

Asbestos and the CDM 2015 Regulations

Key information for Designers undertaking the role of Principal Designer, on the overlap in duties with the new Construction (Design and Management) Regulations 2015 (CDM 2015) and the Control of Asbestos Regulations 2012 (CAR 2012), specifically the duties set out in *Regulation 4.

Duty Holders

Due to the shift in responsibilities under the new CDM Regulations, there is a potential duty for the Principle Designer (PD) and the client to ensure that exposure to Asbestos is being managed throughout a construction project.

In the HSE guidance on the new CDM Regulations it places more explicit requirements on duty holders to follow the *general principles of prevention. The principles also apply to the measures used to prevent or reduce the risk of exposure to asbestos fibres.

The HSE has also indicated that the new regulations are more focused on the client's duties and making the client "accountable for the impact their decisions and approach have on health, safety and welfare on the project".

It has also made clear that the client has to ensure that "sufficient resources and time are allocated for each stage of the project — from concept to completion".

As the Control of Asbestos Regulations 2012 (CAR 2012) require duty holders to effectively manage asbestos in buildings, clients should already have information about the location and condition of asbestos in their building.

Where construction work is likely to disturb this asbestos, the Principal Designer — in projects involving more than one contractor — must be given any asbestos survey and other relevant information. This will form part of the pre-construction information.

The client is required to ensure that before the construction phase begins, a construction phase plan is in place, and where licensed asbestos work is required, the licensed asbestos contractor is required to complete a written plan of work.

Where asbestos is to remain in the building after the completion of the construction or refurbishment work, this information must be kept in the health and safety file.

Where a construction project is notifiable, the client now has the duty to inform the HSE.

It should be noted that in the case of the CDM 2015 Regulations, a domestic client does not have duties. In this case a domestic client has their duties transferred. Hence, where asbestos work is undertaken in domestic premises, it is the contractor who will identify the precautions in their plans.

Management

If proper asbestos management is not undertaken, including asbestos removal, this could lead to immediate or retrospective liabilities under both CAR 2012 and CDM 2015 for the Principal Designer, Principal Contractor and the client.

Control of Asbestos Regulations 2012 - Reg. 4 covers the duty to manage asbestos in non-domestic premises. It requires duty holders to identify the location and condition of asbestos in non-domestic premises and to manage the risk to prevent harm to anyone who works on the building or building occupants. It also explains what is required of people who have a duty to co-operate with the main duty holder to enable them to comply with the regulation.

Non-domestic premises includes the common parts of domestic premises.

Responsibility

The PD will have responsibility to support the client with the provision of information during pre-construction, construction and the post-construction phase of a project.

Asbestos must be fully considered as part of those phases and appropriate information must be provided. This may include:

- Existing Surveys;
- Existing Asbestos Management Plans;
- Details of any removals or ongoing management of Asbestos Containing Materials (ACMs); and
- Details of how the asbestos management/removal plans have or will be communicated.

Surveys

A Refurbishment Survey must be carried out, of a type which will, under controlled conditions, reveal any potential asbestos materials which might be in the vicinity of the area where works are planned.

A visual inspection, or reference to a Management Survey is insufficient, because the Management Survey is not intrusive and has not been undertaken to account for any changes to the building (even of a non-structural nature).

Most of the changes in the new CDM 2015 regulations do not directly affect the way asbestos is treated in construction projects.

Essentially, there are three notable areas to consider when designing in buildings where asbestos may be present.

These are:

1. Maintenance or refurbishment activities that may disturb asbestos;
2. Asbestos removal or encapsulating work; and
3. Construction projects that may require asbestos to be removed or encapsulated as part of the construction phase.

Summary

The new regulations will bring some changes when asbestos work is carried out on sites coming under the CDM Regulations.

However, the way that work is carried out under CAR 2012 remains the same. It is only when considering projects that come within the remit of the CDM Regulations that the changes need to be considered.

The HSE has indicated that it needs to consider whether a new ACOP for CDM 2015 is required. In the consultation phase drafting the new regulations, it had been accepted that a “reduced” ACOP would be drafted. This is now in question and even if it is agreed to develop one, the HSE indicates that it would take at least a year to prepare.

It is vital that the Principal Designer considers the management of asbestos throughout the project and must remind themselves of the potential implications of not doing so.

Failure to properly control exposure to asbestos, where that exposure is deemed to be the PD’s responsibility i.e. failure to support the client in the provision of information (**CDM 2015 Reg. 11(6)), could result in prosecution.

It would also be reasonable to assume that a Principal Contractor (PC) could make a claim against potential programme extensions due to asbestos removal not being designed in.

References

*General Principles of Prevention

These are specified in Schedule 1 of the Management of Health and Safety at Work Regulations 1999.

- a. avoiding risks;
- b. evaluating the risks which cannot be avoided;
- c. combating the risks at source;
- d. adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate, and to reducing their effect on health;

- e. adapting to technical progress;
- f. replacing the dangerous with the non-dangerous or the less dangerous;
- g. developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
- h. giving collective protective measures priority over individual protective measures; and
- i. giving appropriate instructions to employees.

**CDM 2015 - Regulation 11

Duties of a principal designer in relation to health and safety at the pre-construction phase

(6) The principal designer must:

- (a) assist the client in the provision of the pre-construction information required by regulation 4(4); and
- (b) so far as it is within the principal designer's control, provide pre-construction information, promptly and in a convenient form, to every designer and contractor appointed, or being considered for appointment, to the project.

(7) The principal designer must liaise with the principal contractor for the duration of the principal designer's appointment and share with the principal contractor information relevant to the planning, management and monitoring of the construction phase and the coordination of health and safety matters during the construction phase.

Contact

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