

Asbestos removal private member's bill: RoSPA's position (1st draft)

The All Party Parliamentary Group on Occupational Health (APPGOH) (supported by the TUC) has set out the case for asbestos in existing installations in a report (*'The asbestos crisis, why Britain needs an eradication law'*) see <https://www.tuc.org.uk/sites/default/files/asbestoseradication.pdf>.

This would include recommendations for:-

- All Buildings to have an asbestos register by 2022,
- All public buildings to have asbestos removed by 2028 and
- All buildings to have it removed by 2035.

This is in effect a 20 year plan. The aim however is to produce a 'draft' Asbestos Bill, following which the APPGOH will seek an MP to take it on and submit it for Parliamentary consideration and debate, recognising that while in practice few Bills are successful in the Private Members' ballot and that relatively few ever reach the statute book, they represent a useful way of raising awareness at a Parliamentary level.

RoSPA, which is not a member of the APPG, strongly supports the need for long term, coordinated action to tackle the risks posed by the massive remaining inventory of asbestos in existing buildings and installations.

It sees the immediate need however to get full compliance by all occupiers with the 'duty to manage' asbestos (see below) and for the Government to show the way to others by undertaking an urgent review on the state compliance with the duty of occupiers to undertake surveys, create registers and develop asbestos maintenance and removal plans.

Decision making about whether to seal and keep asbestos in place needs to involve all parties including employees, tenants and others affected and their representatives. In RoSPA's view, the target of 2022 for completion of registers is too far off. The Government should set a twelve-month deadline for public sector occupiers for the upgrading and completion of asbestos registers and asbestos management plans and should prepare a comprehensive health protection and business case by the end of the year for the eventual elimination of asbestos from public buildings in a realistic timescale based on building life and the prioritisation of higher risk buildings and plant containing asbestos.

An Asbestos Management Oversight Group, reporting directly to ministers, should be set up, with expert representation from of all key stakeholders.

Annex

From HSE's website

The duty to manage asbestos is directed at those who manage non-domestic premises: the people with responsibility for protecting others who work in such premises, or use them in other ways, from the risks to ill health that exposure to asbestos causes.

The revised [ACOP L143 'Managing and working with asbestos'](#) contains

updated information about the requirements to manage asbestos under regulation 4 of CAR 2012. The information was previously available in the ACOP L127 'The management of asbestos in non-domestic premises' which has now been withdrawn.

What is the duty?

The duty to manage asbestos is contained in regulation 4 of the [Control of Asbestos Regulations 2012](#). It requires the person [who has the duty](#) (ie the 'dutyholder') to:

- take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, its amount, where it is and what condition it is in
- presume materials contain asbestos unless there is strong evidence that they do not
- make, and keep up-to-date, a record of the location and condition of the asbestos- containing materials - or materials which are presumed to contain asbestos
- assess the risk of anyone being exposed to fibres from the materials identified
- prepare a plan that sets out in detail how the risks from these materials will be managed
- take the necessary steps to put the plan into action
- periodically review and monitor the plan and the arrangements to act on it 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

There is also a requirement on others to co-operate as far as is necessary to allow the dutyholder to comply with the above requirements.

Who has the duty?

The dutyholder is the owner of the [non-domestic premises](#) or the person or organisation that has clear responsibility for the maintenance or repair of [non-domestic premises](#), for example through an explicit agreement such as a tenancy agreement or contract.

The extent of the duty will depend on the nature of that agreement. In a building occupied by one leaseholder, the agreement might be for either the owner or leaseholder to take on the full duty for the whole building; or it might be to share the duty. In a multi-occupied building, the agreement might be that the owner takes on the full duty for the whole building. Or it might be that the duty is shared - for example, the owner takes responsibility for the common parts while the leaseholders take responsibility for the parts they occupy. Sometimes, there might be an agreement to pass the responsibilities to a managing agent.

In some cases, there may be no tenancy agreement or contract. Or, if there is, it may not specify who has responsibility for the maintenance or repair of non-domestic premises. In these cases, or where the premises are unoccupied, the duty is placed on whoever has control of the premises, or part of the premises. Often this will be the owner.

In public buildings, such as hospitals, schools and similar premises, the identity of the dutyholder will depend on how the responsibility for maintenance of the premises is allocated. For example, for most schools, the dutyholder will be the employer. Who the employer is varies with the type of school. For local authority managed schools, eg community schools and voluntary-controlled schools, the employer is the local authority. For voluntary-aided and foundation schools, it will be the school governors, and for academy and Free Schools, the academy trust will be the employer. For independent and fee-paying schools, it may be the proprietor, governors or trustees. Budgets for repair and maintenance of school buildings are sometimes delegated to schools by a local authority. In such cases, the duty to manage asbestos is shared between schools and the local authority.