



THE MANAGEMENT OF ASBESTOS IN NON-DOMESTIC PREMISES

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National Team (where appropriate)			
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Keywords	Asbestos, Duty to manage, Control,		
Summary	This RGD informs Inspectors about the duty to manage asbestos in non-domestic premises. This has widespread application to duty holders in the railway industry, since its application extends beyond what might conventionally be termed ‘premises’. Inspectors are referred to sources of further information on the detail of the requirements.		

Detail

INTRODUCTION

1 The Control of Asbestos at Work Regulations (CAWR) 2002 introduced a new requirement at regulation 4 to manage asbestos in non-domestic premises. This regulation is supported by its own Approved Code of Practice and Guidance (L127) and guidance booklet - 'A Comprehensive Guide to Managing Asbestos' (HSG227).

2 CAWR 2002 underwent a significant revision in 2006, part of which entailed combining them with the Asbestos (licensing) Regulations 1983 and the Asbestos (prohibitions) Regulations 1992, resulting in the Control of Asbestos Regulations (CAR) 2006. The above duty to manage asbestos was unchanged by this and remains as regulation 4 under CAR 2006. However, a review programme of the duty is being undertaken over 2007/08 and this RGD will be revised if there are any changes affecting the railway industry.

DUTY TO MANAGE

3 Regulation 4 came into effect on 21 May 2004, and requires the duty holder to:

- take reasonable steps to find materials containing asbestos in their premises and assess their condition;
- presume that materials do contain asbestos unless there is strong evidence that they do not;
- prepare a record of the location and condition of these materials and assess the risk from them;
- prepare and implement a plan to manage those risks; and
- provide information on the location and condition of the material to anyone who is liable to disturb it.

4 Detailed guidance on the application of these requirements is available in the publications named in paragraph 1, and on the [asbestos](#) section of the HSE website.

APPLICATION TO THE RAILWAY INDUSTRY

5 The scope of regulation 4's application to duty holders in the railway industry depends on the definition of the word 'premises'. The official legal view is that a broad definition of the term applies. As well as covering all buildings (e.g. stations, signal boxes), most of the infrastructure and rolling stock will come within the definition of 'premises'. For example, all lineside structures such as location cabinets, signalling equipment, cable trays and pipe ducts should be considered as 'premises' for the purpose of this regulation. Train

locomotives and carriages should be similarly classified.

6 Where premises are owned by one duty holder yet leased to another (for example, stations owned by Network Rail leased to Train Operating Companies - TOCs) the duty to manage asbestos may be shared. The Regulation states that the extent of duty will be determined by the contract or tenancy agreement between the parties. In the absence of such an agreement the duty holder will be determined by the degree of control they have over matters concerning the fabric of the building and maintenance activities carried out there. The share of duties is therefore likely to vary depending on the circumstances, with both duty holders retaining some responsibility.

7. The Regulation also creates an obligation on non-duty holders to cooperate so far as is necessary to enable the duty holder to comply with their duties. For example, architects, surveyors or building contractors will have to cooperate by passing information on to the appropriate duty holder. This duty of cooperation also extends to operators of rolling stock containing asbestos who, notwithstanding their own duties under the regulations referred to above, use the premises of another duty holder and may pose a potential source of contamination in those premises. This duty will usually just extend to providing information, but where the duty holder's assessment shows the risk of contamination to be significant, may also mean cooperating with arrangements to deal with accidents, incidents and emergencies as required under CAR regulation 15.

8 The regulations require an assessment of the risk from asbestos to be carried out. In many cases, this will require a survey as part of the assessment process, but it is not a requirement of the regulation to carry a survey out in all cases. For example, if a sample of lineside cabinets are found to contain asbestos, it may be reasonable to presume that all those of that type and age contain asbestos and to treat them accordingly. Similarly, the Regulations allow duty holders to assume that a material is asbestos without sampling and analysis, and also to use other sources of information to conclude that the material is asbestos free. In practice, most duty holders will use a combination of these approaches.

ACTION BY INSPECTORS

9 Inspectors should note the duty to manage asbestos outlined in this RGD, and should take advantage of suitable opportunities to raise it with duty holders where appropriate. In particular, inspectors may wish to inform duty holders who may not otherwise consider the requirements likely to apply to them, such as TOCs and Freight Operating Companies (in respect of both buildings and rolling stock), of the importance and relevance of the requirements.

10 This will be a huge undertaking for many in the rail industry, but

Rail Guidance Document

nevertheless, duty holders should be left in no doubt that if they ignore their legal duty to protect people from asbestos, enforcement action will be taken.

11. Where taking enforcement action and there is uncertainty over the application of the definition of premises and/or allocation of responsibilities, as described in para. 6, you should consult both the OH topic strategist (Jill Moore) and HMRI legal support unit (Rupert Lown) for advice.

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FIELD STAFF - HEALTH AND SAFETY

12. If carrying out any visits where exposure to asbestos is a possibility, ORR field staff should consult their [health and safety policy](#) on ORRacle (internal access only).

Action
(optional)