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S o l i c i t o r s

ASBESTOS AT WORK

On 21st May 2004, Regulation 4 of the Control of Asbestos at Work Regulations 2002 (“the Regulation”) came into effect.

The Regulation makes every person who has responsibility for the maintenance of non-domestic premises (or any means of access thereto) by virtue of a tenancy agreement, or contract, or an obligation of any kind and every person who has to any extent control of such premises, a “dutyholder”.

It is possible for there to be more than one dutyholder in respect of premises, and their respective responsibilities under the Regulation will depend upon the nature and extent of their maintenance obligations.

In addition, there is a new duty upon every other person who has access to, or occupies such premises to co-operate with the dutyholder to enable to comply with his responsibilities under the Regulation.

It should also be noted that the term “non-domestic premises” also includes the common parts of all premises, whether commercial buildings, housing developments or blocks of flats; whether freehold or leasehold.

Under the Regulation, dutyholders are required to commission a “suitable and sufficient assessment” to determine whether asbestos is or is liable to be in the premises. Further assessments must be made if there is any significant change in the premises or there are other reasons to suspect asbestos may now be present. A full record of all assessments must be kept.

Where an assessment shows that there is or is liable to be asbestos the dutyholder must then determine the condition of the asbestos and the risk it poses to health. A plan must be drawn up identifying the location of the asbestos together with a list of the measures that are to be taken to manage the risk.

The plan should include measures for monitoring the condition of the asbestos, ensuring any asbestos is properly maintained or safely removed (if necessary) and ensuring that information about the asbestos is available to any person liable to disturb it, e.g. builders, carpenters, electricians, plumbers and the emergency services. The plan must be reviewed at regular intervals and if there is any reason to suspect it is no longer valid.

Any person successfully prosecuted under the Regulation will be liable to an unlimited fine and/or a prison sentence of up to two years.

This fact sheet is one in a series of publications designed to provide practical guidance on matters of interest to clients. Copies of all our fact sheets may be obtained free of charge on request from any of our Partners or Staff.

We believe the information contained herein to be correct as at October 2004. Whilst all possible care is taken in the compilation and presentation of this fact sheet, no responsibility for loss, occasioned by any person acting or refraining from acting as a result of the material in this fact sheet, can be accepted by the firm or the author.

The information in this Fact Sheet is not designed to be a definitive text on this issue. On the contrary, it is designed to merely serve as a guide to supplement what we can advise you on directly. If you have any particular queries, especially where the circumstances of a matter make it unusual, you should seek further advice.

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8 November 2004