

Duty to Manage Asbestos in Licensed Premises

Guidance Document

January 2012



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Introduction

The Control of Asbestos Regulations 2006 (CAR) includes an explicit duty to manage asbestos in non-domestic premises. This was first introduced in 2002, coming into effect in 2004. While virtually all production activities involving potential exposure to asbestos have now ceased, research and evidence shows that there remains considerable risk from accidental exposure to asbestos.

An owner, occupier or manager of commercial premises, including licensed retail outlets (but not parts of those premises which are a private domestic dwelling) that may contain asbestos, has the following responsibilities:

- a legal duty to manage the risk from this material if they are responsible for the maintenance and repair of the premises;
- or a duty to co-operate with whoever manages that risk

Under the “duty of co-operation” make available to those responsible for managing these risks, any information on the whereabouts of asbestos material and/or allow access to the premises to inspect them for asbestos.

Under the Health and Safety at Work Act 1974, it is important to recognize that the duty holder responsible for the domestic areas within the retail outlet are also responsible to provide all information relating to the risks to any third party who may be effected by them, such as contractors.

The aim is to protect workers who may come across asbestos during the course of their day to day activities. This should also result in protection of any other people who are using the premise they are working on.

Other Legislation

The legal duties to manage asbestos imposed by the CAR are supplemented by other duties imposed by other sets of regulations, and which may also apply to the domestic areas of the retail outlet ;

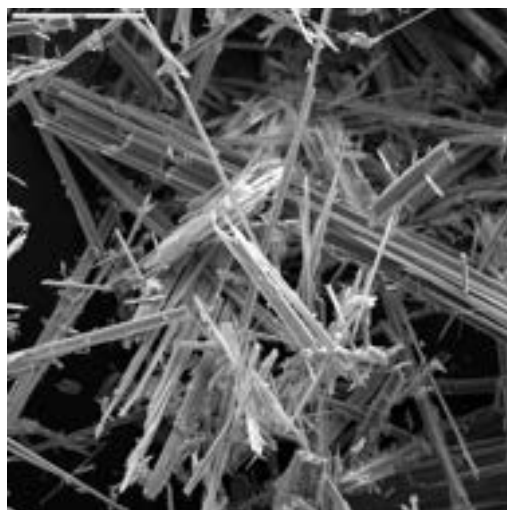
- **Health & Safety at Work Act 1974** requires employers to conduct their work in such a way that their employees will not be exposed to health and safety risks and to provide information to other people about their workplace which might affect their health & safety.
- **Management of Health & Safety at Work Regulations 1999** require employers and self employed people to make a risk assessment of the risks to health & safety of themselves, employees and people not in their employment in respect of their business to protect those people’s health & safety.

- Workplace (Health & Safety and Welfare) Regulations 1992 require employers to maintain workplace buildings so as to protect occupants and workers.
- Construction (Design and Management) Regulations 2007 require the client to provide the planning supervisor with information about the project which is relevant to health and safety. This information might, for instance, include previous surveys of the building for asbestos. Not all projects come within the scope of these Regulations.
- Defective Premises Act (England & Wales) 1972 or Civic Government (Scotland) Act 1982 places duties on landlords to take reasonable care to see that tenants and other people are safe from personal injury or disease caused by a defect in the state of the premises.
- The Health and Safety (Safety Signs and Signals) Regulations 1996 (as amended) require that suitable warning signs are put in place if there are no other appropriate preventive or protective measures.

The risk

Asbestos is an incombustible, fibrous, naturally occurring silicate mineral which is mechanically strong, highly resistant to heat and chemical attack and which has been woven into fabrics and used for reinforcement in cement, plastics and thermal insulations and is believed to have been used in approximately up to 5000 different products.

The fibres can divide very finely and be invisible to the naked eye and it is this property/characteristic which makes it dangerous when inhaled. If asbestos-containing materials (ACMs) are undamaged, then the fibres, if left intact, pose no threat to health but when deterioration, disturbance, or other damage occurs then the release of fibres into the air poses considerable risk to human health.



There are three main types of asbestos still found in premises which cannot be identified by their colour alone:

- Chrysotile (white asbestos)
- Amosite (brown asbestos)
- Crocidolite (blue asbestos)

All of them are dangerous but blue and brown asbestos are more hazardous than white. All forms of asbestos may cause asbestosis, lung cancer or mesothelioma. Therefore, where exposure to asbestos cannot be prevented entirely, exposures need to be controlled as far as is reasonably practicable.

Anyone who disturbs asbestos and releases fibres, can be at risk. In particular, anyone who may be engaged in intrusive work such as drilling, sawing or cutting into the fabric of premises could potentially be at risk.

In the event of any employee or contractor inadvertently damaging suspect ACM or discovering damaged asbestos, no further work should be undertaken that could cause the deterioration of the material. The duty holder should seek advice of a competent organization, accredited by the United Kingdom Accreditation Service (UKAS), or a competently certified person to undertake a suitable risk assessment, by sampling as necessary and assessing potential concentration of airborne fibres if the material proves to be asbestos.

Areas where intrusive work might disturb asbestos include:

- Under bar work: ACMs may have been used in bar construction
- Cellar work at dispense board area: some cellars may have cold room wall cladding, which could be asbestos.
- Python / beer line running, hole cutting, and duct provisions
- Python / beer line installation (through roof voids, floors, ceilings and false columns)
- Old electrical fuse boxes
- Floor and walls voids containing heating pipe lagging
- Voids containing sprayed insulation to steelwork etc.
- Cladding to walls, ceiling, beams and doors to form fire protection
- Flue pipes to heating systems and some boiler pre 1985

This list is not exhaustive and there be other areas of the building where ACMs may be found.

Breathing in air containing asbestos fibres can lead to asbestos-related diseases, mainly cancers of the lungs and chest lining.

Asbestos will only pose a risk to health if it is releasing fibres into the air. The more asbestos dust inhaled the greater the risk.

Duty to manage asbestos containing materials (ACMs)

Dutyholder

The responsibility for complying with the duty to manage lies with the owner, occupier or manager responsible for the maintenance and repair of commercial premises “*the dutyholder*”. In the licensed retail industry the “duty holder” may be assumed to be:

- **free-houses** – the licensee is the duty holder
- **managed houses** – the pub owning company is the duty holder but may delegate day to day management responsibility to the licensee set out in a clearly defined policy
- **tenanted/leased houses** – the duty holder will vary depending on the terms and condition of lease: pub companies and licensees are encouraged to agree who holds the duty as soon as possible. Where there is no such contract or tenancy, every person who has to any extent control of part the commercial premises or any means of escape or egress there from.

The duty does not cover those parts of licensed retail outlets which are used solely as a private domestic dwelling. But it will cover common parts and any bedrooms let out as bed and breakfast accommodation. Any person undertaking work within the private domestic dwelling must fully comply with the Health and Safety at Work Act 1974 and associated regulations, and will be required to identify all risks including asbestos containing materials.

Although the regulations refer to the duty holder, someone else can be nominated to do all or part of the work - but note that the legal responsibilities cannot be delegated.

As the responsible person they must provide information on what ACMs are present and where they are to any contractor (e.g. beer dispense technician, plumber or electrician) who may be carrying out work. The legislation premise is that buildings contain ACMs unless it can be proven otherwise, therefore all contractors will also assume ACMs are present.

What needs to be done to comply with the duty

The “duty holder” must manage the risk from asbestos by:

- **Finding out if there is asbestos in the premises, its amount and what condition it is in.**
- Presuming materials contain asbestos, unless there is strong evidence that they do not.
- Making and keeping up to date a record of the location and condition of the ACMs or resumed ACMs in the premises.
- Assessing the risk from the material.
- Providing information on the location and condition of the material to anyone who is liable to work on or disturb it.
- Make the information available to emergency services if required
- Implementing a management plan to control the risk of any known ACM.
- Regularly inspect any known ACM for signs of deterioration.

If the age of the building or the information available provides strong evidence that no ACMs are present, no further action is required other than to record why this evidence indicates there is no asbestos present.	✓
Carry out a thorough inspection of the premises both inside and out to identify materials that are, or may be, asbestos	✓
If you have any doubts about the material you must presume it contains asbestos. (If any intrusive work is proposed refer to example procedure in Annex 1)	✓

The main duty is to ensure information is available and passed to those who may be at risk because they may disturb asbestos-containing materials.

[Guidance for specialist asbestos surveyors on how to undertake surveys, sampling and assessment is now a provision of Health & Safety Executive (HSE) guidance in the Asbestos: The Survey Guide (HSG264)]

Finding asbestos.

Asbestos has been widely used in the past in the manufacture of building materials and products and in sprayed coatings in construction work, although current legislation prohibits the use of asbestos for these purposes. Asbestos is most likely to be present in a building if it was constructed or refurbished before blue and brown asbestos was banned in 1985, particularly if it has a steel frame and/or boilers with thermal insulation. In some cases, ACMs such as asbestos cement, were used up until 1999. Asbestos is most likely to be found in the following materials (in order of ease of fibre release):

- sprayed asbestos and asbestos loose packing – generally used as fire breaks in ceiling voids
- moulded or preformed lagging – generally used in thermal insulation of pipes and boilers
- sprayed asbestos – generally used as fire protection in ducts, firebreaks, panels, partitions, soffit boards, ceiling panels and around structural steel work.
- insulating boards used for fire protection, thermal insulation, partitioning and ducts
- some ceiling tiles
- millboard, paper and paper products used for insulation of electrical equipment. Asbestos paper has been used as a fire-proof facing on wood fibreboard
- asbestos cement products, which can be fully or semi-compressed into flat or corrugated sheets. Corrugated sheets are largely used as roofing and wall cladding. Other asbestos cement products include gutters, rainwater pipes and water tanks
- certain textured coatings eg artex
- bitumen roofing material; and
- vinyl or thermoplastic floor tiles

Sprayed coatings, lagging and insulating board are more likely to contain blue or brown asbestos. Asbestos insulation and lagging can contain up to 85% asbestos and are most likely to give off fibres.

Ways of identifying whether ACMs are present

- looking at building plans and any other relevant information, such as builders' invoices, which may identify if and where asbestos was used in the construction or refurbishment of the premises
- carry out a thorough inspection of the premises both inside and out to identify materials that are or may be asbestos;
- commissioning a survey from a competent accredited asbestos surveying organisation or certificated asbestos surveyor and
- consult others, such as architects and employees who may be able to provide more information and who have a duty of co-operation to make this available.

If the age of the building or the information available provides strong evidence that no ACMs are present, no further action is required other than to record the details of this evidence .

If in doubt – presume the material is asbestos

Some material obviously does not contain Asbestos such as glass, solid wooden doors, floorboards, bricks and stone. However, if you have any doubts about the material you must presume it contains asbestos.

Professional Surveys and sampling

Samples of material suspected to contain asbestos should only be taken by suitably trained and accredited, competent people. Do not break or damage any material which may contain asbestos to try to identify it. Inform the responsible person on the premises to contact a suitable qualified accredited organization to carry out a survey.

The United Kingdom Accreditation Service (UKAS) has developed an accreditation scheme for organisations which do asbestos surveys. UKAS already has a separate accreditation scheme for sampling and analysis of asbestos in materials. An accredited company is likely to employ suitably trained people for these types of work. But you should check what the firm is accredited for, as some will only be qualified to do surveys and take samples and others only to analyse samples (the UKAS website address is: www.ukas.com)

The survey will identify what type of ACMs are present and where they are. There are two further stages to consider before a licensed premises can fully develop a risk assessment - what condition are the ACMs in, and are they being disturbed or likely to be disturbed?

Condition of any ACMs

The type of ACM, the amount of it and its condition will determine its potential to release asbestos fibres into the air, if disturbed. The condition of ACMs is assessed by the following criteria:

Is the surface of the material damaged, frayed or scratched?	✓
Are the surface sealants peeling or breaking off?	✓
Is the material becoming detached from its base? (This is a particular problem with pipe and boiler lagging and sprayed coatings)	✓
Are protective coverings, designed to protect the material, missing or damaged?	✓
Is there asbestos dust or debris from damage near the material? If the asbestos-containing materials in the licensed premises are in poor condition the person responsible for the duty of care on the premises will have to arrange repairs or have them sealed, enclosed or removed.	✓

Record of where the asbestos or presumed asbestos is and its condition carried out as part of the survey.

The dutyholder or someone acting on their behalf needs to prepare a drawing or some other record which shows where the asbestos or presumed asbestos is, the type if known, its form, its amount and what condition it is in. The drawing should be simple, clear and always available at the premises so that any person that needs to know where the ACMs are, is aware of their location.

Assessing the potential risk from the ACMs

An assessment of whether the ACMs are being or are likely to be disturbed should be carried out. Usually disturbance is created by people working on or near the ACMs.

Asbestos in Good Condition

If the asbestos is in good condition, and is not likely to be damaged or disturbed, HSE advises that it is usually safer to leave it in place and manage it. Preferably asbestos kept in place should be labelled clearly with an Asbestos Warning sign or some other warning system (for example colour coding). If it is not labelled, the person responsible on the licensed premises needs to make sure that those who might work on the material know that it contains or may contain asbestos. A management plan should be introduced to ensure retained asbestos is inspected regularly for signs of deterioration.

Asbestos in poor condition

If the asbestos is in poor condition or is likely to be damaged or disturbed the dutyholder for the licensed premises will need to seek specialist advice as to whether it should be repaired, sealed, enclosed or removed.

Repair and removal

Some damaged asbestos can be made safe by repairing it and either sealing or enclosing it to prevent further damage. If it cannot be easily repaired and protected, it should be removed and the location plan revised. This work can only be carried out by someone trained and competent to carry out the task under controlled conditions – i.e. an asbestos contractor licensed by the HSE.

The person responsible for duty of care on the premises has to have an effective plan for inspecting ACMs left in place, including those that have been sealed or enclosed, to make sure that the condition has not changed. The time between inspections will depend on the type of material, where it is and its condition, but it should be at least every six to twelve months.

Protecting workers from exposure to asbestos

The duty requires that information on the location and condition of the asbestos is made available to anyone likely to work on it or disturb it. The person responsible for duty of care in the licensed premises needs to ensure that any person involved in building maintenance work, and any person working on the premises to install or maintain beer dispense equipment, is aware that the building contains or may contain asbestos. Persons should also be told where it is and be made aware of the potential risks to their health if they disturb it.

The first stage of this process is to ensure that a 'Management Survey' is undertaken of the premises to determine all ACMs that may be present that could be disturbed during normal occupation and routine maintenance are recorded and a register produced to inform those who may be effected by them. This should be carried out by a competent accredited organization, or certified person.

Where any intrusive work is proposed, the surveyor can be given an additional scope to include intrusive elements within the management survey, or the duty holders will also need to contact an accredited asbestos surveying organisation or certificated asbestos inspector to complete a specific 'Refurbishment' survey of the areas requiring intrusion. All surveys will identify where asbestos is located in the premises with a certificate indicating safe and unsafe areas where work can occur. (Refer to Annex 2)

No intrusive work should be carried out unless it is known that asbestos is not present. Persons working in these outlets will require a permit to work (where applicable, if not refer to Annex 1) in the safe area and be barred from working in a contaminated area.

If work is required in an asbestos area then a specialist licensed asbestos contractor should be engaged to make safe or remove the asbestos to allow the other work to take place safely.

Any major licensed premises refurbishment must include a full 'Refurbishment or Demolition' Survey, before any work commences. This survey will include the making safe or removal of any asbestos found. These requirements cover any removal of beer dispense equipment from licensed premises. (Refer to Annex 2)

Whilst the British Beer & Pub Association has taken all reasonable care in the preparation of this general guidance, it accepts no responsibility for loss or damage arising from reliance on any of the information, advice or opinions presented.

Other useful contacts/references:

Health & Safety Executive

www.hse.gov.uk/asbestos/essentials/index.htm

Tel: 08701 545500

HSE have also developed an extensive online guide to managing asbestos which is available on the following website

www.hse.gov.uk/asbestos/managing/index.htm

United Kingdom Accreditation Service (UKAS)

www.ukas.com

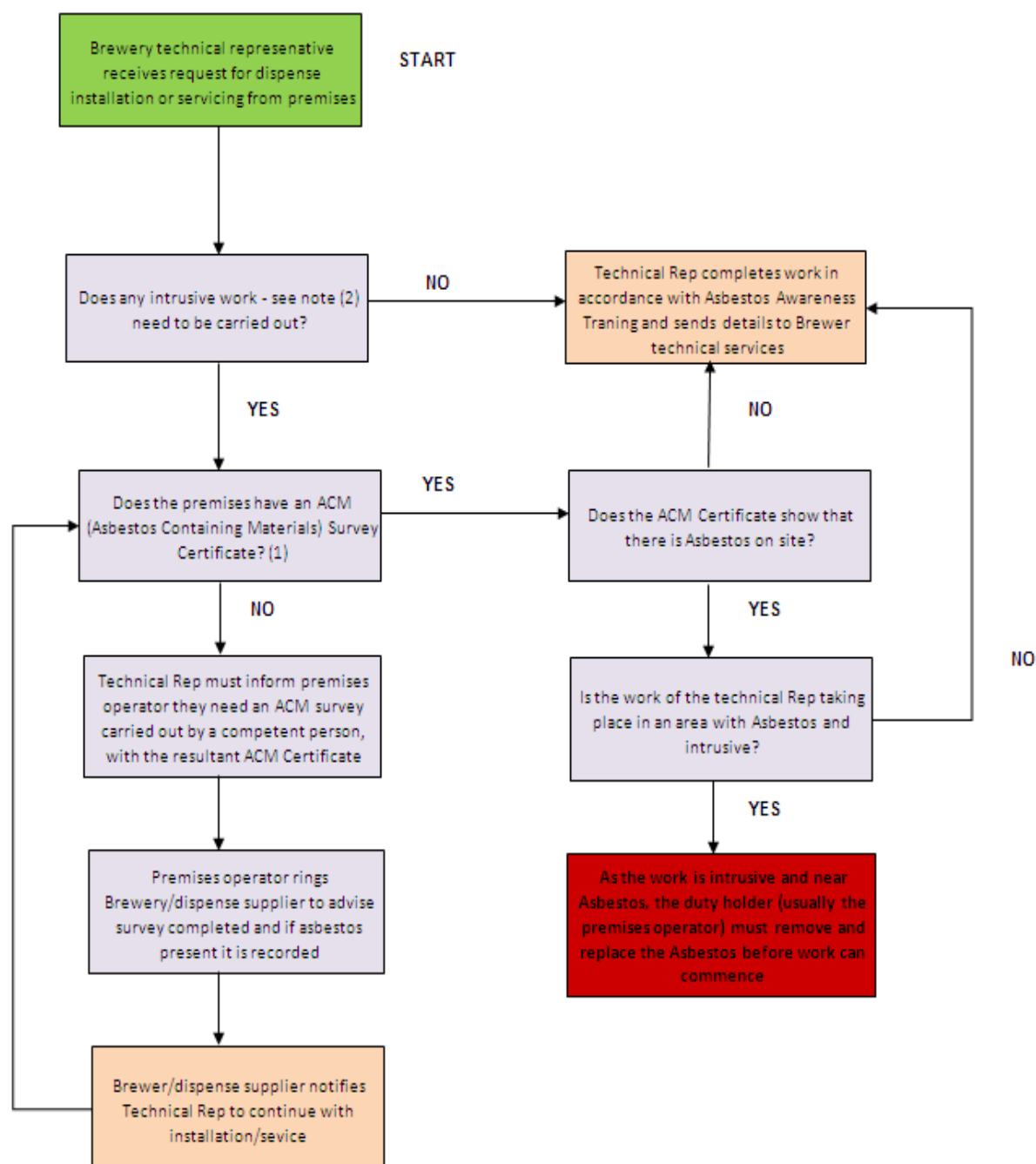
Tel: 020 8917 8400

Asbestos Removal Contractors Association (ARCA)

www.arca.org.uk

Tel: 01283 531126

APPENDIX 1 – Technical Services Flowchart



(1) Account Audit of Licensed Premises by Competent Persons required with a 2 part survey:-

To be arranged by Owner ,Licensee,Manager of outlet

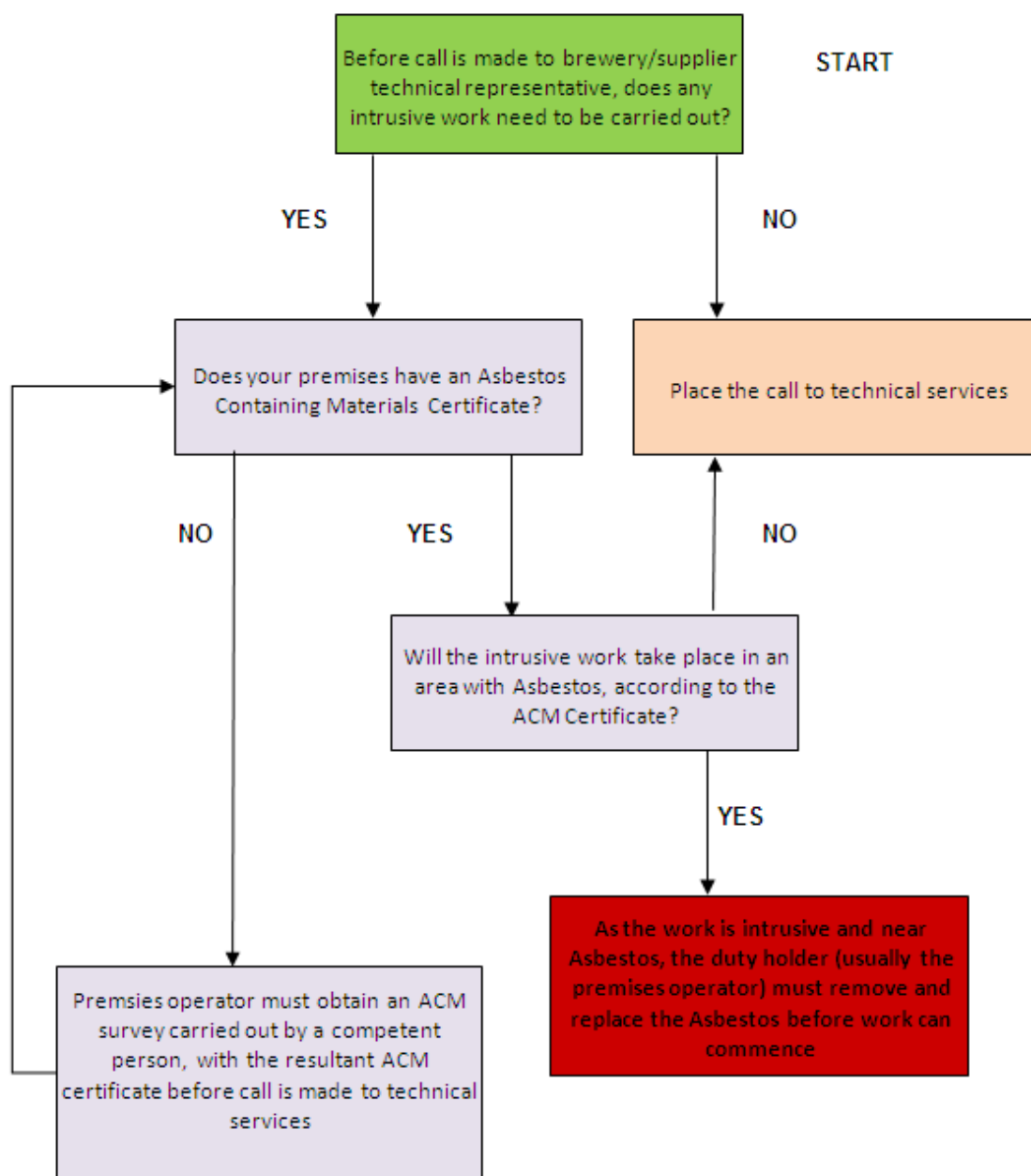
Part 1:- Certificate showing no Asbestos on site

Part 2:- Certificate showing where the ACM's are located

(2) INTRUSIVE WORK:- Defined as Drilling,Cutting,Sawing or entering into floor,ceiling Voids or False Columns or Ductings.

Major refurbishments (re-builds etc.) with Asbestos on site would require a specialist UKAS Accredited Asbestos Consultant/Contractor.

APPENDIX 2 – Premises Operator Flowchart



APPENDIX 3 – Guide to Asbestos Type Surveys in Licensed Premises

The HSE have replaced the previous survey guide (MDHS100) with **Asbestos: The Survey Guide** (HSG264). It is aimed at people carrying out asbestos surveys and people with specific responsibilities for managing asbestos in non-domestic premises under the Control of Asbestos Regulations 2006.

A free downloadable copy of *Asbestos: The Survey Guide* can be found on the HSE website (address above).

Asbestos: The Survey Guide identifies the two types of survey for Asbestos Containing Materials:

Management survey

The Management Survey purpose is required to manage ACM during the normal occupation and use of premises. The duty-holder can make a Management Survey where the premises are simple and straightforward. Otherwise, a surveyor is needed.

A Management Survey aims to ensure that:

- nobody is harmed by the continuing presence of ACM in the premises or equipment;
- that the ACM remain in good condition; and
- that nobody disturbs it accidentally

The Survey must locate ACM that could be damaged or disturbed by normal activities, by foreseeable maintenance, or by installing new equipment. It involves minor intrusion and minor asbestos disturbance to make a Materials Assessment. This shows the ability of ACM, if disturbed, to release fibres into the air. It guides the client, e.g. in prioritising any remedial work.

Refurbishment / demolition survey

The Refurbishment / demolition Survey is required where the premises, or part of it, need upgrading, refurbishment or demolition. The Survey does not need a record of the ACM condition. Normally, a surveyor is needed for Refurbishment / demolition Surveys.

A Refurbishment / demolition Survey aims to ensure that:

- nobody will be harmed by work on ACM in the premises or equipment;
- such work will be done by the right contractor in the right way

The Survey must locate and identify all ACM before any structural work begins at a stated location or on stated equipment at the premises. It involves destructive inspection and asbestos disturbance. The area surveyed must be vacated, and certified 'fit for reoccupation' after the survey.