

Debate Pack  
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By Bukky Balogun,  
Nikki Sutherland,  
Steven Kennedy,  
Brigid Francis-Devine,  
Carl Baker,  
Douglas Pyper

## Asbestos in the workplace

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### Summary

A Westminster Hall debate has been scheduled for 4.30pm on Wednesday 19 April on asbestos in the workplace. The debate will be opened by Jane Hunt MP.

# 1 Background

## 1.1 What is asbestos?

‘Asbestos’ describes any one of several naturally occurring fibrous minerals that have crystallised to form fibres.<sup>1</sup>

It was widely used in the UK as a building material for insulation, flooring and roofing prior to the introduction, in 1999, of a UK-wide ban on the importation, supply and use of all types of asbestos.

## 1.2 Health effects of asbestos

Asbestos is only dangerous when disturbed; if it is safely managed and contained, it does not present a health hazard.<sup>2</sup>

If a person inhales asbestos dust, they could go on to develop asbestosis – long term inflammation and scarring of the lungs. People with asbestosis are at a higher risk of developing other serious conditions such as:

- pleural disease – thickening of the lining covering the lungs (pleura)
- [mesothelioma](#) – cancer that affects the lining of the lungs, tummy, heart or testicles
- [lung cancer](#)

There is no cure for asbestosis, but some treatments may help with managing the symptoms. Further information about asbestos related illness, including symptoms, diagnosis and treatment, is available at:

- NHS, [Asbetosis](#)
- HSE, [Asbestos – FAQs; What are the health risks from asbestos?](#)

## 1.3 Statistics on asbestos injuries

In 2021/22 in England there were:

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<sup>1</sup> Public Health England, [Asbestos: general information](#), updated 11 July 2017

<sup>2</sup> HSE, [Asbestos](#), accessed 12 April 2023

- 13,974 hospital episodes where one of the recorded diagnoses was Pneumoconiosis due to asbestos and other mineral fibres.
- 34,433 hospital episodes where one of the recorded diagnoses was Pleural plaque with presence of asbestos.
- 16,777 hospital episodes where one of the recorded diagnoses was Mesothelioma.

Because more than one diagnosis can be recorded for a single hospital episode, there may be overlap between these two totals.<sup>3</sup>

More than 2,700 people are diagnosed with mesothelioma each year in the UK. Most cases are diagnosed in people aged 75 and over, and men are affected more commonly than women.<sup>4</sup>

## 1.4

### Asbestos-related deaths by occupation

Asbestos-related mortality for men was highest in construction and building occupations between 2011 and 2020.

The table below shows the number and proportion of deaths mentioning asbestosis in Great Britain in the occupations with the highest proportional mortality ratios (the number of deaths mentioning asbestos as a proportion of all deaths).<sup>5</sup>

The Health and Safety Executive does not publish data by occupation for women: around 2-3% of asbestos related deaths have been among women in recent years.<sup>6</sup>

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<sup>3</sup> NHS Digital, [Hospital Admitted Patient Care 2021/22](#), Hospital Admitted Patient Care Activity, 2021-22: Diagnosis

<sup>4</sup> NHS England, [Mesothelioma](#), accessed 13 April 2023

<sup>5</sup> Health and Safety Executive, [Asbestosis male mortality in Great Britain \(including and excluding mention of mesothelioma\) by occupation 2011-2020 and 2001-2010](#)

<sup>6</sup> Health and Safety Executive, [Asbestos-related disease statistics, Great Britain 2022](#) (PDF), November 2022

## Asbestosis mortality for men aged 16-74, 2011-2020

All deaths mentioning asbestosis, Great Britain

SOC2010		All deaths	Proportional
code	Minor occupation group		Mortality Ratio
814	Construction Operatives	14,200	418.1
531	Construction and Building Trades	82,287	308.2
521	Metal Forming, Welding and Related Trades	15,040	272.7
912	Elementary Construction Occupations	28,346	229.6
532	Building Finishing Trades	27,262	198.7
524	Electrical and Electronic Trades	35,265	158.8
812	Plant and Machine Operatives	32,570	134.5
913	Elementary Process Plant Occupations	25,511	125.0
522	Metal Machining, Fitting and Instrument Making	33,469	112.6
523	Vehicle Trades	22,702	105.1

Source: Health and Safety Executive, [Asbestosis male mortality in Great Britain \(including and excluding mention of mesothelioma\) by occupation 2011-2020 and 2001-2010](#)

## 2 Health and safety requirements

### 2.1 The Health and Safety Executive

The Health and Safety Executive (HSE) is the independent regulator of workplace safety in Great Britain.

The HSE website contains a [range of information and guidance on asbestos](#).

### 2.2 Employers' health and safety duties

While the importation, supply and use of asbestos has been banned in the UK since 1999, it's widespread use in buildings built before this date means that it remains present in buildings which are still in use.

A range of health and safety legislation may apply to work-related activity (depending on the specific nature) and the management of asbestos in non-domestic premises.

[The Health and Safety at Work etc Act 1974](#) (HSWA) is the overarching piece of health and safety legislation in Great Britain. It places a duty on employers to undertake their work in such a way as to ensure, so far as is reasonably practicable, that employees (and non-employees who might be affected by the work) are not exposed to risks to their health or safety.

[The Control of Asbestos Regulations 2012](#) (CAR 2012) places the person responsible for the maintenance of non-domestic premises under a 'duty to manage'. This person – the duty holder - must protect people using or working in that premises from the risks to health presented by asbestos exposure. The regulations require employers to take several steps to minimise the risk from asbestos, including:

- Carry out a risk assessment to determine if asbestos is present in the premises, prior to demolition, maintenance or other work which could expose employees to asbestos.
- Provide adequate training to employees who may be exposed to asbestos.
- As far as is reasonably practicable, prevent employees from being exposed to asbestos. Where this is not reasonably practicable, employers must facilitate the work to be carried out in a way that minimises risk and provide appropriate respiratory personal protective equipment.

The HSE has published an Approved Code of Practice (ACOP) on [managing and working with asbestos](#). ACOPs describe preferred or recommended methods that can be used (or standards to be met) to comply with regulations and duties imposed by health and safety legislation. ACOPs have a legal status, as [explained on the HSE website](#). If an employer is found not to have followed the relevant provisions of the Code, they will need to show that they have complied with the law in some other way.

## 2.3 Review of the Control of Asbestos Regulations 2012

In January 2023, HSE published the [second Post Implementation Review \(PIR\) of the Control of Asbestos Regulations 2012](#) (PDF). Evidence informing the PIR was based on 1,850 responses to online questionnaires which were distributed to organizations across industry and completed between May and June 2021. Based on its findings, HSE considered that:

- The regulations are achieving their intended objectives and that those objectives remain valid.
- Intervention by regulation is still required and remains the most effective way to control the risks of exposure to asbestos.
- It is not necessary to amend the provisions of CAR 2012 at this time.<sup>7</sup>

HSE concluded that it didn't consider a substantive revision of CAR 2012 to be necessary at this time but did commit to looking at the regulatory requirements around notifiable and non-notifiable work. HSE also said:

The 2022 PIR demonstrates that the impact of CAR 2012 has a large £16.3 bn net present social value<sup>18</sup> and that the case for maintaining the regulations remains strong. The cost benefit assessment allows us to conclude that the benefits of CAR 2012 outweigh the costs and will continue to do so for the foreseeable future, so long as exposures continue to be effectively controlled.<sup>8</sup>

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<sup>7</sup> HSE, [Second post implementation review of the Control of Asbestos Regulations 2012, S.I. 2012/632](#) (PDF), undated

<sup>8</sup> Ibid.

## 2.4

## Status of the Control of Asbestos Regulations 2012 as retained EU law beyond 2023

CAR 2012 form part of retained EU law – a form of UK domestic law intended to preserve the substantive law of the UK after EU law was “cut-off” as a source, following the UK’s departure from the EU.

[The Retained EU Law \(Revocation and Reform\) Bill 2022-23](#) is currently undergoing its Parliamentary stages. The Bill seeks to overhaul the constitutional architecture of retained EU law, making it easier to revoke, modify or replace through secondary legislation. Notably, the Bill would, as currently drafted, place a “sunset” on retained EU law, causing most of it to expire at the end of 2023. [The Library’s briefing on the Bill](#) provides further background.<sup>9</sup>

CAR 2012 is among the retained EU law which would, by default, expire at the end of 2023, along with some other health and safety law. [An article published by IOSH](#) discusses the implications of this further.<sup>10</sup>

The Bill is not yet law, and the Government has not yet set out its intentions as regard to the expiry or retention of the CAR 2012. This ought to become clearer as and when the Bill is enacted. During the Bill’s Committee Stage, an amendment seeking to exclude CAR 2012 from the sunset clause was not moved.<sup>11</sup>

[The Government was asked](#) what assessment it had made on the potential impact of the Bill on the a) ban on the use of asbestos in the UK and b) CAR 2012. Within her response, Mims Davies, Parliamentary Under-Secretary at the Department for Work and Pensions said:

the Health and Safety Executive (HSE) remains focused on ensuring that regulatory frameworks maintain the United Kingdom’s high standards of health and safety protection and continue to reduce burdens for business.<sup>12</sup>

Ms Davies said the CAR 2012 are owned by HSE, and that HSE would “continue to review its retained EU law to seek opportunities to reduce business burdens and promote growth whilst maintaining the United Kingdom’s high standards of health and safety”.

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<sup>9</sup> House of Commons Library briefing, [Retained EU Law \(Revocation and Reform\) Bill 2022-23](#), 17 October 2022

<sup>10</sup> IOSH, [What impact will the UK Retained EU Law Bill have on business requirements around health and safety?](#), 24 February 2023

<sup>11</sup> See amendment 25, [HL Bill 89-II Second marshalled list for Committee](#), 24 February 2023 and Hansard, [Retained EU Law \(Revocation and Reform\) Bill, Committee 2<sup>nd</sup> Day](#), Vol 828, 28 February 2023

<sup>12</sup> [PQ 148528](#), 23 February 2023



## 2.5

# Carrying out asbestos work

Asbestos work is classified by three corresponding health-risk categories. This determines who can carry out the work and what precautions must be taken in advance:

- [Non-licensed work](#), covers lower-risk asbestos work. It does not require an asbestos licence nor prior notification to the relevant enforcing authority.
- [Notifiable non-licensed work](#) also does not require an asbestos licence but does require employers to meet additional requirements; notifying the relevant enforcing agency prior to the work, designating areas where the work is being done, ensuring that employee medical examinations are carried out and maintaining employee health records.
- [Licensable work](#) covers higher risk asbestos work and can only be undertaken by a contractor that has been granted a licence by [HSE's Asbestos Licensing Unit](#) and has [notified the appropriate enforcing authority](#) prior to undertaking licensable work.<sup>13</sup>

The relevant enforcing authority for notifiable work will either be the local authority, HSE or the Office of Rail and Road depending on the type of work premises or activity, as set out on the [HSE website](#).<sup>14</sup> The website also provides further detail about requirements for carrying out asbestos work.

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<sup>13</sup> HSE, [Licensable work with asbestos](#), accessed 6 April 2023

<sup>14</sup> HSE, [Licensable work with asbestos](#), accessed 12 April 2023

## 3 Calls to mandate the removal of asbestos from all buildings

There have been calls for the Government to require the removal of asbestos from all buildings in Great Britain.

The All-Party Parliamentary Group on Occupational Health and Safety published its report, [The asbestos crisis; Why Britain needs an eradication law \(PDF\)](#), in 2015. It called for the “safe, phased and planned removal of all the asbestos that still remains in place across Britain”, setting out concerns about exposure and associated health risks. The group acknowledged that achieving this “will not be easy and there is a need for a realistic timetable”, but nonetheless recommended that work should begin.

### 3.1 The Work and Pensions Committee Inquiry on HSE’s approach to asbestos management

The Work and Pensions Committee held an inquiry into [The Health and Safety Executive’s approach to asbestos management](#) during 2021 and 2022.

[The Committee published its final report](#) in March 2022.<sup>15</sup> The report said that a “pan-government and ‘system-wide’ strategy for the long-term removal of asbestos, founded on strong evidence of what is best from a scientific, epidemiological, and behavioural point of view” was needed. It acknowledged Government and HSE’s overall ambition to “work towards there no longer being asbestos in non-domestic buildings”, but the Committee felt that neither had set out a clear strategy to achieve this.

The Committee suggested that HSE had been “slow to invest in research and to understand better the costs and benefits of more wholesale removal of asbestos and options for its safer removal”.

The Committee recommended that a 40-year deadline be set for the removal of asbestos from non-domestic buildings within 40 years, and that Government and HSE develop and publish a strategic plan to achieve this.

The Committee set out several other recommendations, including that HSE carry out further work on researching the extent of asbestos exposure in non-domestic buildings, HSE strengthen its work with and guidance to

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<sup>15</sup> House of Commons Work and Pensions Committee, [The Health and Safety Executive’s approach to asbestos management, Sixth Report of Session 2021–22](#), 30 March 2022

dutyholders and HSE increase their inspection and enforcement activity with respect to the Control of Asbestos Regulations 2012.

[Responding to the Committee's report](#) (July 2022), the Government said that addressing Great Britain's asbestos legacy remained a key issue, and that continuing to improve and build-on the evidence base around safe management and disposal of asbestos was fundamental. The Government referred to Great Britain having a "mature and comprehensive plan to managing legacy asbestos risks that aligns with the best evidence currently available" and cited existing requirements under the Control of Asbestos Regulations 2012. The Government did not support the Committee's recommendation for a fixed deadline for asbestos removal, citing both insufficient evidence as to its benefit:

The Government could only advocate a proactive course of action in this area if there is compelling evidence that the, undoubted, increase in exposure to asbestos workers that will result from active removal, possibly prematurely, is justified in terms of reducing risk of exposure to building users. At present this evidence is not there.<sup>16</sup>

And concerns about furthering the risk of exposure:

The Government remains concerned that moving to a fixed deadline for removal would increase the opportunity for exposure which remains difficult to support if the current risk of exposure is very low where asbestos can be managed safely in situ until planned refurbishment works. The use of many public estates would also be significantly disrupted by a removal deadline if this were introduced outside existing estates strategies. There also remains a concern that introducing a deadline would stimulate poor removal and disposal practices with a further risk of increase in asbestos exposures.<sup>17</sup>

The Government [re-iterated this position in February 2023](#).<sup>18</sup>

Ruth Wilkinson, Head of Health and Safety at the Institution of Occupational Safety and Health (IOSH) supported the Committee's recommendation for the Government and HSE to develop an "overall 'plan'" but cautioned against measures being taken without research and evidence around safe removal and disposal.<sup>19</sup>

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<sup>16</sup> House of Commons Work and Pensions Committee, [Government Response to the Committee's Sixth Report of Session 2021–22](#), 20 July 2022

<sup>17</sup> Ibid.

<sup>18</sup> [PQ 148528](#), 23 February 2023

<sup>19</sup> IOSH, [Lives depend on asbestos removal plans – IOSH](#), 21 April 2022

## 4 Asbestos compensation payments

### 4.1 Government schemes

For people suffering from asbestos-related conditions or their families, there are four Government schemes under which they might receive payments. Each scheme has a slightly different focus:

- [Industrial Injuries Disablement Benefit \(IIDB\)](#), a non-means-tested, tax-free, non-contributory benefit payable to people who have become disabled as a result of an accident at work, or because of one of over 70 prescribed diseases known to be a risk from certain jobs.
- The scheme set up under the [Pneumoconiosis etc \(Workers' Compensation\) Act 1979 \(PDF\)](#) which provides lump-sum payments for people suffering from lung diseases caused by exposure to certain dusts (including asbestos), where they are unable to claim damages because the employer has gone out of business. Claims can also be made by dependants if the person has died.
- The Mesothelioma 2008 Act Scheme (the "[2008 scheme](#)"), which provides up-front lump-sum payments to anyone diagnosed with mesothelioma, in recognition of the difficulties people face obtaining compensation from other sources, and the fact that people usually die within months of diagnosis. It covers groups previously not eligible for help, such as the self-employed, those exposed to asbestos in the environment and to family members exposed via workers' clothing. Payments can be made to dependants where the person has died. The scheme operates alongside that established under the 1979 Act, for those unable to benefit from it. It is funded by a "compensation recovery" mechanism, so that payments made are recovered from any subsequent successful civil compensation claim.
- The [Diffuse Mesothelioma Payment Scheme \(DMPS\)](#), which since 2014 has made payments to people with diffuse mesothelioma who were exposed to asbestos either negligently or in breach of statutory duty by an employer, and who are unable to bring a claim for damages against the employer or that employer's liability insurer. This is separate from the 2008 scheme, which continues to operate. The scheme is funded by a levy on insurance companies and makes payments to people first diagnosed on or after 25 July 2012. Like the 2008 scheme, payments can be made to dependants, where the person has died.

Further information on these schemes can be found in House of Commons Library briefing SN06012, [Asbestos-related diseases: payments from the Department for Work and Pension](#).

Statistics on claims and payments under Industrial Injuries Disablement Benefit, the 1979 Act scheme, and the 2008 Mesothelioma Scheme can be found on the [DWP's Stat-Xplore database](#).

Statistics on claims, awards and payments made under the DMPS since it was set up in 2014 can be found in the DWP's [Diffuse Mesothelioma Payment Scheme annual statistics April 2014 to March 2022](#). See also the [Diffuse Mesothelioma Payment Scheme annual review 2021 to 2022](#) published by DWP on 24 November 2022.

## 4.2

### Civil claims

A worker may be able to make a civil claim where they have been exposed to asbestos at work and this has resulted in personal injury. To succeed in such a claim, the worker will have to demonstrate that:

- the employer owed them a duty of care, one element of which is that injury was reasonably foreseeable as potentially arising from relevant actions or omissions
- the duty was breached
- the breach caused the injury.

It may be the case that multiple employers negligently exposed a single worker to asbestos, which has in the past created difficulty with apportioning liability for compensation. However, the [Compensation Act 2006](#) addressed that, by enabling victims of asbestos-related illness to claim in full against any person who negligently exposed them to asbestos, shifting the burden onto the negligent person to seek contribution from others.

The fact that asbestos-related injury manifests many years after exposure can also cause limitation issues, where a claim can be deemed out of time. Under the [Limitation Act 1980](#) a person must bring a personal injury claim within three years of the negligent action, or, if later, the date of knowledge of the injury's cause.<sup>20</sup> In some cases, knowledge can be implied ('constructive knowledge') where it would have been reasonable for the worker to suspect that negligent exposure to asbestos by an employer had contributed to their injury.<sup>21</sup>

Alongside workers themselves, a person associated with a worker, who was secondarily exposed to asbestos, may be able to claim against the employer. For example, if the worker's overalls had asbestos on them and this exposed

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<sup>20</sup> Section 11

<sup>21</sup> see [Collins v Secretary of State for Business, Innovation and Skills \[2013\] EWHC 1117](#)

a family member to asbestos, who later contracts mesothelioma as a result.<sup>22</sup>

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<sup>22</sup> See [Carey v Vauxhall Motors Ltd \[2019\] EWHC 238 \(QB\)](#) and [Gibson v Babcock International Ltd \[2018\] CSOH 78](#)

## 5

## PQs

Asbestos: Regulation**Asked by: Timms, Sir Stephen**

To ask the Secretary of State for Work and Pensions, what assessment the Government has made of the potential impact of the Retained EU Law (Revocation and Reform) Bill on the (a) ban on the use of asbestos in the UK and (b) Control of Asbestos Regulations 2012.

**Answering member: Mims Davies | Department: Department for Work and Pensions**

With the introduction of the Retained EU Law (REUL) Bill, the Health and Safety Executive (HSE) remains focused on ensuring that regulatory frameworks maintain the United Kingdom's high standards of health and safety protection and continue to reduce burdens for business.

In Great Britain, the legislation which controls asbestos exposure risks in workplaces are the Control of Asbestos Regulations 2012 (CAR). These regulations are owned by the Health and Safety Executive.

Under these regulations HSE requires dutyholders to assess whether asbestos is present in their buildings, what condition it's in and whether it gives rise to a risk of exposure. The duty-holder must then draw up a plan to manage the risk associated with asbestos which, importantly, must include removal of the asbestos if it cannot be safely managed where it remains in place. In addition to this, dutyholders are legally required to remove asbestos containing materials before major refurbishment or demolition work can occur.

Great Britain's (GB) asbestos legacy remains a key issue and continuing to improve and build on the evidence base around safe management and disposal of asbestos is fundamental. However, concerns remain that moving to a fixed deadline for removal would increase the opportunity for exposure. This is difficult to support where the current risk of exposure is very low and asbestos can be managed safely in situ until planned refurbishment works.

Our standards of health and safety protections are among the highest in the world. HSE will continue to review its retained EU Law to seek opportunities to reduce business burdens and promote growth whilst maintaining the United Kingdom's high standards of health and safety.

**HC Deb 23 February 2023 | PQ 148528**

### Buildings: Asbestos

**Asked by: Foxcroft, Vicky**

To ask the Secretary of State for Work and Pensions, what steps his Department is undertaking with the Health and Safety Executive to help ensure that UK workplaces are asbestos-free.

**Answering member: Mims Davies | Department: Department for Work and Pensions**

In Great Britain, the regulatory framework for the control of asbestos exposure risks in workplaces is provided by the Control of Asbestos Regulations 2012 (CAR). These regulations are owned by the Health and Safety Executive (HSE).

Under these regulations, HSE requires dutyholders to assess whether asbestos is present in their buildings, what condition it is in and whether it gives rise to a risk of exposure. The duty-holder must then draw up a plan to manage the risk associated with asbestos. Importantly, this must include removal of the asbestos if it cannot be safely managed where it remains in place. Dutyholders are also legally required to remove asbestos containing materials before major refurbishment or demolition work.

HSE provides extensive guidance on its website ([HSE: Asbestos - health and safety in the workplace](#)) to dutyholders to enable them to meet their legal duties and continues to carry out targeted inspection activity to support compliance.

**HC Deb 10 February 2023 | PQ 141487**

### Public Buildings: Asbestos

**Asked by: Sheerman, Mr Barry**

To ask the Secretary of State for Levelling Up, Housing and Communities, what steps he is taking to ensure that local authorities have suitable guidance in place on tackling asbestos and its effect on public health.

To ask the Secretary of State for Levelling Up, Housing and Communities, what steps is he taking to ensure that asbestos in public buildings is remedied as rapidly as possible.

**Answering member: Kemi Badenoch | Department: Department for Levelling Up, Housing and Communities**



All public bodies, including local authorities, are responsible for how they manage asbestos in their buildings and are expected to comply as dutyholders under the relevant legal requirements.

The Health and safety Executive - an executive arm of the Department for Work and Pensions - publishes a range of guidance about working with asbestos and how to comply with relevant legislation. This is set out under the [Control of Asbestos Regulations \(CAR\) 2012](#) with further guidance available on HSE's website [HSE: Asbestos - health and safety in the workplace](#)

The Local Government Finance Settlement for 2022/23 makes available up to £54.1 billion to councils. The majority of this funding is un-ringfenced in recognition of local authorities being best placed to understand local priorities.

**HC Deb 06 April 2022 | PQ 149158; PQ 149159**

## 6

## News items

Health and Safety Matters

30 March 2023

[Asbestos awareness campaign targets younger workers](#)

Personnel Today

10 March 2023

[HSE campaign warns of ongoing asbestos dangers in construction](#)

Pulmonary Fibrosis News

7 March 2023

[Asbestos exposure interacts with smoking, genetics to raise IPF risk](#)

Personnel Today (Occupational Health and Wellbeing +)

13 February 2023

[Warnings that 'sunsetting' bill could harm asbestos health and safety](#)

Personnel Today (Occupational Health and Wellbeing +)

23 January 2023

[Asbestos still rife in hospitals and wider NHS](#)

Health and Safety Matters

14 December 2022

[Asbestos remediation work in the great green renovation](#)

House of Commons Work and Pensions Committee press release

21 April 2022

[Set 40 year deadline for non-domestic building asbestos removal, MPs say](#)

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