



**WARNING
RADON GAS**



Radon: The new asbestos?

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Most organisations are aware of the consequences of failing to control exposure of workers to asbestos.

Fewer appreciate the risks of failing to control exposure to radon gas, an odourless, colourless, tasteless, naturally occurring gas that seeps through the ground and becomes trapped in buildings.

Like asbestos, it can take many years of exposure to cause ill health. When it does, the results are often fatal, as exposure to high levels of radon, which is naturally radioactive, leads to a greatly increased risk of lung cancer.

Small amounts of radon are naturally present in the air and in buildings of all types, ages and locations. It has long been recognised as a health problem and workplace exposure levels are set by the Ionising Radiation Regulations 1999.

But it is not just in the workplace that the risks have been recognised. The Housing Health & Safety Rating System published by the Government under The Housing Act 2004 describes exposure to radon gas as a health hazard and recommends testing for public sector housing.

There is evidence that radon is likely to occur at higher levels within buildings in certain areas of the UK. The Health Protection Agency and the Building Research Establishment publish maps of the areas where it has been estimated that such high levels occur. However, these can often be misleading as there

is often a discrepancy between the maps and what is classified as an 'affected area'. Any building, whether or not in an affected area, can be susceptible to high levels of radon, particularly any property with a basement or underground levels which have large surface areas in contact with soil, through which radon gas can permeate.

There are set maximum levels for radon inside buildings. These levels are the point at which it is advised, or indeed required in the case of workplace, that action is taken to lower the concentration. The level for domestic properties is set at 200bcq/m³. In commercial properties it is 400bcq/m³.

The European Union is currently considering lowering the action levels to 100bcq/m³ and 200bcq/m³ respectively, later this year.

Current consideration of a revision of building regulations may lead to a requirement for non-permeable gas barriers to be installed in all new housing. These barriers – a low cost solution which prevents exposure – have to date not been a requirement. This is somewhat surprising given the health risks.

Employers and house owners should not just rely on maps of radon affected areas alone to assess risk. Tests for radon can be carried out easily and cheaply. Testing for radon is the only way to know whether health is at risk from the gas.

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Previous issues of the briefing are available on request

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The Health & Safety Executive can and does enforce compliance with radon levels in non-domestic properties, and has a team of specialist radiation inspectors that visits workplaces to ensure that radon risk assessments have been completed. Environmental health officers have identical powers in local authority enforced sectors. If high levels of radon are detected, then there are measures and techniques which can successfully reduce those levels.

According to research, the estimated number of occupational cancer deaths in the UK linked to radon is 370 per year, or almost 150 more than the average numbers of work-related deaths that occur each year whilst people are at work.

Asbestos has been seen over recent years to be a significant cause of litigation between organisations and their former employees. Exposure to radon gas has the potential to follow suit. Employers would therefore be well advised to carry out tests – particularly in work areas below ground level or adjacent to earth retaining walls – complete assessments, and take remedial action where necessary.

Ron Reid is a partner at national law firm Shoosmiths, and director of the Radon Council, an independent not-for-profit regulatory body governing the radon industry.



Construction: One death is too many

An independent Government report – One Death is Too Many – reviews the underlying causes of fatal accidents in the construction sector, and makes a number of recommendations to prevent such deaths occurring in the future.

Recommendations

There are 28 recommendations made by the report, some quite far reaching in their scope.

The majority relate to further work requiring research, review or consideration by public bodies. The aim is to improve health and safety within the construction sector.

A key recommendation is that there should be positive duties placed on directors to ensure good health and safety management through a framework of planning, delivering, monitoring and reviewing.

The report goes on to state that such duties should be explicit, so that everyone knows what is expected and breaches can be more clearly identified. One could argue that these positive duties already exist, but any health and safety practitioner would welcome a clearer definition or explanation of such duties.

The report demands a higher standard of behaviour from all of those in the construction industry – including workers – and seeks to raise the profile of construction-related deaths, however caused.

In particular, the report highlights concerns that further down the sub-contracting chain workers are less secure, and on site health and safety management less satisfactory. One recommendation to improve this suggests extending 'gang master' licensing requirements to include construction work.

In addition, there is a recommendation that building regulations be extended so that health and safety processes are included when considering building control applications or building warrants.

The report pushes for greater involvement of trade unions, and suggests that the positive role trade unions can play in health and safety is not fully appreciated by the construction industry. It is recommended that more should be done, particularly by larger companies, to encourage joint working with unions.

Employees are urged to join a trade union, as it is considered that their families are more likely to receive support and advice in the event of a fatal accident.

What next?

But how will this further work be funded?

The report discusses lack of Health and Safety Executive resources, and recommends that steps be taken to improve this situation.

It also recommends that there should be a full time minister for construction, with a co-ordinating brief to lead on construction.

With time and resources always an issue, we will be keeping a watching brief to see what, if anything, can be done to implement the many recommendations contained in this report.

For a copy of the report, please visit:
www.official-documents.gov.uk/document/cm76/7657/7657.pdf

Summer issues

Sun protection

UV radiation is considered to be an occupational hazard for people who work outdoors, and the HSE has confirmed that skin cancer is now the most common form of cancer in the UK.

Employers should provide sun protection advice as part of their routine health and safety training and encourage employees to keep covered up or at least use sunscreen. Employers should consider scheduling work to minimise exposure, and encourage workers to drink plenty of water to avoid dehydration.



Flip flops

In the summer months, more and more open toed shoes and flip flops seem to make their way into the office environment.

Where clear floor polices are not strictly enforced and where there are obstacles or hazards that may cause someone to trip, employers should consider whether such footwear provides protection for working in an environment which, ultimately, they are responsible for.

Banning flip flops at work was the HSE's Myth of the Month for June.

In fact, its advice was that where the floor cannot be kept dry or clean, then wearing shoes that fit well and with good grip would be a better choice than flip flops.

Employers should not require steel toe-capped boots in the office, but may be wise to insist that little toes are properly enclosed!

Workplace temperature

Recent high temperatures have led to renewed trade union calls for a maximum temperature limit in which people can work.

HSE guidance states that temperatures should normally be at least 16 degrees Celsius for sedentary work, but where the temperature is uncomfortably high then employers should take reasonable steps to achieve a reasonably comfortable temperature.

The TUC is calling for employees to be sent home and their employers prosecuted if workplace temperatures reach 30 degrees Celsius for sedentary work (27 degrees if strenuous).

As a result, and at the request of the Secretary of State, the HSE has now instigated a review of health and safety at work in relation to workplace temperatures.

Achieving a reasonably comfortable temperature to suit all employees has always been an issue for employers. To try to achieve it, employers should provide air cooling systems, including portable fans, and try to seat employees away from areas subject to radiant heat or poor ventilation.

Case update

Builder jailed for 3 years

A builder has been convicted of manslaughter and jailed for 3 years following the death of a 15 year old labourer, the youngest person on record killed on a construction site.

The young labourer was crushed to death by a collapsing wall in April 2007 whilst being left to work unsupervised.

Hot fine

Oil giant Shell International Ltd has been fined £300,000 and ordered to pay £45,000 costs, after pleading guilty to serious breaches of the Regulatory Reform (Fire Safety) Order 2005 (RRO).

Within three weeks, fire crews were called to two small fires at Shell's London offices.

Fire officers were unhappy with the fire precautions in place and an audit was arranged. The ensuing inspection revealed that escape routes and fire exits had been blocked, fire doors were defective, and the amount of combustible material in the building had increased dramatically.

The building's risk assessment had not been reviewed for over three years, when an annual review would usually be appropriate.

The assessment identified some of the same failings observed during the inspection. If the recommendations had been actioned the fire/s may have been avoided.

A prohibition notice was issued and the subsequent prosecution led to the largest fine ever imposed under the RRO.

The importance of risk assessments is further highlighted by the recent fire at Lakanal House, in Camberwell, London, in which six people died. The cause is still being investigated.

However, the Tenant Services Authority has advised tenants that they should be in a position to be assured that the risk assessment made by their landlord fully captures any significant fire risks in their homes, and that appropriate action has been taken to deal with any risks that have arisen.

Landlords will need to consider the fire integrity of their premises and ensure fire risk assessments are up to date.

First corporate manslaughter charge is false dawn

The first corporate manslaughter charge under the Corporate Manslaughter and Corporate Homicide Act 2007 (2007 Act) will only shed limited light on the application of the Act to large companies.

This case, which involves a small business with only one active director, is unlikely to consider the test of 'what is senior management'. More importantly, it will not shed any light on whether the new Act makes it easier for large organisations to be prosecuted.

Had the 2007 Act not been in force, this prosecution would have been brought under the old common law 'directing mind' principle.

We will continue to follow the case through the judicial process. However, it is likely that we will have to wait for the prosecution of a large company before the technical legalities of the Act can be properly explored.

Smoking director coughs up £175

A company director has been fined £175 after being caught smoking at his desk by environmental health officers. He was issued with a fixed penalty, but failed to pay, so was summoned to court. This followed a previous warning for the company about smoking in enclosed spaces, following a tip-off.

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Home visits to swine flu victims

'Stay at home' is the advice given to those suffering the effects of swine flu. However, what precautions need to be taken by employees who need to enter affected individuals homes to, for example, carry out repair and maintenance works? In addition to following the latest government advice, employers should also take steps to introduce the following procedures -

1. Upon receiving a request for a home visit, you should enquire as to whether anyone in the household is suffering or suspected to be suffering from swine flu. If yes, can repair be delayed or is it an emergency? Introduce a system to ensure only emergency repairs are carried out to flu victims homes. Request the individual to notify you when they / immediate family are all fully recovered so that arrangements can be made for non urgent visits to be undertaken.
2. Exclude any staff with underlying health issues or who are pregnant from carrying out home visits to infected persons.
3. Seek co-operation of the flu victim to self isolate in different part of property whilst an emergency home visit is carried out.
4. Give personal hand sanitisers to staff with instructions for use.
5. Consider developing flow chart with the procedures/ advice and giving this to staff.
6. Surgical masks are not likely to be effective against swine flu unless they are of a respiratory type and the operative has been trained to fit the mask properly. The guidance to the NHS is that they only need to wear a mask within 1 metre of a patient. Properly managed staff should not find it necessary to come within 1 metre.
7. The most likely form of infection is by touching surface areas within the victim's home, therefore good hygiene practices and use of hand sanitisers before during and after visits is essential and the guidance should include advice to this effect.

Like any system ensure it is kept under review and amend should the Department of Health advice change.

The Primary Authority Scheme

B&Q, Iceland Foods, Moto and Boots are four of the first organisations to create a Primary Authority partnership under the new Regulatory and Enforcement Sanctions Act 2008 (RESA).

The Primary Authority (PA) scheme started 6 April 2009, and is available to all businesses operating across two or more local authority boundaries, regardless of size.

Under the scheme, and for the first time, businesses will be able to form a statutory partnership with a single local authority. The local authority can then provide businesses with advice on a variety of issues, including health and safety, trading standards, food law, fire safety, and licensing.

The aim is to provide companies with reliable and consistent regulatory advice from a single source, while the stated intention is to reduce the regulatory burden, and to improve business confidence.

Additionally, before other councils can begin proceedings against a company involved in a PA scheme, they will need to agree with the PA that the enforcement action is consistent with any advice given by the PA.

The Local Better Regulation Office is responsible for the administration of the scheme, and provides helpful guidance at: www.lbro.org.uk

Health and safety news

Free HSE guidance

From September 2009, the HSE will provide approximately 250 previously charged for publications that contain health and safety advice for free.

The publications cover the full range of HSE's guidance as well as approved codes of practice and guidance on regulations.

The publications will be available on the HSE's website in PDF format. Those who wish to have the professionally printed versions will have the option to buy online.

Employers' liability: revised guidance

The HSE has published a revised edition of the leaflet Employers' Liability (Compulsory Insurance) Act 1969: A guide for employees and their representatives. This brings it in line with the revised guide for employers.

Managing my asbestos

The HSE has issued a step by step guide which takes duty holders through the process of understanding their duties under Regulation 4 of the Control Asbestos Regulations 2006.

The guide begins with a set of questions enabling you to identify whether you are a duty holder, before taking you through steps that help you decide if there is asbestos present, and if so, how to manage it.

The guide is at: <http://www.hse.gov.uk/Asbestos/managing/index.htm>

