

DOING ASBESTOS WE CAN

On 6 April 2012, new asbestos Regulations come into force. The Control of Asbestos Regulations 2012 went through Parliament at high speed in late February and early March. So what is the urgency and what are the changes?

The answer is not as exciting as one might think. In a nutshell, the UK did not properly implement the European Directive on the protection of workers from the risks related to exposure of asbestos at work into the current 2006 Regulations. The 2012 Regulations therefore replace the 2006 Regulations and remedy the error.

The principal change is therefore that short, non-continuous handling or removal of encapsulated asbestos:

- does not need to be notified to the relevant authorities,
- does not need to be undertaken in an area designated as one in which persons are likely to be exposed, and
- is exempted from the requirements so far as health records and medical surveillance are concerned.

The key to this, as with most of the asbestos control regime, is the state of the material. Asbestos fibres, when released into the air, are easily inhaled, but are very difficult for the body to expel. Many fibres therefore become permanently lodged in the lungs of those who breathe them in. They are carcinogenic, and so may turn cells cancerous many years later. If an asbestos related cancer does develop, it is inevitably fatal.

Encapsulated asbestos, not in its fibrous state, must therefore be identified by those with responsibility for non-domestic premises, but can be left *in situ* and monitored for deterioration. Steps must be taken, however, to control the risks from asbestos fibres which are liable to be released into the air. When asbestos is likely to be disturbed, for example during maintenance or refurbishment, the work must be planned and executed so as to reduce the risks of exposure to, and spread of, asbestos fibres to as low a level as is reasonably practicable.

Anyone with responsibility for non-domestic premises has a duty under the Regulations which is relative to the extent of their maintenance or repair obligations, or their control. By way of example, a principal contractor and licensed asbestos contractor were last year convicted of failing to comply with the legislation when refurbishment work involving removal of asbestos was carried out in a retail store. However, Marks & Spencer plc, whose store it was, was also convicted and fined £1 million for the part which it played.

Our law seeks to require those carrying out work to prevent risks to health or safety arising in the first place. In reality, unless it can be guaranteed that encapsulated asbestos can be removed, as a

one off, without any accidental release of fibres, the exemptions introduced by the new Regulations are unlikely to bite.

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Michael Veal is a Partner at Lester Aldridge LLP and head of its Regulatory and Business Crime team.

He can be contacted by telephone on (01202) 786340 or by e-mail at michael.veal@la-law.com.

For a profile, see <http://www.lester-aldridge.co.uk/people/michael-veal/>

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