

The Control of Asbestos Regulations 2012

Lead department	Health and Safety Executive
Summary of measure	The Control of Asbestos Regulations 2012 set out a regulatory framework to protect workers and others by preventing exposure to asbestos from work activity or reducing exposure as far as is reasonably practicable.
Submission type	Post-implementation review (PIR)
Implementation date	6 April 2012
Department recommendation	Retain
RPC reference	RPC-HSE-5222(1)
Opinion type	Formal
Date of issue	5 September 2022

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The Health and Safety Executive (HSE) has produced a detailed PIR with a high level of evidence. It provides sufficient and proportionate evidence and analysis to justify the recommendation to retain the regulations. A particular strength of the PIR is its gathering of new survey data on costs to business which has enabled calculation of more-robust overall cost estimates for the regulations.

¹ The RPC opinion rating is based on whether the evidence in the PIR is sufficiently robust to support the departmental recommendation, as set out in the [better regulation framework](#). RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality²	RPC comments
Recommendation	Green	The PIR provides sufficient evidence and analysis to justify the recommendation to retain the regulations. The PIR explains why no amendments to the regulations are proposed at this stage but notes that the HSE will further consider potential areas for simplification or clarification, for example emerging from the PIR stakeholder survey. The PIR would benefit from discussing these areas further.
Monitoring and implementation	Good	HSE has provided a detailed PIR with a high level of evidence. The stakeholder survey gathered significant new information on costs to business. Overall, the approach, with its focus on changes since 2017 and areas where evidence for the first PIR was more limited, is proportionate.
Evaluation	Good	The PIR provides a good assessment overall and is especially strong in revisiting previous assumptions. The PIR presents revised estimates of costs and benefits in its economic evaluation. There are some areas for improvement in relation to assessment of impacts on small and micro businesses and further discussion of potential future improvements to the regulations or associated guidance.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

Summary of proposal

The Control of Asbestos Regulations 2012 (CAR 2012) came into force on 6 April 2012, updating and consolidating previous asbestos regulations. The core requirements of CAR 2012 include:

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

CAR 2012 classifies work with asbestos into three broad categories:

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

Notifiable non-licensed work (NNLW). This refers to work that is not licensed and does not fall into one of the categories listed at paragraph 14 (pages 7-8) of the PIR. NNLW must be notified prior to its commencement. Medical surveillance, health records and designated areas for work with asbestos are required.

Non-licensed work. This refers to work where the concentrations of asbestos fibres in the air during the work activity undertaken are likely to be low and covers such activity as short, non-continuous maintenance tasks and small-scale asbestos work. This includes work undertaken by workers such as plumbers, electricians, etc. who may disturb asbestos as a consequence of carrying out their jobs. There is no requirement for notification, medical surveillance or health records, and the work does not need to be carried out by a licensed contractor. Non-licensed work is referred to as 'non-notifiable work' in the PIR.

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 in buildings they own or manage;
- putting in place a plan to manage the risks from asbestos in the building; and
- passing on information to contractors or workers who may disturb asbestos while they are working on the building so they can put in place appropriate control measures and avoid unintended disturbance.

HSE published its first statutory PIR of CAR 2012 in March 2017.³ This was rated fit for purpose by the RPC.⁴ The first PIR of CAR 2012 was an extensive review of the regulations. The present PIR builds on the work of the first review but focusses on areas of change since 2017 and where evidence for the first PIR was more limited.

Recommendation

The PIR provides sufficient evidence and analysis to justify the recommendation to retain the regulations. Although the overall recommendation of the 2017 PIR was to retain the regulations, there were four recommendations for improvement, mainly around improved guidance. Three of these recommendations were implemented and the PIR provides good evidence that these changes met their objectives and have support of stakeholders (paragraph 40, pages 12-13, and pages 91-96). The PIR explains that the fourth recommendation, to align the frequency of medical examinations (to three from the present two years) was not implemented due to stakeholder opposition and the present PIR does not examine this area. The 2017 recommendation would have removed a requirement that went beyond alignment with EU Directive 2009/148/EC. The PIR would benefit from updating the evidence to support either changing or keeping this requirement.

More generally, the PIR notes that the HSE will be considering potential areas for simplification or clarification emerging from the PIR stakeholder survey and the Work and Pensions Select Committee (WPC) inquiry (paragraphs 13, 62 and 94). While the PIR presents a fairly detailed summary of the HSE's position on the WPC inquiry report's recommendations, the content of the WPC report appears to be considered largely out of scope of the PIR. However, given that the evidence provided to the WPC looked at how regulation of the asbestos industry is working, the PIR would benefit significantly from considering this evidence further. For example, the PIR refers to not having figures for the number of buildings in GB containing asbestos or the number of duty holders (paragraph 31, page 11 and the appendix) and both issues were flagged in the WPC report. Further consideration of evidence provided as part of the WPC inquiry could improve evidence for future PIRs and the implementation of the regulations. The PIR would also benefit from discussing in more detail possible interactions with policy development in respect of building safety.

Monitoring and implementation

Proportionality and range of evidence

In line with RPC guidance for policies with a high impact and high profile, HSE has provided a detailed PIR with a high level of evidence. Although the range of methods used is more limited than for the 2017 review, the online survey had 1,850 responses, covering a good range of stakeholders and businesses of different types and size (described at paragraphs 28-29, pages 10-11, and figures 3-4 on page

³ <https://www.gov.uk/government/publications/control-of-asbestos-regulations-post-implementation-review>

⁴ <https://www.gov.uk/government/publications/the-control-of-asbestos-regulations-2012-pir-rpc-opinion-green-rated>

112). The survey gathered significant new information on costs to business and the PIR includes an economic evaluation of the costs and benefits of the regulations. The PIR gives an overview of its desk-based research (paragraph 46, page 14, and paragraph 12 on page 103).

The PIR provides a good discussion and justification for the more limited range of evidence used compared to the 2017 PIR but would benefit from further discussion of whether this was restrictive in some areas, for example in following up on survey comments. Overall, the approach, with its focus on changes since 2017 and areas where evidence for the first PIR was more limited, is proportionate.

The PIR includes a useful comparison against requirements and practice in other, mainly EU, countries (page 24). The PIR could usefully expand its discussion in this area, explaining further, where practices differ in other countries, why they would not be appropriate for the UK.

Evaluation

The PIR provides a good assessment overall and especially against policy objectives, the case for continued intervention and comparison against original assumptions. There are some suggested areas for improvement described below.

Unintended effects

The PIR provides a sufficient discussion, at paragraphs 48-55 (pages 15-16), of possible unintended consequences of the regulations. Nothing significant was identified through the survey. The PIR would benefit from being explicit whether this was the view of stakeholders or an assessment by the HSE. The PIR could also address whether any of the relatively small number of “negative comments” were followed-up with the respondents.

Original assumptions and revised cost benefit estimates

The evaluation here is a particularly strong area of the PIR. As with the 2017 PIR, the HSE explains why there is no single, definitive IA against which a revised assessment of costs and benefits can be compared (paragraph 42, pages 13-14). However, the PIR conducts a detailed re-assessment of the assumptions made in the 2017 PIR, mainly using information from detailed questions in the online stakeholder survey (see below) and provides revised estimates of aggregate costs and benefits. The re-assessment of costs is thorough, providing new estimates against each of the individual regulations where the survey indicated that costs were significantly different to those assumed in 2017. Around 95 per cent of overall costs have been updated using survey evidence.

The bulk of the 2021 survey asked questions (Q1-91 in Appendix 1, pages 36-91 of the PIR) designed to gather further information on costs. The approach was to present the assumptions in the 2017 PIR and ask respondents to consider their accuracy. Where responses differed to ‘about right’, respondents were prompted to provide their own estimates. These estimates were then used to inform revised

estimates for the cost of the regulations in the ‘economic evaluation’ at Appendix 2 (pages 100-159).

The economic evaluation considered costs against the four main areas noted above, i.e. licensed work, NNLW, non-licensed (non-notifiable) work and duty to manage. For licensed work and NNLW, the estimated combined cost of £205 million per year was similar to that estimated in the 2017 PIR (£225 million). Estimated costs for non-notifiable work and duty to manage increased substantially from the 2017 PIR, to £312 million (£165 million) and £219 million (£120 million) per year, respectively. The increase for non-notifiable work came from the addition of a cost in respect of wages for new workers for the time taken to complete training and improved evidence in relation to costs such as risk assessment and control measures (e.g. PPE). The increase in relation to duty to manage falls mainly with the ‘industrial and commercial buildings’ category. Factors behind the increase include improved evidence (following survey reports that previous cost estimates were too low) and a corrected estimate of the number of businesses affected. Overall, the PIR estimates a cost of £741 million per year, up from £490 million in 2017.

The PIR would be improved by providing further overall commentary on how much of the change reflects improved evidence (this appears to be the main factor), as opposed to modelling improvements and inflation adjustments (the latter appears to account for around 12 per cent or approximately quarter of the overall change between 2017 and 2021). The PIR is very clear in that it goes through individual regulations in numerical order but could benefit from highlighting further the measures with the largest impact, and discussing the relative quality of evidence, more clearly. Where the PIR refers to “HSE’s view” the PIR could benefit from explaining further the basis for assessment (for example, paragraph 178, page 135).

The PIR follows the 2017 review in projecting the annual cost estimates over a 100-year period, to arrive at a present value cost figure of £12.4 billion. This is an increase of £2.1 billion from 2017 and reflects the higher annual cost estimates and a correction to the application of long-term discount rates. The costs would have been significantly higher but for revised modelling of the attrition rate, i.e. the rate at which all buildings are demolished or renewed through their natural life cycle. The PIR usefully covers this in its sensitivity analysis (page 151) but the PIR would benefit from providing a clearer summary of the how the revised approach to attrition affects the overall estimates.

Similarly, as with the 2017 PIR, the present PIR estimates the value of cancer deaths avoided against counterfactuals of no asbestos controls in place (scenario B) and a gradual removal of controls (scenario C). This results in estimates of 50,500 and 19,300 cancer deaths avoided, respectively over the 100-year period. Using HSE’s value of a prevented fatality (VPL) of £1.48 million, the former equates to a present benefit of £28.7 billion. This is very similar to the figure produced in the 2017 PIR. Deducting the £12.4 billion costs gives an indicative net present value of £16.3 billion, around £2.2 billion lower than the 2017 PIR estimate. The PIR would benefit from explaining why the HSE VPL is lower than the DfT VPL, particularly in view of the ‘dread factor’ associated with cancer deaths.

Small and micro-businesses (SMBs)

The PIR includes discussion, mainly at paragraphs 59-62 (pages 113-114), of the impact of the regulations on SMBs. The PIR reports an impressive 157 survey responses from microbusinesses (including 64 self-employed). This group was ‘hard to reach’ in the 2017 PIR. A similar number of responses was received from small business (table 103, page 96). The PIR would benefit from separating more consistently small from medium-sized businesses (figure 4, page 112). The PIR discusses how existing exemptions might apply to some SMBs. The PIR estimates the aggregate cost to microbusinesses of complying with the ‘duty to manage’ (paragraph 225, page 146). The PIR could be improved by discussing the proportionality of this cost relative to larger businesses. The PIR notes that that assumptions relating to SMBs could benefit from further research and engagement (paragraph 50, page 111). The PIR would benefit from setting out how this might be done. Future PIRs should continue to seek to improve evidence of impact of the regulations on SMBs.

Improvements or alternatives considered

See also ‘recommendation’ above. The PIR considers, at paragraphs 56-62 (pages 16-18), potential opportunities for reducing the burden on business. This notes that “*No consistent themes were identified*” from the survey but provides a thoughtful discussion of possible areas and commits to considering these further (these mainly involve simplifying through guidance rather than changes to regulations). The PIR could be more expansive about the general comments received from stakeholders on improving guidance (for example at paragraph 58, page 17). The PIR discusses briefly opportunities resulting from EU exit, notably removing the>NNLW category and reverting to two work categories: licensed and non-licensed. The PIR would benefit from discussing in more detail how this particular area might be considered further. Finally, given that the PIR notes there has been a large increase in the estimated compliance cost of non-notifiable work, such that it has moved from being the smallest cost area to the largest (paragraph 248, page 152), the PIR would benefit from discussing specifically any possibilities to reduce costs in that area.

Regulatory Policy Committee

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