



### **LAW DEPARTMENT CIRCULAR**

#### **Asbestos Management**

Persons responsible for non-domestic properties have a duty to manage asbestos within such properties, in terms of the Control of Asbestos Regulations 2012.

#### **What is a non-domestic property?**

All Church buildings and Church Halls are non-domestic properties. A Manse is classed as a domestic property and therefore does not fall within the legal obligation to manage, but it may be prudent to include a Manse in your management plan if there is any suspicion that asbestos might be present there.

#### **Who is responsible?**

The persons responsible for management of asbestos, called “dutyholder” in the legislation, are those responsible for the building. In most cases, this will be the Charity Trustees for the Congregation, i.e. the Kirk Session, the Financial Board (if any) i.e. Congregational Board, Deacons’ Court, Board of Management, and all members thereof. Practical arrangements can be delegated to one or two persons, e.g. a Fabric Convener or a Fabric Committee, who must report back to the Trustees for the Congregation.

#### **What must we do?**

It is necessary to inspect all parts of the Church premises to decide whether or not asbestos might be present, and to assess its condition. In doing so you must look at any building plans or other relevant papers or information which might be available, and you must inspect all parts of the building which are “reasonably accessible”. If you are quite certain that there is no asbestos anywhere in the building, no Management Plan is needed. If there is any asbestos present, or anything which might contain asbestos, the dutyholder must have in place an Asbestos Management Plan (the “Plan”), which should be updated regularly. This can be prepared by the dutyholder, but it is possible to have this prepared by a specialist firm.

#### **How do we know if there is asbestos in our buildings?**

Asbestos was banned in 1999, so any building built after the year 2000 should be in the clear. Also, there are materials such as stone, wood and glass which quite clearly contain no asbestos. However, in general, it must be assumed that other materials contain asbestos (Asbestos Containing Materials – “ACMs”) unless proved otherwise. Likely ACMs are lagging around heating and boilers, other insulation materials, artex coatings, floor tiles and ceiling tiles etc. Please NOTE that some congregations have discovered the presence of asbestos within Church organ workings, so the organ (if there is one) should also be checked, as well as other fittings eg fittings in a kitchen. If there is any doubt about any other materials within the buildings, they should be included in the Plan.

### **Must we pay for a professional asbestos survey?**

There is no obligation to engage a specialist firm to survey Church buildings for asbestos. It is perfectly possible for one or two members of the Congregation to carry out an inspection by looking at all parts of the premises and writing down a list of all areas and items which do, or may, contain asbestos, and its condition. There is a helpful step by step guide, with photos, on the HSE website [www.hse.gov.uk/asbestos/managing](http://www.hse.gov.uk/asbestos/managing). It is accepted that Trustees for a congregation might feel more at ease with their obligations if they arrange for a professional asbestos survey and there is no reason why they should not do so, if funds are available. The cost of such a survey ranges from £500 - £1000. If a major overhaul or construction project is planned which might involve work in areas with ACMs, then it would be wise to engage specialists at that point, and your architect or Project Manager would be able to give advice.

### **Must all ACMs be removed from our premises?**

It is not essential to remove ACMs from buildings unless they become damaged. Asbestos only becomes dangerous when disturbed, and it is not necessary to remove, e.g. lagging round pipes, if it is in good condition. However, if any ACMs are damaged or start to flake, then it is imperative that the area where they are be cordoned off, and licensed asbestos contractors be called in to deal with this.

### **Who is at risk?**

Anyone who comes into the vicinity of damaged ACMs is at risk – office bearers, members of the congregation, visitors to the Church.

Tradesmen such as electricians, heating engineers etc are at particular risk if there is any possibility that they might unknowingly drill into material which contains asbestos or otherwise disturb asbestos. It is therefore imperative that their attention is drawn to any ACMs or possible ACMs in the areas where they might be working. You can do this in two ways:-

1. Have full details of any potential ACMs in your Asbestos Management Plan, which should be shown to tradesmen before they carry out any work on the building (tradesman in fact have a statutory right to see such a Plan), and
2. Place warning signs where they can be seen clearly in areas with possible ACMs.

### **What does an Asbestos Management Plan look like and where should it be kept?**

There is no prescribed format for an Asbestos Management Plan, and its exact content will depend on the circumstances of the Congregation. However, it must contain a record of the location, extent AND condition of ACMs or presumed ACMs on the premises. It must contain an assessment of the risk posed by such ACMs, and a specification of the measures which are being taken to manage those risks. Measures which should be taken to manage risk include monitoring the condition, ensuring any ACMs are properly maintained or, if necessary, safely removed, and ensuring anyone who might come into contact with ACMs is made aware of their presence. The Plan should also take note of when any such measures were implemented.

The Plan should be kept in a central place where it is readily available to office bearers, and should be drawn to the attention of future office bearers. It must also be given to any tradesmen or contractors who come to work on your premises and who might come into contact with ACMs.

### **How often does the Asbestos Management Plan need to be updated?**

The legislation refers to “regular intervals” and it is suggested that your premises should be checked and the plan updated at least once a year, and preferably twice a year. If an incident should occur, such as someone inadvertently disturbing asbestos, or there is any significant change in the premises, the Plan should be reviewed at that point also.

### **Where can I obtain further information?**

There is a wealth of further information available on the website of the Health & Safety Executive ([www.hse.gov.uk](http://www.hse.gov.uk)). They also produce a useful booklet, “Managing Asbestos in Buildings” which can be downloaded free from their website or is available to purchase at: The Stationery Office, PO Box 29, Norwich NR3 1GN, Tel 0870 600 5522

### **What happens if there is no Asbestos Management Plan in place?**

The rate of death due to asbestos related illnesses in this country is still high, exacerbated by the fact that it can take many years for the symptoms to show. There is a clear responsibility to ensure that no one who enters premises for which we are responsible inhales asbestos dust, so far as reasonably practicable. In Scotland, powers to inspect your premises and check your Asbestos Management Plan lie with the local authority, and substantial fines can be imposed if there is no Plan in place.

### **SUMMARY**

- Find out if there is asbestos in the premises, its extent and condition
- Presume other materials contain asbestos, unless there is good evidence otherwise
- Make record of the above
- Assess risk from ACMs and potential ACMs
- Deal with risk and keep notes of how the risks have been dealt with
- Review and monitor the Plan regularly.

### **Finally...**

The Law Department is always happy to help with specific queries and you should not hesitate to get in touch if you have further questions.