



# Proposals for revised Asbestos Regulations and an Approved Code of Practice

IOSH response to the Health and Safety Executive Consultation

Consultative  
Document  
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## **Introduction**

Founded in 1945, IOSH has around 28,000 individual members, is Europe's largest occupational safety and health (OSH) professional body and has strong OSH links worldwide. A chartered body and registered charity, we are the guardian of OSH standards of competence in the UK and provider of professional development and awareness training courses. The Institution regulates and steers the profession, maintaining standards and providing impartial, authoritative, free guidance on OSH issues. Our members work at a variety of strategic and operational levels across all employment sectors and our vision is:

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

The Institution is pleased to respond to this important consultation published by the Health and Safety Executive on Proposals for revised Asbestos Regulations and an Approved Code of Practice. Our response has been collated from the views of IOSH members who responded to the call for comments published in the Safety and Health Practitioner magazine and on the consultation area of the IOSH website at [www.iosh.co.uk/consultationdocuments](http://www.iosh.co.uk/consultationdocuments). It has also been informed by the contribution of the IOSH Council of Management.

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## **IOSH response to consultation questions**

**Q1 Do you agree with the proposal to follow Asbestos Worker Protection Directive (AWPD) requirements such that there should be a new regime to exempt work that produces only sporadic and low intensity exposure from the requirements of licensing, notification and medical surveillance?**

We note that 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.

**Q2 Which of the following most closely resembles your view of the proposal to remove work with asbestos-containing textured decorative coatings from the scope of licensing?**

**a) Work with asbestos-containing textured decorative coatings should be removed from the scope of the licensing regime and the controls proposed in this consultation document should be required.**

**b) Work with asbestos-containing textured decorative coatings should remain licensable and the current level of controls required to do the work should be maintained.**

Though we support the risk-based and proportionate approach and think the new HSL research (Revell, 2005, HSL/2005/32) provides some interesting data, we believe there needs to be further confirmation of the findings and conclusions before any decision is taken to de-license the removal of asbestos-containing textured coatings (TCs) in general.

In the Revell study, the high dust levels produced and short duration of many of the jobs meant the research project was both challenging to conduct and to interpret. In fact protocols were changed during the project to overcome problems, and although 'some forty' sites were initially chosen for the study only 35 were used,

producing a total of 191 samples. In addressing the difficulties we note, for example, that a limited number of short-duration samples were taken to avoid overloaded dust samples; that at later sites, the air sample flow rate was much lowered; and that there was pooling of individual sample data to improve the limit of quantification. We also note the researchers encountered problems concerning data on the actual duration of the tasks and that there were difficulties in calculating an accurate 4-hour time weighted average.

We would expect further peer-reviewed research to involve a larger study, perhaps using the new 'treated sample' method throughout (as used and described in the HSL study). We assume that the HSL research (Revell, 2005) involved licensed asbestos removers and suggest that, as removal by non-licensed contractors could well lead to the generation of higher levels of dust, this should also be studied, though the health and safety of the workers concerned would need to be adequately protected throughout. Additionally, if it can be established by sampling that certain TCs definitely do not contain asbestos (i.e. those produced post-1992) we do not see a need to retain the requirement for these to be removed by licensed contractors, though usual precautions to protect workers would still apply. The consultation states that the HSE is undertaking further research 'during the consultation' to help inform the proposed Approved Code of Practice and findings from this research will need to be considered.

In the study the authors note:

'Whilst it is re-assuring that the removal contractors were generally adhering to their method statements, it is of concern that they were dry sweeping (5 jobs) and dry shovelling debris (2 jobs)'  
(Revell, 2005: p 7)

And that:

'If the textured coating becomes unlicensed this could result in increases in dust levels and airborne fibre concentrations during removal unless adequate natural [ventilation sic] (open doors and windows) is employed'  
(Ibid: p 40)

We would be concerned that any de-licensing of work on TCs could lead to an increase of this type of unsafe behaviour and that possible exposures could increase. The onus would be on good understanding and implementation of control measures by contractors and the report suggests that:

'If the control measures relating to the repair/removal of decorative coatings in domestic premises (or other short duration situations) are amended then a limited study to measure the effects of these changes making recommendations for the appropriate working practises for non-licensed removal should be undertaken.'  
(Ibid: p 40)

Should research-based changes be made to the licensing requirements for removal of TCs, the effects should be carefully monitored to ensure there is no reduction in health and safety levels and appropriate guidance should be provided on safe working practices.

In Annex E (ii) of the consultation document, the 'HSL risk analysis of licensed work with textured decorative coatings' is presented, in response to the Revell report's recommendation that:

'A risk assessment should be carried out based on this new data to determine whether removal of chrysotile containing textured coatings should continue to be done only by a licensed asbestos removal contractor.'

(Revell, 2005: p 40)

The assessment was based on the 'wet removal process that should be taking place', although as already mentioned, this is not necessarily happening and unfortunately, available data on TC removal was 'very limited', though very recent Transmission Electron Microscopy (TEM) analysis data was cited. Additionally, 'two key pieces of information' were lacking i.e. numbers of workers employed and asbestos type. To obtain additional information, notifications covering a 3-month period were used and we note Annex E (ii), paragraph 33 states that regarding table 3, 'these are likely to be overestimates of exposure', though we also note that some figures for asbestos types present in each ACM type were described as 'statistically poor'. We would expect that a further HSE risk analysis would be conducted following any further research into the removal of textured decorative coatings.

As an unintended consequence associated with possible de-licensing could be to give the incorrect impression to the public that 'some asbestos is safe after-all', the evidence and risk-base for such a decision needs to be strong and the overall message about how to manage asbestos safely, needs to be a clearly stated and communicated one.

#### **Further reading:**

HSE, 2003, Asbestos essentials: Task manual, HSG210, HSE Books

HSE, 2005, Proposals for Revised Asbestos Regulations and an Approved Code of Practice, CD205, HSE Books

Revell G (2005), An Investigation into the airborne fibre releases during the removal of textured coating from Domestic Premises. HSL/2005/32

Watch Committee Paper WATCH/2006/1 <http://www.hse.gov.uk/aboutus/hsc/iacs/acts/watch/010206/paper1.pdf>

**Q3 Do you agree with the proposal to align CAW requirements for minimising worker exposure more closely with the COSHH hierarchy of controls listed in order of priority?**

We support the proposal to align the new Control of Asbestos Regulations 2006, regulation 11, with the current COSHH hierarchy of controls, in order to ensure worker exposure does not exceed the control limit and is as far below this as is reasonably practicable.

**Q4 Do you agree with the proposal to implement a single Control Limit of 0.1 f/cm<sup>3</sup> as a 4-hour TWA as measured using the WHO method?**

We agree with introducing a single control limit, which we believe will simplify the existing arrangements and also represents a lower exposure level. Using the 4-hour TWA and the WHO counting method we believe are also beneficial.

**Q5 Do you agree with the approach to the requirements for identification of asbestos?**

We agree with introducing a requirement in the Control of Asbestos Regulations 2006 for a suitable and sufficient risk assessment of the 'presence and type' of asbestos prior to the commencement of work and also the proviso that where there is uncertainty, it is assumed that asbestos is present and that it is not only Chrysotile.

**Q6 Do you agree with the approach to requirements for the evidence of ability to do asbestos demolition and removal work?**

We agree that those intending to carry out demolition or removal of asbestos should provide HSE with evidence of their ability to do so safely (including those not required to be licensed) and that this should include their training records.

**Q7 Do you agree with the proposed approach to training requirements?**

We agree that the training requirements need to be clarified so that all those potentially at risk or who may endanger others, are adequately trained to control the risks associated with asbestos. We also suggest that the proposed ACoP should refer to the need to include appropriate asbestos training in sector-specific 'passport schemes'. Additionally, in view of the increasing numbers of migrant workers involved in the construction industry, we believe consideration should be given to providing translated asbestos awareness information.

**Q8 Do you agree with the proposal that only those who are competent (as defined) to work inside an enclosure are allowed to do so?**

We agree that only those who are competent to do so, should be allowed to work within an enclosure, however, we believe the stated definition of competence should include the word 'skill', in addition to knowledge and experience.

We suggest the definition which currently reads:

'...considering the task they are required to perform and taking account of the size and/or hazards of the job, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken.'

Should instead read:

'...considering the task they are required to perform and taking account of the size and/or hazards of the job, the person has successfully completed the appropriate training and possesses the necessary skills, experience and knowledge to ensure safe and healthy working.'

**Q9 Do you agree with the proposal to clarify and simplify the asbestos regulations by bringing the requirements of ASLIC and the Prohibitions Regulations into CAW and creating one combined set of Control of Asbestos Regulations?**

We agree with the proposal to create a combined set of asbestos regulations, believing that presenting them all in one document will help to clarify and simplify the legal requirements and avoid duplication.

**Q10 Do you agree with the proposal to produce a single Approved Code of Practice to cover all Control of Asbestos Regulations including Licensing?**

We agree that a single ACoP (including L11, L27 and L28) would also be beneficial in order to provide comprehensive guidance on the new single set of regulations, covering both licensed and non-licensed working. We suggest consideration should also be given to incorporating L127, the ACoP on 'The Management of Asbestos in Non-domestic Premises'.

**Q11 Do you agree with the proposed changes to licensing such that:**

**a) licenses have a maximum time limit of 3 years**

**b) removal of the exemption from licensing for employers using their own staff in their own premises for licensable work**

We agree that removal licenses should have a maximum time limit of three years, but that HSE should retain the right to reduce time limits where appropriate. We also agree that employers should be required to be licensed when using their own staff for licensable work on their own premises.

**Q12 Do you agree with the proposal that accreditation be required for someone to undertake a four-stage clearance certificate procedure?**

We agree with the proposal to include in the regulations a requirement that those providing each part of the 4-stage clearance certification procedure should be subject to accreditation to ISO 17020 and ISO 17025.

**Q13 Do you agree with the proposal to remove the two STELs (short-term exposure limits) from the Regulations and include a peak exposure limit of 0.6 f/cm<sup>3</sup> in ACoP such that no worker exposure, however short in duration should exceed that peak? If not, please give details.**

We agree that a peak exposure limit of 0.6 f/cm<sup>3</sup> for all types of asbestos should be set and that worker exposure, no matter how short, should not exceed this level. However, contrary to the proposal in the consultation, we believe that the new regulations must actually specify this peak exposure limit or refer to the peak exposure limit specified in the ACoP.

**In your view how well does the Proposal for Revised Control of Asbestos Regulations 2006 and ACoP represent the different policy issues involved in the matter?**

We believe it covers the issues reasonably well, however, we think it would also be appropriate to explain the duties of Local Authorities (LAs) and housing associations, etc. for provision of asbestos-safe domestic premises to their tenants; and to cover the possible accreditation of asbestos surveying.