

## CONTROL OF ASBESTOS AT WORK REGULATIONS 2002

### BACKGROUND AND APPLICATION

The aim of the Control of Asbestos at Work Regulations 2002 is to ensure that building and maintenance workers are no longer unknowingly exposed to deadly asbestos fibres without first being able to assess the risk. In this briefing paper on asbestos, we examine the main provisions of the new legislation, how leaseholders may be affected and what action needs to be taken. Finally, we provide a case study from our residential management portfolio, illustrating how effective asbestos management should be carried out and communicated to residents and contractors.

The compliance date of 21st May 2004 is when those who have responsibilities for maintenance and repair activities in non-domestic properties (the duty holders) have to ensure that systems are in place to manage the asbestos risk. Non-domestic properties also encompass common areas of domestic premises, including stairwells, roof spaces, lift shafts, halls, etc.

As with many new regulations, people can over react or have misguided perceptions. The discovery of asbestos containing materials does not necessitate the immediate removal of the materials. The spirit of the new regulations advocates the management of asbestos rather than its removal.

Asbestos in good condition and in a position where it will not be disturbed does not constitute a health hazard. However, if it is disturbed the deadly fibres are released into the air and, if

inhaled, the resulting accidental exposure can be fatal.

### KEY PROVISIONS

The key requirements of the regulations are:

- *To establish if there is asbestos within the premises.*
- *An asbestos risk assessment must be carried out to identify whether asbestos is present and what condition it is in.*
- *Unknown materials must be presumed to contain asbestos until there is evidence to the contrary.*
- *A register must be kept of the location and condition of the asbestos containing materials.*
- *This must be updated regularly deleting records of removed asbestos and adding previously unknown asbestos.*
- *This register must be available to anybody who may work or is likely to disturb the material.*
- *The register should also be available to the emergency services.*

### MANAGEMENT PLAN

Once the risk assessment is completed, a management plan must be devised detailing how the risk is to be managed. If the material has been identified, or is presumed to contain asbestos, action must be taken. Even if the material does not impose a risk at the time, it has the potential to do so, and therefore it must be included in the management plan, and measures need to be in place to ensure that it is kept in good condition.

Options may include labelling and inspections on a regular basis to check the condition. Other options include repair, encapsulation or removal. The measure will depend upon the associated risk. The plan must be implemented and regularly reviewed.



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## PROPERTY INSPECTIONS

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It will be inevitably going to take a period of time for all duty holders to comply with the “duty to manage” regulation and complete compliance is not expected by May 2004, especially from organisations with extensive property portfolios.

However, HSE inspectors and local authority inspectors will be carrying out inspections and will expect a compliance strategy to be in place.

From 21st May, building and maintenance workers entering non-domestic premises should expect, at the very least, a management strategy and, in many cases, an asbestos register on site.

The essential ingredients to ensure the success of the ‘duty to manage’ regulations are cooperation and communication between the duty holder and contractors. Anyone involved in building maintenance work must be informed if the building contains, or may contain, asbestos, and the location of such materials.



*Potential risk areas must be recorded on the register*

Of equal importance, is the responsibility of building and maintenance workers to report the discovery of any previously discovered asbestos containing materials. This information will need to be entered into the register. Damage reporting is

essential as it will change the condition of the materials and may alter the subsequent action that needs to be taken. Any damage-related release of asbestos fibres into the air may constitute a risk to other people working within the building.

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## CEM CASE STUDY – HILLSIDE COURT

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An asbestos survey was carried out on the common areas in Hillside Court by BSE Environmental Services, (Dockland Business Centre, London E14 8PX, Tel: 020 7345 5035 – Alan Fisher).

The survey covered fourteen different areas in the common parts, and three different forms of asbestos were found, chrysotile, amosite and crocidolite, the most dangerous form of asbestos being the latter, after samples were sent to the Cavendish Laboratories for analysis. The samples were given a risk assessment score between 1 and 12. The crocidolite was given a risk assessment of 10. All the information relating to the survey i.e. hand written on-site survey results, photographs and laboratory results have been bound together in an asbestos register which is available for contractors working at the property.

The next step is to produce a management plan for dealing with the asbestos and the treatment for the different areas will be decided based on a number of factors including the location of the material, the extent of the material, the use of which the location is put, the occupancy of the area, the activities carried on in the area and the frequency with which maintenance activities are likely to take place.



Fortunately, at Hillside Court CEM had already taken action to remove the asbestos in the high risk areas, and this has been recorded in the asbestos register. The management plan for dealing with the remainder of the asbestos was still to be agreed when this paper was prepared.

The lessees at Hillside Court were concerned that, despite the survey revealing only medium risk asbestos in some areas that they could still be at risk. In order to restore confidence, CEM arranged for air samples to be taken in these areas, which confirmed that there was no danger.

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### REASSURING CONTRACTORS

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Building contractors are now far more aware of the change in the legislation on asbestos and problems may be encountered with some contractors refusing to work in certain areas if they feel that asbestos could be present and if they have not seen the asbestos register.

This was initially experienced at Hillside Court with the contractors dealing with the boiler replacement, refusing to complete their work until they had written confirmation that the slightly damaged asbestos covering to the pipe work, was not a potential danger. With the asbestos register, CEM were able to provide this assurance and work was subsequently completed as planned.

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### PROFESSIONAL ADVICE

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In an ever-changing world, our panel of experts continues to offer specialist advice on topical property matters including the recently introduced asbestos provisions. For more information, please email us at [marketing@countystate.co.uk](mailto:marketing@countystate.co.uk) or alternatively contact your property manager.

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### FURTHER READING AND ONLINE RESOURCES

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- Health & Safety Executive (HSE)  
[www.hse.gov.uk/asbestos/index.htm](http://www.hse.gov.uk/asbestos/index.htm)
- HSE books and free publications  
[www.hsebooks.co.uk](http://www.hsebooks.co.uk)
- Control of Asbestos at Work Regulations 2002, Statutory Instrument 2002 No. 2675 (HMSO)  
[www.legislation.hmsso.gov.uk/si/si2002/20022675.htm](http://www.legislation.hmsso.gov.uk/si/si2002/20022675.htm)
- The Asbestos (Prohibitions) (Amendment) Regulations 2003, Statutory Instrument 2003 No. 1889 (HMSO)  
[www.legislation.hmsso.gov.uk/si/si2003/20031889.htm](http://www.legislation.hmsso.gov.uk/si/si2003/20031889.htm)
- The Royal Institution of Chartered Surveyors (RICS)  
[www.rics.org/asbestos](http://www.rics.org/asbestos)

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