EXPLANATORY MEMORANDUM TO

THE CONTROL OF ASBESTOS (AMENDMENT ETC.) REGULATIONS 2026

2026 No. 1153

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Health and Safety Executive ("HSE") on behalf of the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Sir Stephen Timms, Minister for Social Security and Disability at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Kate Haire, Deputy Director of the Engagement and Policy Division at the HSE confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Moya Woolley at the HSE can be contacted by email: moya.woolley@hse.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the provision in the Control of Asbestos Regulations 2012[1] ("the 2012 Regulations") in relation to the cleaning of premises at the conclusion of work which exposes or is liable to expose persons to asbestos. It introduces a new requirement which has the effect that the person who assesses the cleanliness of the premises is appointed independently of the person who carried out the licensable[2] asbestos-related work on those premises. The purpose of this new provision is to strengthen the measures which protect persons who reoccupy the premises at the conclusion of the work from the risk of exposure to asbestos.

4.2 This instrument also makes minor consequential amendments to the 2012 Regulations to update or remove redundant references to other statutory instruments.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

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[1] The Control of Asbestos Regulations 2012 (S.I. 2012/632): https://www.legislation.gov.uk/uksi/2012/632/contents

[2] The term "licensable work with asbestos" is defined in regulation 2(1) of the 2012 Regulations: https://www.legislation.gov.uk/uksi/2012/632/regulation/2. See also https://www.hse.gov.uk/asbestos/licensing/licensed-contractor.htm

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The 2012 Regulations require premises, or parts of premises, to be thoroughly cleaned after the completion of work with asbestos. This requirement is the legal responsibility of the employer of the workers carrying out the work (or if a self-employed person, that person), i.e. the licensed asbestos removal contractor ("the LARC"). Once the cleaning has been completed and where the work is licensed, the LARC is required to carry out a thorough visual inspection of the work area in preparation for the 'handover' of the site to an asbestos analyst ("the analyst") for an independent multi-stage clearance procedure, known as the 'four-stage clearance process' ("the 4SC process").

The 4SC process

5.2 The four stages of site clearance certification for reoccupation are:

- Stage one – preliminary check of site condition and job completeness;
- Stage two – a thorough visual inspection inside the enclosure/work area;
- Stage three – clearance air monitoring[3]; and
- Stage four – final assessment post-enclosure/work area dismantling.

5.3 The analyst independently assesses the premises, or the area(s) of the premises, where the asbestos removal work has taken place to make sure the locations are thoroughly clean and safe to be returned to the owner/occupier for reoccupation (or, as appropriate, demolition). The inspection to establish that the area is fit for reoccupation must involve a four-stage examination by the analyst. The analyst then issues a clearance certificate called a 'Certificate of Reoccupation'[4] when they have completed the 4SC process and confirmed that the area has been thoroughly cleaned.

5.4 It is a legal requirement for the person employing the analyst organisation[5] to ensure they are accredited by the United Kingdom Accreditation Service[6] (UKAS) to the standard contained in ISO/IEC 17025[7] for the 4SC process. As part of this accreditation, the analyst organisation is required to demonstrate independence and impartiality.

Work and Pensions Committee report recommendation

5.5 In April 2022, the Work and Pensions Committee published its report on 'HSE's approach to asbestos management'[8]. One recommendation was for HSE to consider the potential for conflicts of interest when the LARC appoints the analyst to be used during the 4SC process (for example, due to pressure to release a site for reoccupation). The report recommended that it should be mandatory for the

[3] Air monitoring involves measuring airborne fibre levels to verify the effectiveness of cleaning following asbestos removal work.
[4] This is described as the "site clearance certificate for reoccupation" in regulation 20 of the 2012 Regulations.
[5] A four-stage clearance analytical organisation is an accredited entity that undertakes air sampling, fibre counting, and inspection activities associated with asbestos removal projects.
[6] United Kingdom Accreditation Service (UKAS): https://www.ukas.com
[7] ISO/IEC 17025: https://www.iso.org/ISO-IEC-17025-testing-and-calibration-laboratories.html
[8] Work and Pensions Committee report - 'The Health and Safety Executive's approach to asbestos management': https://publications.parliament.uk/pa/cm5803/cmselect/cmworpen/633/report.html

client/dutyholder[9] to appoint the analyst, and therefore it would be unlawful for the LARC to appoint the analyst who is involved in the 4SC process.

5.6 This practice was already recommended in the Approved Code of Practice ("ACoP") and Guidance[10] – 'Managing and working with Asbestos[11]' which has supported the 2012 Regulations and preceding regulations for nearly 20 years (the first edition was published in 2006 and the second edition in 2012). HSE's guidance 'Asbestos: The Analysts' Guide[12] (HSG248) also states that the organisation carrying out the 4SC process should have the necessary independence to act completely impartially.

5.7 Despite this recommendation, HSE's data from its asbestos licensing scheme indicates that the appointment of the analyst does not meet the recommended independence and impartiality in just over half of licensable asbestos removal work (53% for the period of June 2024 to September 2025). When the 4SC process is not completed as required there is potential for workers and building users to be exposed to asbestos after removal activity has been completed. Due to the health impacts of exposure to asbestos, HSE concludes a regulatory approach is necessary and proportionate.

HSE implementation of the Work and Pensions Committee recommendation

5.8 This instrument creates a statutory obligation to ensure that the LARC can no longer appoint the asbestos analyst used in the 4SC process. The measure is intended to strengthen the independence and impartiality of the 4SC process by removing potential conflicts of interest that may arise when the LARC appoints the asbestos analyst. This will help to ensure that persons who reoccupy the space in which the asbestos-related work was carried out are not at risk of exposure to asbestos.

What was the previous policy, how is this different?

5.9 Paragraphs 5.6 and 5.7 describe the recommendation in the previous guidance that any organisation carrying out the 4SC process should have the necessary independence to act completely impartially.

5.10 This instrument ensures that the analyst appointed to carry out the 4SC process is independent and impartial and that enforcement action can be taken where the appointment does not meet those criteria.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 20[13] of the 2012 Regulations makes provision for the standards for air testing and site clearance certification. The person appointing the analyst is required to ensure that the person carrying out the assessment is accredited by an appropriate body as competent to perform work in compliance with the paragraphs of ISO/IEC

[9] The term "client/dutyholder" is used to describe a person who under the 2012 Regulation has repair or maintenance obligations, control of or a right of access to premises and is therefore the person who ordinarily appoints a service provider.
[10] An Approved Code of Practice (ACoP) gives practical advice on how to comply with the law and the ACoP has a special legal status. Following the ACoP is enough to ensure compliance with the law, although it is also acceptable to use alternative methods to comply with the law. Anyone prosecuted for breach of health and safety law who do not follow the relevant provisions of the ACoP would need to show they had complied with the law in some other way, or a Court would find them at fault.
[11] HSE ACoP – Managing and working with Asbestos: https://www.hse.gov.uk/pubns/priced/l143.pdf
[12] HSE guidance - Asbestos: The Analysts' Guide (HSG248): https://www.hse.gov.uk/pubns/priced/hsg248.pdf
[13] Regulation 20: https://www.legislation.gov.uk/uksi/2012/632/regulation/20

17020[14] and ISO/IEC 17025[15]; these standards relate to matters including (but not limited to) quality systems, personnel, accommodation and environmental conditions, test and calibration methods, method validation and reporting results.

6.2 Regulation 1(2) and (3) of this instrument makes provision for split commencement which has the effect of allowing affected persons a transition period of 12 months from the coming into force date of this instrument to become familiar with, and adapt to, the substantive changes set out in regulation 2(2).

6.3 Regulation 2(2) of this instrument substitutes regulation 20 of the 2012 Regulations with an updated provision which retains certain requirements relating to the appointment of an analyst but provides that the analyst cannot be appointed by the person who cleaned the premises or parts of premises where the asbestos-related work was carried out.

6.4 Regulation 2(3) and (4) make minor consequential amendments to the 2012 Regulations. Regulation 2(3) substitutes the reference in regulation 31 of the 2012 Regulations to the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 with the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013[16]. Regulation 2(4) removes the reference in Schedule 3 to the Construction (Design and Management) Regulations 2007 (as this instrument has been revoked).

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes. HSE considers that the amended provision introduced by this instrument remains the only means to ensure the necessary independence and impartiality of the analyst, used during the 4SC process, from the LARC.

6.6 This approach also makes the amended provision subject to existing enforcement mechanisms and this is the only way of monitoring and achieving compliance with the outcomes described above.

7. Consultation

Summary of consultation outcome and methodology

7.1 An online public consultation[17] on the proposed amendment ran for nine weeks from 10 November 2025 to 9 January 2026. Targeted communications were sent directly to stakeholders including British Occupational Hygiene Society and the Faculty of Asbestos Assessment and Management, Asbestos Testing and Consultancy Association, Asbestos Removal Contractors Association, Asbestos Control and Abatement Division and the Asbestos & Environmental Safety Association. The consultation was also promoted via HSE e-bulletin with over 300,000 subscribers, which was opened over 1,650 times.

7.2 A total of 358 responses were received for the consultation (not all respondents answered every question), and the ‘HSE response to the consultation on legislative and guidance proposals for the Control of Asbestos Regulations 2012’ is published on

[14] ISO/IEC 17020: https://www.iso.org/standard/17020
[15] ISO/IEC 17025: https://www.iso.org/ISO-IEC-17025-testing-and-calibration-laboratories.html
[16] See https://www.legislation.gov.uk/uksi/2013/240/contents.
[17] Legislative and guidance proposals for the Control of Asbestos Regulations 2012 consultation: https://consultations.hse.gov.uk/hse/proposals-control-of-asbestos-regs-2012/

the same web page as the online public consultation, prior to this instrument coming into force.

7.3 There was strong support for making the 4SC process independent. From 329 responses, analysis shows that 71% (234) of respondents either agreed or strongly agreed with the proposed amendment to the 2012 Regulations, 12% (39) disagreed or strongly disagreed and 17% (56) neither agreed nor disagreed. Those respondents not in favour of the proposal suggested that the conflict is controlled through professionalism and accreditation (where this accreditation is in place). HSE data from notifications of licensed work showed that 53% of analysts are still appointed by LARCs and thus lack the required independence. Concerns around mandating the independence of analysts used in the 4SC process were due to potential challenges with gaining experience in appointing independent analysts.

8. Applicable Guidance

8.1 The ACoP – Managing and working with Asbestos[18], Asbestos, The Analysts' Guide (HSG248)[19], and other HSE web guidance has been updated prior to this instrument coming into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the annual impact on business is below the de minimis threshold of +/- £10 million equivalent annual net direct cost to business (EANDCB). A de minimis assessment of costs and benefits was undertaken and the impacts are outlined below.

Impact on businesses, charities and voluntary bodies

9.2 There is an impact on businesses, charities or voluntary bodies. The EANDCB is estimated to be £1.9 million. This comprises familiarisation costs and operational costs resulting from independent analyst appointment arrangements.

9.3 The legislation does impact small or micro-businesses.

9.4 To minimise the impact of the requirement to businesses, the approach taken is to update guidance to help them comply with this change made by this instrument. There will also be targeted communication with stakeholders in 2027. This instrument provides for a transition period of 12 months to allow for familiarisation with, and adaptation to, the changes.

9.5 There is no, or no significant impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to review the changes made by this instrument as part of the fourth statutory Post Implementation Review (PIR) of the 2012 Regulations, due to be published in 2032. As the third statutory PIR is due to be published in 2027, there would be insufficient time to monitor the new requirement

[18] HSE ACoP - Managing and working with Asbestos: https://www.hse.gov.uk/pubns/priced/l143.pdf
[19] HSE guidance - Asbestos: The Analysts' Guide: https://www.hse.gov.uk/pubns/priced/hsg248.pdf

following its full implementation in November 2027, taking account of the transition period.

10.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015[20], Sir Stephen Timms, Minister for Social Security and Disability has made the following statement:

"In my view, it is disproportionate to include a statutory provision to review the Control of Asbestos (Amendment etc.) Regulations 2026."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument introduces a new prohibition in the 2012 Regulations which, alongside the existing requirements and prohibitions in the 2012 Regulations, is subject to specific enforcement mechanisms prescribed in the Health and Safety at Work etc. Act 1974[21] and not this instrument. Section 33(1)(c)[22] of the 1974 Act provides that it is an offence for a person to contravene any requirement or prohibition imposed under health and safety regulations (which include the 2012 Regulations as those regulations are made under section 15 of that Act).

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").

[20] Small Business, Enterprise and Employment Act 2015: https://www.legislation.gov.uk/ukpga/2015/26/contents
[21] Health and Safety at Work etc. Act 1974 (HSWA): https://www.legislation.gov.uk/ukpga/1974/37/contents
[22] Section 33(1)(c) of HSWA: https://www.legislation.gov.uk/ukpga/1974/37/section/33