

LEGAL ALERT

JULY 2004

HEALTH & SAFETY BULLETIN

Rollits
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ALL CHANGE

Things do not stay still long in the health and safety field. In this issue, there is news of one set of regulations coming into force, another set falling at the first hurdle and a third set on the way. See the discussions on asbestos, health and safety offences and fire safety reform.

ASBESTOS REGULATIONS FINALLY COME INTO FORCE

The much trailed duty to manage asbestos contained in the Control of Asbestos At Work Regulations 2002 finally came into force on 21 May 2004. This will probably go down as a landmark piece of legislation as the Government get serious about the control and monitoring of asbestos, although ironically there is presently something of a debate raging as to the harmful effects of certain types of asbestos. The presumption behind the Regulations, however, is that asbestos is harmful and that the risk presented by exposure is serious and no level of exposure can be regarded as safe.

WHAT THEN DO THE REGULATIONS SAY AND WHO DO THEY AFFECT?

There is a duty to manage asbestos in non-domestic premises. This duty is imposed on anybody who has, by virtue of a contract or tenancy, an obligation to maintain or repair those premises or access to them, or on any person who, in the absence of a contract or tenancy, has control over part or all of such premises.

This can mean that there can be in any given situation more than one duty holder. Both have contributions to make which are determined by the nature and extent of the maintenance and repair obligation which each may have. Each duty holder is under an obligation to co-operate with the other.

The duty holder has to manage the risk from asbestos by ensuring that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises. For this purpose you have to take such steps as are reasonable and look at the condition of any asbestos which is or has been assumed to be present.

In practice plans need to be considered and an inspection made of parts of premises which are reasonably accessible.

The duty is not once and for all because if there is reason to suspect that the assessment is no longer valid or there has been a significant change in the premises then the assessment has to be reviewed **forthwith**. Once an assessment has been made its conclusions have to be recorded.

If the assessment shows that asbestos is present then the duty holder has to consider the risk that asbestos poses, prepare a written plan identifying the relevant parts of the premises and what measures are to be taken to manage the risk from asbestos.

The measures need to be adequate so that asbestos can be monitored and either properly maintained or where necessary removed safely. It is important to ensure that information is given to any person who is likely to disturb asbestos including the emergency services.

The Regulations contain other duties. There is a general catch all duty to prevent exposure of employees to asbestos so far as is reasonably practical or if that is not feasible to reduce the exposure to the lowest level reasonably practical. The employer shall not carry out any work which exposes his employees to asbestos until he has identified the type of asbestos and also made a suitable and sufficient assessment of the risk involved in such work.

The Regulations also require an employer to ensure that adequate information, instruction and training is given to employees who may be exposed to asbestos. Such employees must also be made aware of significant findings of a risk assessment and of the risk to health that asbestos can pose and the precautions which should be observed.

There are other provisions as to medical surveillance and maintenance of health records.

The Regulations do require careful reading in full because in addition to the headline duty to manage asbestos they revoke the Control of Asbestos at Work Regulations 1987 and the amending Regulations of 1992 and 1998.

It is likely that health and safety enforcing agencies will be keen on this subject. Asbestos is believed to be present in hundreds of thousands of commercial premises in any number of different guises. The courts too are likely to regard any breach of the Regulations as very serious and impose fines accordingly. The enforcing authorities have additional powers which could force action to be taken, leading to, in more serious cases, a requirement to suspend business activity because premises are shut down.



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HEALTH AND SAFETY OFFENCES BILL

There has been talk for many years of the Government increasing the potential penalties for breach of health and safety at work. The courts at a high level have consistently commented that fines imposed are too low. Presently under most of the Regulations the maximum fine in the Magistrates Court is £5,000, although this increases to £20,000 for a breach of the Health and Safety at Work etc Act 1974. In the Crown Court fines for breaches of both can be unlimited.

A Private Members Bill was recently introduced in Parliament seeking to remove the £5,000 cap on fines. It appears this bill is unlikely to reach the Statute Book owing to a lack of Parliamentary time.

Not that this should be taken as a signal to relax as the £2million fine recently handed out to Thames Trains Limited for its part in the Ladbrook Grove collision demonstrates. This is the largest fine imposed for a conviction under the Health & Safety at Work Act. It is of interest that the Judge "discounted" the fine by a third on the basis that the company had pleaded guilty. Additionally the courts have endorsed the suggestion that, if following a very serious incident, a fine has the effect of closing down a business that that is not in itself a reason for reducing the proposed fine. Fines equating to a proportion of profit are by no means uncommon. Avoid this risk of no business or no profit and manage your health and safety.



REGULATORY REFORM FIRE SAFETY ORDER 2004

The Government has finally got round to drafting wholesale changes to the Fire Regulatory regime. A Fire Safety Order has emerged as an attempt to simplify a system which to an extent has been bedevilled by the fact that duties relating to fire precautions are set out in excess of 100 different sets of rules and regulations. The recently introduced Order places significant duties on the responsible person who in relation to a workplace is an employer and in relation to non-workplaces to the person who has control of the premises.

The general duty is to take such general fire precautions that will ensure so far as is reasonably practicable the safety of employees and also to take such general fire precautions in relation to those who are not employees as may reasonably be required in the circumstances.

The cornerstone of the Order is the requirement for the responsible person to make a suitable and sufficient assessment of the risks to which individuals are exposed with a view to identifying general fire precautions which need to be taken. The responsible person must make and give effect to such arrangements as are appropriate, and which reflect the size of the undertaking and the nature of activities carried out. The need is for effective planning, organisation, control, monitoring and review of the measures taken to ensure fire safety. These arrangements must be recorded.

The requirements to have appropriate fire fighting and fire detection equipment, and proper emergency routes and exits are set out in some detail in the Order. The requirements for appropriate procedures, including safety drills, are made clear so that fire evacuation can take place safely if the worst occurs.

The Order requires the responsible person to appoint one or more competent persons to assist in undertaking the various preventive and protective fire safety measures. This does not necessarily have to be an internal appointment but the responsible person has to ensure that they are available to fulfil this function adequately and that they have adequate means at their disposal to undertake this task properly. The Order also requires a responsible person to provide employees with comprehensible and relevant information on procedures and also ensure co-ordination with other employers of employees who are also working on his premises.

To a greater extent these requirements reflect what is already necessary, particularly on the part of employers. However, it is intended that the requirements apply to most non-domestic premises which are used or operated by employers, the self employed and also the voluntary sector. The concept of the responsible person is introduced upon whom major important duties will rest. When the Order becomes law, which is likely, it will remove significant fire safety law from the last three decades and introduce an all encompassing piece of legislation as has been the Government's intention.

INFORMATION

**If you have any queries on any aspect of Health & Safety law please contact:
Chris Platts at Hull on 01482 337363**

This Bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice. We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 18 June 2004

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ANY QUERIES

We are here to help!

Please do not hesitate to get in touch with me on 01482 337363 if I can assist with any health & safety issues you may have or feel that a discussion (without obligation) about health & safety matters generally may be useful to you.

I look forward to hearing from you.



Chris Platts