



The
Property
Institute

ADVICE NOTE

ASBESTOS

This guidance has been produced to assist Landlords of properties containing long leasehold flats, Residents' Management Companies (RMCs) and Right to Manage Companies (RTMs) understand their duties and responsibilities with regard to the management of asbestos in their properties.



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NOTE

As the leading trade body for residential leasehold management, TPI is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

INTRODUCTION

This guidance has been produced to assist Landlords of properties containing long leasehold flats, Residents' Management Companies (RMCs) and Right to Manage Companies (RTMs) understand their duties and responsibilities with regard to the management of asbestos in their properties.

It is also intended to provide information to leaseholders who have concerns about the management of asbestos in blocks of flats where they have a leasehold interest.

For those who wish to understand the subject in more depth, links to sources of further information can be found at the end of this document.

Asbestos

Asbestos is responsible for the highest number of deaths in the working population. Asbestos still kills around 5000 workers each year. Around 20 tradesmen die each week as a result of past exposure. However, asbestos is not just a problem of the past. It can be present today in any building built or refurbished before the year 2000.

The term 'asbestos' also includes Asbestos-containing Materials (ACMs) such as asbestos cement and some textured decorative coatings. Three main types of asbestos were commonly used:

- crocidolite (commonly known as blue asbestos);
- amosite (commonly known as brown asbestos);
- chrysotile (commonly known as white asbestos).

The Health and Safety Executive's (HSE) guidance note a0 Introduction to Asbestos essentials³ provides more information on asbestos including what it looks like and where you can find it.

When materials that contain asbestos are disturbed or damaged, fibres are released into the air. When these fibres are inhaled, they can cause serious diseases. These diseases do not affect a person immediately; they often take a long time to develop, but once diagnosed, it is often too late to do anything. Asbestos can cause the following fatal and serious diseases:

- Mesothelioma (a cancer which affects the lining of the lungs (pleura) and the lining surrounding the lower digestive tract (peritoneum) which is almost always fatal)
- Asbestos-related lung cancer (another cancer which is often fatal)
- Asbestosis (a condition that causes progressive shortness of breath, and in severe cases can be fatal)
- Pleural thickening (a condition that can cause shortness of breath and discomfort in the chest).

The Control of Asbestos Regulations 2012

All work with asbestos and the management of asbestos in non-domestic buildings is governed by the Control of Asbestos Regulations 2012¹⁰ (CAR2012).

In 1984 the Court of Appeal in Westminster City Council v Select Management Ltd held that the common parts and lifts of a residential

property were non-domestic premises made available to persons who were not their employees as a place of work.

The 'common parts' of multi-occupancy domestic premises, such as purpose-built flats or houses converted into flats might include foyers, corridors, lifts and lift shafts, staircases, roof spaces, gardens, yards, outhouses and garages.

CAR2012 is supported by an Approved Code of Practice (ACOP) and guidance entitled L143 Managing and working with asbestos which is free to download at <http://www.hse.gov.uk/pubns/priced/l143.pdf>

An ACOP gives practical advice on how to comply with the law. By following the advice dutyholders will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice. Dutyholders may use alternative methods to those set out in the Code in order to comply with the law, however, the Code has a special legal status. If a dutyholder is prosecuted for breach of health and safety law, and it is proved that they did not follow the relevant provisions of the Code, they will need to show that they have complied with the law in some other way or a Court will find them at fault.

The duty to manage

The dutyholder must identify the location and condition of asbestos-containing materials (ACMs) and manage the risk to prevent harm to anyone who works on the building or to building occupants.

The duty holder must, in particular, ensure that:

- reasonable steps are taken to find materials in premises likely to contain asbestos and to check their condition (materials must be presumed to contain asbestos unless there is strong evidence that they do not);
- a written record of the location and condition of ACMs and/or presumed ACMs is made and that the record is kept up to date;
- the risk of anyone being exposed to these materials is assessed;
- a written plan to manage that risk is prepared and that the plan is put into effect to make sure that: any material known or presumed to contain asbestos is kept in a good state of repair;
- any material that contains or is presumed to contain asbestos is, because of the risks associated with its location or condition, repaired and adequately protected or, if it is in a vulnerable position and cannot be adequately repaired or protected, it is removed; and
- information on the location and condition of the material is given to anyone who is liable to disturb it or is otherwise potentially at risk.

Identifying duty holders

The duty to manage in CAR2012 is placed on the 'dutyholder' who is defined as:

- every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access or egress to or from those premises; or
- in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or

- any means of access or egress to or from those premises, and where there is more than one such dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.

Who the dutyholder is, or dutyholders are, will in multi-occupied residential buildings, be determined by the lease.

All parties to the lease who are responsible for alterations, repairs and maintenance will be dutyholders.

The dutyholder may therefore be the freeholder, sub-lessor, a Residents' Management Company (RMC) or Right to Manage Company (RTM).

In a tripartite lease where the Managing Agent is written into the lease, they may also be a dutyholder.

L143 makes it clear however, that if an owner or leaseholder uses a managing agent, the managing agent would act on behalf of the owner but does not assume the owner's duties to manage asbestos in law. The ultimate responsibility remains with the owner.

Duties of the Managing Agent

All work with asbestos and the management of asbestos in non-domestic buildings is governed by the control of asbestos regulations 2012.

Anyone who is not a dutyholder (such as a Managing Agent), but has information on or control of the premises, must help the dutyholder, as far as necessary, to comply with the duty. But this does not extend to paying for or sharing the costs of any actions the

dutyholder takes to manage these risks.

Where a Managing Agent is involved in the instruction or management of any person or contractor who will undertake work that may expose them to asbestos containing materials or asbestos fibres, they will have duties under Section 3 of the Health and Safety at Work etc. Act 1974 to "ensure, so far as is reasonably practicable" that any person undertaking or affected by the work "are not thereby exposed to risks to their health or safety" from asbestos.

Privately occupied parts of domestic premises (flats)

Even though the duty to manage asbestos in CAR2012 does not apply to domestic premises, any employer who undertakes demolition, maintenance or any other work which exposes, or is liable to expose, their employees to asbestos in respect of any premises, must ensure that a suitable survey is undertaken by a competent surveyor to identify whether asbestos is present that may be disturbed by the work and if so what type of asbestos it is.

The same employer, by virtue of their duties under Section 3 of the Health and Safety at Work etc. Act 1974, also has a duty to ensure that any residents of the flat, or indeed any other person, is not exposed to asbestos fibres when the work is undertaken.

Where asbestos is present, the employer must assess the risk of exposure and take such steps as are necessary to prevent anybody being exposed to asbestos fibres.

If your flat is in a block that was built or refurbished before the year 2000 and you are having any work undertaken that may disturb asbestos containing materials, to protect both your health and the health of those involved in the work, you are advised to ensure that the person managing the work, and where there is not one, the contractor undertaking the work, commissions a suitable asbestos survey from a competent surveyor. This applies to work on any parts of the building that are demised to you, whether inside or outside the building.

Guidance on asbestos surveys and selecting a competent surveyor is given later in this document.

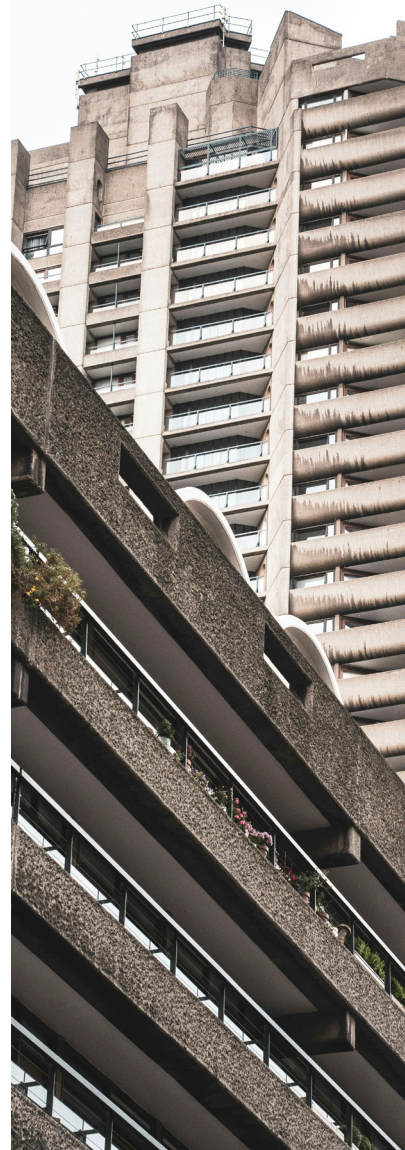
Where asbestos containing materials are identified in the survey that may be disturbed by the work, you should ensure that they are either removed or protected, or the work modified to avoid disturbing the asbestos containing materials. The surveyor who undertook the survey should be able to advise you on any action that is required.

Where the asbestos materials form part of the structure of the building, you may need a licence from the Landlord to undertake any removal. In such circumstances you should notify your Landlord or the Management Company and where there is one the Managing Agent.

Identifying and assessing asbestos

L143 states "Everything that can reasonably be done must be done to decide whether there is (or may be) asbestos in the premises, and if there is asbestos (or could be), to find out where it is likely to be. All documentary information that can be obtained about the premises must be systematically checked and as thorough an inspection, as is reasonably accessible, of the premises both inside and outside must be carried out."

The thorough inspection of the premises will usually take the form of a survey. The survey should be comprehensive and systematic, and the survey type should ensure that the duty holder meets their current occupational requirements.



There are two types of survey:

- a management survey; and
- a refurbishment and demolition survey.

A management survey should be carried out to identify the asbestos for normal day-to-day occupation and maintenance of the building.

Its purpose is to locate, as far as reasonably practicable, the presence and extent of any suspect ACMs in the building which could be damaged or disturbed during normal occupancy, including foreseeable maintenance and installation, and to assess their condition. Management surveys will often involve minor intrusive work and some disturbance. The survey will usually involve sampling and analysis to confirm the presence or absence of ACMs.

As part of or upon completion of the survey the condition of ACMs must be assessed. The assessment should take account of the type of ACM, the amount and its condition. This information must then be used to determine the potential to release asbestos fibres into the air, if disturbed, and the potential risk from the ACMs.

A refurbishment and demolition survey is needed before any refurbishment or demolition work is carried out. This type of survey is used to locate and describe, as far as reasonably practicable, all ACMs in the area where the refurbishment or demolition work will take place. The survey will be fully intrusive and involve destructive inspection, as necessary, to gain access to all areas, including those that may be difficult to reach. A refurbishment and demolition survey may also be required when more intrusive maintenance and repair work will be carried out. Refurbishment and demolition surveys should only be conducted in unoccupied areas to minimise risks to tenants, the public or employees on the premises.

Further guidance on surveys can be found in HSG264 Asbestos: The Survey Guide¹³.

Choice of surveyors

The HSE strongly recommends the use of accredited or certificated surveyors for asbestos surveys.

Organisations and individual surveyors can demonstrate that they are technically competent to undertake surveys for ACMs through accreditation by the United Kingdom Accreditation Service (UKAS). The UKAS website¹⁴ can be used to find an accredited or certificated surveyor.

Records

Where the assessment indicates ACMs are present or presumed to be present a formal record must be created. The record, which is frequently referred to as an asbestos register should:

- include an accurate drawing of the premises and the main features of each room and passageways should be marked on it;
- contain details of the locations of the ACMs, their extent and condition and their forms (e.g. floor tiles, boards, cement sheets) and what the ACM looks like (e.g. if painted and what colour);
- be available on site for the entire life of the premises;
- be kept up to date so that it always accurately records the

- known or assumed ACM's present in the building; and
- be shared with any person, including workers and contractors carrying out maintenance or other work, who may encounter the ACM's found in the survey.

Asbestos records can be in written or electronic form and should be kept for a minimum of 40 years.

When asking a contractor to undertake work that may disturb asbestos containing materials the person instructing the work must ensure that relevant information in the asbestos register is communicated to and understood by the person or person undertaking the work before they permit any work to start.

Management plan

A written management plan must be prepared in either electronic or paper format. The plan, which sets out how the risks identified from asbestos will be managed, must:

- identifying the person(s) responsible for managing the asbestos risk; and
- include a copy of the asbestos register and how to access it if it is kept electronically.
- include instructions that prevent any work on the fabric of the building from starting without the relevant parts of the register being checked and set out how this will be achieved;
- include plans for any necessary work to repair, protect or remove ACMs that was identified in the risk assessment;
- set out the priority for any actions identified;
- include a schedule for monitoring the condition of any ACMs identified in the register;
- include details of how the content of the management plan will be communicated; and
- include contingency arrangements if the main contact person for asbestos risk management is not available.

High priority must be given to actions relating to the management of damaged ACMs and ACMs likely to be disturbed; these will need to be repaired, sealed, enclosed protectively or removed using trained and competent personnel.

The management plan must be:

- prepared by a person with the necessary skills, knowledge, experience and insurance
- reviewed, at least, every 12 months and if there is reason to believe that circumstances have changed: The review frequency should be set out in the asbestos management plan; and
- communicated to any employees and made available to all premises within the building and any managing agents appointed by the duty holder.

Inspection of ACMs

Any identified or suspected ACM must be inspected, and its condition assessed periodically, to check that it has not deteriorated or been damaged. The frequency of inspection will depend on the location of the ACMs and other factors which could affect their condition. The inspection frequency should be established during the assessment and documented in the asbestos management plan.

Contractors duties

Before undertaking building, refurbishment, maintenance or demolition work or any other work which exposes or is liable to expose anybody to asbestos the employer of the workers involved in the work must ensure that:

- a suitable and sufficient asbestos survey is undertaken;
- a suitable and sufficient assessment is undertaken of the risks to the health of their employees associated with the exposure and the steps that need to be taken to meet the requirements of CAR2012;
- the significant findings of the assessments are recorded;
- a suitable written plan of work to the standards set out in CAR2012 has been prepared that details how that work is to be carried out safely and without exposing anybody to asbestos;
- the plan has been communicated to all people involved in the work; and
- all people involved have been given adequate information, instruction and training.

Section 3 of the Health and Safety at Work etc. Act 1974 also imposes a duty on every employer to conduct their work in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected by their work are not exposed to risks to their health or safety. This will of course include any risk associated with exposure to asbestos.



Repairing or removing asbestos

There is a specific requirement in CAR2012 (regulation 7) for all ACMs to be removed as far as reasonably practicable before major refurbishment or final demolition. Removing ACMs is also appropriate in other smaller refurbishment situations which involve structural or layout changes to buildings.

ACM's that are in a vulnerable position where they are likely to be disturbed during routine maintenance work or daily use of the building and cannot be adequately repaired or protected, should also be removed.

Work with asbestos that requires a licence

Most asbestos removal work will require a contractor holding a licence from HSE. All work with sprayed asbestos coatings and asbestos lagging and most work with asbestos insulation and asbestos insulating board (AIB) requires a licence. The HSE have a database of current asbestos licence holders¹⁵.

Non-licensed work

All non-licensed work with asbestos:

- needs a risk assessment; and
- must be carried out with the appropriate controls in place.

Anybody carrying out such work must have:

- had the correct level of information, instruction and training, to protect themselves (and others in the area) from the risks to health that exposure to asbestos causes; and
- insurance for working with asbestos.

Notifiable non-licensed work

Some non-licensed work has additional requirements. This work is known as notifiable non-licensed work (NNLW) and includes:

- large-scale removal of textured decorative coatings using steaming or gelling methods;
- minor, short duration work:
 - to remove asbestos insulating board as part of a refurbishment project;
 - involving asbestos insulation including, for example, the repair of minor damage to a small section of pipe insulation where the exterior coating has been broken or damaged;
- the removal of:
 - asbestos cement products, such as roof sheeting, where the material has been substantially damaged or broken up by, for example, a fire or flood damage;
 - asbestos cement products where the removal activity will mean that the material will be substantially broken up, creating significant quantities of dust and debris; and
 - asbestos paper and cardboard products if not firmly bonded in a matrix.

Where the work is NNLW the person undertaking the work needs to ensure that the relevant enforcing authority is notified. The relevant enforcing authority for domestic premises in the Health and Safety Executive (HSE).

Notification can be made online¹⁶ and required before the work starts, but there is no minimum notice period and the contractor does not need to wait for permission from the enforcing authority.

Asbestos information, instruction and training

There are three main levels of information, instruction and training. These relate to:

- Asbestos awareness
- Non-licensable work with asbestos including NNLW
- Licensable work with asbestos.

Asbestos awareness training

Information, instruction and training for asbestos awareness is intended to give workers and supervisors the information they need to avoid work that may disturb asbestos during any normal work which could disturb the fabric of a building, or other items which might contain asbestos. It will not prepare workers to carry out work with asbestos-containing materials. If a worker is planning to carry out work that will disturb ACMs, further information, instruction and training will be needed.

Non-licensable work training

This level of information, instruction and training is required for those whose work will require them to disturb asbestos-containing materials that does not require a licence to work with.

Licensable work with asbestos training

This level of information, instruction and training is required for those whose work will require them to disturb asbestos-containing materials that requires a licence to work with.

Further information

Further information on asbestos information, instruction and training can be found on the HSE website¹⁷.

Further information

1. L143 (Second edition) Managing and working with asbestos: Control of Asbestos Regulations 2012. Approved Code of Practice and guidance – Free to download at <https://www.hse.gov.uk/pubns/books/l143.htm>
2. HSG210 (Fourth edition) Asbestos essentials: A task manual for building, maintenance and allied trades of non-licensed asbestos work – Various sheets free to download at <http://www.hse.gov.uk/asbestos/essentials/index.htm>
3. HSE Asbestos essentials: Guidance note a0 – Introduction to Asbestos Essentials <https://www.hse.gov.uk/pubns/guidance/a0.pdf>
4. HSG247 Asbestos: The licensed contractors' guide – Free to download at <https://www.hse.gov.uk/pubns/books/hsg247.htm>
5. HSG248 Asbestos: The analysts' guide for sampling, analysis and clearance procedures – Free to download at <https://www.hse.gov.uk/pubns/books/hsg248.htm>
6. HSG264 Asbestos: The survey guide – Free to download at <http://www.hse.gov.uk/pubns/priced/hsg264.pdf>
7. INDG223 (rev5) Managing asbestos in buildings: A brief guide – Free to download at https://qhse.support/public-documents/industry-guidance/indg223_v4.pdf
8. OC265–50 Control of Asbestos Regulations 2012 – General enforcement guidance and advice – Free to download at <https://www.hse.gov.uk/foi/internalops/ocs/200-299/oc265-50.pdf>
9. The Health and Safety at Work etc. Act 1974 <https://www.legislation.gov.uk/ukpga/1974/37>
10. Control of Asbestos Regulations 2012 <https://www.legislation.gov.uk/uksi/2012/632/contents/made>
11. The Construction (Design and Management) Regulations 2015 <https://www.legislation.gov.uk/uksi/2015/51/contents/made>
12. The Management of Health and Safety at Work Regulations 1999 <https://www.legislation.gov.uk/uksi/1999/3242/contents/made>
13. HSG264 (Second edition) Asbestos: The Survey Guide
14. UKAS Database of asbestos inspecting bodies <https://www.ukas.com/about-us/technical-advisory-committees/asbestos/>
15. HSE Database of asbestos licence holders <https://www.hse.gov.uk/asbestos/licensing/index.htm>
16. ASBNNLW1 – Notification of non-licensed work with asbestos <https://notifications.hse.gov.uk/asbestosform/NNLW>
17. Asbestos information, instruction and training <https://www.hse.gov.uk/asbestos/training.htm>
18. HSE Website: Asbestos www.hse.gov.uk/asbestos

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Note:

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