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## Health and Safety Executive

### Proposals on Revised Control of Asbestos Regulations

#### Completing this questionnaire

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes or click on the square grey boxes to select an answer (eg 'Yes' or 'No').

#### Respondent's details:

<b>Name:</b>	JOINT UNION ASBESTOS COMMITTEE(1) and ASBESTOS in SCHOOLS GROUP(2)
<b>Job title:</b>	
<b>Organisation:</b>	UNION CAMPAIGN GROUP(1) and GENERAL CAMPAIGN GROUP(2)
<b>Email:</b>	dbuttle@atl.org.uk
<b>Street:</b>	ATL, 7 Northumberland Street
<b>Town:</b>	London
<b>Postcode:</b>	WC2N 5RD
<b>Telephone:</b>	020 7930 6441
<b>Fax:</b>	

**Size of organisation:**

Choose one option:

Not applicable <input checked="" type="checkbox"/>	1 to 9 employees <input type="checkbox"/>
10 to 49 employees <input type="checkbox"/>	50 to 249 employees <input type="checkbox"/>
250 to 1000 employees <input type="checkbox"/>	1000+ employees <input type="checkbox"/>
Self-employed <input type="checkbox"/>	

**Confidentiality**

<p>Please put a cross in the box if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)</p>	<input type="checkbox"/>
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<p><b>What is your type of organisation:</b></p> <p>Choose one option</p>	
<p>Construction, building/plant/equipment maintenance, repair and installation <input type="checkbox"/></p>	<p>Asbestos equipment and services – surveying, removal, monitoring, analysis, training <input type="checkbox"/></p>
<p>Building owner/manager/landlord/client <input type="checkbox"/></p>	<p>Charity/voluntary/pressure group <input checked="" type="checkbox"/></p>
<p>Academic/consultancy/research <input type="checkbox"/></p>	<p>Member of the public <input type="checkbox"/></p>
<p>Local government <input type="checkbox"/></p>	<p>National Government including Non-departmental public bodies <input type="checkbox"/></p>
<p>Trade or professional association <input type="checkbox"/></p>	<p>Medical professional <input type="checkbox"/></p>

Trade union <input checked="" type="checkbox"/>	Other <input type="checkbox"/>
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<p>If 'Other' please specify:</p>	<p>This response is filed on behalf of the Joint Union Asbestos Committee (JUAC) and the Asbestos in Schools Group (AIS).</p> <p>JUAC is made up of the six teaching unions (ASCL, ATL, NASUWT, NUT NAHT, Voice) and the main support staff unions (GMB, UCATT, UNISON, UNITE). JUAC submits this response on behalf of nearly a million members.</p> <p>JUAC supports the aim of the Asbestos in Schools Group (AiS). The aim of the AiS Group is to make United Kingdom schools and colleges safe from the dangers of asbestos both for staff and pupils. Accordingly our response focuses heavily on the ways in which the proposed amendments should lead to improved awareness and improved management of asbestos in UK schools and colleges.</p> <p>There is growing concern about the problem of asbestos in schools and how it is not being adequately addressed. The known facts are that asbestos kills, that it is present in at least three quarters of all schools and that the occupants of schools are dying of mesothelioma in increasing numbers. Because of the long latency period before the development of asbestos-related disease, it is not known how many school children have died as adults because of exposure at school, nor how many will die in the future.</p> <p>Because of this unacceptable death toll, there is an urgent need to assess the true scale of the problem and then allocate proportionate resources so that schools can be made safe.</p> <p>As asbestos materials deteriorate the number of school teachers dying from Mesothelioma has increased year on year from 15 in the period 1980 to 1985 to 64 in the period 2001 to 2005 with a total of 223 teachers dying of mesothelioma since 1980. School caretakers, cleaners, cooks, secretaries and teaching assistants have also died of this cancer. Although reasonably reliable figures are known as to how many teachers have died; because of the long latency period it is not</p>
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	<p>known how many adults have subsequently died as a result of exposure whilst attending school during childhood.</p> <p>The Committee on the Carcinogenicity of Chemicals in Food, Consumer Products and the Environment has been commissioned by the DfE to assess the relative vulnerability of children to low-level exposure to asbestos fibres. Its findings must inform Government policy on the management and removal of asbestos in schools.</p>
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### In what capacity are you responding:

Choose one option:

An employer

An employee

Trade union official

Health and safety professional/Safety representative

Training provider

Self employed

### Part 1 - Consultation Questions

Q1.1 Do you agree with the proposed definition of work for which a licence will be required?

Yes

No

**If you disagree please explain why.**

**Q1.2 Do you agree with the definitions proposed for the following terms:**

- |                                  |     |                                     |    |                                     |
|----------------------------------|-----|-------------------------------------|----|-------------------------------------|
| i) asbestos coating              | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| ii) textured decorative coatings | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| iii) asbestos insulating board   | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| iv) asbestos insulation          | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| v) asbestos cement               | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| vi) short duration work          | Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |

**If you disagree please explain why.**

There is an opportunity to clarify that any short duration work carried out by a licensed contractor will not preclude him carrying out licensed work during the following seven day period.

**Q1.3 Do you support the proposal to have a 3 year transition period before the requirement comes into force, for workers to have a medical examination prior to carrying out Notifiable Non Licensed Work (NNLW) with asbestos?**

Yes

No

If not, please suggest alternatives.

**Q1.4 Do you agree that for>NNLW the requirement to have medical examinations carried out by an appointed doctor or an employment medical advisor should be extended to include other registered medical practitioners?**

Yes

No

If you disagree please explain why.

## Part 2 - Views on the proposed guidance

**To help inform the development of guidance, views are invited on the types of asbestos-containing materials and work activities that should normally be categorised as Notifiable Non-Licensed Work (NNLW).**

Please provide your views. Please note that this response box has a 20,000 character limit (about 3,500 words). If you have additional points to raise, please send these in a separate e-mail to [asbestosconsultation@hse.gsi.gov.uk](mailto:asbestosconsultation@hse.gsi.gov.uk)

HSE suggest in this consultation that asbestos insulating board (AIB) in good condition should normally be regarded as “non friable” as it is compressed board held in a bonding matrix and that consequently AIB is low risk because exposure is reduced.

All AIB, regardless of the condition, should be considered friable. The regulations should not allow a contractor to decide whether AIB is friable or not based on the condition of the material. If that happens then school caretakers and maintenance people will inevitably treat all AIB as non-friable so long as the visible face appears to be in good condition. Tests have shown that even if the visible surface appears to be in good condition, fibres can readily released from the reverse face. Also enclosed AIB can release significant levels of fibres. If the regulation state that AIB in good condition is non-friable then that sends out the wrong message and will inevitably lead to the release of asbestos fibres, the contamination of the school and exposure of the person carrying out the work and potentially the occupants.

HSL state:

*“AIB can be quite friable and can be damaged relatively easily giving rise to airborne fibre concentrations of a few f/ml.”<sup>1</sup>*

Amosite fibre release in schools is frequently from AIB. In various tests the AIB has either been identified as being in good condition or it been presumed to be in good condition. In 1987 tests showed that significant levels were released despite the fact that the AIB appeared to be in good condition.

When the problem was re-identified in 2006 HSL expressed their concern that the AIB in the columns was enclosed with a steel casing and therefore it had been presumed it was protected, in good condition and not releasing asbestos fibres.<sup>2</sup> Also because the enclosures were tailor made it complied with the ACOP guidance for enclosing and encapsulation and therefore thousands of schools incorrectly presumed it was in good condition and not releasing fibres.<sup>3</sup> However in reality all the enclosure achieved was to act as a bellows when the columns were knocked and significant levels of amosite were released.

HSL expressed their concern about the casings by stating:

*“A release from an enclosed source of asbestos was unexpected and of particular concern as this is one of the recommended methods for remediation.”<sup>4</sup>*

<sup>1</sup> (Summary of fibre concentrations In CLASP construction schools containing asbestos. HSL/2007/22 Project Leader: Garry Burdett para 4.5 p19\_ [http://www.hse.gov.uk/research/hsl\\_pdf/2007/hsl0722.pdf](http://www.hse.gov.uk/research/hsl_pdf/2007/hsl0722.pdf) )

<sup>2</sup> Asbestos awareness handbook CLASP Location Tables ASBESTOS IN CLASP STANDARD DETAILS March 2003 para 1.04

<sup>3</sup> The management of asbestos in non-domestic premises. Regulation 4 the Control of Asbestos Regulations 2006 ACOP Para 105(b) p20 Regulation4 (8) (9)ACOP paras 80-84 p15-16

<sup>4</sup> 2008 ASTM Johnson Conference Airborne Asbestos Concentrations in System-Built Schools HSL Burdett 17 Jul 2008

It had been presumed that the AIB was in good condition; however a tailor made method of enclosing the asbestos material had been proven to fail for it caused the release of asbestos fibres rather than preventing it, and the whole process had passed undetected for forty years purely because the enclosure had concealed the damage that was occurring.

Under the proposed amendment to the CAR caretakers could, incorrectly, consider the AIB in good condition and not friable. If they then removed the casing they would be significantly exposed to asbestos.

Any AIB panel in a location where it can be knocked must also be considered friable. In school corridors or door surrounds are frequently AIB which are continuously disturbed by hundreds of children jostling each other in the corridors or pushing through doors. This material is friable.

HSE state in their :HSE Inspection Pack for Duty to Manage Asbestos in Premises Strategic Delivery Programme: FIT3 (Disease Reduction Programme)

## *Chapter 1 – Parent Project: Cancer (Asbestos) Project*

Intervention Strand: Duty to Manage Asbestos Enforcement Initiative 2007/8

2.3 This duty requires the duty holder to take the following key actions: .....

- to prepare and implement a plan to manage those risks, e.g. fibre release from friable AIB panels; and

4.2 During routine planned or reactive site inspections inspectors should consider enforcement action to deal with any immediate risks using the legislation detailed in OC 265/50 when they find the following circumstances: .....

- People using the building being exposed or liable to be exposed to a significant risk from ACMs in poor condition, e.g. walking past friable asbestos insulating board;

EPA define friable as: “*Friable asbestos-containing material (ACM), is defined by the Asbestos NESHAP, as any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy (PLM), that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure.*” (Sec. 61.141)

But EPA do add the additional phrase: “Any material which is friable, **or has a high probability of releasing fibers**, many asbestos-containing materials may become crumbled, pulverized or reduced to powder, thereby releasing asbestos fibers, or may deteriorate to the extent that they may release fibers if disturbed. Since inhalation of asbestos fibers has been linked to the development of respiratory and other diseases, any material which is friable, **or has a high probability of releasing fibers**, must be handled in accordance with the Asbestos NESHAP.”

AIB in good condition has a “high probability of releasing fibres.” Although the visible surface of AIB might appear in good condition and sealed the reverse face is unlikely to be sealed.

AIB use was widespread in schools and is often in positions vulnerable to disturbance.

Ordinary maintenance (e.g. painting AIB ceilings and walls, cleaning a light, drilling a hole to hang a picture) in schools can release significant levels of fibres and render AIBs friable.

It is the duty holders’ responsibility to identify the type, extent and condition of asbestos in schools and to devise and implement an asbestos management plan. It is unsafe to assume that AIB in good condition is non-friable and a proper assessment should be made and regular inspections recorded of all AIB in schools by the duty holder.

WATCH concluded that “The risk will be lower, the lower the exposure, but “safe” thresholds are not identifiable”) WATCH committee final position statement Feb 11).

Ordinary maintenance work in schools involving AIBs ought properly to require notification, medical surveillance and exposure record keeping.

### Part 3 - Impact on Business

**Q3.1 Has HSE identified the occupations affected by the changes correctly? See**

**Annex 2, Table 2 of the Impact Assessment, reproduced below, for details.**

<b>SOC Code</b>	<b>Occupation</b>	<b>Number of Jobs (thousands) 2009-10 GB</b>	<b>Percentage of workers Affected (lower limit)</b>	<b>Percentage of workers Affected (best estimate)</b>	<b>Percentage of workers Affected (upper limit)</b>	<b>Number of workers affected (lower limit)</b>	<b>Number of workers affected (best estimate)</b>	<b>Number of workers affected (Upper limit)</b>
5216	Pipe fitters	15,317	54%	60%	66%	8,271	9,190	10,109
5223	metal working & production maintenance fitters	217,595	18%	20%	22%	39,167	43,519	47,871
5241	Electricians, electrical fitters	231,683	18%	20%	22%	41,703	46,337	50,970
5242	Telecommunications engineers	41,835	54%	60%	66%	22,591	25,101	27,611
5244	TV, video and audio engineers	10,375	18%	20%	22%	1,868	2,075	2,283
5245	Computer engineers, installation and maintenance	39,827	5%	5%	6%	1,792	1,991	2,190
5249	Electrical/electronics engineers n.e.c.	79,211	18%	20%	22%	14,258	15,842	17,426
5314	Plumbers, heating and	189,849	63%	70%	77%	119,605	132,894	146,184

	ventilating engineers							
5315	Carpenters and joiners	237,889	63%	70%	77%	149,870	166,522	183,175
5316	Glaziers, window fabricators and fitters	42,807	30%	33%	36%	12,714	14,126	15,539
5319	Construction trades n.e.c.	220,756	18%	20%	22%	39,736	44,151	48,566
5321	Plasterers	49,560	27%	30%	33%	13,381	14,868	16,355
5322	Floorers and wall tilers	38,488	9%	10%	11%	3,464	3,849	4,234
5323	Painters and decorators	137,812	27%	30%	33%	37,209	41,344	45,478
6232	Caretakers	83,604	45%	50%	55%	37,622	41,802	45,982
8149	Construction operatives n.e.c.	79,439	18%	20%	22%	14,299	15,888	17,477
9121	Labourers in building and woodworking trades	169,056	18%	20%	22%	30,430	33,811	37,192
9129	Labourers in other construction trades n.e.c.	34,134	18%	20%	22%	6,144	6,827	7,509
Total		1,919,237				594,124	660,138	726,151

Yes

No 

**Please provide details of any occupations you think are missing from the list.**

Ordinary maintenance work (e.g. cleaning and hanging pictures) in schools can be carried out not just by care takers but by all staff.

School staff members are often unaware of the presence and the risks associated with AIBs and can unintentionally damage AIBs during normal school activities and may therefore also suffer from inadvertent exposure which should be recorded.

**Q3.2 Do you believe the estimates of the percentage of workers affected in each occupation in the above table from the Impact Assessment are realistic?**

Yes

No 

**Please provide some comments to support your answer.**

We do not have any information other than the HSE estimates and so cannot comment.

**Q3.3 Is the estimated cost of a typical medical examination per worker reasonable (between £85 and £120 per worker)?**

Yes No

Please provide some comments to support your answer.

We understand this to be the current price spread charged by appointed doctors.

**Q3.4 Do you think the time required for a typical medical examination (2 hours on average, including travel time) is realistic?**

Yes

No

If not please provide your estimate with justification.

The time does not allow for travel time and waiting and would suggest that 4 hours would be more appropriate.

**Q3.5 HSE has assumed that between 20% and 40% of workers will have medical examinations (30% compliance is our best estimate). Do you consider this a realistic estimate?**

Yes

No

Please provide some comments to support your answer.

JUAC and AIS aim to make UK schools and colleges safe from the dangers of asbestos for both staff and pupils.

According to Occupational Health figures on average 16 teachers per year have died from mesothelioma over the last decade up from only 3 per year on average in the 1980s.

The Government estimates that 75% of school buildings have asbestos containing materials.

ACMs are still commonly found in partition walls, door surrounds, AIB ceiling panels and lagging and are routinely disturbed during ordinary maintenance by all school staff who are usually unaware that they have potentially been exposed to asbestos fibres.

HSE will no longer inspect schools proactively despite the fact that when 152 local authorities were surveyed almost 30% failed to satisfy HSE that they were meeting their statutory duties.

JUAC own survey of health and safety representatives revealed that 80% had either not had or did not know if they had had asbestos awareness training. Only 28% confirmed that ACMs were clearly marked.

Without a national awareness campaign, mandatory asbestos training and specific school guidance we believe that very few school staff will have medical examination because they will be unaware that they are even working with ACMs.

**Q3.6 Is HSE's estimate of the time taken to notify per job (5 to 10 minutes per job for a format similar to but shorter than the ASB5 used by licensed contractors <https://www.hse.gov.uk/forms/notification/fodasb5.pdf> ) reasonable? NB Please use the Back button on your browser to return to this questionnaire.**

Yes

No

**Please provide some comments to support your answer.**

We are unable to comment.

**Q3.7 How many notifications for NNLW do you estimate you would need to make in a typical year?**

n/a

**Q3.8 If you are an employer:**

**(a) How many of your employees in total are likely to be involved in NNLW?**

n/a

**(b) How many jobs that fall within the NNLW category do you expect each of your employees to undertake per year?**

n/a

**Q3.9 HSE has assumed that between 30% and 50% of employers (includes the self employed) will notify. 40% is our best estimate. How realistic is our assumption?**

n/a

**Q3.10 HSE has assumed that record keeping will take 5 minutes per job on average and that 40% of duty holders will comply. Are these assumptions a reasonable estimate?**

Yes

No

**Please provide some comments to support your answer.**

We are unable to comment.

**Q3.11 We have assumed that the cost of retrieving asbestos records would be negligible because we believe they are rarely requested eg by employees. Do you agree/disagree? (NB this is NOT about registers of asbestos locations in buildings)**

Yes

No

**Please provide some comments to support your answer.**

With increasing numbers of school staff dying from mesothelioma we anticipate that there will be an increasing number of requests for asbestos records and that proper provision should be made; but that, if a central electronic data base is established, retrieval costs should be low.

**Q3.12 Do you believe the assumption that approximately 30% of workers will familiarise themselves with the new guidance to be realistic?**

Yes

No

**Please provide some comments to support your answer.**

Without a national awareness campaign it is unlikely the message will get to those that need to be aware.

**Q3.13 Is HSE's estimate of the time taken for a worker to familiarise themselves with the guidance and their duties (30 minutes per worker on average) reasonable?**

Yes

No

**Please provide some comments to support your answer.**

For companies doing licensed and unlicensed work 30 minutes ought to suffice but for duty holders in schools who do not have a good understanding of current requirements a national awareness campaign, mandatory asbestos training and specific school guidance is essential.

**Q3.14 What is the likelihood that business will pass any increased costs incurred as a result of changes to CAR06 onto clients in the form of higher prices?**

Very likely

**Q3.15 Do you think that the new requirements will result in a smaller pool of people who will carry out work in the NNLW category?**

Yes

No

**Explain what impact the change is likely to have in your view.**

We are unable to comment.

**Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?**

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n/a

**Is there anything you particularly liked or disliked about this consultation?**

n/a

**Please send your response by 4 November 2011 to:**

Susan Polack  
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Long Latency Health Risks Division  
Cross-cutting Interventions Directorate  
Health and Safety Executive  
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**E-mail:** [asbestosconsultation@hse.gsi.gov.uk](mailto:asbestosconsultation@hse.gsi.gov.uk)

**Thank you for taking the time to complete this questionnaire**