

Amicus response to: Proposals for Revised Asbestos Regulations and an Approved Code of Practice. CD205

Amicus the union represents approx 1.2 million workers in most sectors of industry and the public sector in the UK. We wish to respond to this consultation regarding the proposed new asbestos Regulations and Approved Code of Practice (ACOP)

Amicus is in favour of the principle to combine the existing legislation together with a single ACOP. We see some of the proposals contained within the consultation paper as positive steps, and we will highlight these later in this response.

However Amicus has certain reservations regarding these proposals, and would take the view that any failure to increase or indeed lower standards to worker protection is not in the interests of social welfare. Indeed, some aspects of these proposals represent a decrease in worker protection. There is also a failure to grasp an opportunity to increase that protection in many key areas. Specific points in relation to those comments are:

- **The extensive scope of work allowed to be undertaken without a licence.** Under the “ Three part concept”
- **The casual adoption of the term: Sporadic and of low intensity** and the scope of the exemptions from licensing relating to that term, e.g. work with asbestos cement.
- **Removal of Textured coatings from the licensing regime**
- **Removal of Short Term Exposure Limits (STELs) from the Regulations to the ACoP**
- **Failure to review the term “reasonably practicable” in relation to prevention or reduction of exposure, and controls**
- **Failure to review the use of control limits as a proviso to provide Respiratory Protective equipment (RPE)**

Amicus welcomes the following:

- Changes in the method of fibre counting, in line with the World Health Organisation (WHO) standard, which will result in particles less than 3 microns being counted, leading to a more accurate reading. However this method allows discrimination of fibre types, so only asbestos fibres **should** be counted. We feel that the proposed and existing method used in this process, Phase Contrast Microscopy (PCM), may not provide accurate identification of asbestos fibres.
- A single lower control limit of 0.1 f/ml for all fibre types measured over 4 hours, (favoured over the directives 8 hours). Although, we have reservations about the viability of certain requirements only being activated above certain exposures.
- Proposals that employers using their own workers in their own premises, will no longer be exempt from the licensing requirements. Amicus fully supports this amendment.
- Changes to the clearance procedures, that will in effect require those issuing clearance certificates, meet the requirements of ISO accreditation to all four stages.

Scope of work to be undertaken without a licence

The intention of the proposed three-part concept, as stated in the proposals is designed in almost all cases to maintain a status quo. The scope of the work allowed is far too extensive and in effect produces no increased protection from contracting mesothelioma.

For example, within the proposals *non- continuous maintenance activities*, which are part of the above concept, great pains are taken to explain the different types of work allowed without a licence. Examples of these are the removal of asbestos paper linings, friction linings, floor tiles, drilling holes in asbestos insulating boards and so forth.

The type and extent of work proposed is extremely varied and vast; the concept of ordinary workers such as construction

workers, plumbers, electricians having to carry out this work in this modern era is barbaric and out dated.

Sporadic and of low intensity taken from the Asbestos at Work Protection Directive (AWPD).

Incorporated as one of the main concepts under the three part exemption criteria. The proposals give some examples of what this could mean in practical terms. For example work with asbestos cement and textured decorative coatings, picking up asbestos debris etc, linked to control limits.

The problem with this type of work is that very little control is exerted over how the work is done. For example if asbestos cement roofing sheets are removed using an angle grinder to cut the fixing bolts, then the control limit will be exceeded easily.

Licensing offers good protection and that the work is done and controlled properly. We would like to see a tripartite working group set up to review all the exemptions from licensing proposed.

Textured coatings

The attempt to remove such work from the licensing regime constitutes a reduction in worker/public protection and quality control. There is a vast difference between wet and dry removal and between negative pressure and normal conditions. In any event, the document indicates further research is necessary, and we remain unconvinced that the research shown, with its discrepancies, is enough to instigate the proposed changes.

We would add that if comparisons are going to be made, for example against the risk of working with asbestos cement, we would prefer to see that work licensed as well.

Short Term Exposure Limits (STELs)

Amicus is absolutely against the proposal to move the current STEL from the Regulations to the ACoP. We except the proposals are attempting to improve on the Asbestos Worker Protection Directive (AWPD), but this represents a lowering of standards. The

Directive represents a minimum standard, which in fact if left results in workers being exposed to 2.4 f/cm over 10 minutes. This is an unacceptable level, and would lead to the legal duty of RPE requirement placed in question at that level.

Amicus would like to comment also on the specific questions as follows:

Question 1

Amicus believes that there is no safe level of exposure to asbestos. The perception of ordinary workers required to undertake such work as proposed, is that they are under considerable risk to their health. They also experience extreme anxiety when they are faced with the fact that the law offers little protection if they refuse to do the work.

Amicus is aware of these facts, from the vast amount of enquiries that we receive from our members. There will be duties on employers to ensure people undertaking unlicensed work are competent, and that this work doesn't exceed the control limits. The reality is that ill trained workers are regularly exceeding limits due to bad working practices, and this will continue with the present proposals.

The risk of a fatal disease is a real one, and if all of these derogations are left in place, the low levels of general enforcement and bad working practices outside of the licensing regime will lead to many avoidable deaths. We feel that the exemptions from licensed work are far too extensive, so we cannot agree with the three-part concept as it stands.

Amicus would propose a tripartite working group be set up, to look closely at the type of work and materials set out in the proposals constituting exemptions linked to regulation 3 (2). We are extremely worried about the wide scope of tasks and materials, being afforded derogation from licensing.

Question 2

Amicus does not support the removal of work on textured coatings (TC's) from the licensing regime. The research, which is quoted as justifying the removal, was not done under practical conditions. We do not accept that the levels of exposure demonstrated under controlled negative pressure conditions reflect the actual likely exposure levels, which are encountered in the working environment, in particular where dry removal is attempted.

Also some of the data achieved using Phase Contrast Microscopy (PCM), were shown to exceed the four-hour control limit. Therefore further research is needed and is, we understand currently underway.

Risk from work with TC's is said to be lower than from many other asbestos related activities. However TC's were used extensively in domestic and industrial premises and the time and way it is removed poses a much higher risk than from other work. A figure of 2-5% asbestos is given for TC's by weight, but in reality the content by bulk is considerably higher.

Some processes with higher proportions of asbestos have been excluded from the current licensing system. Despite comparison's being made to these, Amicus believes the way TC's need to be removed makes these comparisons too narrow. We would like to see some of these materials such as asbestos cement included in any event, as licensing actually in its self affords a high level of security and good practice, needing less enforcement and assures highly trained willing staff.

Question 3

Amicus supports the proposals to align the new requirements for minimising exposure with the hierarchy of controls within COSHH. The importance of safe workplace first is imperative; also the use of RPE in addition to recommended controls in the hierarchy is essential we feel for this type of carcinogen. However we would like to see the term reasonably practicable replaced by the term practicable for requirements of controls, including RPE

Question 4

Amicus is totally in favour of proposals to implement a single control limit of 0.1 f/cm³. But we must add we are not in favour of removing the STEL from the Regulation to the ACOP. We would broadly support changes to the method of fibre counting. The proposed new method (from WHO) includes particles of above 3 microns, and discounts non-asbestos fibres. In relation to the latter, we would want to ensure the method is failsafe, when discriminating fibre type, to the effect that asbestos fibres are **not** inadvertently themselves discounted. We have reservations about the method used: Phase Contrast Microscopy (PCM)

Question 5

Amicus supports this proposal, which places a requirement on duty holders, to either identify the presence and type of asbestos, or to assume its presence. This, coupled with the duty to base any assumptions on the non-chrysotile alone scenario, is welcome.

Question 6

We agree with a requirement on all employers to seek evidence of competency prior to any work involving demolition or removal work, although we would ask whether this is wide enough to cover all such work involving asbestos. The duty to include a written plan of work is very welcome. But we feel paperwork alone is not evidence that firms are capable of carrying out the work; physical checks on how it's actually being done are essential.

Question 7

Amicus supports these proposals, and the approach to training mirrors that, within the current set up. However, in addition we would like to see a specific requirement to train safety representatives. Safety representatives may be required to deal with issues relating to potential or actual exposure, so this issue is extremely relevant.

Question 8

Amicus supports this

Question 9

Amicus supports a single Regulation, as this will galvanise existing requirements to enable easier reference and understanding. We have stated that any reduction of legal duty is something we would not support; therefore any movement of regulation to ACoP would be unthinkable to our mind.

Question 10

Amicus supports a single ACoP; this will lead to less cross-referencing and duplication.

Question 11

(a) Amicus agrees that a maximum time limit of three years is suitable for a licence, and it would support the comments that there needs to be a simple method of reviewing and removing licences within that period. We do not accept that revocation is only an option in “the most serious cases”. Any licence holder should have their licence removed if they were to put the health of their workers, or others at risk. Any breach of licensing requirements should be considered deadly serious.

(b) Amicus is fully supportive of the proposals to remove the exemption from licensing for employers using their own workers in their own premises. This is the type of improvement that will save lives, and simplify the already complicated derogation regime.

Question 12

Amicus supports this proposal, and we feel that this duty for analysts to have accreditation regarding clearance certification to all four stages is a vast improvement.

Question 13

We do agree with the proposals to have a short term Exposure Limit, but we would want it incorporated in a regulation not in the ACoP.

General

Amicus feels that more emphasis could be put on consultation, and the competence requirement enhanced.

Some of the proposals are positive but many negative aspects exist, and still allow workers to be put at too much risk. In particular, the amount of exemptions they advocate regarding licensing requirements. Although the licensing system is not perfect, it does provide a level of protection that would otherwise be missing. Also, in view of the simplification programme, it seems sensible that complicated derogations, if left out, would simplify this and other Regulations no end.

We have suggested a working group look at the suitability of all the derogations, regarding type of work and materials requirements. This would be to assess whether these are too broad and risky for the non-licence person to undertake the work. We know from experience, workers put in this situation are very worried about doing some of the work laid out in these proposals.

The term “reasonably practicable” does not appear in the directive, and its use we feel waters down the directives intentions. For example, provision of RPE where reasonably practicable. Since asbestos is a potent carcinogen duties of provision should be set at a much higher level.

The provision of RPE is also quantified by the proposals as being linked to the control limits being exceeded. Amicus would want a duty that RPE be provided and used whether the control limit was exceeded or not. In a lot of circumstances measurement of fibres are not undertaken, therefore good practice should be advocated and regulated.

It is not definitely clear in the prohibitions part of the proposals, that *products* extends to equipment which has parts containing asbestos. At present some companies bring in equipment from other countries for refurbishment, such as generators, train parts etc (asbestos product is usually removed on refurbishment). They remain unsure if the importation ban extends to this equipment, under the term *products*. The new Regulations must make it clear whether this is a total ban, and whether the term *products* covers everything.

Conclusion and further comment

Amicus would be happy to add to the above submission if required or to respond to any requests for clarification. Any initial approach should be made to the contact below:

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