

HSE has recently received a number of enquiries from Training Providers seeking clarification on several issues relating to the asbestos awareness training and subsequent refresher training. The main areas of concern and confusion relate to whether refresher training is required for workers who have previously undertaken asbestos awareness training and the frequency of such refresher training. Another area of concern relates to training certificates and the length of validity.

I have set out below some additional information which clarifies the situation as to what is regulation, what is Approved Code of Practice and what is guidance. Hopefully this will help clarify the situation to ensure both what training providers and employers have to do to ensure they comply with their legal obligations.

Regulations

Regulations are law, approved by Parliament. These are usually made under the Health and Safety at Work Act, following proposals from the HSE Board. This applies to regulations based on EC Directives as well as 'home-grown' ones.

The Health and Safety at Work Act, and general duties in the Management Regulations, are goal setting (see 'What form do they take?') and leave employers freedom to decide how to control risks which they identify. Guidance and Approved Codes of Practice give advice. But some risks are so great, or the proper control measures so costly, that it would not be appropriate to leave employers discretion in deciding what to do about them. Regulations identify these risks and set out specific action that must be taken. Often these requirements are absolute to do something without qualification by whether it is reasonably practicable.

Approved Codes of Practice

Approved Codes of Practice offer practical examples of good practice. They give advice on how to comply with the law by, for example, providing a guide to what is 'reasonably practicable'. For example, if regulations use words like 'suitable and sufficient', an Approved Code of Practice can illustrate what this requires in particular circumstances.

Approved Codes of Practice have a *special legal status*. If employers are prosecuted for a breach of health and safety law, and it is proved that they have not followed the relevant provisions of the Approved Code of Practice, a court can find them at fault unless they can show that they have complied with the law in some other way.

HSC consulted in 1995 on the role of Approved Codes of Practice in the health and safety system and concluded that they could still be used in support of legal duties in specific circumstances.

Guidance

Guidance can be specific to the health and safety problems of an industry or of a particular process used in a number of industries. The main purposes of guidance are:

1. to interpret helping people to understand what the law says including for example how requirements based on EC Directives fit with those under the Health and Safety at Work Act;
2. to help people comply with the law;
3. to give technical advice.

Following guidance is not compulsory and employers are free to take other action. But if they do follow guidance they will normally be doing enough to comply with the law.

Refresher Training (ACOP L143 Paragraph 147)

Under Regulation 10 CAR 2006 employers have to ensure that every employee received relevant information, instruction and training and that this is given at regular intervals. The relevant parts of the ACOP then build on this regulation to clarify the 3 types of training, content and who should receive each type of training. Paragraph 147 sets out the requirements for refresher training.

Refresher training is applicable to **all types** of asbestos training including awareness training and should be given at **least once a year**. For workers who have previously received awareness training their refresher training can included as part of a **health & safety update or a tool box talk**. It is the employer's responsibility to ensure that the person or training provider, delivering the refresher training, in whatever format, is competent to do so.

The important point is that the worker is reminded and remains aware of the dangers of asbestos fibres. By following the ACOP including this paragraph the employer will be doing enough to comply with the law.

Training Certificates (ACOP L143 Paragraph 140 Guidance)

Another cause of concern that has been raised by several training providers relates the traceability of training certificates and that they should only be valid for no more than one year. It is important here to keep in mind what is a legal requirement, what is ACOP and what is "guidance." It is **not a legal requirement to ensure that training certificates are traceable and has an expiry period of one year and is therefore not compulsory**.

Several Training Providers have raised issues about UKATA's Certificate Registration Scheme however this is not a matter on which HSE should comment as it is a matter between the association and its members. It has been stated in a recent UKATA communication that it has been a long term goal of HSE to have a mechanism in place which registers all persons who have undertaken asbestos training - **this is not the case**. HSE has, in the past worked, with UKATA and IATP to collate statistical information on the numbers undertaking training to help assess the impact of the "Hidden Killer" Campaign. Similar information may be requested on an adhoc basis but we do not have any policy goal to establish such a database.

I trust that members of both UKATA and IATP find the above information useful and that their concerns are allayed.

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