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The Regulation of Use and Disposal of Asbestos Cement

Before November 1999 use and disposal of Asbestos Cement was not subject to the present EU Directives and HSE regulations in the UK. The Government's then policy on asbestos cement, as not being in need of any specific regulation, was affirmed by peer reviewed research carried out by Health & Safety Commission scientists, published in the HSC research paper, HSC/06/55. This research shows the real danger from breathing fibres from the amphibole forms of asbestos ('Blue' and 'Brown' Asbestos), and the absence of such danger from manufactured products containing Chrysotile ('White Asbestos')

However Government policy was reversed in November 1999 by the then Labour Government - following a parliamentary debate led by the then Labour MP Michael Clapham who had been greatly influenced by health claims lawyers and the Asbestos Removal Contractors Association. In that debate no reference was made to the difference between the amphibole forms of asbestos and chrysotile, which is a quite different naturally occurring mineral, nor was extreme exposure to raw asbestos fibres differentiated from casual exposure to manufactured products containing a small proportion of asbestos fibres.

New EU directives were introduced in 1999 to regulate the use and disposal of all asbestos and any manufactured products containing any form of asbestos - to be enforced by the Environment Agency under Hazardous Waste regulation.

The possibility of a UK derogation to allow the re-use of end of life asbestos cement sheets on farms was debated at the AGM of the Conservative Rural Affairs Group (CRAG) on 6th May 2009, since when CRAG has lobbied for such a derogation. This lobbying has been complicated by the split of responsibilities between Government Departments, in that Defra is the appropriate Ministry for disposal of asbestos cement, whereas the Department for Work and Pensions (DWP) is concerned with the aspect of work on asbestos cement.

In March 2015 the then Defra Parliamentary Under Secretary of State for Natural Environment and Science, Lord de Mauley, who had written to Steve Baker MP about asbestos issues on farms in November 2014, addressed the CRAG AGM at Portcullis House. Lord de Mauley was thanked for the preparation by Defra of the leaflet '*Handling and Disposal of White asbestos (Chrysotile) and Asbestos Cement - Some Advice for Farmers and Growers*' the draft of which he had sent to Steve Baker MP in November 2014. The following points were then explained to Lord de Mauley:-

- The differing properties of the two main types of asbestos - dangerous amphiboles (blue and brown) and Chrysotile which causes no measurable risk to health
- The way in which amphiboles cause mesothelioma, and the reasons why chrysotile soft fibres cannot cause mesothelioma
- That the Health and Safety Commission's 2006 Risk Analysis Report HSC/06/55 is still valid and supported by scientists specialising in fibre toxicology
- That General Farm Work is shown to be significantly more dangerous than working with asbestos cement
- That no convincing Government statement has been issued as to why the findings of HSC/06/55 are not reflected in regulations controlling disposal of asbestos cement

- That the possible re-use of farm end-of-life roofing sheets as a membrane beneath new concrete or buildings being built on the farm (for which CRAG has been pressing since 2009) would be a re-use, hence not waste - and would therefore fall outside scope of EU Waste Framework Directive. Furthermore implementation of such a derogation would not cost the Government any money other than administrative costs.

The Control of Asbestos Regulations 2012 placed further unnecessary burdens on farmers who may wish to instruct a farm worker to remove a decayed asbestos cement roofing sheet or carry out similar maintenance work on e.g. a faulty asbestos cement gutter. For such work the farmer is now obliged under CAR 2012 to conduct a formal risk assessment and record it, prepare a written plan of work, notify HSE in advance, provide respiratory equipment and protective clothing, define and sign the work area, arrange and pay for medical examination of the workers involved at intervals of no more than three years for the remainder of the worker's life and retain those records for 40 years. Whereas all of those provisions may be sensible for workers employed on the removal of amphibole forms of asbestos, they are shown by the findings of HSC/06/55 to be totally unnecessary for work on asbestos cement.

In 2011 the Supreme Court had ruled in effect that all cases of mesothelioma, an unpleasant form of cancer, were caused by exposure to asbestos – this has resulted in a spate of spurious claims for compensation one of which was described by Christopher Booker in an article published in the Sunday Telegraph on 6th September 2015. In this article Mr Booker described the claim for £300,000 against a Hertfordshire building firm for allegedly causing mesothelioma to a former worker who had been employed by the firm for a short time in the 1960s - at which time his work had included handling asbestos cement guttering and downpipes.

However this case is not unique, in that there have been many previous defendant companies faced with similar claims, such as that against a building and civil engineering firm, established in 1957, trading in NE Lincolnshire and run by a Director who had read Mr Booker's article. This Lincolnshire firm has significant assets, not dissimilar in value to the assets of many farms, and had recently been targeted by the same large firm of solicitors as had brought the case described by Mr Booker now acting for a different plaintiff former building worker. This worker had claimed that he had contracted mesothelioma while working with asbestos cement, and relied on the expert opinion of the same doctor of medicine as had been expert witness in the case against the Hertfordshire building, the subject of Mr Booker's article.

Advertisements inserted by this same legal firm are now appearing in the national press offering to claim compensation on behalf of any workers (which includes farm workers) ever exposed to asbestos and now suffering from any form of lung disease. Thus any former farm worker who subsequently suffered from mesothelioma (which can occur naturally or be contracted from other causes) and who had once worked on a farm where there had been an asbestos cement barn can now easily lodge a claim, on a no win no fee basis through this legal firm, against the farmer who had employed him in earlier years. The controversial ruling by The Supreme Court in 2011, mentioned by Mr Booker in his article, has resulted in an increased number of spurious claims involving the historic use of asbestos cement by former workers.

All farmers who have a farm building with asbestos cement roof or gutters can now potentially be sued for e.g. £300,000 by any employee who had once worked on the farm in past decades, and who had subsequently contracted mesothelioma from other causes The writer thinks it important that we in the Conservative Rural Affairs Group should be actively pressing for the review of regulations governing the use and disposal of asbestos cement which had been requested by the Rt Hon Owen Patterson MP and which may become the subject of an Adjournment Debate to be requested by Steve Baker MP.

Further information can be seen on the ***Progress Report on the Requested Revision of Asbestos Regulation in the UK*** which was prepared by a member of the Wessex Region of CRAG, Bryan Edgley MBE FRSA, (who may be contacted at <bryan.edgley@kenshamfarms.com> or by telephone to 01494 881373) in consultation with Dr John Hoskins FRSC C.Chem for Steve Baker MP FRSA.