



Scotland Office

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4 April 2011

Dear [REDACTED],

FREEDOM OF INFORMATION REQUEST ABOUT ASBESTOS

Thank you for your email sent to the Scotland Office on 12 March 2011.

You asked for the following information under the Freedom of Information Act 2000:

Under the Freedom of Information Act 2000, please disclose

Full details of observations, advice, recommendations, instructions etc, on the management of asbestos within public buildings, issued within the department and to subordinate organisations, Following the Supreme Court backing given to compensation claims on behalf of Dianne Willmore and Enid Costello, on 9 March, 2011.

I would prefer to receive the information in electronic format, to the enclosed email address. However, if it is more convenient, I would be happy to receive the information in hard copy format.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material.

I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

The Scotland Office occupies two buildings, one in Edinburgh and one in London. There is no asbestos in the Edinburgh building, but there is some in the London building. An asbestos register is made available to staff and contractors in the London building. Guidance is also available to all Scotland Office staff on the Ministry of Justice intranet. (The Scotland Office formed part of the Ministry of Justice until 31 March. From 1 April the Ministry of Justice continues to provide the Scotland Office with certain services including in respect of building management and health and safety.) The guidance is annexed to this letter.

I hope you find this helpful.

If you are dissatisfied with the decision made in relation to your request you may ask for an internal review. A request for an internal review should be addressed to:

FOI Officer
1 Melville Crescent
EDINBURGH
EH3 7HW

If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
CHESHIRE
SK9 5AF

If you have any queries about this letter please contact me.

Yours sincerely

A large black rectangular redaction box covers the signature and name of the sender.

Annex MoJ Guidance

Managing Asbestos at Work

1. Purpose

- 1.1 The purpose of this guidance note is to outline the requirements for managing Asbestos in the workplace to prevent the exposure of employees, contractors and visitors to Asbestos fibres.

2. Legislation

- 2.2 The Control of Asbestos Regulations 2006 came into force on the 13th November 2006, consolidating earlier requirements in regard to asbestos. The Regulations impose a duty to manage asbestos in non-domestic premises on those with contractual obligations for maintenance or repair of premises – for example, owners, landlords, agents and facilities managers. These duties are to find out where asbestos is present on their premises and to take action to ensure its adequate management.

- 2.3 The requirements on Duty Holders under Regulation 4 of these regulations in respect to asbestos management are to:

- Find out if there is asbestos in the premises, its amount and what condition it's in;
- Presume materials contain asbestos, unless there is evidence that they do not;
- Make and maintain an up-to-date record of the location, condition and removal of asbestos-containing material
- Assess the risk of exposure to Asbestos Containing Materials (ACMs).
- Develop a plan that details how the risk is going to be managed;
- Reviewing and monitoring the plan and the arrangements so that the plan remains relevant and up-to-date.
- Provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.
- Take steps to see that actions above are carried out.

3. Definition

- 3.1 Asbestos is a fibrous silicate mineral that is incombustible. Due to this valuable property, it has been used in buildings as an insulating material and for fire protection. The three main types of asbestos that have been commercially used are

- Chrysotile (white)
- Amosite (brown)
- Crocidolite (blue)

Brown and blue asbestos are known to be more hazardous than white asbestos. Other asbestos minerals include actinolite, anthophyllite and tremolite. All asbestos-containing materials (ACM's) should be treated with caution. The only reliable way to check which type of asbestos is present is to have a sample examined in specialist laboratory.

4. Discussion

4.1 The health risks associated with asbestos come from inhaling asbestos fibres which often results in the development of chronic lung disease, specifically:

- Asbestosis
- Lung cancer
- Mesothelioma

4.2 The respiratory diseases do not occur immediately following exposure but can take more than 20 years to develop. The likelihood of developing one of these diseases will depend on individual susceptibility, the type of asbestos fibre, the length of exposure, the number of fibres breathed in, the number of times exposed and whether or not the person smokes. Asbestos can only cause these diseases when it is inhaled.

4.3 Work with any ACM's can be hazardous and specific controls must be taken to ensure that work can be carried out without risk to health. The problem is not limited to any specific industry and numerous trades come into contact, namely:

- Building Surveyors
- Demolition, roofing and construction contractors,
- Electricians and plumbers
- Fire and intruder alarm installers
- Joiner, gas fitters and plasterers
- Maintenance personnel
- Painters and decorators

4.4 Asbestos was commonly used until the mid 1980's for a variety of purposes because of its excellent fire retardant and insulating properties and chemical stability. Although it can be found throughout a building, the common locations for ACM's are:

- The roof and exterior walls
- Boilier vessels and pipework
- Ceilings – spray coatings
- Interior walls/panels – loose asbestos inside partition walls
- Flooring materials – floor tiles, linoleum
- Air handling systems – lagging, gaskets
- Domestic appliances – gaskets, panels in domestic boilers
- Other areas, fire blankets, water tanks

4.5 The only way to identify whether ACMs are present in a building is to conduct a detailed survey. This is the first step of the duty to manage the risks from asbestos materials with risk assessments and risk management issues to follow. In practice, many duty holder will commission a competent surveyor.

There are two types of survey:

Type 1 – Management Survey

Type 2 – Refurbishment and Demolition Surveys

4.6 You can check whether a company has the appropriate training and experience by finding out if it is approved by a recognised accreditation body. There are two personnel certification schemes for individuals that undertake asbestos surveys. One is ABICS Asbestos Building Inspectors Certification Scheme and the other is NIACS National Individual Asbestos Certification scheme. More in depth guidance is available for duty holders from the HSE free publication No. HSG 264 which replaces MDHS 100 the definitive scientific approach to identification and safe management of ACM's.

5. Developing the System

5.1 MoJ employees have duties under these regulations if they have responsibility for the maintenance and repair or control the access to or egress from a non-domestic premises.

The duty holder may be the Business Owner, the Landlord or Tenant depending on the circumstances of the case. In some cases responsibility can be shared between two or more parties. The duty holder must ensure that an Asbestos Management Plan is drawn up detailing procedures for managing asbestos. The management plan must be read in conjunction with this guidance note and the MoJ Corporate Health & Safety Policy. *Please see Annex A for a Managers checklist.*

5.2 The regulations also include a duty to co-operate, which applies widely. This will, for example, require a landlord to pass information on asbestos to a new tenant. Similarly a tenant must co-operate by allowing a landlord to gain access to a building, for example, to carry out a survey. Also, a building surveyor or architect who has plans which show information on the whereabouts of asbestos would be expected to make these available to the duty holder at a reasonable cost.

6. Check for Presence

6.1 The Duty Holders must ensure a survey is undertaken to establish if any Asbestos Containing Materials (ACM's) are present and record the details in an asbestos register.

6.2 There are two types of survey; a Management Survey and Refurbishment & Demolition Surveys:

Management Survey - This is a standard survey that should be carried out for the continued management of asbestos in premises. The purpose of the survey is to locate, as far as is reasonably practicable, the presence and extent of any suspect ACM's in the building and assess their condition. Sampling is the most common approach that has been used for surveys. However, this type of survey can also involve presuming the presence or absence of asbestos.

The survey can be completed using a combination of sampling ACM's and presuming ACM's or just presuming. Any materials presumed to contain asbestos must also have their condition assessed (i.e. material assessment).

Refurbishment & Demolition Surveys – This survey is used to locate and describe ACM's in the area where the refurbishment work will take place or in the whole building if demolition is planned.

7. Asbestos Register

7.1 The register must contain records of the condition, material risk and location of each ACM and any actions that the MOJ carries out. The register will be used by staff, contractors and any other operatives to view exactly where potentially dangerous materials can be found in the premises. The MoJ's Duty Holders are responsible for ensuring the registers are kept up to date and copies are accessible.

7.2 Duty Holders must also ensure that the company or individual undertaking the survey is approved by a recognised accreditation body.

7.3 If no ACM is identified then no further action is required. However, workers and contractors should remain vigilant as they may uncover unidentified ACMs during the course of their work.

8. Undertake a Risk Assessment

8.1 If ACMs are identified (or suspected) the Duty Holders must undertake a risk assessment to enable them to decide what action is necessary to manage and control the potential risks posed by these materials. When making that assessment the following factors should be considered:

- Type and amount of ACM present
- The condition of the materials – are they damaged?
- What tasks are likely to disturb the materials
- Whether the work has to be carried out
- Work methods that are going to be used to prevent or control exposure
- Likely levels of exposure
- How long the job will take
- Who could be affected by the work

9. Consider the Options

9.1 Once the level of risk has been determined, the Duty Holders must decide what action to take, i.e. whether to leave the asbestos in place (if the condition is good and it is unlikely to be disturbed), to seal/enclose it, or remove it.

9.2 It is a legal requirement to use a licensed contractor if any ACMs need to be encapsulated or removed as they fall into the high risk category (e.g. asbestos insulating panels). If the materials are lower risk, then an unlicensed, but competent contractor may carry out this work.

10. Licence Requirements

10.1 In the vast majority of cases anyone working with asbestos will need to hold a licence. However, certain circumstances do not require a licence and more information can be found in The Approved Code of Practice (ACOP) to the Control of Asbestos Regulations 2006.

11. Working Practices

11.1 The Health & Safety Executive HSE has produced detailed guidance on safe working practices for those working with ACMs. The guidance takes the form of Asbestos Essentials Task sheets of which there are 48 documents. These can be accessed via the HSE's website at www.hse.gov.uk.

12. Record Findings and Planned Actions

12.1 The Duty Holder must ensure that significant findings of the assessment including details of the planned actions and reasons for these actions are recorded.

13. Monitor and Control

13.1 The Duty Holder must implement a system for monitoring the control measures to ensure that work practices continue to be safe. Areas where ACMs are present are regularly examined to check the integrity of these materials.

13.2 Procedures must be in place to ensure all contractors arriving on site know of the presence of asbestos and the site rules.

14. Plans for Dealing with Asbestos Emergencies

14.1 Appropriate procedures must be in place to protect employees and other persons in the event of an asbestos emergency. The Duty Holder must provide information to the emergency services both before and at their site arrival. Details of these procedures must be kept readily available. In the event of accidental release the Duty Holder must take immediate action.

Further Information:

Please contact Corporate Health and Safety Branch on 020 3334 6868/6855/6871 or contact
<mailto:MoJhealth&safetyenquiries.gsi.gov.uk> if you have any further enquiries.

Managers Checklist

Annex A

No	Question	Y/N	(If no) Comment & Action	Timescale
1	Have you identified the Duty Holder for the premises?			
2	Has an Asbestos risk assessment been carried out and an Asbestos Register created or reviewed in the last 2 years?			
3	Has an Asbestos Management Plan to control the risks recorded in the Asbestos Register been created, including local arrangements for monitoring and inspecting ACMs?			
4	Are systems in place to ensure contractors are made aware of the location of ACMs in premises and their actions are controlled to ensure fibre release does not occur?			
5	Are there systems in place to report any deterioration in the condition of ACMs to the Duty Holder?			
6	Has an asbestos document file been created for the premises and is all paperwork in it kept up to date?			
7	Are systems in place to ensure that, prior to all maintenance work, additions and modifications to the premises, a suitable survey is undertaken?			
8	Are there systems in place to ensure appropriate action is taken following receipt of updated Asbestos Registers?			

9	Has the Duty Holder and any other relevant person undertaken relevant training in the last 3 years in asbestos management (premises managers and specific asbestos management)?			
10	Have you provided employees with information on the actions they should take in the event of damage or release of asbestos?			
11	Are you entirely satisfied that the asbestos in your premises is under adequate managerial control?			

This checklist is a guide, it is not exhaustive.

Inadvertent exposure to asbestos – guidance for staff and managers

Background

'Asbestos' is the name given to a group of minerals that occur naturally as masses of strong, flexible fibres that can be separated into thin threads and woven. These fibres are not affected by heat or chemicals and do not conduct electricity. For these reasons, asbestos has in the past been widely used in many industries including the building trade. Asbestos containing materials may still be present in some buildings and stringent controls are in place within the UK to control and manage the existing asbestos within buildings to ensure, so far as is reasonably practicable, that exposure is prevented.

Asbestos fibres are harmful because they are extremely small and sharp. If the asbestos fibres are released into the air, the fibres may be easily inhaled or swallowed and cause serious health problems. Ordinary-sized dust is caught and expelled by the body's defences before it can be breathed into the lungs or swallowed into the stomach, but because of the size of the fibres asbestos slips through. That's why it's the lungs and the chest which suffer most, and sometimes also the stomach.

Asbestos materials in good condition are safe unless the asbestos fibres become airborne, which happens when the materials are damaged.

Inadvertent exposure to asbestos

It is unfortunately not uncommon for people to be accidentally exposed to asbestos fibres, usually in small quantities, during building operations, maintenance work or following damage to asbestos-containing materials. (Many of those suffering today from asbestos-related diseases worked in the building trades and were exposed to asbestos in their day-to-day work with asbestos materials, or because work with asbestos was carried out near them).

Inadvertent exposure may have occurred in the past and members of staff may already have details of the nature and length of exposure, but the following advice is provided as a guide.

It is possible that repeated low-level exposures may lead to asbestos-related diseases, although high exposure for long periods is linked more clearly to these diseases. There is usually a long delay between first exposure to asbestos and the first symptoms of disease; this can vary between 15 and 60 years.

Breathing in asbestos fibres can eventually lead to a number of diseases, including:

- asbestosis or fibrosis (scarring) of the lungs;
- lung cancer; and
- mesothelioma, a cancer of the inner lining of the chest wall or abdominal cavity.

Asbestos exposure incidents understandably cause anxiety about the possible effects, both short and long-term, of the exposure. In many cases exposure will have

been low, with little likelihood of any long-term side effects. Unfortunately, although the type of asbestos involved may be known there is often little if any reliable information concerning the amount of asbestos which may have been inhaled. Therefore it is often difficult to be certain exactly how much long-term risk to health may have been caused.

If an inadvertent exposure to asbestos takes place the MoJ will try to find out as much as possible about the type of asbestos, the duration of exposure and the likely exposure levels, and will keep accurate and detailed records concerning the incident and those people involved.

Exposure limits

Employers have specific duties under the Control of Asbestos Regulations 2006. In essence they have to manage and control any asbestos found within their buildings. These Regulations set out the "control limit" of exposure that should not be exceeded.

The "control limit" means a concentration of asbestos in the atmosphere when measured in accordance with the 1997 World Health Organisation recommended method, or by a method giving equivalent results to that method approved by the Health and Safety Commission, of 0.1 fibres per cubic centimetre of air averaged over a continuous period of 4 hours.

What employees should do if inadvertently exposed to asbestos

A low level exposure below the control limit should be recorded on the individual's personnel file and reported to your GP.

Your GP should be given details about the possible exposure including date(s), duration, type of asbestos and likely exposure levels (if known) and you should ask for a note of these details to be made in your personal medical record. These details should be available from local facilities managers and will be recorded on air test certificates that should be available.

Your GP will decide whether you should be referred to a chest specialist (although this is not usually necessary) or whether you should undergo any tests such as a chest X-ray. A chest X-ray is not usually necessary or helpful, particularly because in the short-term it would not show anything wrong, even after heavy exposure to asbestos. In particular a chest X-ray cannot show whether or not asbestos fibres have been inhaled.

An exposure over the control limit will normally be identified by local air tests arranged by accommodation managers. The Corporate Health and Safety Branch must be informed of the results of the airtests. Further information of what to do is provided below.

Workplace information and support services

Staff may be anxious about possible exposure to asbestos and can seek advice and support from a variety of in house points of contact:

Welfare Service The Workplace Support Helpline is available any time of the day or night, 365 days a year. Just call 0121 681 3475.

Local Health and Safety Officers

Health and Safety Branch Advisers

Trade Union Safety Representatives

Existing management and control of asbestos

For MoJ HQ estate, as with other estates and facilities teams, an asbestos policy and/or asbestos management plan must be in place. This sets out the roles and responsibilities for people managing the control of any remaining asbestos and will include details of control measures such as:

Material and priority assessments

Asbestos Registers and Action Plans

Emergency procedures

Asbestos removal and disposal procedures

Permit-to-work procedures

Training requirements

The Asbestos Policy and Asbestos Management Plan for MoJ HQ is available from the MoJ Corporate HQ Facilities Team.

Procedures to be followed in the Event of Inadvertent Exposure

The full procedures are described within the Asbestos Management Plan. The following précis is practical advice for employees who have not seen the Asbestos Management Plan but suspect that asbestos has been disturbed:

Evacuate the area without causing alarm and assemble evacuees locally outside the area. Do not send people home at this point.

Immediately report the matter to the Local Accommodation Manager and local Health and Safety Officer.

Record the names of all staff who may have been exposed.

Await further instructions.

There are many circumstances in which an inadvertent exposure to asbestos can occur, and the instructions provided will be tailored to the particular situation as a result of an assessment of an approved independent asbestos consultant.

Agencies, NDPB's and other bodies

In the first instance, staff from other parts of the MoJ family should consult their local:

Accommodation or Facilities Managers.

Health and Safety Officers.

Asbestos Policy and/or

Asbestos Management Plans.

However if these are unavailable, in emergencies seek advice from MoJ HQ Corporate Health and Safety Branch.

Further information

Further Health and Safety advice can be obtained from the links below or from the MoJ HQ Corporate Health and Safety Branch. Telephone 0207 340 6855.
<mailto:MOJhealth&safetyenquiries@justice.gsi.gov.uk>

Information for employees provided by the Health and Safety Executive available at <http://www.hse.gov.uk/asbestos/employees.htm>

The Control of Asbestos Regulations 2006 available at <http://www.hse.gov.uk/asbestos/regulations.htm>

Regulation 4 of the Control of Asbestos Regulations 2006, Approved Code of Practice and guidance L127

This publication gives advice on how to comply with the duty in Regulation 4 of the Control of Asbestos Regulations 2006 to manage asbestos in non-domestic premises. It explains the duties of building owners, tenants and anyone else with legal responsibilities for such premises. Information available at <http://www.hse.gov.uk/pubns/books/l127.htm>