



INTRODUCTION OF NEW CONTROL OF ASBESTOS REGULATIONS ON 13 NOVEMBER 2006

Open Government Status		Fully open	
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RGD postholder/owner		Jenny Lopez, Legal Support Unit	
National Team (where appropriate)			
RGD cleared by		Helen Ralphson, GM5 POP	
RGD type		Policy_____ <input type="checkbox"/> Information_____ <input checked="" type="checkbox"/> Procedure_____ <input type="checkbox"/>	
Target audience		HMRI_____ <input checked="" type="checkbox"/> Policy_____ <input type="checkbox"/> Inspectors_____ <input checked="" type="checkbox"/> Admin_____ <input type="checkbox"/>	
Assign to block		Process/New Legislation_____ <input type="checkbox"/> Topic/Technical_____ <input type="checkbox"/> Stakeholder Management_____ <input type="checkbox"/> Legal_____ <input checked="" type="checkbox"/> Business Support/Transition__ <input type="checkbox"/>	
Keywords	Asbestos, asbestos licensing		
Summary	This RGD informs Railway Inspectors about the new Control of Asbestos Regulations 2006 (CAR) which came into force on 13 November 2006. The new regulations implement amendments to the European Asbestos Worker Protection Directive (AWPD) and other changes to the existing asbestos regulatory framework.		
Consultation	Jill Moore, GM5 Topic Strategy; Robin Tarry, Occupational Health; Steve Bliss, GM2; James Mack, ORR Legal Team; Nick New, Enforcement Process Owner.		

Detail

The Control of Asbestos Regulations 2006 (CAR) implement amendments to the European Asbestos Worker Protection Directive (AWPD) and other changes to the existing asbestos regulatory framework.

The following three sets of regulations that controlled exposure to asbestos have now been combined into the Control of Asbestos Regulations 2006-:

- a) The Control of Asbestos at Work Regulations 2002
- b) The Asbestos (Licensing) Regulations 1983
- c) The Asbestos (Prohibitions) Regulations 1992.

Statutory Instrument 2006 No. 2739 is available now:

<http://www.opsi.gov.uk/si/si2006/20062739.htm>

CAR will be supported by two Approved Codes of Practice (ACoPs):

L143 Asbestos ACoP

This ACoP applies to all work with asbestos and explains the requirements of the new regulations relating to work with asbestos, other than regulation 4 (the duty to manage asbestos in non-domestic premises). This replaces two existing ACoPs (**L27 and L28**) which, respectively, dealt with work on licensable materials and unlicensed work. It also replaces the Guide to Asbestos Licensing (**L11**)

L127 (2nd edition) Management of Asbestos in Non-Domestic Premises

This ACoP provides advice on the duties under regulation 4 of CAR to manage the risk from asbestos in non-domestic premises. This will be unchanged in substance from the current ACoP on this duty, but has been approved under the new regulations. This ACoP is aimed at a different audience, namely those who have duties to manage the risk from asbestos in non-domestic premises. In particular, it applies to those who have responsibility for the maintenance and repair of non-domestic premises where asbestos-containing materials are likely to be present.

The ACoPs and the SI area available from:

www.hsedirect.com

www.opsi.gov.uk

Enforcement allocation for asbestos work

Enforcement allocations are set out in the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006. Inspectors should refer to those regulations if there is any doubt as to the Enforcing Authority (EA). HSE will be the (EA) for any work with asbestos that previously required a licence under the Asbestos (Licensing) Regulations 1983 (now regulation 8 of CAR) whether or not it is a construction activity as defined (see regulation 4(5) of the Enforcing Authority Regulations 2006). Notifying work is a condition of the licence, and such notifications will normally be made to HSE (please note that Table 2 of the ACoP guidance (page 31) on notification of work with asbestos is incorrect). HSE will be amending this. In the meantime, ORR Stakeholder Engagement team is reviewing the MoU between ORR and HSE on this issue. If there are any further material changes, we will let you know via Dispatches.

Where a licence is not required for asbestos work, reference should be made to regulation 5 of the Enforcing Authority Regulations and associated guidance documents.

Significant points:

1. Changes to Control Limit

There is a new Control Limit for **all types** of asbestos of 0.1 fibres per cubic centimetre of air (equivalent to 0.1f/ml) averaged over a continuous period of four hours. 'Control Limit' is defined in regulation 2(1). This limit is lower than each of the control limits applying under CAWR 2002.

There is no short term exposure level in CAR. However, HSC has approved a concentration of 0.6 fibres per cubic centimetre of air in a 10-minute reference period during any working day as being the level of exposure to asbestos that cannot be considered to be sporadic and low intensity under regulation 3(2). This is published in the ACoP.

Specific guidance is provided in the ACoP (paragraphs 32-33) explaining the kind of work that should be considered as producing 'sporadic and low intensity' worker exposure to asbestos.

2. Changes to fibre counting method

A new, World Health Organisation (WHO) asbestos fibre counting method is introduced to replace the current European Reference Method (ERM). Analytical laboratories that carry out air testing will transfer to this counting method. Under the ERM method, fibres are discounted if they touch particles greater than three microns wide, but under the WHO method, these fibres are not discounted.

3. Application of the Regulations (Regulation 3)

CAR applies to all work with asbestos, except that specified in regulation 3(2). Regulation 3(2) disapplies certain specified types of work where:

- (a) the worker exposure to asbestos fibres is sporadic and of low intensity (see paragraph 1 above) and:
- (b) it is clear from the risk assessment that the exposure of any employee will not exceed the control limit; and
- (c) the work involves:-
 - (i) short, non-continuous maintenance activities:
 - (ii) removal of materials in which the asbestos fibres are firmly linked in a matrix;
 - (iii) encapsulation or sealing of asbestos-containing materials which are in good condition; or
 - (iv) air monitoring and control, and the collection and analysis of samples to ascertain whether a specific material contains asbestos.

There is a risk-based approach to define what comes within the definition of sporadic and low intensity worker exposure. The ACoP defines which work will be exempt from requiring a licence on the same basis, aligning when a licence is needed with the requirement to notify work. For most work with asbestos this will maintain the status quo.

4. Training (Regulation 10)

Asbestos training is split into licensed, non-licensed and awareness training (see ACoP paragraph 124). CAR extends the list of topics on which information, instruction and training must be given to employees. This is set out more explicitly in both the Regulations and the ACoP.

5. Prevention or reduction of exposure (Regulation 11)

Employers must first decide whether they can prevent the exposure to asbestos so far as is reasonably practicable, before considering how they will reduce the exposure to as low as reasonably practicable. Should the measures (other than the provision of RPE) not reduce the exposure level below the control limit, suitable RPE must be provided which will reduce the concentration of asbestos in the air inhaled by the employee to a concentration below the control limit and - as low as is reasonably practicable.

6. Previous exemptions are recognised (Regulation 35)

Existing certificates of exemption, issued under the Asbestos (Prohibitions) Regulations 1992, continue under CAR. A few exemptions have been issued in relation to the import and use of rail vehicles.

7. Employers using their own workers on their own premises will no longer be exempt from licensing.

This means that railway companies will need to apply to HSE for an asbestos licence for work with asbestos in their own premises with their own employees, unless the exceptions under regulation 3(2) are met.

Action **(optional)**

Inspectors should note the introduction of the new Regulations, the revocation of the three previous regulations on asbestos, and the replacement Approved Codes of Practice.

Specific queries related to asbestos should be referred to:
Robin Tarry for technical advice and;
Jill Moore for advice or queries on ORR's strategy.

Queries on the Regulations should be referred to Jenny Lopez, Legal Support Unit.

Please also make the above persons aware of any issues that arise in relation to this topic.