessation of the work), in writing and without delay <p>(2) For work with asbestos which is not licensable work with asbestos and is not exempted by regulation 3(2), an employer must notify the appropriate enforcing authority of:-</p>

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	<p>(a) the particulars specified in schedule 1, before work is commenced: and</p> <p>(b) any material change, which might affect the particulars notified in accordance with (2)(a), without delay.</p> <p>Notification of licensable work</p> <p>194 When undertaking licensable work, the appropriate enforcing authority should be notified with details of the proposed work at least 14 days before work starts. This enables the authority to assess the proposals for carrying out work with asbestos and if appropriate, to inspect the site either before or during the work.</p> <p>Notification of NNLW</p> <p>200. Employers who plan to carry out NNLW should notify the work using the online notification form for notifying all the relevant authorities. Notification must be made before the work begins.</p> <p>201. Notifications can only be made using the online notification form at https://extranet.hse.gov.uk/lfserver/external/asbnnlw1</p>
<p>Regulation 10 – Information, instruction and training</p> <p>154 Employers should consult safety representatives and elected representatives of employee safety in good time about the</p>	<p>The revised new ACOP is very similar to the current one although the sections appear in a different order.</p> <p>Non-licensable work with asbestos including NNLW</p> <p>214 In addition to the ‘asbestos awareness’ in paragraphs 207 - 210, those employees whose work will knowingly disturb ACMs, and which is defined as non-licensable work or NNLW, should receive additional task-specific information, instruction and training.</p>

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information, instruction and training which they intend to provide.

Competence

246 Employers should give information, instruction and training to make sure employees are competent to carry out their work effectively and safeguard themselves, and others, from harm.

247 To be competent, an employee must:

- have had adequate information, instruction and training for the task;
- be able to demonstrate an adequate and up-to-date understanding of the work, the required control measures and appropriate law.

248 A training course on its own will not make an employee competent. Competence is developed over time by implementing and consolidating skills learnt during training, on-the-job learning, instruction and assessment.

249 It is essential for recently trained employees, particularly those new to asbestos work, to consolidate their newly acquired skills and knowledge by putting them to use on the job as soon as possible. Employers, supervisors and managers will play an important role in coaching new members of staff by reinforcing good work practices and correcting bad ones. Where persistent problems occur, retraining may be required. Further training can then be tailored to deal with performance weakness and gaps in relevant skills

250 Similarly, some longstanding employees may benefit from reassessment and a skills update.

Competence in respirator zones

251 Employers carrying out licensable work in a respirator zone must make sure that only competent employees enter that respirator zone, or supervise such employees.

252 To comply with the requirements in regulation 18(4)(a) and (b), employers must be able to

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	<p>demonstrate that operatives and supervisors have been given adequate information, instruction and training.</p> <p>Information and instruction for non-employees</p> <p>253 Employers who are working on asbestos in premises have a duty to make sure, so far as is reasonably practicable, that adequate information and instruction is given to those not employed by them, who are present in the premises and could be affected by the work.</p> <p>254 The information provided should include details of:</p> <ul style="list-style-type: none">• the location(s) where work is taking place so that people can avoid them;• possible risks from rearranging thoroughfares and fire exits as a result of the work being done;• any other information to help people avoid risks from the disturbance of ACMs caused by the work being done.
<p>Regulation 11 – Prevention or reduction of exposure to asbestos</p> <p>The majority of the information contained in the new and old ACOPs is the same. The sections below are missing from the new ACOP however:</p> <p>Work with asbestos insulating board (AIB) 186 As indicated in paragraph 41, certain work with AIB that is a short, non-continuous maintenance activity and which conforms to the principles of good practice can be considered to conform to regulation 3(2) and will be non-licensable. For any work with AIB, employers must use work methods which reduce the level of fibres released at source, wherever possible by removing boards whole without breaking them and, wherever practicable, by controlled stripping techniques including spraying with wetting agents and using Class ‘H’ vacuum cleaners (BS EN 603359)</p>	

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Work on textured decorative coatings containing asbestos.

167 Textured decorative coatings can be worked on or disturbed for a number of reasons, including during maintenance and repair, during replacement of lights and other fittings, during removal as part of room or building refurbishment and during removal or repair following damage due to water, fire or other accidental or deliberate acts.

168 As indicated in paragraphs 36-37, most work with textured decorative coatings is likely only to produce sporadic and low intensity worker exposure and can be categorised as complying with regulation 3(2) as long as 3(2)(b) is fulfilled, ie it is clear from the risk assessment that the control limit will not be exceeded.

169 When deciding what controls are needed for any particular job, due regard should be given to the:

- (a) risk assessment for the work (see paragraphs 53-69);
- (b) nature and extent of the material and of the planned work;
- (c) proposed method of removal;
- (d) potential risks from materials other than asbestos.

170 The following apply to all work with textured decorative coatings whether the exceptions detailed in paragraph 31 apply or not:

- (a) the duty to prevent exposure to asbestos as far as is reasonably practicable, or, if that is not possible to control it as far as is reasonably practicable (see paragraphs 155-165 and 167-169);
- (b) in line with (a) above, the method of work should aim to minimise release of asbestos fibres;
- (c) sanding, particularly with power tools, must be avoided;
- (d) work must only be carried out by suitably trained and competent workers (see paragraphs 128-131);

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(e) a suitable plan of work must be prepared before the work starts (see paragraphs 76-82)

171 For very minor work, it may not - subject to a suitable and sufficient risk assessment - be reasonably practicable to use the degree of control required for more extensive work. For example, shadow vacuuming with a HEPA vacuum and suitable RPE is likely to be sufficient for work which requires the removal or insertion of a few screws through textured coating.

172 More significant work usually produces substantial amounts of other waste such as paint flakes and plaster debris and will require more stringent controls than minor work.

173 The control regime for all but the most minor work should include control at source/dust suppression and good work practices which minimise dust generation and spread (avoiding power tools etc). The primary controls will consist of one or more of the following:

- (a) remove whole underlying plasterboard if possible with textured decorative coatings attached;
- (b) steam to loosen (there are proprietary machines/equipment available) and scrape;
- (c) apply a hydrating gel to loosen and scrape;
- (d) apply 'solvent free' chemical and scrape.

174 In certain circumstances appropriate wet blasting techniques may also be necessary for residual sections or very stubborn material. These techniques should not be employed as the primary method of removal.

175 The following measures should be employed to help contain and prevent the spread of asbestos fibres and other materials during all but the most minor work with textured coatings:

- (a) Although worker exposure is unlikely to exceed the control limit during controlled removal, RPE should always be worn. In line with expected asbestos airborne dust levels suitable RPE such as disposable (FFP3) or

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half-mask respirators (with P3 filters) should be adequate. Other suitable PPE, eg coveralls should also be worn.

(b) In situations where the work on textured decorative coatings is necessary due to water, fire or other accidental or deliberate damage, the area is likely to contain debris and other waste materials (although the occupier may already have taken steps to clean the area(s)). The affected area(s) should be inspected to identify the extent of debris.

If there is any evidence of textured decorative coating debris or dust then a pre-clean should be undertaken. The enclosure and protective sheeting should be installed as far as possible before the pre-clean is started. The pre-clean should be undertaken using appropriate dust suppression and control measures including vacuuming with a Class H vacuum cleaner (BS EN 603359), surface wiping, temporary encapsulation with tape, spray wetting and bagging (see also paragraphs 247 and 249). Once all the contamination has been removed, the enclosure and protective sheeting installation should be completed and the main work can then start.

(c) The work area should be segregated and enclosed using the existing room or a purpose-built enclosure. Access to the enclosure should be regulated through a 2-stage airlock. Workers should decontaminate in the airlock system prior to leaving the work area. This will involve vacuuming down using a Class H vacuum cleaner (BS EN 603359) and washing footwear and wiping the RPE in the inner stage. PPE and RPE should be removed in the outer stage of the airlock.

(d) Any portable items liable to become contaminated with dust and debris from textured decorative coatings should be removed prior to work starting. Remaining items should be protected with plastic sheeting.

(e) Once the work is complete, the area should be thoroughly cleaned before being returned to the occupier. All visible traces of dust and debris should be removed and the enclosure dismantled. A thorough visual inspection should then be carried out. Clearance air monitoring is not necessary as part of the clearance procedures.

(f) An independently provided certificate of

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<p>reoccupation is not necessary but a written statement should be issued to the occupier stating that the area has been thoroughly cleaned and visually inspected to ensure that no visible traces of dust and debris remain and is suitable for reoccupation. The statement should also contain the following information: the site address, the dates of the work, a brief description of the work, the name and address of the contractor, and details of the specific areas and items visually checked. The statement should clearly bear the name and signature of the person completing the inspection.</p> <p>176 There are certain practical difficulties in removing textured decorative coatings from damaged ceilings. The 'usual' practice is to 'pull-down' or 'drop' the ceiling which can be a dusty process (the dust is predominantly calcium sulphate or calcium silicate). In these situations there should be greater attention paid to reducing general dust levels (a requirement under the COSHH Regulations¹⁶). The ceiling (boards or lathe and plaster) should be thoroughly dampened down using an effective wetting system before work starts and during the work. Material, debris and dust on the floor should also be dampened down.</p> <p>177 If work methods in paragraphs 171-176 are complied with it can be deemed that the control limit will not be exceeded and regulation 3(2) will apply. It will only be necessary to provide additional substantiation under the risk assessment (in accordance with paragraphs 64 and 67(a)) if there is significant or exceptional variance in the scope or method of work.</p>	
<p>Regulation 16 – duty to prevent or reduce the risk of the spread of asbestos</p>	<p>The new ACOP is much more detailed</p> <p>Removal of waste from full enclosures</p> <p>383 Where practicable, remove waste bags from the enclosure via a separate bag lock. Waste bags should be placed in the inner stage of the bag lock where they are decontaminated before being passed into the middle compartment of the bag lock.</p> <p>384 In the middle stage of the bag lock, the waste bags should be placed into a second bag (ie an outer bag), sealed and the outer bag wiped down and the</p>

double-bagged waste should be placed in the outer stage of the bag lock.

385 The waste should be removed promptly from the outer stage of the bag lock by an 'outside worker' wearing appropriate PPE and RPE. The bags should be transferred directly to the waste skip or vehicle.

386 Under no circumstances should people exit the enclosure via the bag lock.

387 Where it is not practicable to have a separate bag lock system, the bag lock should be constructed from the inner or middle stage of the three-stage airlock which provides the entry/exit system for people. Waste bags should never be taken through the main hygiene facilities.

Waste removal general

388 All waste should be double bagged and the bags wiped down to remove surface contamination. Waste should be transported between the enclosure or work area and the skip or removal vehicle using the route likely to be safest during normal transit.

Licensable work in open sites

389 Where it is not reasonably practicable to enclose the work area:

- the work area should be marked by suitable warning notices and physical barriers appropriately placed;
- employers must assess the risks to workers and others nearby and if necessary, and as far as is reasonably practicable, the work should be done when other workers or members of the public are not nearby.

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390 Where it is not reasonably practicable to build a full enclosure, other containment and dust-suppression techniques should be used to prevent the spread of asbestos.

391 Where an enclosure is not used, the risk assessment should establish what will be required to ensure that, as far as is reasonably practicable, the spread of asbestos is prevented and the work area thoroughly cleaned.

Static sampling/air monitoring

392 Air monitoring to reduce risks from spread of asbestos is required to:

- measure background concentration of asbestos fibres in the work area during work to check that the control measures are effective;
- measure background levels outside the enclosure, particularly when the enclosure is in occupied

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	<p>premises. Check for leaks around the perimeter of the enclosure and at the airlock and bag lock positions. Also conduct testing at the discharge location of the air extraction equipment where it is sited internally;</p> <ul style="list-style-type: none">• measure background levels inside the enclosure when the asbestos work is complete, to ensure that it has been thoroughly cleaned and decontaminated before dismantling;• carry out measurements for reassurance eg after accidental releases.
<p>Regulation 17- cleanliness of premises and plant</p>	<p>407 Once asbestos removal is complete, the premises must be assessed to determine whether they are thoroughly clean and so fit to be returned to the owner/occupier. It is important that this includes the premises, any plant or equipment or parts of the premises where work with asbestos has taken place and the surrounding areas, which may have been contaminated. The areas requiring assessment for site clearance certification for reoccupation include the:</p> <ul style="list-style-type: none">• enclosed area, including airlocks (this will include ceiling voids where AIB ceiling tiles have been removed) or the delineated work area where an enclosure has not been used;• immediate surrounding area (for enclosures this will include the outside of walls and underneath polythene floors; for delineated areas this will include surfaces nearby either where asbestos may have been spread or where the pre-cleaning was not done properly);• transit route if one has been used;• waste route and area around the waste skip. <p>408 Those employing an organisation to carry out air</p>

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	<p>testing as part of the certification for reoccupation must ensure that the organisation is accredited to meet the relevant criteria in ISO 17020 and ISO 17025. Anyone engaged to carry out site clearance certification for reoccupation must demonstrate that they conform with specified requirements in ISO 17020 and ISO 17025 through accreditation with a recognised accreditation body. This is intended to allow flexibility, but in practice, it is likely to be the same person or organisation who carries out each stage. This will help continuity and consistency, and will avoid problems with interfaces at each stage of the process. The organisation carrying out the air testing should have the necessary independence to act completely impartially. If the analyst is contracted by the building owner/occupier, a copy of the clearance certificate should be made available to the asbestos removal company.</p>
<p>Regulation 22 – Health records and medical surveillance</p> <p>Regulation: the wording has changed from the employer "shall" to the employer "must"</p>	<p>Employers must keep a health record for any employee who carries out work notifiable as either licensable or NNLW. The information must be kept for 40 years in a safe place.</p> <p>475 For licensable work and NNLW the health record should be kept in a suitable form which will allow each employee access, on request, to their own records.</p> <p>476 For NNLW the employer must:</p> <ul style="list-style-type: none">• enter the employees carrying out the work in a register or record, indicating the nature and duration of the activity and the exposure to which they have been subjected;• have a recording and planning system which records the date of the last examination and brings forward the next required medical examination date for each individual. <p>479 A medical examination should be repeated every two years (or within a shorter time if advised by a doctor) but only while the employee continues to do or expects to continue licensable work. The examination must be carried out by an HSE appointed doctor.</p>

Medical examinations for NNLW

480 Employees who carry out any NNLW must have a medical examination on or before 30 April 2015. From 1 May 2015 anyone carrying out NNLW should have been medically examined under *the Regulations* in the past three years.

481 After the first medical an examination should be repeated every three years (or a shorter time if advised by a doctor) but only while the employee continues to do or expects to continue to do NNLW. For NNLW, the examination does not have to be carried out by an HSE-appointed doctor, it may be carried out by a non-HSE- appointed doctor, such as a local general practitioner.

Further information on medical examinations

482 Medical examinations for licensable work and NNLW should:

- take place in the employee's normal working time. employees should co-operate if they are sent for such an examination;
- be at the employer's expense, including travel, lost working time and the doctor's fee;
- trigger a review of all methods of work, risk assessments, and co-worker health if an employee is diagnosed with an asbestos-related condition. The affected worker may need further medical and managerial redeployment assessment if continuing in current tasks might endanger themselves or others.

The below appears in the guidance section of the new ACOP:

Health records

483 Health records kept for the purposes of regulation 22 are not the same as the medically confidential examination record which is kept by a doctor in line with medical practice. The health record kept by the employer only contains the information set out in paragraphs 472 - 473 above.

484 Because an asbestos-related disease may not be diagnosed until many years after exposure to asbestos occurs, health records should be kept for 40 years after the date of last entry or until the employee concerned reaches the age of 80, whichever is the longer period. The records should be kept even if the employee leaves the employer.

485 Employers may make their own arrangements for keeping the data but records should be kept so they allow employers to form a view of the typical degree and duration of each employee's exposure to asbestos during the time they worked for the employer. It is acceptable to estimate exposures provided those estimates are informed, ie based on similar tasks on similar ACMs.

486 Individual employees are entitled to see their health records on request. Doctors should also be given access to the records where this is relevant.

487 Guidance for doctors carrying out asbestos medicals is provided on the HSE website in the following documents:

- appointed doctors – www.hse.gov.uk/pubns/ms32.htm

- non-appointed doctors – www.hse.gov.uk/pubns/ms34.htm

488 A searchable database of appointed doctors is provided on the HSE website at www.hse.gov.uk/doctors/index.htm.

Certificates of examination

489 Certificates of examination should be issued to both employee and employer and indicate the date an examination was carried out under regulation 22. For new employees, the employer should verify that the employee has had an examination in the previous two years for licensable work and in the previous 3 years for NNLW (after 1 May 2015). If necessary, they need to confirm the validity of a certificate with the previous employer or examining doctor. Certificates should be kept on file by the employer for at least four years from the date of issue.

Other health surveillance requirements

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490 The medical examination under *the Regulations* is not an indication of general fitness to work such as doing strenuous removal activities or removal in confined spaces. In addition to the medical examination required for work with asbestos, health surveillance may also be required under the *Management of Health and Safety at Work Regulations 1999*. In addition, if an employee is undertaking work in confined spaces to which the *Confined Spaces Regulation 1997* apply, medical advice on an employee's suitability to do this kind of work may also be needed.

491 There is further guidance on health surveillance matters on the HSE website at <http://www.hse.gov.uk/health-surveillance/>.

492 If an employer has concerns about the general fitness for work of an employee, the employer should consider formally arranging for a fitness-for-work examination to be carried out, in addition to the asbestos medical.

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