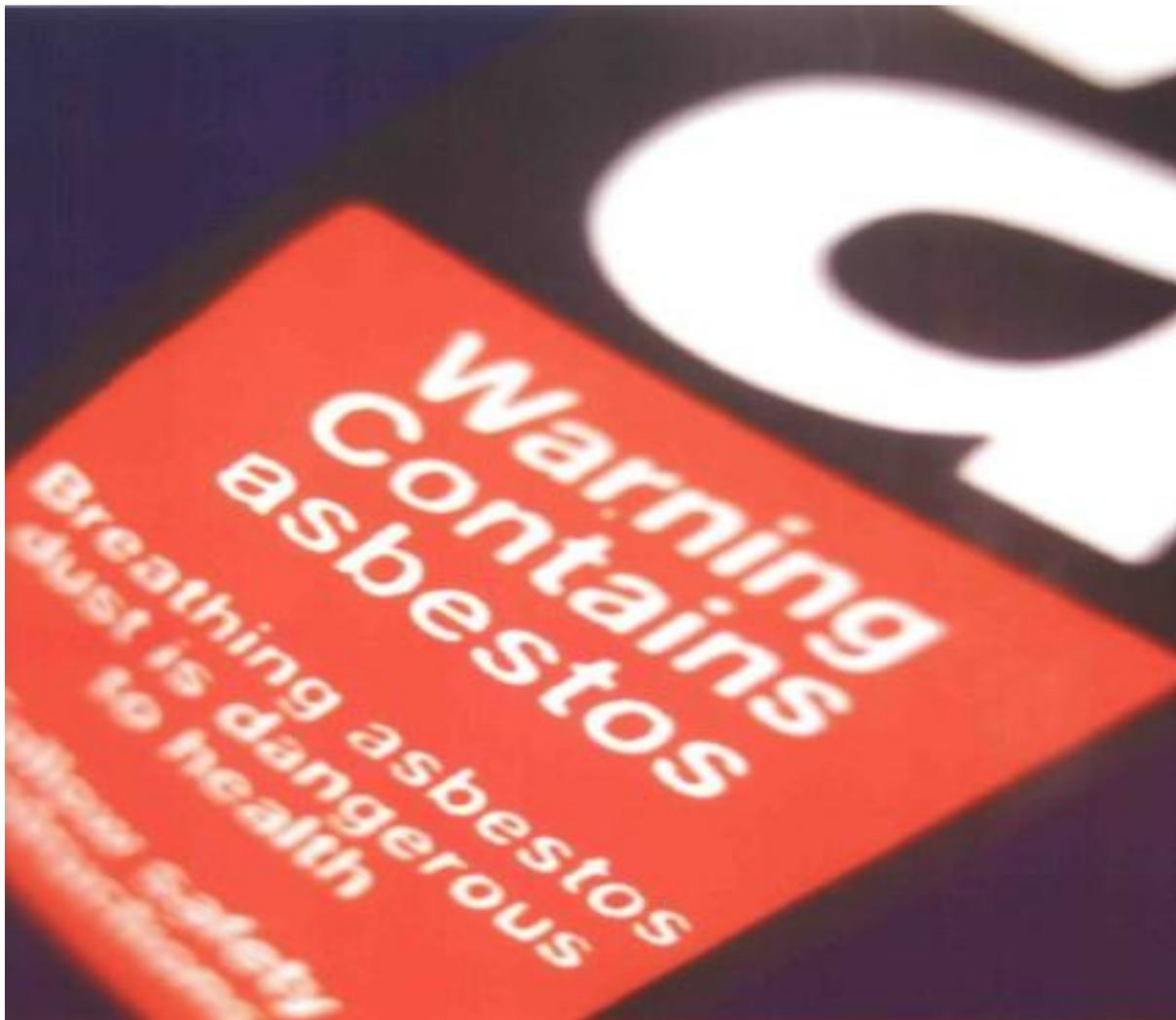


# CD237 – HSE proposals on revised Control of Asbestos Regulations

IOSH response to the Health and Safety Executive (HSE) consultation



Submission

4.11.11



## Introduction

The Institution of Occupational Safety and Health (IOSH) is pleased to respond to this important HSE consultation 'Proposals on revised Control of Asbestos Regulations' (CD237).

We note that this proposal is to introduce revised regulations in order to implement the legislative changes required in order to fully comply with the European Commission Directive 83/477/EEC, as amended by 2003/18/EC. We support improved levels of protection for workers and the public; understand that such a legislative change could help facilitate this; and believe this is consistent with the position IOSH took in 2006, during the consultation on revising the regulations.

In the response that follows, we summarise our position, provide some background information and then respond to the specific consultation questions, before closing with references and a section about IOSH.

## Summary

1. IOSH supports the proposed additional measures for work involving friable asbestos containing materials (ACMs) or causing deterioration of non-degraded ACMs.
2. We are concerned to ensure the competence of those providing medical examinations and also those offering notifiable non-licensed work services.
3. We believe that clarity and effective communication are key to successful implementation. We think a simple explanation of the reasons for these changes, together with definitions of the key terms, should be provided.
4. IOSH members will be pleased to help with the development of any guidance in support of the new requirements.
5. We suggest that the impact assessment should consider the possibility of increased awareness and health benefits associated with the changes.

## Background

Our position on this topic was originally outlined in our 2006 response to HSE's consultation 'Proposals for revised Asbestos Regulations and an Approved Code of Practice'.<sup>1</sup> In this, we answered the specific question on whether there should be a new regime to exempt work that produces only sporadic and low intensity exposure from licensing, notification and medical surveillance requirements, by making clear that the key terms from the Directive needed to apply, as follows:

"We note that the Asbestos Worker Protection Directive (AWPD) does not in fact require exemptions, as suggested by the question, but simply allows certain requirements to be waived. However, these waivers do not include the need to provide evidence of ability to carry out asbestos removal work. We only support the exemptions suggested in the question if all the other AWPD requirements for exemption are fulfilled and if evidence of ability to do the work safely has also been provided. These further requirements are cited as follows:

Provided that worker exposure is sporadic and of low intensity, and when it is clear from the results of the risk assessment that the Control Limit will not be exceeded in the air of the working area, certain requirements of the AWPD may be waived (e.g. to notify and to have medical surveillance) where the work involves:

- a) short, non-continuous maintenance activities in which only *non-friable* materials are handled
- b) removal *without deterioration of non-degraded* materials in which the asbestos fibres are firmly linked in a matrix
- c) encapsulation or sealing of asbestos-containing materials which are in good condition
- d) air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos" [Italics have been added here for emphasis]

However, as the italicised terms were not included in our 2006 legislation,<sup>2</sup> Britain now has to rectify this. The key legislative changes proposed in this 2011 consultation now mean there are 3 categories of work with asbestos (licensed; non-licensed; and the new category of 'notifiable non-licensed work') and so an effective communication strategy, together with clear definitions, will be essential to assist dutyholders.

We are therefore concerned that HSE do not intend to define the terms 'non-friable' or 'without deterioration of non-degraded' materials in the revised regulations. As it is normal practice for unusual, potentially ambiguous, key terms to be defined in legislation (e.g. 'interpretation' section <sup>2</sup>), it is unclear why this decision has been taken. In our recent evidence to the Löfstedt review,<sup>3</sup> we emphasised the need for legal requirements to be presented in a way that makes them easy for dutyholders to understand and apply. Failure to provide for this in the revised regulations would seem to be a retrograde step and a lost opportunity and indeed, could attract negative media comment. We note that the terms will be defined and illustrated in the guidance, but are concerned that some dutyholders may not have access to this.

Also, given the current (and we believe unfounded) government concerns about health and safety legislation transposed from Europe, we believe it should be made clear that this new legislation is needed because of previous 'under-transposition' and that it maintains Britain's sensible, proportionate, risk-based approach.

## **IOSH response to consultation questions**

**Q1.1 Do you agree with the proposed definition of work for which a licence will be required? If you disagree please explain why.**

Yes, but given the proposed introduction of a third category of asbestos work, feel that it is also important to define when work is 'Notifiable non-licensed work'.

**Q1.2 Do you agree the definitions proposed for the following terms: i) asbestos coating ii) textured decorative coatings iii) asbestos insulating board iv) asbestos insulation v) asbestos cement vi) short duration work. If you disagree please explain why.**

Yes.

**Q1.3 Do you support the proposal to have a 3 year transition period before the requirement for workers to have a medical examination prior to carrying out NNLW with asbestos comes into force? If not please suggest alternatives.**

No – given the importance of appropriate medical examination, we feel consideration should be given to reducing the transition period, so that reasonable time is provided for compliance, while not allowing unnecessary delay.

**Q1.4 Do you agree that for NNLW the requirement to have medical examinations carried out by an appointed doctor or an employment medical advisor should be extended to include other registered medical practitioners? If you disagree please explain why.**

No – we have concerns about extending this to other registered medical practitioners, as it is a specialist area and requires specialist competence.

**Q2 To help inform the development of guidance, views are invited on the types of asbestos-containing materials and work activities that should normally be categorised as Notifiable Non-Licensed Work (NNLW).**

We will be pleased to involve IOSH members in the development of the guidance.

**Q3.1 Has HSE identified the occupations affected by the changes correctly? See Annex 2, Table 2 of the Impact Assessment for details. Please provide details of any occupations you think are missing from the list.**

We would suggest that the role of 'Site Manager / Supervisor' be added to the list.

**Q3.2 Do you believe the estimates of the percentage of workers affected in each occupation in the above table from the Impact Assessment are realistic?**

Yes – though we feel that SOC code 5245 (Computer engineers, installation and maintenance) could be higher than 5%. We note that the table on page 18 actually lists SOC code 5242 (Telecommunications engineers) in two different places, which will affect the overall total.

**Q3.3 Is the estimated cost of a typical medical examination per worker reasonable? (between £85 and £120 per worker).**

Yes.

**Q3.4 Do you think the time required for a typical medical examination (2 hours on average, including travel time) to be realistic? If not please provide your estimate with justification.**

Yes.

**Q3.5 HSE has assumed that between 20% and 40% of workers will have medical examinations (30% compliance is our best estimate). Do you consider this a realistic estimate?**

It is difficult to estimate how realistic this figure is, because it is unclear who will do the NNLW and what the compliance levels will be.

**Q3.6 Is HSE's estimate of the time taken to notify per job reasonable? (5 to 10 minutes per job for a format similar to but shorter than the ASB5 used by licensed contractors)**  
[www.hse.gov.uk/forms/notification/fodasb5.pdf](http://www.hse.gov.uk/forms/notification/fodasb5.pdf)

Yes.

**Q3.7 How many notifications for NNLW do you estimate you would need to make in a typical year?**

N/A

**Q3.8 If you are an employer: (a) How many of your employees in total are likely to be involved in NNLW? b) How many jobs that fall within the NNLW category do you expect each of your employees to undertake per year?**

N/A

**Q3.9 HSE has assumed that between 30% and 50% of employers (includes the self employed) will notify. 40% is our best estimate. How realistic is our assumption?**

It is difficult to estimate how realistic this figure is, see answer to 3.5 above.

**Q3.10 HSE has assumed that record keeping will take 5 minutes per job on average and that 40% of duty holders will comply. Are these assumptions a reasonable estimate?**

Again, this is difficult to estimate – dutyholders will need clear guidance on what records are required to ensure that they are compliant, but are not keeping anything unnecessary.

**Q3.11 We have assumed that the cost of retrieving asbestos records would be negligible because we believe they are rarely requested e.g. by employees. Do you agree/disagree?**

We disagree the cost would be negligible, as it is possible that this new legislation will help raise awareness about the health risks associated with asbestos exposure, particularly in workers newly undergoing medical examinations, so requests for retrieving asbestos records could increase.

**Q3.12 Do you believe the assumption that approximately 30% of workers will familiarise themselves with the new guidance to be realistic?**

Yes.

**Q3.13 Is HSE's estimate of the time taken for a worker to familiarise themselves with the guidance and their duties reasonable? (30 minutes per worker on average)**

Yes.

**Q3.14 What is the likelihood that business will pass any increased costs incurred as a result of changes to CAR06 onto clients in the form of higher prices?**

We think it is highly likely that businesses will pass on increased costs to clients.

**Q3.15 Do you think that the new requirements will result in a smaller pool of people who will carry out work in the NNLW category? Explain what impact the change is likely to have in your view.**

It is difficult to predict the impact of the change on service providers. Some of those already doing non-licensed work may be able to take the additional measures required for NNLW; however, others may be put off by the additional requirements and turn to existing licensed contractors to carry out the work. It is also possible that new groups offering 'NNLW services' may enter the market, seeking commercial opportunity from the legislative changes. Such new entrants could be of concern; for example, some unscrupulous or 'unaware' providers could stray into carrying out 'licensed' work, having assured the client that it is 'NNLW'. Adequate communication, competence, resourcing and enforcement will be key.

## References

1. IOSH response to the HSE consultation on *Proposals for revised Asbestos Regulations and an Approved Code of Practice*. 2006 [www.iosh.co.uk/ConsultDoc/pdf%20Asbestos%20CD205.pdf](http://www.iosh.co.uk/ConsultDoc/pdf%20Asbestos%20CD205.pdf)
2. The Control of Asbestos Regulations 2006 (SI 2739). London: TSO, 2006  
[http://www.legislation.gov.uk/uksi/2006/2739/pdfs/uksi\\_20062739\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/2739/pdfs/uksi_20062739_en.pdf)
3. IOSH. *IOSH submission to the Löfstedt Review of health and safety legislation*. 2011  
[www.iosh.co.uk/ConsultDoc/IOSH%20submission%20to%20Lofstedt%20review%20July'11.pdf](http://www.iosh.co.uk/ConsultDoc/IOSH%20submission%20to%20Lofstedt%20review%20July'11.pdf)

## About IOSH

Founded in 1945, the Institution of Occupational Safety and Health (IOSH) is the largest body for health and safety professionals in the world, with more than 39,500 members in over 85 countries, including over 13,000 Chartered Safety and Health Practitioners. Incorporated by Royal Charter, IOSH is a registered charity, and an ILO international NGO and CIS collaborating centre. The IOSH vision is:

**'A world of work which is safe, healthy and sustainable'**

The Institution steers the profession, providing impartial, authoritative, free guidance. Regularly consulted by government and other bodies, IOSH is the founding member to UK, European and International professional body networks. IOSH has an active research and development fund and programme, helping develop the evidence-base for health and safety policy and practice. Summary and full reports are freely accessible from our website. IOSH publishes an international peer-reviewed journal of academic papers twice a year titled *Policy and practice in health and safety*. We have also developed a unique UK resource providing free access to a health and safety research database, as well other free on-line tools and guides, including award-winning websites for business start-ups and young people; an occupational health toolkit; and a risk management tool for small firms.

IOSH has 30 branches in the UK and worldwide including the Caribbean, Hong Kong, Isle of Man, Middle East, the Republic of Ireland and Singapore. We also have 16 special interest groups covering aviation and aerospace; communications and media; construction; consultancy; education; environment; fire risk management; food and drink; hazardous industries; healthcare; international; offshore; public services; railways; retail and distribution; and rural industries. IOSH members work at both strategic and operational levels across all employment sectors. IOSH accredited trainers deliver health and safety training to all levels of the workforce from shop floor to managers and directors, through a professional training network of more than 1,600 organisations. We issue around 100,000 certificates per year.

For more about IOSH, our members and our work please visit our website at [www.iosh.co.uk](http://www.iosh.co.uk).

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