

The Control of Asbestos Regulations 2012

- post-implementation review

Health and Safety Executive

RPC rating: fit for purpose

Description of proposal

The Control of Asbestos Regulations 2012 (CAR 2012) came into force on 6 April 2012. CAR 2012 revoked and re-enacted The Control of Asbestos Regulations 2006 (CAR 2006) and fully transposed the main elements of EU Directive 2009/148/EC. In addition to transposing the directive, the main objective of CAR 2012 is to set out a framework for preventing exposure to asbestos from work activity or reducing exposure as far as is reasonably practicable. The core requirements of CAR 2012 include:

- assessing the risks from asbestos;
- putting in place measures to prevent exposure to asbestos;
- providing appropriate work equipment; and
- providing information, instruction and training to workers.

The regulations are supported by an HSE-approved code of practice setting out in more detail what duty-holders are expected to do in order to comply with the legal requirements.

CAR 2012 introduced a new category of ‘notifiable non-licensed work’ (NNLW) with asbestos. This refers to work where concentrations of asbestos fibres in the air during the work activity are unlikely to exceed the limits specified in the regulations, above which licensing is required, and where the activity is sporadic and of low intensity. The work must be notified prior to its commencement. Air monitoring, medical surveillance and health records for workers are also required. Notifiable non-licensed work with asbestos falls between the other two categories of ‘licensable work’ and ‘non-notifiable work’.

Licensable work refers to work where the concentrations of asbestos fibres in the air during the work activity are likely to exceed limits specified in the regulations or involve specific asbestos-containing materials. This includes most large scale asbestos removal and building refurbishment/demolition work where the presence of asbestos is known or suspected. It can be undertaken only by licensed contractors who fulfil the stringent criteria set out by HSE. The work must be notified at least 14 days prior to its commencement. Air monitoring, medical surveillance and health records for workers are also required.

Non-notifiable work refers to work where the concentrations of asbestos fibres in the air during the work activity are likely to be low. It covers activity such as maintenance and small scale asbestos work. This includes work undertaken by tradesmen such as plumbers and electricians, who may disturb asbestos as a consequence of carrying out their jobs. There is no requirement for notification, medical surveillance or health records.

CAR 2012 also places a 'duty to manage' asbestos on owners or managers of non-domestic buildings (including public, commercial and industrial buildings and the common parts of multi-occupancy domestic buildings). This involves identifying, assessing risk, and recording the location and condition of asbestos; and putting in place a plan to manage the risks from any asbestos in the building that they own or manage. Information must be passed on to any contractors or workers who may disturb asbestos while they are working on the building, so that they can put in place appropriate control measures.

Impacts of proposal

In line with government guidance for policies with a high impact and high profile, HSE has provided a detailed post-implementation review (PIR) with a high level of evidence. HSE has undertaken research with a range of duty holders, using a combination of qualitative (workshops and focus groups) and quantitative (survey) methods. There has also been desk-based research using questions to the labour inspectorates in other EU member states and consultation with wider stakeholders. HSE has undertaken an economic evaluation as part of the PIR that assesses the costs and benefits of the regulations.

The PIR explains that the individual duties in CAR 2012 have come about in a piecemeal process over approximately 20 years, with some of the duties being amended at different points, and that there was "*...never a definitive IA in place that captured all of the costs together, and the usefulness of the data in the different IAs was limited*" (paragraph 59 of Command Paper). The PIR, therefore, concentrates on the likely future costs and benefits, seeking to estimate the current and ongoing costs and benefits of complying with the regulations.

Benefits

HSE has been able to provide a monetary estimate of the benefit of the reduction in exposures that can be expected from the working practices required by the regulations. This comes from comparing two scenarios: one where businesses continue to take the actions required by the regulations and one where businesses stopped taking all of these actions. Analysis by HSE epidemiologists estimates that there would be a difference of 50,500 deaths (40,800 from mesothelioma and 9,700

from lung cancer) between the two scenarios over the period 2016-2115. HSE uses an estimate of £1.3 million as the average cost to society of a fatality from work-related cancer (broadly consistent with Department for Transport values in relation to road safety) to arrive at an estimated benefit of £28.8 billion in present value terms over the period to 2115. It is recognised that a scenario of businesses stopping all actions to control asbestos if the regulations were withdrawn is implausible. However, it is the appropriate scenario to compare against the costs of taking the prescribed actions in the regulations (see below). Nevertheless, HSE has provided an additional scenario where businesses only gradually stop taking some of the actions currently required by the regulation. This gives a present value benefit of £10.6 billion over the period to 2115.

Costs

For licensed work, notifiable non-licensed work and duty to manage asbestos, HSE used focus groups and a follow-up questionnaire to obtain estimates of cost. For non-notifiable work, this entailed an online survey of 94 duty-holders followed by 30 telephone interviews. Unfortunately, the resulting data did not allow HSE to calculate a robust cost estimate. Nevertheless, it has been possible to provide an indication of the scale of cost. Overall, the annual compliance cost of CAR 2012 is estimated to be in the region of £0.5 billion. This estimate has been aggregated from estimates of compliance costs relating to individual elements of the regulations. The main areas of these annual costs are estimated to be:

- Licensed work and NNLW (£225 million). The highest costs being in respect of:
 - o Regulation 10 – providing information, instruction and training to employees (£135 million)
 - o Regulation 24 – storage, distribution and labelling (£50 million)
- Non-notifiable work (£165 million). Consisting mainly of:
 - o Training (£96 million)
 - o Control measures (£62 million)
- Duty to manage asbestos (£120 million). Requirements in respect of keeping records of the location and condition of asbestos, and carrying out annual checks are expected to cost around:
 - o £79 million in respect of industrial/commercial buildings
 - o £33 million in respect of local authority managed buildings.

The prohibition on supply and use of asbestos (which goes back to 1985 for blue and brown asbestos) means that the stock of asbestos-containing materials will decrease over time. Going forward, the overall annual cost is, therefore, adjusted to allow for this. (This assumption has also been used in the benefits modelling.) Over the period 2016-2115, the cost is estimated at £10.3 billion in present value terms. The PIR notes that this is likely to be an overestimate, for example, because cost estimates provided by larger businesses in the licensed sector have been applied to the NNLW sector, where costs are expected to be lower. Given the uncertainties, HSE estimates the cost of the regulations to be in the “...high single billions of pounds over the period 2016-2115” (paragraph 166 of appendix 1).

Overall, based upon this analysis, HSE concludes that “*the evidence supports a judgment that the benefits of CAR 2012 outweigh the costs and will continue to do so for the foreseeable future, so long as exposures continue to be controlled*” (paragraph 166 of appendix 1).

Other key aspects of the PIR

The PIR addresses the extent to which the regulations are working and whether they have been implemented in the most appropriate way. The evidence from duty holders suggests that the regulations are achieving their objectives and have been implemented in a clear, consistent and practical way. However, the process evaluation undertaken for the PIR has identified specific areas where process or guidance could be improved. These include further clarity around the distinction between licensable, non-licensable and notifiable work and practical examples relating to how much information goes into the written plan of work (prior to commencing work with asbestos). The PIR explains clearly that these changes can be made administratively, without altering the regulations.

HSE encountered several problems in the collection of its cost data for the PIR and has set out a number of lessons which should be useful for future IAs and PIR (appendix 1, pages 5-6).

Quality of submission

HSE has undertaken a detailed and comprehensive PIR commensurate with the high impact and profile of the policy, including economic, process and impact evaluation. The PIR uses a good range of research methods, including focus groups, questionnaires and telephone interviews of duty holders. This helps compensate for the very low response rate to some of the questionnaires. The PIR provides an important and useful comparison of overall costs and benefits. The identification of specific areas where further guidance would be beneficial is also particularly useful.

There are some areas where the PIR could be clearer or strengthened.

As noted above, due to difficulties in comparison with previous impact assessments and the long latency of the health impacts, the PIR concentrates on the likely costs and benefits going forward, rather than those that have been incurred. The PIR is not, therefore, a conventional evaluation, although the approach is acceptable given the particular circumstances.

On the estimation of benefits, the PIR would benefit from providing greater justification for its approach, including how it relates to the Treasury Green Book guidance. It would have been particularly useful for the PIR to have undertaken sensitivity analysis on the appraisal period and discount rate assumptions. For example, it would be helpful to know what the cost benefit position would be using, say, a 30-year appraisal period and the standard discount rate, rather than 100 years at a reduced discount rate. The PIR would also benefit from providing further detail on how the present value has been arrived at from the annual cost, including how the decline in the stock of asbestos has been treated in the calculations.

The PIR refers to the health impacts being discounted at 1.5 per cent rather than 3.5 per cent to allow for the value of health to rise in line with real incomes, assumed to be 2 per cent in the long-term (footnote 25, page 29 of appendix 1). Although giving the same result, to be strictly consistent with the Glover and Henderson work referenced in the PIR, the value of the health benefits should be uprated by 2 per cent per year and then discounted at the standard 3.5 per cent.

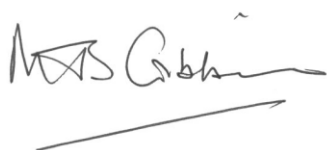
The PIR refers to the IA on the CAR 2012 regulations “*focussing solely on the change to define separately notifiable non-licenced work and did not cost any of the other duties under CAR 2012 where there was no change*” (page 29). The PIR would benefit from drawing out further the impact of the new notifiable non-licenced work category and examining whether a comparison could be made against the assumptions in the IA for this particular element.

The PIR reports detailed estimates of the costs of individual requirements under the regulations (pages 9 to 27 of appendix 1). The PIR would benefit from including a table setting out these estimates. This would also help make it clearer that they sum to the totals presented.

Departmental recommendation	Retain
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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Michael Gibbons CBE, Chairman