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Information Sheet

Asbestos

What is asbestos and what are the risks?

Asbestos is a soft fibrous mineral. It has been used for over 150 years as a building material in the construction of commercial, industrial and public buildings. There was extensive use of asbestos from the 1950s through to the mid 1980s. There are three types of asbestos: blue (crocidolite), brown (amosite) and white (chrysotile). Blue and brown asbestos were banned in the UK in 1985 and white asbestos was banned in 1999.

Asbestos is a serious health risk if its fibres are inhaled. These fibres can remain in the lungs or settle in the lung linings and the chest cavity for long periods. This can cause lung cancer and mesothelioma, which is an incurable cancer of the lining of the lungs and stomach, and other asbestos-related diseases such as asbestosis or fibrosis, which is scarring of the lungs.

There can be a period of many years between exposure and diagnosis.

Overall, exposure to asbestos is the biggest single cause of work-related deaths with around 4,000 people a year dying from asbestos-related disease. Unlike many other fatal diseases, the number of incidents is rising and it is predicted that the number of deaths will reach 10,000 a year by 2015. Health and Safety Executive (HSE) figures show that in the period 1980-2000, 182 education workers died from mesothelioma. These figures record deaths of people under the age of 74.

Where is asbestos likely to be present?

Asbestos and Asbestos Containing Materials (ACMs) are in:

- > floor tiles
- > pipe lagging
- > textured paints
- > internal partitions
- > roofs and gutters
- > rainwater downpipes
- > asbestos insulation board used for fire protection and thermal insulation

Schools built in the 30 years after the end of the Second World War were system/modular built. These include what are known as CLASP schools. These are schools built according to the Consortium of Local Authority Special Programme systems. Large amounts of asbestos were used in the construction of CLASP schools, which were a standard construction using lightweight steel girders with panel in-fill.

A freedom of information survey in 2008 showed that 903 out of the 1,043 schools in one local authority contained asbestos. Nationally it is estimated that at least 75 per cent of all schools across the UK have asbestos present in one form or another.

All the school-based unions are campaigning for a national survey of schools, funding for remedial work and training for school staff (www.voicetheunion.org.uk/asbestos). This is supported by the All Party Parliamentary Group on Safety and Health.

Published by Voice
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The Control of Asbestos at Work Regulations 2006

The **Control of Asbestos at Work Regulations 2006** (CAW) require the 'duty holder' to be responsible for the management of asbestos. For most educational establishments the duty holder is the employer; that is, either the local authority, the governing body, the trustees or, in the case of independent schools, the proprietors. In many cases the responsibility is devolved to the head teacher.

Regulation 4 of CAW requires the duty holder to:

- > find out if there is asbestos in the premises, its amount and what condition it is in. There is a presumption that materials 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 the asbestos and Asbestos Containing Materials (ACMs);
- > assess the risk from these materials;
- > prepare a plan setting out in detail how the risk from this material will be managed;
- > take steps needed to put the plan into action;
- > review and monitor the plan and the arrangements made to put it in place; and
- > provide information on the location and condition of the material to anyone who is liable to work on it or disturb it.

The 2006 Regulations replaced regulations introduced in 2002 and previous asbestos regulations in order to bring the UK into line with the **EU Asbestos Worker Protection Directive**. The Regulations are accompanied by an Approved Code of Practice.

The Management of Health and Safety at Work Regulations 2002

These Regulations set out the employer's responsibility for the management of health and safety at work and they apply to asbestos in the same way as to any other hazard at work. Employers must identify hazards, assess the level of risk from those hazards, decide whether existing control measures are sufficient and, if they are not, put in reasonably practicable measures to remove or reduce the risk.

As part of health and safety management, employers should ensure that employees who are given health and safety tasks are competent to do so and provide information, training and support when this is needed.

The **Management Regulations** emanate from the **Health and Safety at Work etc Act 1974**. Under this Act employers must take all reasonably practicable steps to protect the health, safety and welfare of employees at work. This includes the specific duty to provide and maintain systems at work that are safe and without risk

to health and to ensure that employees conduct their undertakings in such a way that those who are not in their employment but who are nevertheless at the workplace (for example, pupils and visitors) are not exposed to risks to their health and safety.

Identifying the presence of asbestos

Determining whether there is asbestos at the workplace is a specific duty under the 'duty to manage' in the 2006 Regulations and it is also step one of a risk assessment under the **Management Regulations**.

There is no statutory duty on the duty holder to carry out an asbestos survey, but it is clearly the most reliable way of identifying the presence of asbestos. A survey, or an inspection if that is an effective method of identification, should be carried out by competent personnel who will either be external consultants or local authority employees with sufficient training and experience in this work. The presumption should be that any material contains asbestos unless there is strong evidence to suggest it does not. Clearly some materials, such as glass, solid wooden doors, floorboards, bricks and stone do not contain asbestos. Building plans may show that other materials were used elsewhere on the premises.

It may not be possible to access some areas of the premises such as roofs and heating ducts and behind some partitions. It should be presumed that ACMs may be present in these areas unless there is strong evidence for thinking this is highly unlikely.

There needs to be a written record of where the asbestos or presumed asbestos is, the type, if known, its form, its amount and what condition it is in. The record can be accompanied by a drawing and can be stored electronically to enable easy updating.

Assessing the potential risk from ACMs

The key issues in assessment are:

- > Is the asbestos in good condition?
- > Is it likely to be damaged?
- > Is it likely to be worked on or disturbed? This will depend on whether the ACM is in a position where it is likely to be disturbed, how much ACM is present and whether there is easy access to it. Is maintenance work, refurbishment or other work on the premises likely to be carried out where the ACM is?

The HSE advises that the condition of ACMs can be considered by addressing a series of questions:

- > Is the surface of the material damaged, frayed or scratched?
- > Are the surface sealants peeling or breaking off?
- > Is the material becoming detached from its base? This is particularly relevant with pipe and boiler lagging and spray coatings.

- › Are protective coverings missing or damaged?
- › Is there asbestos dust or debris from damage near the material?

Removing or managing asbestos

There is no statutory duty to remove any ACMs from the premises. If asbestos is in poor condition or likely to be damaged or disturbed the options are to repair, seal, enclose or remove it. Complete removal eliminates the risk entirely and there is no need for further management.

If the ACM is damaged and/or at risk of damage, in an area where it is exposed to wear and tear or damage/vandalism and it cannot be easily repaired or protected, it should be removed by an approved contractor licensed under the **Asbestos (Licensing) Regulations**. These Regulations impose standards of work on contractors and also responsibilities on employers to provide adequate information and protect employees affected by the removal of asbestos.

In 2009, contractors who were responsible for unlicensed asbestos removal at a Yorkshire school were convicted and fined. They were removing asbestos insulating board ceilings at the school. The work was sub-contracted to another firm that was not licensed and it passed the job to another firm that was also unlicensed.

Removal work should be carried out only when the school or other education setting is not occupied, unless there are exceptional circumstances that do not allow this.

If the ACM can be made safe by repairing it and either sealing or enclosing it, the asbestos register should be updated accordingly.

Control measures

Duty holders must prepare written management plans setting out how the risks from ACMs and potential ACMs are to be managed. The management plan should cover:

- › priority actions and timetabled actions;
- › monitoring arrangements;
- › staff responsibilities;
- › information and training for staff;
- › information for external contractors. There should be a system that ensures that anyone who comes in to carry out work on the premises does not start before they are given relevant information on any asbestos present.
- › Emergencies. There should be procedures for safeguarding employees, children and young people if asbestos is disturbed and occupants are exposed to asbestos fibres. All these incidents should be recorded and investigated and all cases of actual

possible asbestos exposure (employees, children and young persons) should be recorded by the employer.

Any member of staff who believes they, or the children they are responsible for, have been exposed to asbestos should ensure that the school records the incident. It should also be reported to Voice.

In system built schools in particular, any damaged sealant around doors, windows, skirting boards and structural columns, or damage to walls, ceiling or floor tiles, should be reported and remedial action taken.

Inserting drawing pins into asbestos Insulation Board

In 2006, the HSE issued advice on the practice of putting up classroom displays on ceilings or walls containing Asbestos Insulating Board (AIB) using drawing pins or staples. The guidance states that although the risk involved may be small, this was an activity which could and should therefore be avoided. In this regard, employers and staff should act on the assumption that asbestos is present until it is confirmed otherwise.

Parliamentary Report 2012

In February 2012 the All-Party Parliamentary Group on Occupational Health and Safety published a report on asbestos in schools, "Asbestos in Schools - The need for action". It explains the problem and why it is a cause of such concern and it makes six recommendations.

The six recommendations are:

- › The Government should set a programme for the phased removal of asbestos from all schools, with priority being given to those schools where the asbestos is considered to be most dangerous or damaged.
- › Standards in asbestos training should be set and the training should be mandatory. The training should be properly funded.
- › The DfE and HSE jointly develop asbestos guidance specifically for schools and that current standards be reviewed.
- › A policy of openness should be adopted. Parents, teachers and support staff should be annually updated on the presence of asbestos in their schools and the measures that are being taken to manage it.
- › Pro-active inspections to determine the standards of asbestos management should be reinstated, with a view to reducing future costs.
- › Data should be collected centrally on the extent, type and condition of asbestos in schools and this becomes an integral part of the data collection of the condition of the nation's schools.

JUAC

JUAC (the Joint Union Asbestos Campaign) is comprised of the six main education unions: the Association of School and College Leaders; the Association of Teachers and Lecturers; the National Association of Head Teachers; NASWUT; the National Union of Teachers; Voice; plus the education sections of UNISON, Unite, UCATT and the GMB.

JUAC has the objective of ensuring that the risks from asbestos in school buildings are effectively managed and it encourages openness in the UK government's policy towards asbestos in schools, with the ultimate aim of seeking the safe removal of asbestos from all schools.

Compensation claims

Victims of occupational exposure to asbestos and their dependents can claim compensation from the employer for negligence and for breach of the **Control of Asbestos at Work Regulations** and the **Management Regulations**. These claims assert that the employer either had, or should have had, knowledge that the claimant was exposed to a foreseeable risk of injury that was avoidable and should have been avoided by reasonably practicable measures. There have been a number of claims by teachers and teachers' dependents.

Example 1

In March 2009, the widow of a former chemistry teacher of 34 years' service was awarded £290,000 compensation following his death in 2007 from mesothelioma, aged 61. He had been exposed to asbestos in equipment used for science experiments and class demonstrations.

Example 2

In a 2009 High Court case, an ex-pupil, Dianne Willmore, was awarded compensation against her local authority, Knowsley Metropolitan Borough Council. She claimed damages for personal injury caused by exposure to asbestos whilst she was a pupil at a secondary school between 1972 and 1979, having been diagnosed with malignant mesothelioma in 2007. She did not know that there could have been asbestos in the school until she read a newspaper article in 2008.

Dianne had been exposed to asbestos dust when:

- > workmen removed ceiling tiles in a corridor to work on the wiring behind them;
- > ceiling tiles in the toilets were disturbed or damaged by pupils misbehaving;
- > damaged tiles were stored in the toilets;
- > ceiling tiles were broken or damaged because

bullying pupils had removed them to hide other pupils' belongings in the ceiling void.

All these situations had exposed her to risk which was more than minimal and materially increased her risk of contracting mesothelioma later in life. The claimant was awarded £240,000 damages. The High Court ruled that the local authority was negligent. Reasonably practicable steps could have been taken to avoid this exposure.

The Council appealed to the Court of Appeal and then the Supreme Court. They argued that she had to prove that the asbestos dust had more than doubled the risk of her developing mesothelioma. This was rejected. Medically there is no minimum threshold dose of asbestos below which there is no risk of mesothelioma and the Lords ruled that the causation test should remain as the "material contribution" test, not a "doubling of the risk" test.

Dianne Willmore died after the Court of Appeal hearing.

Enforcement

HSE inspectors have an advisory role on compliance with health and safety legislation. They can issue Improvement Notices requiring employers to make changes to comply with legislation or Prohibition Notices which require an activity to cease until remedial action has been taken. HSE enforcement policy can also include criminal prosecution.

In 2008 a council pleaded guilty to breaches of the **Control of Asbestos at Work Regulations** after a school caretaker was exposed to asbestos after sweeping the boiler house. He was unaware that it was contaminated with quarantined asbestos because he had not been told that this was in the boiler house. He only knew when he saw asbestos removal contractors in the boiler house wearing protective clothing.

The HSE can issue enforcement notices. Examples in 2010 included action taken against an academy and two church schools, an independent school, a maintained school and a university over failures to manage asbestos. An immediate Prohibition Notice was placed on a primary school in Cardiff for a disturbance to asbestos. Three Improvement Notices were issued: for breaches in the regulation for providing training; another for failing to provide information on the location and condition of asbestos; and a final one for a general failure to manage their asbestos.

Further information can be found by visting:

www.voicetheunion.org.uk/asbestos

If you have any concerns please contact Voice.