

EnviroHive Information Pack

Regulation 4 - Duty to Manage

The duty to manage requires those who manage non-domestic (some domestic premises are affected see section 2-What Premises are affected) premises to protect persons who work in such premises, or use them in other ways, from the risks to health associated with exposure to asbestos.

1- What is the duty? The duty to manage asbestos is contained in Regulation 4 of the Control of Asbestos Regulations 2006 and requires the person who has the duty to manage (ie the "dutyholder") to:

- Take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, in what amount, where and in what condition;
- Presume materials do contain asbestos unless there is strong evidence that they do not;
- Make, and keep up-to-date, a record of the location and condition of these asbestos containing materials - or materials which are presumed to contain asbestos;
- Assess the risk of anyone being exposed to fibres released from the materials identified;
- Prepare a plan that sets out in detail how the risks from these materials will be managed;
- Take the necessary steps to put the plan into action;
- Periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up-to-date;
- Provide information on the location and condition of the materials to anyone who is liable to work on or disturb them;

2- What premises are affected? The duty to manage covers all non-domestic premises. Such premises include all industrial, commercial or public buildings such as factories, warehouses, offices, shops, hospitals and schools.

Non-domestic premises also include those "common" areas or "communal" part of certain domestic premises e.g. purpose-built blocks of flats or houses converted into flats. The common areas of such domestic premises might include any foyers, corridors, lifts and lift-shafts, staircases, roof spaces, gardens, yards, outhouses and garages - but would not include inside the individual flats themselves. Such common areas would not include rooms within a private residence that are shared by more than one household such as bathrooms, kitchens etc in shared houses and communal dining rooms and lounges in sheltered accommodation.

3- Who has the duty? In many cases, the dutyholder is the person or organisation that has clear responsibility for the maintenance or repair of non-domestic premises through an explicit agreement such as a tenancy agreement or contract.

The extent of the duty will depend on the nature of that agreement. In a building occupied by one leaseholder, the agreement might be for either the owner or leaseholder to take on the full duty for the whole building; or it might be to share the duty. In a multi-occupied building, the agreement might be that the owner takes on the full duty for the whole building. Or it might be that the duty is shared - for example, the owner takes responsibility for the common parts while the leaseholders take responsibility for the parts they occupy. Sometimes, there might be an agreement to pass the responsibilities to a managing agent.

In some cases, there may be no tenancy agreement or contract. Or, if there is, it may not specify who has responsibility for the maintenance or repair of the premises. In these cases, or where the premises are unoccupied, the duty is placed on whoever has control of the premises, or part of the premises. Often this will be the premises owner.

The HSE document "The Control Of Asbestos Regulations 2006" can be ordered via the HSE website <http://www.hsebooks.com/Books> (ISBN 0717662063)

4- Other things to consider, asbestos in buildings due for refurbishment and/or demolition – There is a specific legal requirement to minimise the spread of asbestos and take all reasonable steps to locate and identify it, any refurbishment work or demolition due to be carried out on a building or premises or part thereof should be inspected for asbestos prior to any works. It is the responsibility of the building owner and the principle contractor carrying out the demolition or refurbishment works (others may have this responsibility depending on the contract arrangements or size of the works involved) to make sure a Type 3 asbestos survey has been carried out, so as asbestos containing materials that have been identified in the survey can be removed safely prior to any works. Those involved in such works may include Chartered Surveyors, CDM Consultants, Health & Safety Consultant, Architects, M&E Contractors & General building contractors.

For further information or guidance regarding asbestos please contact our offices.