

Department for Environment, Food and Rural Affairs

**Registration, Evaluation, Authorisation and Restriction of Chemicals
(REACH)**

**Consultation on the Marketing and Use of Second-Hand Articles
containing Asbestos**



**A response by the Association of Personal Injury Lawyers
August 2013**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Department for Environment, Food and Rural Affairs consultation on the restrictions on the second hand sale of articles containing asbestos. We understand the points raised in favour of the derogation – railways cannot be shut down whilst all trains are replaced with asbestos free models, for example. We are concerned, however, that the exemption should not become a “free for all” for all goods containing asbestos, and have concerns that this consultation does not sufficiently explore the dangers of asbestos exposure.

Whilst the scope of this consultation may in some ways be outside our remit, we understand the importance of properly regulating the use of asbestos, and the health consequences of failing to do so. We therefore offer views on matters within the scope of our remit.

Should the UK government take up the derogation so that exemptions can be issued from the asbestos restriction?

APIL understands that adoption of the derogation and exemptions would be a preferable approach to a complete ban on sale of articles containing asbestos. A complete ban could encourage vendors to seek to remove asbestos from the article to allow a sale to go ahead and increase the potential risk to health. We feel that this would be a particular problem in today’s economic climate. If the derogation was put in place, vendors would be allowed to sell items containing asbestos in situ without the need to remove the asbestos. The impact could therefore be that less asbestos is disturbed and therefore the risk of contact is kept to a minimum.

However, it is important that if the derogation is brought into force, it does not become a “free for all” for all goods containing asbestos, and if an article does contain asbestos, there should be a clear reminder of the duties and precautions for those who may come into contact with it. We stress the importance of warnings, guidance, and people being made aware of their duties should a product or vessel contain asbestos. It should be made very clear that the asbestos must not be tampered with or removed unless by a licensed contractor. People should be directed to the Control of Asbestos Regulations and the associated Approved Code of Practice and guidance. The HSE currently educates construction workers and similar, whose line of work may bring them into contact with asbestos, on how to correctly deal with asbestos. There is information on the HSE website such as how to spot asbestos and what to do if a person comes across it. We suggest that a similar approach should be taken here. It is not necessary to have signs all over train

carriages pointing out that the train, for example, contains asbestos; but where there is a risk that someone may come across it; the person should be made well aware of their duties.

Do you agree that formal responsibility for exemptions from the asbestos restriction belongs with HSE, the HSENI, the Office of Rail Regulation, and the formal REACH Competent Authorities, depending on their respective responsibilities?

Do you agree that in practice HSE and HSENI, as the agencies with the most practical experience of administering asbestos exemptions, should be able to issue exemptions at the request of and on behalf of the formal Competent Authorities, and under their oversight? And so should issue exemptions which other regulators may enforce?

We agree that formal responsibility for exemptions from the asbestos restriction belongs with the HSE, the HSENI and the Office of Rail Regulation, and the formal REACH Competent Authorities, as these are the most capable authorities to carry out this task. However, we question how the statement in section 3.2 of the consultation document would work in practice: “the formal competent authorities in the UK are the Secretary of State, the Scottish Minister, Welsh Ministers and the Departments of Enterprise, Trade and Investment and the Environment in Northern Ireland. They have all delegated day to day responsibility to the HSE.” We believe that the HSE, HSENI and the Office of Rail Regulation are the correct bodies to carry out this responsibility; however we are concerned that unless the details of the day to day delegation are set out clearly, the system will not be effective as there will be loopholes which will allow the authorities to “pass the buck” as no one has a clear idea of where the responsibility lies for various matters. Unless all organisations involved are aware of their responsibilities, then the delegation could lead to gaps in enforcement. The dangers of delegation, without first setting out clearly where responsibility lies, are demonstrated in the ongoing work on asbestos in schools. In England, there has been a Select Committee hearing and a steering group set up specifically to deal with asbestos in schools. It has been suggested that the issue of asbestos in Welsh schools is a matter for Wales and as such the Select Committee and steering group in England have been reluctant to examine this issue. There has been no similar Select Committee hearing in Wales, and no steering group has been set up, so the topic of asbestos in schools has fallen through the devolutionary gap, with confusion as to who is to take responsibility for the issues relating to this in Wales. This demonstrates that where there is delegated responsibility, it is important to ensure that all parties are aware of their responsibilities so that nothing “falls through the gap”.

Impact Assessment

We are concerned that the impact assessment focuses very heavily on costs, but does not assess the situation from a health and safety point of view. Consideration must be given to the effect of the derogation on health. We would have liked to have seen more on the potential impact on health as this is dealt with fairly briefly. Asbestos has extremely significant consequences for health, and should have been dealt with more thoroughly in the impact assessment.

General comments on the consultation document

We have a number of concerns with the consultation itself. We feel that the list of consultees is not sufficiently comprehensive, as a number of important stakeholders are missing and have seemingly, therefore, not been consulted. These include local authorities and local NHS trusts and health boards. Local authorities and councils may be particularly interested in the derogation to allow for the second hand sale of articles containing asbestos, because there could be implications for those who exercise the right to buy their council house. It is unclear whether the sale of a house would be included in the definition of “placing on the market” in the REACH regulations, but if it would, there would be implications for councils where the council house contains asbestos. It would be important in this situation to ensure that the buyer is fully aware of the issues surrounding asbestos, how dangerous asbestos exposure is and their duties on discovering asbestos. If the sale of houses would fall within the REACH regulations, it would be expected that councils and local authorities would be consulted on this matter.

- Ends -

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