

Asbestos – your responsibility?

What is the Duty

The duty to manage asbestos is contained in regulation 4 of the Control of Asbestos Regulations 2006. It requires the person who has the duty (i.e. the "duty holder") 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;
- 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; and
- 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 anyone to co-operate as far as is necessary to allow the duty holder to comply with the above requirements.

Who has the duty?

In many cases, the duty holder is the person or organisation that has clear responsibility for the maintenance or repair of non-domestic premises 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.

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