

HSE Duty to Manage Review & Enforcement

THE DUTY TO MANAGE

The HSE have begun a review of the level of compliance with Regulation 4 of the Control of Asbestos Regulations, commonly referred to as the 'Duty to Manage'. Inspectors have been trained specifically to review organizations arrangements and make sure that all the required elements are in place.

More people die from asbestos related diseases a year than are killed on the roads. The figures do not seem to be decreasing as was predicted. In fact, the number of asbestosis cases being reported is dramatically increasing. This reflects the continued exposure caused by the uncontrolled disturbance of installed asbestos products as opposed to exposure during manufacture.

The Duty to Manage requires those who have responsibilities for maintenance activities in non-domestic premises to assess whether there is any asbestos in their premises, and depending on its condition, either remove it or manage it, making sure that subsequent maintenance or other activities carried out do not expose the workers to unavoidable risk.

They must also ensure that information on the location and condition of these materials is given to anyone likely to disturb them. In fact the Duty to Manage is often misinterpreted as a duty to Survey. However, Surveying, and identifying the location/nature of the hazard, is only the first step of the management process.

Regulation 4 refers to a Duty Holder as the person/s that must ensure that the requirements of the Regulations are being implemented. The Regulations places a duty on all parties who have, by virtue of any contract or tenancy agreement, an obligation of any extent in relation to the maintenance or repair of premises or of access or egress to premises to co-operate.

In order to comply, the Duty Holder must address the following key processes:

- Take reasonable steps to identify and locate any asbestos in the premises and assess the condition
- Presume that materials do contain asbestos unless there is strong evidence that they do not
- Prepare a record of the location and condition of these ACMs and assess the risk from them
- Prepare and implement a plan to manage those risks
- Provide this information to anyone who is liable to disturb the materials
- Monitor the condition of the material left in place, and to review the assessment of risk periodically.

REVIEW & ENFORCEMENT

Following their 2006/2007 campaign and in addition to the current asbestos awareness campaign, 'Asbestos – The Hidden Killer', the HSE are currently undertaking a very proactive approach to enforcement of the Duty to Manage requirements.

During routine or enforcement visits by HSE inspectors, they have been instructed to consider enforcement action when they find the following circumstances:

- Where no Survey has been carried out and there are no robust management systems in place implementing the results of a presumptive survey
- There is no Asbestos Management Plan detailing how the organization deals with asbestos risks
- Maintenance workers or others working in a building being exposed or liable to be exposed to a significant risk from asbestos during maintenance operations
- People using the building being exposed or liable to be exposed to a significant risk from ACMs in poor condition, egg walking past friable asbestos products
- Where no information and/or training have been provided to those liable to disturb asbestos

In addition to tackling the immediate risks, HSE Inspectors are instructed to consider 'tracking back' up the procurement chain to find out how the work was planned and which Duty Holders failed to manage the risks from asbestos. ***Where the failure was caused by a poor Survey, substandard Asbestos Removal works or inadequate Management Procedures, the HSE have confirmed they will take action against those individuals.***

In the week commencing 16 September 2007, prior to the Duty to Manage Review starting, 2 notices were issued. Both were the result of poor asbestos removal practices on site.

In the week commencing 4 November 2007, after the review had began, the number of notices has increased to 6. Of these only 1 was related to asbestos removal and the other 5 were for breaches of the Duty to Manage.

Should you require any further information on the Duty to Manage or require assistance with the production of Survey strategies or Asbestos Management Policy & Procedures please contact James Riley (or any of our Management Team) on 0845 456 9953.