

## Regulation 4 Duty to manage asbestos in non-domestic premises

### Summary

This regulation covers the duty to manage asbestos in non-domestic premises. It requires dutyholders 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 to building occupants. It also explains what is required of people who have a duty to co-operate with the main dutyholder to enable them to comply with the regulation. Non-domestic premises includes the common parts of domestic premises.

### Regulation 4

(1) *In this regulation “the dutyholder” means—*

- (a) *every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access or egress to or from those premises; or*
- (b) *in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access or egress to or from those premises.*

*and where there is more than one such dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.*

(2) *Every person must cooperate with the dutyholder so far as is necessary to enable the dutyholder to comply with the duties set out under this regulation.*

(3) *In order to manage the risk from asbestos in non-domestic premises, the dutyholder must ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.*

(4) *In making the assessment—*

- (a) *such steps as are reasonable in the circumstances must be taken; and*
- (b) *the condition of any asbestos which is, or has been assumed to be, present in the premises must be considered.*

(5) *Without prejudice to the generality of paragraph (4), the dutyholder must ensure that—*

- (a) *account is taken of building plans or other relevant information and of the age of the premises; and*
- (b) *an inspection is made of those parts of the premises which are reasonably accessible.*

(6) *The dutyholder must ensure that the assessment is reviewed without delay if—*

- (a) *there is reason to suspect that the assessment is no longer valid; or*
- (b) *there has been a significant change in the premises to which the assessment relates.*

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- (7) *The dutyholder must ensure that the conclusions of the assessment and every review are recorded.*
- (8) *Where the assessment shows that asbestos is or is liable to be present in any part of the premises the dutyholder must ensure that—*
- (a) *a determination of the risk from that asbestos is made;*
  - (b) *a written plan identifying those parts of the premises concerned is prepared; and*
  - (c) *the measures which are to be taken for managing the risk are specified in the written plan.*
- (9) *The measures to be specified in the plan for managing the risk must include adequate measures for—*
- (a) *monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos;*
  - (b) *ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and*
  - (c) *ensuring that information about the location and condition of any asbestos or any such substance is—*
    - (i) *provided to every person liable to disturb it, and*
    - (ii) *made available to the emergency services.*
- (10) *The dutyholder must ensure that—*
- (a) *the plan is reviewed and revised at regular intervals, and without delay if—*
    - (i) *there is reason to suspect that the plan is no longer valid, or*
    - (ii) *there has been a significant change in the premises to which the plan relates;*
  - (b) *the measures specified in the plan are implemented; and*
  - (c) *the measures taken to implement the plan are recorded.*
- (11) *In this regulation—*
- (a) *“the assessment” is a reference to the assessment required by paragraph (3);*
  - (b) *“the plan” is a reference to the plan required by paragraph (8); and*
  - (c) *“the premises” is a reference to the non-domestic premises referred to in paragraph (1).*

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**Managing the risk**

**81** The dutyholder must manage the risk from asbestos on the premises.

**82** The main dutyholder is required to ensure that a written plan is prepared that shows where the ACM is located and how it will be managed to prevent exposure to asbestos, including to contractors and other workers who may carry out work on the fabric of the building that could disturb the ACM. This plan then needs to be put into action and communicated to those affected. The dutyholder needs to ensure the plan is reviewed regularly and updated as circumstances change, in consultation with all those who may be affected.

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**83** The regulation is designed to make sure anyone who carries out any work in non-domestic premises and any occupants of the premises are not exposed to asbestos from ACMs that may be present.

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84 The regulation identifies those who have the main responsibilities (ie dutyholders) under the regulation and places certain duties on them. Dutyholders must ensure risks from the presence of asbestos in the premises are managed. The regulation also requires additional groups to co-operate with, or provide information to, the main dutyholder.

85 In practice, the duty to manage requires the main dutyholder to make sure that competent persons:

- assess whether the premises are liable to contain asbestos and identify its location and condition (or, alternatively, assume asbestos is present and manage the premises accordingly);
- assess the risk from any located (or assumed) ACMs and to identify vulnerable or damaged ACMs and arrange for their repair and/or protection or, where necessary, arrange removal by somebody competent to do this.

86 An essential part of the duty to manage is making sure that information on the location and condition of the ACM is passed on to contractors and other workers who may carry out work on the fabric of the building that could damage/disturb asbestos. This allows them to put in place appropriate controls to protect themselves and others in the building.

87 To help the main dutyholder and others who have duties under this regulation, paragraphs 88–147 give guidance on:

- where the duty to manage applies;
- where the duty to manage applies to common parts of domestic premises;
- identifying who the dutyholders are;
- who has a duty to co-operate with the dutyholder;
- what the dutyholder must do to comply with the law.

### Where the duty to manage applies

88 The duty to manage covers all non-domestic premises. This includes all industrial and commercial buildings, such as factories, warehouses, offices and shops. The duty also covers public buildings such as hospitals, schools, museums, libraries, leisure centres, churches and other religious buildings. In addition, premises include road and rail vehicles, vessels, aircraft and offshore installations, as well as structures and installations (such as bridges), street furniture (such as street lighting) etc.

89 The duty does not apply to domestic premises such as private houses. However, the duty does apply to the 'common parts' of multi-occupancy domestic premises, such as purpose-built flats or houses converted into flats. The common parts of such domestic premises might include foyers, corridors, lifts and lift shafts, staircases, roof spaces, gardens, yards, outhouses and garages but not the private domestic area inside each flat.

90 Common parts do not include rooms within a private residence that are shared by more than one household such as bathrooms and kitchens in shared houses and communal dining rooms and lounges in sheltered accommodation.

### Common parts of domestic premises

91 Table 5 sets out examples of if and where the duty to manage is likely to apply to parts of domestic premises.

92 Note that even where the duty to manage under regulation 4 does not apply, Section 3 of the HSW Act does apply to anyone conducting a business, such as

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landlords of domestic premises. The section 3 duty stipulates that an employer or self-employed person must ensure so far as is reasonably practicable that the conduct of their undertaking does not present a risk to the health and safety of people who are not their employees.

**Table 5** Duty to manage in common parts of domestic premises

Type of residence	Type of occupation	Rooms or parts	Duty to manage applies?
Private house – single dwelling including bedsits	Owner occupier	All	No
	Let to single family	All	No
	Occupied by more than one family	Private rooms, eg bedroom, living room	No
		Shared rooms, eg kitchen, bathroom, lavatory	No
	Rooms let to lodgers	Common parts for access and circulation, eg entrance hall, staircase	No
Private rooms		No	
House converted into flats	Occupied by more than one family	Private rooms	No
		Common parts for access, circulation and storage, eg entrance hall, staircase, roof space	Yes
Garages, parking spaces	Integral to, or linked with residence	Private	No
	Not allocated to any specific person	Common parts – for access and circulation	Yes
Block of flats	Occupied by more than one family	Individual flats	No
		Common parts, eg foyer, lift, stairs, lobby, boiler and plant room, roof space, communal yard, garden, store rooms, bike shelter, external outbuilding	Yes

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**Table 5** Duty to manage in common parts of domestic premises (*continued*)

Type of residence	Type of occupation	Rooms or parts	Duty to manage applies?
Flats over a shop or office, with or without a separate entrance	Occupied by the shop or office owner	Private rooms	No
	Leased separately	Private rooms	No
		Access and circulation areas	Yes
Sheltered accommodation		Private rooms	No
		Common rooms, eg dining room, lounge	No
		Work areas, eg kitchen, staff room, laundry	Yes
		Common parts, eg foyer, lift, stairs, circulation areas, boiler room, store rooms, roof space, external outbuilding	Yes
Hotel, pubs, guest house, hall of residence, hostel (private and local authority), care home	Includes bed and breakfast, if that is the main purpose	Private rooms occupied by the owner	No
		Guest accommodation and common parts (eg foyer, lift, stairs, circulation areas), store rooms, roof space, outbuildings	Yes
Tied cottage/ accommodation	Leased or rent-free	All	No
Farm	Leased or rent-free	Farmhouse	No
		Farm buildings	Yes

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**Identifying dutyholders**

93 The duty to manage is placed on the person or organisation that has the main responsibility for maintenance or repair of non-domestic premises and common parts of domestic premises. The dutyholder may be the owner or, where there is an explicit agreement, such as a tenancy agreement or contract, the dutyholder may be the occupier or the landlord, sub-lessor or managing agent. It may also be the tenant. Where there is a tenancy agreement or contract, the extent of the duty will depend on the nature of that agreement. In some circumstances, the duty to manage may be shared. If so, the dutyholders should co-operate to make sure that the risk from asbestos is managed appropriately.

94 The extent of the duty will, in most cases, be determined by the degree of responsibility over matters concerning the fabric of the building and the maintenance activities carried out there. For example, the owner may rent out or lease workplace premises under agreements where the tenants are responsible for all alterations, maintenance and repairs in the premises. In such situations, the tenants will be the dutyholder.

95 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 ultimate control of the premises, or part of the premises, eg the owner.

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***Dutyholders for public buildings***

96 The identity of the dutyholder in public buildings, such as hospitals, schools and similar premises will depend on how responsibility for maintenance of the premises is allocated. For example in 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, with capital expenditure remaining the responsibility of the local authority. In such cases, the duty to manage asbestos is shared between schools and the local authority.

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***Deciding who has the duty to manage***

97 In situations where there is no owner with sole responsibility for maintenance of the premises, it will be necessary to consult the detail of any contract/tenancy agreement to help establish who is responsible for which aspects of the requirements, under regulation 4.

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98 Table 6 shows some examples of tenancy arrangements and how responsibilities may be allocated or shared under the regulation.

**Table 6** Identity of dutyholders

Responsibility for premises	Who has the duty to manage under regulation 4?
The owner has sole responsibility for the premises or has sole responsibility for the common parts of multi-occupied buildings	The owner
Under a tenancy agreement or contract, tenants (including employers or occupiers) are responsible for alterations, repairs and maintenance	The tenant, or tenants, in multi-occupancy premises
Under a tenancy agreement or contract, the owner keeps responsibility for maintenance and repairs, and the owner has control of access by maintenance workers into the building	The owner
Under a tenancy agreement or contract, responsibility is shared between several people, eg owners, sub-lessors, occupiers and employers	Each party – for those parts of the premises for which they have maintenance responsibilities  Note that employers occupying the premises also have a general duty of co-operation to comply with the requirement of any health and safety regulations under regulation 11 of the Management of Health and Safety at Work Regulations 1999 <sup>7</sup>
If an owner/leaseholder uses a managing agent	The owner  The managing agent would act on behalf of the owner but does not assume the owner's duties in law. The ultimate responsibility remains with the owner
There is no tenancy agreement or contract	The person in control of the premises
The premises are unoccupied	The person in control of the premises

**Changes in tenancy or occupation**

99 If the terms of the tenancy are altered or if the building is vacated, the owner or leaseholder must make sure all relevant information is passed on to any new occupier.

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## Duty to co-operate

**100 If the owner rents, leases or lets out under a contract or agreement and gives shared responsibility to the owner and the occupier(s), all parties should make whatever parts of the building they are responsible for available to one another. This enables each dutyholder to carry out their responsibilities under regulation 4.**

**101 Anyone who is not a dutyholder, but has information on or control of the premises, must help the dutyholder, as far as necessary, to comply with the duty. But this does not extend to paying for or sharing the costs of any actions the dutyholder takes to manage these risks.**

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102 Some examples of where the duty to co-operate applies are listed below.

- An owner who has no maintenance and repair responsibilities for the premises would still need to provide any information they have on the building to help to confirm if there are ACMs present or not.
- Architects, surveyors or building contractors who were involved in the construction or maintenance of the building are expected to make this information available at a justifiable and reasonable cost.
- Those in occupation of the premises, who have no maintenance or repair responsibilities, but may still control access to the premises, are required to co-operate by allowing the dutyholder access to carry out the actions needed to comply with the duty.
- Where the duty to manage is shared between two or more dutyholders, they must co-operate to make sure they comply with the requirements of regulation 4.
- In public buildings, such as hospitals and schools where the employees of a number of employers must work together, to allow the dutyholder to comply with the requirements of the Regulations.

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## Delegating tasks

**103 The dutyholder's legal responsibilities cannot be delegated, but dutyholders can nominate others to do all or part of the work to assist in complying with the duties. Anyone or any organisation who is nominated to do some work as a result of this regulation must know what it is they have to do and be able to do it safely. They should be competent to do this work.**

**104 Safety representatives must be consulted about the arrangements to appoint a competent person or organisation.**

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105 The dutyholder must satisfy themselves that any person or organisation nominated to assist them in complying with the duty to manage:

- can demonstrate suitable competence and training;
- can demonstrate independence, impartiality and integrity;
- has an adequate management system in place;
- carries out any survey commissioned to locate ACMs, in accordance with recommended guidance.

106 Where the dutyholder appoints a third party to carry out a survey, they can assess if the surveyor is likely to have adequate experience and training by checking that they are accredited by a recognised accreditation body as complying with BS EN ISO/IEC 17020<sup>9</sup> to undertake surveys for ACMs. UKAS is currently the sole recognised accreditation body in Great Britain.

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107 If the dutyholder selects a surveyor who is not accredited by UKAS, they should make reasonable enquiries to make sure that they are competent by obtaining details of their qualifications, copies of their written procedures (including quality control policies) and references to other evidence of recent similar work.

108 HSE strongly recommends using accredited surveyors.

109 In accordance with the Safety Representatives and Safety Committees Regulations 1977, safety representatives should be consulted on matters affecting the employees they represent. This means they should be consulted about the arrangements and, with reasonable notice being given, see any records made in connection with the assessment.

110 Similarly, employees not represented by trade union representatives should be consulted in accordance with The Health and Safety (Consultation with Employees) Regulations 1996.

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**111 Where the dutyholder has nominated a person or organisation to assist in complying their responsibilities, they must make sure that those on the premises are aware who has been nominated and the tasks they have been given.**

### What the dutyholders must do to comply with the law

112 Dutyholders are required to ensure that:

- reasonable steps are taken to find materials in premises likely to contain asbestos and to check their condition;
- materials are presumed to contain asbestos unless there is strong evidence that they do not;
- a written record of the location and condition of asbestos and/or presumed ACMs is made and that the record is kept up to date;
- the risk of anyone being exposed to these materials is assessed;
- a written plan to manage that risk is prepared and that the plan is put into effect to make sure that:
  - any material known or presumed to contain asbestos is kept in a good state of repair;
  - any material that contains or is presumed to contain asbestos is, because of the risks associated with its location or condition, repaired and adequately protected or, if it is in a vulnerable position and cannot be adequately repaired or protected, it is removed;
  - information on the location and condition of the material is given to anyone who is liable to disturb it or is otherwise potentially at risk.

#### *Find out if asbestos is present*

113 Everything that can reasonably be done must be done to decide whether there is (or may be) asbestos in the premises, and if there is asbestos (or could be), to find out where it is likely to be. All documentary information that can be obtained about the premises must be systematically checked and as thorough an inspection, as is reasonably accessible, of the premises both inside and outside must be carried out.

114 The thorough inspection of the premises will usually take the form of a survey. The survey should be comprehensive and systematic and the survey type should ensure that the dutyholder meets their current occupational requirements: a management survey should be carried out to identify the

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asbestos for normal day-to-day occupation and maintenance of the building, and a refurbishment and demolition survey should refurbishment or demolition work be planned.

115 All parts of the premises should be checked, including warehouses, yards, sheds, outbuildings, underfloor services, ducts, corridors, vertical risers, ceiling voids, storerooms, external runs of pipes and bridges. Fixed plant and machinery, such as process plant, should be included, as well as mobile units which are permanently on the premises. Mobile units, which are only on the premises intermittently, should not be included.

116 The dutyholder should ensure that anyone who may be able to provide more information (and in any case have a duty of co-operation) is consulted and that this information is obtained. Such people may include:

- architects;
- building surveyors;
- building contractors;
- safety representatives;
- employees who are familiar with the premises;
- the previous dutyholder.

117 There may also be previous assessments and surveys or other existing documents which can be consulted. Check any information obtained or provided for accuracy.

118 Consider the age of the premises when assessing if asbestos is present. Any premises whose construction was completed before 2000 should always be presumed to contain asbestos, unless there is strong evidence to suggest they do not. Any premises constructed after 2000 can be presumed to be asbestos free. However, exercise caution in circumstances where new premises are built on existing basements or linked to adjoining structures.

119 If the building's age or the information provides very strong evidence that no ACMs are present, no further action is needed other than to record why this evidence indicates there is no asbestos present.

***Assessing the condition of ACMs***

120 The condition of ACMs should be assessed. The assessment should take account of the type of ACM, the amount and its condition. This will determine its potential to release asbestos fibres into the air, if disturbed. The assessment should consider the following:

- Is the surface of the material damaged, frayed or scratched?
- Are the surface sealants peeling or breaking off?
- Is the material becoming detached from its base? (This is a particular problem with pipe and boiler lagging and sprayed coatings.)
- Are protective coverings, designed to protect the material, missing or damaged?
- Is there asbestos dust or debris from damage near the material?

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***Assessing the risk***

121 The dutyholder should ensure that an assessment of the potential risk from the ACMs is made. The assessment should consider the following:

- The information gathered on the location, amount and condition of the ACM.
- Is the ACM in a position where it is likely to be disturbed?
- How much ACM is present?

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- Is there easy access to the ACM?
- Do people work or move near the ACM in a way that is liable to disturb it, ie is it vulnerable to damage?
- If likely to be disturbed, is it close to areas where people normally work?
- How many people use the area where the ACM is?
- Is maintenance, repair or refurbishment work or other activity on the premises likely to be carried out where the ACM is?

122 The assessment should identify how the ACMs are going to be managed and how any work activity which may disturb asbestos will be managed. The assessment should identify those ACMs:

- which are in good condition and can be left in place and managed;
- which are in vulnerable locations that need to be protected or removed;
- in poor condition and which need repair or removal;
- which will need to be removed where maintenance, refurbishment work or demolition is planned.

**Recording the assessment information**

123 Create a record of the locations where the assessment indicates ACMs are present or presumed to be present. The written record should include an accurate drawing of the premises and the main features of each room and passageways should be marked on it.

124 The record and drawing should contain details of the locations of the ACMs, their extent and condition and their forms (eg the product type – tiles, boards, cement sheets) and what the ACM looks like (eg if painted and what colour).

125 The record and drawings should record details of any area not accessed or inspected and the area must be assumed to contain asbestos unless there is strong evidence that it does not.

126 This formal record is frequently referred to as an asbestos register. It can be in written or electronic form.

127 The record should be dated to aid periodic reviews.

128 All the information gathered from the assessment should be used to form the management plan.

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**Making the management plan**

129 A written (electronic or paper) management plan should be prepared. The management plan should set out how the risks identified from asbestos will be managed. Details should include:

- identifying the person(s) responsible for managing the asbestos risk;
- a copy of the asbestos record or register and how to access it if it is kept electronically;
- instructions that any work on the fabric of the building cannot start without the relevant parts of the record/register being checked. The plan should include details for how this will be achieved. In particular, the plan should identify the procedures and arrangements to make sure:
  - the record/register is checked in good time before the work starts;
  - checks will be made that the information on the presence of asbestos has been understood and will be taken into account;
  - checks will be made that the correct controls will be used and that competent asbestos-trained contractors will carry out the work;

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- plans for any necessary work identified from the risk assessment, eg repair, protect or remove ACMs;
- the schedule for monitoring the condition of any ACMs;
- how to communicate the content of the management plan;
- contingency arrangements if the main contact person for asbestos risk management is not available.

### *Actioning the management plan*

130 The dutyholder should ensure that the plan is implemented to manage the risks. The action plan should:

- prioritise the actions identified;
- give high priority to damaged material and materials likely to be disturbed; these will need to be repaired, sealed, enclosed protectively or removed using trained and competent personnel.

131 If unsure how to implement the management plan themselves, the dutyholder should seek competent specialist advice from an asbestos surveyor, a laboratory or a licensed contractor, or other competent person as appropriate.

132 The plan should include procedures and responsibilities to ensure that the asbestos register is shared with any worker/contractor carrying out maintenance or other work.

133 The asbestos register, including drawings, should be available on site for the entire life of the premises and should be kept up to date.

134 Work should only start once the dutyholder is satisfied that the information in the asbestos record/register is known and understood by the workers who are doing the work on site and easily accessible for anyone who needs to inspect it.

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### **Managing asbestos left in place**

135 If the material is in good condition, well protected either by its position or physical protection, reducing the likelihood of damage, and is unlikely to be worked on regularly or otherwise disturbed, it is usually safer to leave it in place and manage it.

#### *Leaving asbestos in place*

136 If ACMs or presumed ACMs that are in good condition are left in place, this information should be entered on the record/register of locations and the information kept up to date.

137 Everyone who needs to know about the asbestos should be told about its presence in sufficient detail, eg maintenance workers, contractors and occupants. People who simply occupy premises only need to be informed, where necessary, of the location of the ACMs, so that the ACM will not be disturbed during normal occupational activities. Occupants should be instructed not to do anything which could damage or disturb the ACMs and to report any accidental damage promptly.

138 ACMs can be labelled clearly with the asbestos warning sign (see Schedule 2) or some other warning system (eg colour coding) can be used. If labelling is not used, the dutyholder must make sure that those who might work on the material know that it contains or may contain asbestos, before they start work.

139 It can save time and prevent confusion if the location of non-asbestos material, which could be mistaken for asbestos, is noted in the asbestos register and drawing.

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**Repair and removal of asbestos**

140 Some damaged ACM can be made safe by repairing it and either sealing or enclosing it to prevent further damage. If this can be done safely, the dutyholder should ensure the area is marked after it has been repaired and make sure it is on the record of asbestos locations.

141 If ACM is likely to be disturbed during routine maintenance work or daily use of the building, it will release fibres. If it cannot be easily repaired and protected, the dutyholder should have it removed.

142 This work must be carried out by someone trained and competent to carry out licensable work, NNLW, or non-licensable work, as appropriate.

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**Reviewing and updating the management plan**

143 As a minimum, the management plan, including records and drawings, should be reviewed every 12 months. It should also be reviewed if there is reason to believe that circumstances have changed (eg there is a change of use of building, work being undertaken, ACMs removed or repaired etc). The plan, including records and drawings, should then be updated accordingly.

144 Any identified or suspected ACM must be inspected and its condition assessed periodically, to check that it has not deteriorated or been damaged. The frequency of inspection will depend on the location of the ACMs and other factors which could affect their condition, eg the activities in the building, non-occupancy etc. There will also be events or changes, eg maintenance work, new tenants or employees, that should also trigger a review of the plan.

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145 The effectiveness of the current management plan should be reviewed to:

- highlight the need for action to repair/remove ACMs;
- raise awareness among all employees;
- raise issues which may affect the management plan, including:
  - changes to the organisational structure and/or staff;
  - resourcing the management plan;
  - changes to company procedures;
  - changes in building use/occupancy/refurbishment plans;
  - any instances of failure of the procedures, eg where procedures have not been followed and why not; where procedures have been inadequate and why; and where exposure to airborne asbestos fibres has occurred.

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146 There should be periodic checks to make sure that the arrangements and procedures for managing asbestos are working and that people are fully aware of what they should be doing to comply with the duty to manage.

**Communicating and sharing the management plan**

147 Dutyholders should ensure that the management plan is made available to all the individual premises, so if there are separate site managers/building managers responsible for different premises on the same site, they must each make the information available to those in their respective premises.

Dutyholders should:

- tell employees what the management plan arrangements are;
- provide the emergency services with information on the location and condition of any known ACMs;
- provide copies of the management plan for employee representatives and trade union safety representatives.