



Hazardous Homes To Let: Protecting Renters from Asbestos

Introduction and background

The Control of Asbestos Regulations 2012 (CAR12) place responsibilities upon duty holders to manage and limit exposure to asbestos. The duty holder could be either an employer, landlord or leaseholder. In some situations, it could be a combination of these.

Regulation 4 of CAR12 refers to the duty necessary to manage asbestos in non-domestic premises. Privately owned domestic properties such as houses are specifically excluded from these regulations. While flats and domestic buildings owned by councils, housing associations and private landlords are only covered by the law in respect of common areas, such as hallways and stairwells. The regulations do not require landlords to manage and maintain asbestos in all other private living areas, which are not for common use.

This paper challenges the current regulations surrounding the management of asbestos in domestic premises. The paper focuses on privately rented properties, which pose a unique set of challenges. It concludes with recommendations designed to ameliorate the problem and reform the current regime.

The UK's housing rental market

The UK housing market has faced a range of challenges over the past twenty years or more. Rising house prices have made it impossible for many to purchase their own homes, leading to a large proportion of people having to rent.

Falling numbers of social housing and rising buy-to-let properties means that there are now almost 5 million households, approximately 20% of all households, living in private rented accommodation.¹ Many of these properties contain asbestos, which can pose a risk if not managed correctly – those living in properties with asbestos have an increased likelihood of developing asbestos-related cancers (Korda et al 2017).

Unfortunately, numerous concerns have been raised over the management of asbestos in the private-rented sector, with landlords and letting agencies failing to inform tenants and contractors about the presence of asbestos in rented properties – in some cases legal action has been taken by tenants and contractors.

¹ UK Private Rented Sector, ONS, 2019. [[Available at: <www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018#:~:text=The%20number%20of%20households%20living,consistent%20at%2017.7%20million%20households>](https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018#:~:text=The%20number%20of%20households%20living,consistent%20at%2017.7%20million%20households)].



The management of asbestos is an issue in all domestic properties, including social housing and university accommodation. Universities are prominent civic institutions. It is in their financial and public interest to attract students by offering safe and appealing accommodation. Social landlords, including local councils and housing associations, have a social purpose to provide more affordable and secure homes. Councils have clear lines of democratic accountability and are consequently more transparent in how they comply with housing legislation and regulation.

However, privately rented properties, under the management of landlords and letting agencies, are primarily motivated by profit. Unfortunately, too many are less inclined to comply fully with housing regulations, with a quarter (25%) of private landlords in England failing to meet the government's Decent Homes Standard compared to 13% of social landlords.² This can have lethal consequences when it comes to the improper maintenance of asbestos.

CAR12 & Domestic Premises

CAR12 explains who is responsible for managing asbestos in common parts of multi-occupied domestic premises, which can be rented or privately owned.

The duty holder is responsible for foyers, corridors, lifts and lift shafts, staircases, roof spaces, gardens, yards, outhouses and garages (HSE 2012: 28).³ CAR12 specifically state that outside of these areas the duty to manage does not apply, though the landlord still has a duty of care to those working on the premises under the Health & Safety at Work Act (HSW) (1974).⁴

Identifying the duty holder for common parts of multi-occupied domestic premises can be complicated, however, as it largely depends on the specifics of the leasehold – particularly the degree of responsibility agreed over the fabric of the building and maintenance (HSE 2012: 31). The duty to manage falls on whoever has ultimate control of the property (owners). If there is an agreement, the duty holder may be either the owner, landlord,

² Ministry for Housing, Communities and Local Government (MHCLG), English Housing Survey Headline Report, 2017-18.

³ Health & Safety Executive (HSE). 'Table of domestic/non-domestic premises'. *Managing my asbestos* [online]. Available at: <www.hse.gov.uk/asbestos/managing/domestic.htm> Accessed: 24 August 2020.

⁴ CAR12 mentions that Section 3 of the Health & Safety at Work (HSW) Act 1974 (page 29) still applies to anyone conducting business in these areas (including landlords) - Section 3 stipulates that an employer or self-employed person must ensure, so far as is 'reasonably practicable', that the conduct of their undertaking does not present a risk to the health and safety of people who are not their employees.



managing agent, tenant, or shared between multiple individuals (requiring them to cooperate).

CAR12 duties under Regulation 4 do not apply to private areas of rented domestic dwellings such as living rooms, bedrooms, kitchens, and bathrooms etc. In some circumstances landlords will have duties towards tenants under the ‘general duties’ of the Health & Safety at Work Act (1974). These duties do not apply in all circumstances, however, only when landlords are conducting business undertakings on the premises. They are required, as far as ‘reasonably practicable’, to prevent ‘other persons’ (including tenants) from being exposed to risks to their health and safety.

Ultimately, the responsibilities landlords have will depend on the specific circumstances – social landlords with many properties would clearly be conducting a business undertaking, while private landlords with a single property would not. The former could therefore be bound by the Health & Safety at Work Act (1974), while the latter would not. This conveys how unclear the current regime is.

While CAR12 does not apply a duty to manage in all domestic spaces, it does require duty holders in both residential and commercial properties to minimise the risk of exposure to workers and tenants; although in most cases the landlord’s responsibility will not extend further than carrying out a risk assessment before work is done by a contractor (Entwistle 2018).

However, landlords are bound by a range of other regulations in domestic premises. Shelter Legal have outlined the different legislation that applies to asbestos in domestic premises, to clarify the law for landlords and tenants (Shelter 2017):

- **Housing Act 2004 (Part 1):** Local authorities have duty to keep housing provisions in their area under constant review. Powers available to the local authority: Prohibition Order, Improvement Notice, Hazard Awareness Notice, Demolition Order, Clearance Areas. Asbestos is one of 29 hazards listed in the Housing Health and Safety Rating System.⁵
- **Environmental Protection Act 1990 (Statutory Nuisance):** The presence of damaged asbestos in a dwelling could be considered to make the premises a statutory nuisance under the Environmental Protection Act 1990, in that such premises would be prejudicial

⁵ Housing Health & Safety Rating System. Available at: assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/15810/142631.pdf.



to health.⁶ Local authorities have a duty to detect and investigate any statutory nuisance complaints and hold the power to issue an Abatement Notice - this is usually issued on the person responsible for the premises (landlord).

- **Landlord and Tenant Act 1985 (Section 11):** Implied contractual right that landlords (public or private) must keep in repair the structure and exterior of the property - this includes asbestos in an external wall of roof. Tenant can sue landlords for breach of contract in these circumstances.
- **Defective Premises Act (1972):** If a landlord is the builder of the property, they have a duty to ensure it is not defective and are liable to be sued for compensation or to seek an order to have work carried out - this can be difficult to prove in the case of social housing (local authorities are not responsible for asbestos used pre-1999).

Both landlords and tenants would benefit from amendments to regulations, that clearly and concisely outline the responsibilities for managing asbestos in all parts and all types of domestic premises. This could involve extending the 'duty to manage' asbestos to all parts of domestic premises, via maintenance contracts, and by requiring tenants to help landlords in managing asbestos through a 'duty to collaborate'. Or it could involve removing the duty to manage asbestos in domestic premises from CAR12 and creating different duties under new legislation that specifically apply to asbestos in domestic premises, for example, through an update of the Landlord and Tenants Act (1985). Such measures would address the accountability problem that exists with our current approach to managing asbestos in domestic premises.

Accountability Problem

The absence of specific regulations for the management of asbestos in all domestic spaces blurs the lines of accountability, enabling a situation where landlords and letting agents can too easily turn a blind eye to asbestos or shift the cost of managing it onto tenants. Tenants often do not know if they are living with asbestos in their home. When they do find out they can struggle to convince a landlord to take the risk seriously and have the problem assessed by a professional. Tenants can also struggle to find advice and guidance or navigate their way through the legal web surrounding asbestos in domestic premises and often spend their own money on legal advice or representation. In worse case scenarios, this situation has led to tenants being both unknowingly and knowingly exposed to asbestos in their own homes.

⁶ s.79(1)(a) Environmental Protection Act 1990.



There are numerous stories of asbestos exposure in domestic premises, that could have been prevented if landlords and letting agencies were fully aware of and compliant with the law, as the case study below reveals.

Case Study: No duty on private landlords to manage asbestos

During the Covid19 lock-down a private landlord with a sitting tenant decided to sell his property. Having agreed an offer, the prospective buyer immediately engaged an asbestos consultant to assess the condition of asbestos in the basement of the property, to estimate the cost of removal.

The sitting tenant immediately became concerned, because she and her children had been living in the property for many years unaware that asbestos was present. The tenant approached both the letting agency and landlord to ask about the condition of the asbestos and the likely risk to her family. Both denied any prior knowledge and refused to undertake a professional assessment.

The tenant then flagged her concerns with her local authority, who ordered the letting agency to appoint an asbestos surveyor to examine the property. The work was done but following verbal instruction from the surveyor to urgently seal off the basement, the landlord refused to share the final report. The tenant has since left the property but has had to abandon her possessions, stored in the basement, due to the potential health risk involved in removing them.

The tenant has tried to identify who is responsible for the dangerous condition of the asbestos in her home – the council have informed her that oversight is with the HSE. The HSE have not responded. The tenant tried to engage a lawyer but was told time and again by the many law firms ‘specialising in asbestos’ that they only work on behalf of those with an existing asbestos-related disease.

Letting agents are a key stakeholder in the private-rented market, acting as an intermediary between landlords and tenants. They hold much power and responsibility for the management and maintenance of properties. Over the years, there have been multiple instances where landlords and letting agencies have been fined or sued for failing to adequately protect tenants and contractors from being exposed to asbestos.

In 2011, the letting agency ‘Rochefort Shugar’ paid £4,000 in fines for breaching Section 3(1) of the Health and Safety at Work Act (1974) for failing to inform an employee about the presence of asbestos, which led to exposure (Renshaw 2011). More recently, a landlord in Birmingham was ordered to pay over £1,800 in fines and costs after failing to provide a contractor with an asbestos register before work began on the premises (Norwood 2019).

Although landlords and letting agencies are occasionally issued with fines for breaching legislation, it is questionable whether these are enough of a deterrent – particularly given the degree of harm that can be cause to entire families in circumstances where exposure



occurs. Many cases do not reach the courts and tenants are often forced to pay to treat asbestos or remove it themselves. This shifting of duty and costs from landlords onto tenants reinforces the narrative that there is an unacceptable imbalance between the rights of landlords and renters in the private-rented housing market.

To combat this, it may be necessary to implement criminal sanctions in certain circumstances where landlords and/or letting agencies have been found to negligently expose tenants or contractors to asbestos. This would be justified on the grounds that asbestos exposure can result in fatal illness, which might not become noticeable for many decades (in the case of mesothelioma). For this reason, the harm caused by failing to comply with regulations could lead directly to a loss of life and should be judged in the court of law accordingly.

Conclusions and Recommendations

The Health and Safety Executive is the UK Government's agency for the health, safety, and welfare of the workforce. Consequently, the Control of Asbestos Regulations 2012, for which the HSE is responsible, is primarily a regulatory instrument for the workplace. As a result, residential premises in which asbestos can be found and where people may be exposed, is not adequately covered by a legal duty to manage asbestos and prevent harm.

The absence of this duty is especially problematic in the private-rented sector, where landlords are effectively operating a business concern but are not legally obliged to manage asbestos in all domestic living spaces, whether they know about the existence of this substance or not. This suggests that reform is needed to the current regulations relating to asbestos and tenant's rights. This is necessary to prevent avoidable exposure and potential harm; and to provide tenants with protection and legal recourse should they develop an asbestos-related disease.

We recommend:

1. Legislative Change

There are two approaches that could be taken here: extending the current 'duty to manage' to all parts of domestic premises or creating a new piece of legislation that covers asbestos in domestic premises specifically. The latter could be an amendment to existing Landlord and Tenant Act 1985, and the enforcement of this new legislation could be invested in local authorities.

2. 'Home Information Pack'

The introduction of a 'Home Information Pack' to include a complete asbestos register of the premises, would provide all homebuyers, landlords, and tenants with a domestic audit of hazardous materials found in all interior and exterior parts of the property. It would also serve to inform any contractors working on the premises about the presence and whereabouts of



asbestos. Landlords and letting agencies would face severe penalties for failing to comply. This would also aid in the creation of a national asbestos database that records the presence of all asbestos in UK buildings.⁷

3. Local Authorities Determine Minimum Penalties

Minimum penalties should be set for breaching asbestos regulation in domestic premises. Local authorities should have the ultimate decision on what these are, given that they have a duty to review housing provisions in their area. They can access data on asbestos easier than other governmental bodies and are best placed to determine how to enforce legislation.

4. Awareness Campaign

A public awareness campaign, reminding landlords and tenants of their respective duties and rights, should be introduced to strengthen compliance with new and existing legislation on asbestos in domestic premises.

⁷ Our policy paper titled 'Why a National Asbestos Database Can and Should be Established': www.airtightonasbestos.uk/research.



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