



PWYLLGOR IECHYD A DIOGELWCH HEALTH & SAFETY COMMITTEE

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| DYDDIAD Y CYFARFOD: DATE OF MEETING: | 14 November 2022 |
| TEITL YR ADRODDIAD: TITLE OF REPORT: | Health and Safety Regulations: |
| CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR: | Control of Asbestos Regulations 2012 |
| SWYDDOG ADRODD: REPORTING OFFICER: | Andrew Carruthers, Executive Director of Operations |

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Sicrwydd/For Assurance

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

This report is being presented to the Health and Safety Assurance Committee (HSAC) to provide assurance against a number of key Health and Safety regulations. This report concerns the Control of Asbestos Regulations 2012, and the approved code of practice L143 (second edition) Managing and Working with Asbestos.

Asbestos, the name given to a group of naturally occurring fibrous minerals which exhibit similar properties, is a category 1 human carcinogen. Asbestos-containing materials (ACMs) were used for a wide range of construction purposes in new and refurbished buildings until 1999 when almost all use of asbestos was banned. Buildings constructed after year 2000 can normally be regarded as being asbestos-free.

Where ACMs are in good condition and unlikely to be disturbed, they do not present a risk. However, where materials are in poor condition, or are disturbed or damaged, asbestos fibres are released into the air, which, if breathed in, can cause serious lung diseases, including cancers.

Approximately 2700 ACMs are known to be present within Health Board sites.

The Health Board has been previously commended by the HSE for its asbestos management arrangements in place.

The Compliance team is confident that robust arrangements are in place, with some suggested areas for strengthening.

Following the recent appointment of an asbestos compliance officer (within the compliance team) a high level management review was undertaken to assess the protocols we have in place as a Health Board to ensure adequate arrangements remain in place to manage asbestos. As a result of this, a decision was made to re-instate the risk entry for Asbestos onto Datix (previously removed) until such time as we are confident that all suggested improvement plans have been addressed in full.

The ACMs are managed by the Compliance team in line with the Health Board's Asbestos Policy and the Control of Asbestos Regulations 2012. Asbestos management actions include the labelling of higher risk materials, the encapsulation or enclosing of materials to prevent damage, and the periodic re-inspection of their condition. Removal is considered only if other management options are deemed unsuitable, due to the inherent risks from asbestos removal work, cost implications, and the inevitable disruption to services. ACMs are however removed when found to prevent essential maintenance or refurbishment work; normally by commissioning specialist (licensed) contractors, although lower-risk materials can be removed by trained Site Operations personnel (as non-licensable asbestos work).

The wholesale removal of all ACMs from the Health Board's property portfolio is widely regarded as cost-prohibitive due to the scale of the work and to the disruption to services that would be required. Additionally, buildings constructed before year 2000 can almost never be regarded as asbestos-free until they are demolished due to the often haphazard use of ACMs for packing and shuttering purposes during construction, resulting in the possibility of hidden and unidentified ACMs being hidden within the fabric of a building.

Whilst the Health Board continues to manage its ACMs appropriately, there remains a residual risk of asbestos fibre exposure to occupants if ACMs are inadvertently disturbed by accident or incident, or if hidden / unidentified ACMs are revealed and disturbed during maintenance or refurbishment work. The legislative requirement is combined with an assessment against each pertinent regulation.

Cefndir / Background

The Health and Safety at Work etc. Act (HASAWA) 1974 is the primary piece of legislation covering occupational health and safety in Great Britain. It has over 100 delegated regulations under it, many of which are applicable to the healthcare working environment, including the Control of Asbestos Regulations 2012 (CAR 2012). CAR 2012 provides the legal framework which defines what is meant by the term Asbestos, the requirements for duty holders to manage it with their premises, and the controls and necessities required to work with it.

It also imposes a legal duty on duty holders to identify the presence of asbestos prior to any refurbishment work or other work which may disturb the fabric of a building, and to provide information and instruction to staff regarding asbestos.

It is these duties, under regulations 4, 5, and 10, in addition to duties under regulations 11, 12, 13, 14, and 15, which are arguably most pertinent to the Health Board

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Regulation 4: Duty to manage asbestos in non-domestic premises

Legal requirements:

The Health Board is the duty holder for its freehold properties under this regulation, and also for some its leasehold properties depending upon contractual agreements. Non-domestic properties are defined as being all buildings other than private houses and multi-occupancy properties such as flats (although communal areas are covered by this regulation).

This regulation was first introduced in 2002 (imposed in 2004) and places a legal duty for the duty holder to manage the risk from asbestos within its properties, by means of the following actions:

- To take reasonable steps to find materials in premises likely to contain asbestos and to check their condition.
- To presume materials to contain asbestos unless there is strong evidence that they do not.
- To make a written record of the location and condition of asbestos and/or presumed ACMs and that the record is kept up to date.
- To assess the risk of anyone being exposed to these materials.
- To write a plan to manage the risks and to put the plan into effect to make sure that:
 - any material known or presumed to contain asbestos is kept in a good state of repair;
 - any material that contains or is presumed to contain asbestos is, because of the risks associated with its location or condition, repaired and adequately protected or, if it is in a vulnerable position and cannot be adequately repaired or protected, it is removed;
 - Information on the location and condition of the material is given to anyone who is liable to disturb it or is otherwise potentially at risk.

Compliance:

To comply with this regulation, the Health Board has attained the asbestos survey reports commissioned by the three former NHS Trusts between 2002 and 2004 to form the basis of a register of ACMs for all of its sites. New surveys have been commissioned where information has been found to be incomplete or insufficient, and intrusive surveys commissioned prior to refurbishment / construction schemes to identify hidden ACMs (as required by Regulation 5). All of this information has been added to the asbestos register, and new information continues to be added as new scheme-specific surveys are commissioned. Where the presence of ACMs cannot be confirmed or refuted, such location / items are recorded within the register as being presumed to contain asbestos. The physical condition of each ACM (confirmed or presumed) is assessed and awarded a numeric score, and this combined with a scoring matrix for the usage and occupation of the affected room produces a risk assessment score to assist within the prioritising of control and remedial actions. The location of ACMs within each building is also recorded on site-specific CAD drawings. All ACMs are subject to a re-inspection by a competent person at a normal frequency of every 12 months, and the risk assessment scores re-assessed. An Asbestos Management Plan document (AMP) has been written for each of the Health Board's sites, including the relevant extract from the asbestos register, and a copy of the marked-up CAD plan(s). Control actions such as closing-off areas found to be affected by debris or other high-risk ACMs, and remedial actions such as encapsulation / protecting or removing ACMs vulnerable to damage, are prioritised using the risk assessment scoring within the asbestos register / AMP documents.

The asbestos register can also be viewed via an intranet viewer application which links to photographs of each ACM taken during its last re-inspection, and to PDF versions of the relevant AMP document and CAD plans for each site.

Printed copies of the AMP documents for each acute site and its community sites, including asbestos register extracts and marked-up CAD plans, is given to the Site Operations team at the each acute site.

A printed copy of the relevant AMP document is also given to a designated responsible person at each community site, so that visiting staff and contractors can access this information on-site.

Improvement actions:

- Leasehold properties:

The leasehold property portfolio (including managed GP practices) and their existing asbestos information is under review by the Compliance team to identify any shortfall in compliance, and new surveys shall be commissioned to improve compliance as required. The review is due for completion by the end of November 2022, and the programme of additional surveys due for completion by the end of February 2023.

- Re-inspections and information updating:

The 2022-2023 asbestos re-inspection contract has been awarded to a UKAS-accredited asbestos consultant contractor by the Compliance team in conjunction with NHS Wales Shared Services Partnership (NWSSP) Procurement Services. The re-inspection programme is due to commence presently and the issue of new AMP documents is due for completion by end of February 2023.

- Accessibility of information:

The Compliance team are reviewing commercial digital database / portal-type solutions to improve the accessibility of asbestos management information to the Estates Department teams and contractors. Target implementation is by end of January 2023.

Regulation 5: Identification of the presence of asbestos

Legal requirements:

Regulation 5 requires employers to identify the presence of asbestos, its type, and its condition, before commencing any building, maintenance, demolition or other work, liable to disturb it. This regulation applies to all health board work including Major Capital, Discretionary Capital, and Fire team projects, and minor works schemes managed by the Site Operations teams.

Before carrying out any work which might disturb the fabric of a building, employers (meaning the Health Board and its building contractors) should find out if the part of the building likely to be disturbed contains asbestos and, if so, the type and condition. This should include assessing relevant information, such as that contained in construction plans or provided by duty holders responsible for the maintenance and repair of premises under regulation 4 of the Regulations (e.g. asbestos surveys or registers). If no records are available, or there are doubts about their accuracy / sufficiency, the presence of the most hazardous types of asbestos must be presumed until a suitable asbestos survey or additional investigation / sampling can be commissioned to determine the presence, type and condition of asbestos.

Compliance:

The Major Capital, Discretionary Capital, Fire, and Site Operations teams have commissioned numerous Refurbishment and Demolition Asbestos Surveys and sampling, and continue to do so, to support their schemes.

Improvement actions:

Following the appointment of a senior member of its staff to the Health Board's Compliance team, a major supplier of Refurbishment and Demolition asbestos surveys to the Health Board has recently closed their South Wales operations and are no longer able to provide this service to the Health Board. The Compliance Team and NWSSP Procurement team are vetting alternative suppliers.

Regulation 10: Information, instruction and training**Legal requirements:**

Regulation 10 requires employers to ensure that anyone liable to disturb asbestos during their work, or who supervises such employees, receives the correct level of information, instruction and training to enable them to carry out their work safely and competently and without risk to themselves or others. For most Estates personnel this will equate to Asbestos Awareness training and access to the Asbestos Register information; although a higher level of training is required if they are to conduct actual asbestos work to lower-risk ACMs (non-licensable asbestos work and sampling training).

All contractors working on Health Board sites are required to have received Asbestos Awareness training from their employer (and higher levels of training if conducting asbestos work), as well as being supplied with relevant Asbestos Register / Survey information from the engaging Estates officer.

Asbestos Awareness training must be refreshed every 12-months although this can be combined with other health and safety refresher training. Non-licensable Work training must be rigorously refreshed every 12 months.

Compliance:

A Basic Asbestos Awareness E-Learning presentation is already available to all Health Board staff via the learning development prospectus.

Full Asbestos Awareness training and refresher sessions have been arranged for Estates Department staff, including for Site Operations personnel (the highest risk group), and Soft FM team supervisors.

Non-licensable work and sampling training and refresher has been arranged for nominated Estates personnel.

Improvement actions:

Consideration is being given by the Compliance team to the further development of asbestos awareness training tailored to specific departments, and to inclusion within the E-Learning prospectus. Target completion and implementation is by end of 2023.

Regulation 11: Prevention or reduction of exposure to Asbestos**Legal requirements:**

Regulation 11 requires the Health Board to prevent employees being exposed to asbestos or, if this is not possible, to put in place the measures and controls necessary to reduce exposure to as low as is reasonably practicable.

Compliance:

Compliance with this regulation is achieved through the Health Board's Asbestos Policy in regard to meeting the requirements of the Control of Asbestos regulations 2012, including Regulations 4, 5, and 10.

In specific cases where higher risks of asbestos exposure have been identified, control measures such as physical restrictions, RPE / PPE requirements, and air testing to assess ambient asbestos fibre concentrations have been implemented.

Improvement actions:

The periodic review of the Health Board's Asbestos Policy by the Compliance team is now due and shall be completed by mid-January 2023

Regulation 12 Use of control measures and Regulation 13 Maintenance of control measures

Legal requirements:

Regulation 12 place duties on the Health Board Site Operations personnel to apply control measures where necessary, and for the Health Board to have procedures for the use of control measures. Regulation 13 requires the Health Board to carry out regular inspection and maintenance of their control measures to make sure they are kept in good efficient working order.

Compliance:

The Health Board have purchased six class 'H' vacuum cleaners (compliant with BS 8520-3:2009) for use as a primary control measure during non-licensable work and emergency decontamination. The vacuum cleaners have been distributed to the acute sites and are under the control of the relevant Site Operations teams. Non-licensable work training and refresher training includes the use of class H vacuum cleaners.

Non-licensable work trained Site Operations personnel are equipped with disposable FFP3 RPE (compliant with EN 149), and non-licensable work training includes procedures for storage, checking, use, and disposal. The RPE is also available for asbestos-emergency situations.

Improvement actions:

The asbestos compliance officer is reviewing the current arrangements for the mandatory periodic testing of the class 'H' vacuum cleaners by a specialist contractor to improve the effectiveness of the arrangements. Improvement to arrangements is due to be implemented by end of February 2023.

Regulation 14 Provision and cleaning of protective clothing

Legal requirements:

Regulation 14 requires the Health Board to provide employees with adequate personal protective clothing appropriate for the work they will be doing. It also sets out the requirement for proper cleaning, maintenance and storage of the clothing.

Compliance:

Non-licensable work trained Site Operations personnel are equipped with disposable Type 5 coveralls (compliant under BS EN ISO 13982-1:2004+A1:2010), in addition to other safety wear. Non-licensable work training includes procedures for use and disposal. The coveralls are also available for asbestos-emergency situations

Regulation 15: Arrangements to deal with accidents, incidents and emergencies

Legal requirements:

Regulation 15 places a duty on the Health Board to prepare procedures on what to do if there is an accidental, unplanned, uncontrolled release of asbestos fibres.

Compliance:

Asbestos Awareness training and refresher training includes training regarding the HSE-published guidance and procedures within Asbestos Essentials task sheet EM1 *What to do if you discover or accidentally disturb asbestos during your work*.

The Health Board’s procedures regarding asbestos accidents, incidents and emergencies are contained within the Health Board’s Asbestos Policy version 4 section 20 *Incident response and emergency procedures*, and within sections 15 and 21 of each of the site-specific Asbestos Management Plan documents.

Improvement actions:

The asbestos compliance officer is updating the Health Board’s current procedures in line with HSE-published guidance (Asbestos Essentials task sheet EM1), and for inclusion within the updated AMP documents to be issued by end of February 2023.

Argymhelliad / Recommendation

The Health and Safety Committee is requested to take assurance from this report that work has been undertaken and is underway to support full compliance with the regulations.

| Amcanion: (rhaid cwblhau) | |
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| Objectives: (must be completed) | |
| Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor: | 2.1 Provide assurance around the UHB arrangements for ensuring the health, safety, welfare and security of all employees and of those who may be affected by work-related activities, such as patients, members of the public, volunteers contractors etc. |
| Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score: | 222 - Exposure to Asbestos through contact with asbestos containing materials (ACMs). |
| Safon(au) Gofal ac Iechyd: Health and Care Standard(s): | Not Applicable |

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| Amcanion Strategol y BIP: UHB Strategic Objectives: | 4. The best health and wellbeing for our individuals, families and communities |
| Amcanion Cynllunio Planning Objectives | |
| Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019 | 2. Develop a skilled and flexible workforce to meet the changing needs of the modern NHS |

| Gwybodaeth Ychwanegol: Further Information: | |
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| Ar sail tystiolaeth: Evidence Base: | Contained within the body of the report. |
| Rhestr Termiau: Glossary of Terms: | Contained within the body of the report. |
| Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Ansawdd Iechyd a Diogelwch: Parties / Committees consulted prior to Health and Safety Committee: | No consultation to date but will be shared with Quality and Safety/Governance meetings as well as County Partnership Forums. |

| Effaith: (rhaid cwblhau) Impact: (must be completed) | |
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| Ariannol / Gwerth am Arian: Financial / Service: | There may be financial implications if the issues identified require monetary rectification. |
| Ansawdd / Gofal Claf: Quality / Patient Care: | There is a positive impact on staff safety, health and wellbeing through compliance with the Workplace (Health, Safety and Welfare) Regulations 1992. |
| Gweithlu: Workforce: | Potential for adverse future staffing impacts if this legislation is not complied with as it relates to employee safety. |
| Risg: Risk: | Risk to health and safety management. |
| Cyfreithiol: Legal: | Potential for enforcement action including Improvement Notices/Prosecutions and claims due to breaches in legislation. |

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| Enw Da: Reputational: | Potential for enforcement action including Improvement Notices/Prosecutions and claims due to breaches in legislation. |
| Gyfrinachedd: Privacy: | Not Applicable |
| Cydraddoldeb: Equality: | <p>No evidence gathered to indicate a negative impact on any protected group/s.</p> <p>Evidence gathered indicates a positive impact on the protected characteristics of human rights and pregnancy / maternity by providing a safer workplace.</p> |