

**CONTROL OF ASBESTOS REGULATIONS 2006
WHAT IT MEANS FOR AN OWNER OR TENANT OF COMMERCIAL
PREMISES**

Regulation 4 of the Control of Asbestos Regulations 2006 which came into force on the 13th November 2006 sets out the duty to manage Asbestos in Commercial Properties. This legislation affects all non-domestic premises including factories, offices, shops and warehouses. It also includes common areas of both commercial premises and domestic premises, for example, staircases and corridors in a block of flats.

The duty to comply with the Regulations is placed on the “the Duty Holder”. This is the person that has clear responsibility for the maintenance and repair of the premises. This responsibility is usually set out under the terms of a Tenancy Agreement. Generally, in premises which are not let it is the owner of the building who is the Duty Holder. If premises are let as a whole it is usually, unless it states to the contrary in the Lease, the tenant’s responsibility to comply with the legislation. In an Industrial Estate it may be that the tenants of each Unit is responsible for their specific Unit whilst the owner is responsible for the Common Parts although the costs of complying with this legislation can usually be recouped under the service charge provisions.

Regulation 4 of the Control of Asbestos Regulations 2006 requires the Duty Holder to:-

1. Take reasonable steps to find out if there are materials containing asbestos and if so its amount, where it is and what condition it is in.
2. Presume materials contain asbestos unless there is strong evidence that they do not.
3. Make and keep up to date records of the location and condition of the asbestos containing materials or materials which are presumed to contain asbestos.

4. Assess the risk of anyone being exposed to fibres from the materials identified.
5. Prepare a plan that sets out in detail how the risks from these materials will be managed.
6. Take the necessary steps to put the plan into action.
7. Periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up to date.
8. Provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

If no maintenance work is planned or if the premises are very small an owner or tenant may decide to carry out its own inspection. However, it is advisable for a survey to be carried out by a specialist asbestos surveyor.

A management plan must be made available not only to employees, tenants, occupiers and contractors but also to potential purchaser's valuers, surveyors and the emergency services.

The Regulations are enforced by Health and Safety Inspectors who conduct spot checks to ensure that a management plan is in place. Failure to comply with the regulations is a criminal offence with a maximum penalty of an unlimited fine and imprisonment for up to two years.

When you come to sell or lease your commercial premises your buyer or tenant will want to check that you have been complying with the Asbestos Regulations 2006 and will ask for a copy of the most recent survey or assessment carried out together with a copy of the written plan and any other records prepared for managing asbestos at the premises.

If you require advice on any aspects of commercial property including sales, purchases and leases please contact Ruth Latham.

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