



## A guide to asbestos

### Key Points

- For all residential premises, whether houses or flats, a landlord may, depending on the circumstances, be liable if anyone such as a tenant resident or visitor, is put at risk of being exposed to asbestos or is actually exposed to it. The landlord is under a duty to ensure that a risk assessment is carried out and can be prosecuted for failing to do so. Also a landlord can be guilty of a criminal offence if anyone is exposed to a risk from asbestos.
- In addition to making sure that a risk assessment is carried out, a landlord must use a competent contractor to carry out repairs or other work. Landlords cannot simply leave matters to contractors. A landlord still has his/her own responsibilities relating to asbestos. At the very least, landlords must check that a contractor is competent. Likewise, any information about the presence of asbestos known to the landlord must be passed onto the contractor. These basic requirements apply to small landlords but, because the dangers from asbestos are well known, this may not be enough, especially for larger landlords.
- A landlord who is an employer or who is self employed must ensure that the Control of Asbestos Regulations are complied with in the case of domestic premises, including common parts. Any contractor must also comply with these Regulations. These regulations require that a risk assessment is carried out before any work is started to see if asbestos is present and to ensure that appropriate precautions are taken to deal with asbestos which is present.
- Again with all residential premises, any landlord who commissions repair or construction work has to comply with CDM Regulations which include an obligation to notify the presence of asbestos where the landlord is aware of this.
- Additional special rules apply to the common parts of non domestic premises which includes the common areas of blocks of flats and bedsits but these additional requirements do not apply to individual self contained units (e.g. flats) or to single dwellings. Whether or not work is to be done, the landlord is obliged to carry out investigation as to whether or not asbestos is present in the common parts and if it is there to monitor its condition as well as putting control measures in place. Anyone who may be at risk as a result (e.g. a contractor carrying out work) must be notified of the presence of asbestos. The measures must be kept under review, at least annually.

## A. All Domestic Premises

### Landlord's responsibility

There is a specific duty to manage asbestos but this only arises in cases concerning non domestic buildings including common parts of blocks of flats. However, for all premises (including residential premises) there is an obligation to carry out a risk assessment if any work or repairs are to be carried out at a property and this will have to be completed before work starts. A landlord owes responsibilities to tenants, residents and visitors, as well as to workmen carrying out the work.

### Risk assessment

A risk assessment to identify whether or not asbestos is present needs to be carried out before the work is started, in all cases.

### Where the landlord knows asbestos is present

If the landlord is aware of the presence of asbestos any contractor must be told before work starts.

### Domestic premises

- As we have seen for all work a risk assessment must be arranged before the work starts. As well as the landlord, any contractor carrying out the work is obliged to see that this is done. The landlord must also ensure that a competent contractor is chosen. These responsibilities arise if work is to be carried out. Domestic premises such as single dwellings or individual flats are outside the scope of the duty to manage relating to common parts. In the case of common parts an investigation must be carried out in any case whether or not work is to be done – see Section B below. A considerable risk is if anyone is exposed to asbestos.
- Where the landlord is an employer, e.g. because he has staff working for him/her as employees (even just one employee), or if the landlord is treated as being “self employed”, for the purposes of Health and Safety at Work legislation then the following provisions apply:
- As an employer or someone who is self employed the landlord is under a duty to conduct his undertaking in such a way as to ensure that non employees such as tenants, residents or visitors are not exposed to risks to their health and safety, such as from exposure to asbestos. Failure to comply can result in a criminal conviction.
- There is a duty to undertake a risk assessment relating to the risks to the health and safety of non employees to identify what measures need to be taken to comply with this duty. This can be arranged by the contractor. This could include establishing whether asbestos is present. Failure to comply is a criminal offence.

- The Control of Asbestos Regulations and CDM Regulations impose various requirements. These requirements apply to all types of residential premises – see paragraphs 7, 8 and 9 below.
- A competent contractor must be chosen – see paragraph 15 below.
- The Health and Safety Executive (HSE) maintain that a landlord is self employed for these purposes. This is not necessarily clear cut and may depend on the circumstances of the individual landlord. Certainly, these provisions will apply if a landlord is an employer. We look at the issue of whether or not a landlord can be self employed in our Briefing Note “Is a landlord self employed for the purposes of Health and Safety at Work Legislation?” It is better to assume in all cases that the landlord has these responsibilities.
- Additionally, any landlord of any premises whether domestic or non domestic who arranges for building work to be carried out, including repairs and maintenance, must ensure that anyone carrying out design work as well as every contractor is provided with information at the outset which they know about and which might affect the work. This includes information relevant to Health & Safety. Failure to comply is a criminal offence. You should make sure that the contractor is competent and sufficiently experienced.

### Landlords working with asbestos

- The DIY landlord carries out work himself or herself or who directly supervises work by others needs to be aware of the risks around asbestos being present in the property. Not only must a risk assessment be carried out in this situation but additional requirements apply under the Control of Asbestos Regulations. If a landlord is an employer or is regarded as self employed then if the landlord is working with asbestos then various additional duties arise. These apply to all premises, including domestic premises such as individual flats and single dwellings. Work with asbestos includes work which removes, repairs or disturbs asbestos, ancillary work and, importantly, directly supervising any such work. Certain types of work with asbestos can only be done by someone who holds a licence issued by the Health and Safety Executive.
- If a landlord is an employer or self employed no work must be done to a property (including maintenance or demolition) without carrying out a risk assessment to see if any asbestos is present and to establish the risk to employees as well as the steps which need to be taken to comply with the regulations. A suitable work plan must be prepared. Certain non licensable work must be notified to HSE before it is started.

### The role of managing agents

- Agents managing premises, particularly non domestic premises such as blocks of flats, also need to be aware of their responsibilities before allowing building work or repairs to go ahead. In all likelihood they will be employers anyway or they will be self employed. In the case of non domestic premises they may be regarded as a duty holder depending in the degree of control that they have over the premises. For all premises, not just common parts which count as non domestic premises, they will be subject to the same duties as landlords who are employers or self employed.
- A case involving an agent is instructive. The agent used a self employed handy man to carry out work. He was sent to repair a leaking porch at a house. The underside of the porch had asbestos boarding. The handy man removed this breaking it in the process. He then realised it was asbestos. Fibres were spread around the area. The agent was prosecuted and convicted for failing to carry out a risk assessment prior to the carrying out of the work.

### HSE's views on landlord's responsibilities

- Where it is established that tenants residents or visitors have been exposed to risk from asbestos located at a property owned by a landlord HSE's focus will be on whether the landlord did all that was reasonably practicable to ensure the health and safety of the tenants residents or visitors. They will consider what was reasonably practical for the landlord in question to do. Matters such as the landlord's knowledge of the risks, his/her approach to the selection and instruction of contractors, his/her supervision of the work (and what was reasonable for him/her to do under the circumstances), his/her response to the risk, his/her relationship to the property and his/her contract with the managing agent (if any) will all be relevant factors when determining if there has been a breach of relevant legislation.
- HSE cannot and will not give an explicit list of measures that must be taken by all landlords to comply with their duties because what is reasonably practicable will depend on individual circumstances.
- HSE consider that the law expects significant effort to be applied to prevent exposure to asbestos. Therefore a landlord faced with the need for repairs or other work to be done on his/her property should anticipate the possibility of exposure to asbestos and take active steps to ensure it does not happen. This could be by means of commissioning an asbestos survey, which is simple to arrange and relatively inexpensive. Alternatively, the landlord should inform the contractor that no survey has been done and require the contractor to arrange for a survey before the work is started. The landlord must require proof that a survey had been completed by demanding sight of the survey report.
- The landlord must choose a competent contractor. Considering the potential serious consequences of exposure to asbestos HSE considers it in order for a landlord to satisfy himself/herself as to the competence of a contractor and measures must be taken. This includes speaking to previous clients to check up on the contractor. Landlords must also require a contractor to provide a description of the measures the contractor will go to to avoid asbestos. The contractor needs to be aware from the outset if it becomes clear that repair or works that necessitate the disturbance of asbestos the contractor needs to know about the need to involve a licensed asbestos contractor. The contractor should be able to demonstrate that he or she can distinguish between licensed and non licensed work with asbestos. Failure to discuss this properly with the landlord would call into question the competence of the chosen contractor. Non compliance by the landlord with these requirements could well lead to the landlord being prosecuted.



## B. Common Parts (e.g. blocks of flats)

### Duty to manage asbestos in common parts of residential buildings

- The duty to manage relates to the control and management of asbestos in non-domestic premises. Non-domestic premises include the common parts of blocks of flats and bedsits e.g. the roof structure, halls, stairs and landings. They also include shops, offices etc. The current regulations were effective from 6th April 2012. The basic duty is to manage the risk so that no one can come to any harm from any asbestos on the premises such as residents, visitors or workers. Common parts for these purposes do not include rooms within a private residence that are shared by more than one household such as bathrooms and kitchens in shared houses. This duty is to be carried out whether or not work is to be undertaken.
- Many blocks of flats may well contain asbestos. It was commonly used as a fire retardant, although it is no longer used.

### Duty holder

- A landlord will be a duty holder and have responsibilities where he/she is responsible for repairs of non-domestic premises or has control over them. A landlord cannot abdicate responsibility by appointing a managing agent.

### Duty to investigate

- Under the Regulations there is a duty on landlords, as duty holder of blocks of flats, to investigate whether or not asbestos is present in the common parts. If it could be there they will have to monitor its condition, put control measures in place and notify anyone who may be at risk.

### Duty to co-operate

- There is also a duty on all persons to co-operate e.g. individual tenants.

### Duty holder's responsibilities

- For these purposes the Landlord is the "duty holder". More than one person may be responsible as the duty holder. If there is more than one person the responsibilities as between them will be divided according to the nature and extent of the maintenance obligations owed. Advice may need to be taken depending on the terms of the relevant leases.

### Risk Assessment

- The first requirement is to carry out a risk assessment of the common parts. It should be presumed that asbestos is present unless there is strong evidence to the contrary.
- Every duty holder must carry out a risk assessment which must be recorded in writing. A "nil" record must be kept even if there is none present. This risk assessment must consider whether asbestos is present, its location within the building and its condition. In carrying out this risk assessment the duty holder must carry out an inspection of reasonably accessible parts of the building and consider building plans/other relevant information. The age of the premises must also be taken into account. It may be possible to eliminate the possibility of asbestos being present by inspecting plans or specifications which show that no asbestos was used. Appropriate professional help may well be needed to carry out any inspections.
- Depending upon the circumstances more extensive investigation may be needed and could involve analysing samples.
- This risk assessment is an ongoing process. It must be reviewed immediately circumstances change or fresh information comes to light. The conclusions of any review must also be recorded.

### What happens if there is asbestos present

- If the risk assessment shows that asbestos is either present or is likely to be present in the common parts then the duty holder has a further obligation. A management plan must be prepared. It will include a determination of the risk from the asbestos. This plan must also be written. The plan must show what parts of the premises are affected and set out the plans for managing the risk. The measures which must be specified in the plan for managing the risk must include adequate measures for monitoring the condition of any asbestos (or materials containing asbestos). It must also ensure that any asbestos is either properly maintained, or where necessary removed.

### Duty to notify presence of asbestos

- Information about the location and condition of any asbestos must be provided to anyone liable to disturb it (e.g. someone coming into the building to carry out repairs) and is made available to the emergency services (e.g. the fire brigade).

### Management Plans where there is a duty to manage

- In cases where there is a duty to manage in formulating the management plan where asbestos is present (or is likely to be present) consideration will have to be given, in particular, to the state of the asbestos. For example if it is breaking up then it may well need to be removed. On the other hand, if it can be left in an undisturbed state and is in good condition then monitoring it and ensuring that it continues to remain in a good condition may well suffice.
- Where a management plan has to be drawn up because asbestos is present (or suspected) this plan must be reviewed and revised at regular intervals, i.e. at least annually. It must be revised if there is any reason to suspect that the plan is no longer valid or there has been any significant change in the premises (e.g. due to alterations or deterioration in the condition of the asbestos). Changes must be recorded in writing. Where a management plan is required the duty holder must ensure that the measures specified in the plan are actually implemented and those measures are recorded in writing. As these regulations apply to all non-domestic premises the Landlord must carry out the initial risk assessment. If this shows that asbestos is either present or likely to be present then the management plan to show action to be taken is required.

### Enforcement where there is a duty to manage

- Failure to comply with the legislation is a criminal offence, as referred to above.

### Housing Health and Safety Rating System

- Under the Housing Health and Safety Rating System asbestos is one of the hazards. If this hazard exists at the property the local authority can carry out a Housing Health and Safety Rating System assessment. If the risk is sufficiently serious as a result of this hazard that it is classified as a Category 1 hazard then the local authority must take enforcement action against the landlord. If it is a less serious Category 2 hazard they have a discretion to do so.
- For more information about the Housing Health and Safety Rating System click [here](#). Works may therefore be required as a result which could lead to the property being upgraded/improved to deal with a particular hazard.