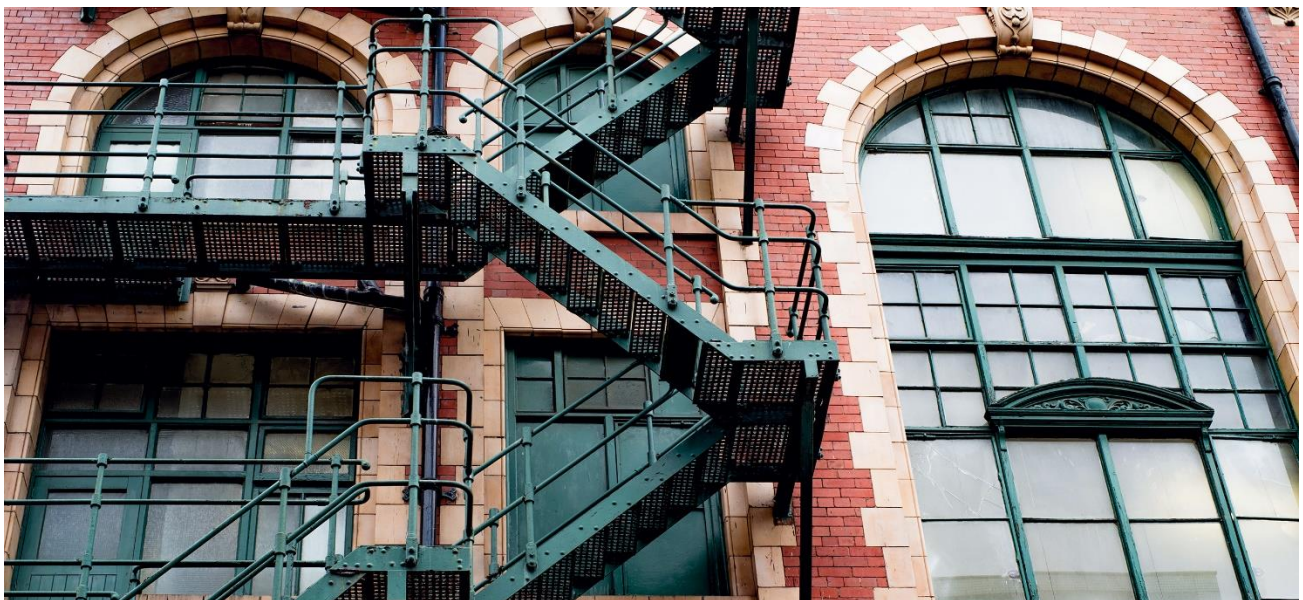


## Managing asbestos

# End-Clients have legal duties to manage the risks from asbestos

*Still today there are many buildings containing asbestos – commercial properties, schools, hospitals, housing groups – so the owners and managers of these buildings, constructed prior to the year 2000, need to manage the risks from any asbestos containing materials.*

*This publication includes an overview of the legal responsibilities, such as the Health and Safety at Work etc. Act 1974, and the Control of Asbestos Regulations 2012 (CAR 2012), which includes the requirement to identify the presence of asbestos and have an asbestos register and management plan. Also, the Construction (Design and Management) Regulations 2015 (CDM 2015), which places certain requirements on clients, for example, if asbestos removal is required the client needs to appoint a competent asbestos removal contractor.*





**End-Clients have legal duties to manage the risks from asbestos**

**Locate – Assess – Manage**

With regard to people's health and safety the overarching piece of legislation is the Health and Safety at Work etc. Act 1974. Under sections 2 and 3, it places the duty on every employer to ensure, so far as reasonably practicable, the health, safety and welfare at work for all employees and non-employees who may be affected by the employer's activities.

The **Control of Asbestos Regulations 2012 (CAR 2012)** place a legal duty to 'manage asbestos in non-domestic properties' and 'common parts of domestic premises' by:

- Finding out if there is asbestos in the premises, the amount and what condition it is in
- Presuming the materials contain asbestos, unless there is strong evidence that they do not
- Making and keeping an up-to-date record of the location and condition of the Asbestos Containing Material's (ACM) or presumed ACM's in premises
- Assessing the risk from the material
- Preparing a plan that sets out in detail how to manage the risk from this material
- Taking the steps needed to put this plan into action
- Reviewing and monitoring the plan and the arrangements made to put it in place and
- Providing information on the location and condition of the material to anyone who is liable to work on it or disturb it.

Specifically relating to asbestos management is CAR 2012, with regulation 4 covering the duty to manage asbestos in non-domestic properties (includes the common parts of domestic premises). This regulation requires the duty holder to identify the location and condition of asbestos.

### Location of Asbestos

To meet this the duty holder can assume asbestos is present and manage the premises accordingly or arrange for a thorough inspection in the form of an asbestos survey.

There are three types of asbestos surveys, however before deciding on the type of survey, the client needs to be aware that the survey must provide sufficient information for an asbestos register to be prepared.

### ***'legal duty to manage risks from asbestos'***

The usual asbestos survey, whether for a commercial building or a school, is called a Management Survey. This survey is carried out to locate, as far as reasonably practicable, the presence and extent of any suspected ACMs in the building which could be damaged or disturbed during normal occupancy, including foreseeable maintenance and installation.

Also, during the survey the condition of ACMs should be assessed, taking account of the type of ACM (e.g. asbestos insulating boards – AIB), the amount and its condition.



The assessment should consider factors, such as: is the surface of the material damaged, is the surface sealant breaking off and are protective coverings damaged. This information will determine its potential to release asbestos fibres into the air.

There is a Refurbishment Survey which should locate, as far as reasonably practicable, the presence and extent of any suspected ACMs in the areas that are to be refurbished. Therefore, the job specification should be provided so that all the areas likely to be disturbed are surveyed prior to the work starting.

If a building or part of a building is to be demolished, a Demolition Survey is required, so that all ACMs can be identified and then removed, prior to the demolition taking place.

### Who should undertake the survey?

Surveys can be carried out by in-house personnel or a third party. However, the duty holder is responsible to make sure that a survey is carried out by a competent person. For example has the surveyor sufficient training, qualifications, knowledge, experience and ability to carry out their duties in relation to the survey.

The HSE strongly recommends that the duty holder uses an organisation accredited by the United Kingdom Accreditation Service (UKAS) for asbestos surveying.

Following a survey, the client should receive a clear, accurate and usable report, that is, the information can be used to prepare an asbestos register.



## Asbestos Register

Information from an asbestos survey report should be recorded, referred to as an asbestos register, with accurate drawings and dated, as periodic reviews should be carried out, so an up-to-date record is available on the location and condition of all ACMs.

## Management Plan

The duty holder should now produce a management plan setting out how the risks identified from asbestos will be managed.

This plan should include details such as:

- the person(s) responsible for managing the asbestos risk
- a copy of the asbestos register (how to access it if kept electronically)
- instructions that no work should be carried out on the building without the asbestos register being checked
- a schedule for monitoring the condition of ACMs
- if ACMs are damaged how is the situation to be managed.

The duty holder should ensure that the plan is implemented so the risks are properly managed.

## Communication

Communication is vital, as all staff and workers, whether the maintenance team at a hospital or a building contractor at a school, need to know where ACMs are located.

***'inform anyone liable to disturb ACMs'***

Therefore, the duty holder, via the management plan, should ensure that the asbestos register is shared with any worker/contractor carrying out maintenance or other work on/in the premises.

For example, trades such as plumbers and electricians will therefore know where ACMs are and will not work on them or disturb them unknowingly.

To aid communication to all possible workers, the regulation does state that the asbestos register (including drawings) should be available on-site for the entire life of the premises.



***Clients have the legal responsibility to appoint competent asbestos removal contractors***

## **Appoint – Plan – Remove**

If the condition of ACMs means it needs to be removed, or the building is being renovated/ demolished and the ACMs need to be removed prior to work starting, there are legal responsibilities on the clients to manage the project and appoint a competent contractor.

### **Client duty to manage a project**

Clients have explicit responsibilities on managing construction projects under the Construction (Design and Management) Regulations 2015 (CDM 2015). As they are at the head of the procurement chain, the law requires that clients make suitable arrangements for managing a project, and maintain and review these arrangements throughout the project, to ensure health and safety risks are managed appropriately.

Clients do not need to be 'experts' in either construction work or asbestos work, and do not need to directly manage or supervise the work themselves.

However, they are responsible for ensuring appropriate arrangements are in place to manage and organise projects during both the 'pre-construction' and 'construction' phases of the project.

This means appointing suitably competent people and providing them with sufficient information, time and resources to do the job properly.

If asbestos removal is required, the client needs to appoint a competent asbestos removal contractor. Therefore, they need to make reasonable enquiries to satisfy themselves that contractors are appropriately resourced and competent for the work.

### **How can clients reassure themselves of competency?**

Firstly, does the type of asbestos containing material require a contractor to have a licence from the Health & Safety Executive (HSE) to remove this material under controlled conditions? A list of licence holders, who are also ARCA members, is available at [arca.org.uk](http://arca.org.uk).

Secondly, is the contractor independently audited, are they audited on site by a third party to ensure compliance with health and safety requirements? How can a client check this?

One way to check is to see whether the contractor is a member of a trade association, as some clients expect a trade association to maintain industry standards and provide a safeguard.

Asbestos removal carries a high level of health and safety risks, so clients should look behind a trade association logo to see what reassurance that membership actually provides.

To provide reassurance for all parties of compliance with relevant legislation, the Asbestos Removal Contractors Association (ARCA) introduced an audit scheme in 2000, to support members' performance and therefore maintain standards. What does this scheme mean?

### ***'unannounced site audits provide reassurance'***

It means that ARCA member contractors are required to have a satisfactory site audit to join [and an office audit], and then three satisfactory site audits every year to maintain membership of the Association.

These audits follow the 'Plan, Do Check' approach to health and safety management, and support members in monitoring their performance, as well as highlighting any areas of improvement.

Member contractor's site audits are carried out on notified licensable work and are unannounced. This has been made possible by the HSE providing ARCA with some details [name of licensee, site location, dates of work and nature of work] off the licensed contractors 'notification of asbestos work' form.

Using this information ARCA can arrange site audits, so that ARCA members (excluding Ireland) have no prior knowledge of when, or where, an ARCA auditor will be assessing their performance, providing a high level of reassurance for all parties, including end-clients.

Members need to continually prove they can meet the standards needed to be an ARCA member.



## Asbestos removal work

Once a contractor is appointed, the client will then need to provide the contractor with sufficient information, time and resources to do the job properly.

For example, an asbestos removal contractor will need appropriate pre-construction information in order to prepare a suitable Plan of Work, and contractors need time (and access) to assess the premises properly and discuss key site information with the client.

Clients' decisions, actions and inaction have an enormous impact on how work can be delivered. For licensed asbestos removal work the contractor will need to submit notification of work to the HSE two weeks prior to work commencing. That is, the work must be planned before it starts.

## A Plan of Work

It is the duty of the licensed asbestos removal contractor to produce a suitable Plan of Work (PoW) to comply with Regulation 7 of CAR 2012.

A PoW should be a practical and useful document describing a safe working method for site staff to follow, which shows that senior managers have considered significant site risks (asbestos and otherwise) and produced a specific job instruction to address them.

Also, a PoW should be complete but manageable in length; for example, the use of diagrams, photographs and flowcharts can all help make PoWs less wordy; and should be easy to read and straightforward to follow.

This is supported by HSE, as their position is that generic information about frequently used company procedures (such as standard ways of bagging waste, standard enclosure construction materials etc) will not need to be in the site-specific plan. Keeping generic information out of the site-specific plan means the standard procedures on which it is based need to be available on-site in a readily accessible and readable format, be that electronic or hard copy.

The asbestos removal contractors' manager should create the PoW with the client, so both parties are aware of any site constraints, other trades on-site, etc.

Finally, a PoW is there to primarily support site staff, but should also be available for the analyst, manager, auditor, HSE inspector and client.

**Good coordination and cooperation between all parties is a must for a project to be successful.**





## *What needs to happen after asbestos removal and before re-occupation*

# Clean – Test – Re-occupy

After ACMs have been removed, there is an inspection and testing procedure prior to re-occupation. This is what needs to happen before the building or area where asbestos removal took place, can be allowed to be re-occupied.

There are a number of tests/stages in this process, known as the '4-stage re-occupation test', which is a legal requirement under CAR 2012. Therefore, when licensed asbestos removal work is planned by both the end-client and the licensed asbestos removal contractor, sufficient time has to be allowed for the '4-stage re-occupation test' to be completed by a UKAS accredited analytical company.

### Overview

Tests must be carried out after licensed asbestos removal, and before the building/area of building is handed back to the client for re-occupation. The purpose is to ensure that all specified ACMs have been removed and the area is clean, dry and dust free, as far as is reasonably practicable, and therefore fit for re-occupation.

This is known as **the '4-stage re-occupation test', which is a legal requirement as detailed in CAR 2012,** and the test can only be undertaken by a UKAS accredited testing laboratory accredited to ISO 17025.

Clients should note that the HSE strongly recommends that the analytical company contracted to carry out the '4-stage re-occupation test' is employed independently by the end-client.

Also, licensed asbestos removal contractors should complete a Handover Form which should be given to the analyst before the '4-stage re-occupation test' starts.

### Handover Form

Licensed asbestos removal contractors should ensure that the asbestos enclosure and/or work area has been thoroughly cleaned by the contractor, and that a thorough visual inspection has been completed by the contractor to confirm this.

Following this the contractor should complete a Handover Form to give to the analyst, and the analyst should not start the clearance until this form is satisfactory, at which time the analyst should sign and date the form.

In summary, the contractor should not arrange for the '4-stage re-occupation test' to start until satisfied that:

- All the asbestos has been removed as detailed in the Plan of Work
- The area inside the enclosure and airlocks is both clean and dry, and has already passed their own thorough visual inspection
- A Handover Form has been prepared for the analyst
- Sealant has not been applied

## 4-stage re-occupation test

The '4 stage re-occupation test', as the name suggests is made up of four separate tests or stages, which are carried out by a qualified analyst. These are:

### Stage 1 - Preliminary check of site condition and job completeness

- Confirm scope of work
- Obtain or prepare diagram showing areas requiring clearance
  - Decontamination Unit
  - Enclosure, surrounding areas, waste and transit routes
  - Integrity of enclosure
  - interior of enclosure using viewing panels / CCTV

Estimate time thorough visual inspection will take and record it in Certificate for Reoccupation (CfR)

When the analyst carrying out the test is happy that it has met the criteria for Stage 1 he/she will move onto Stage 2.

### Stage 2 – A thorough visual inspection

This will entail:

- A thorough visual inspection inside the enclosure
- Check
  - The completeness of the removal of Asbestos Containing Materials (ACM's) from the underlying surfaces
  - For any visible debris including in the airlock and baglock (all compartments)
  - For the presence of settled dust on all surfaces within the enclosure
- Ensuring the enclosure is dry as far as is reasonably practicable

The time spent on this stage will depend on the size and complexity of the enclosure and in some cases, may require more than one analyst to carry out the inspection.



### Stage 3 – Clearance air monitoring

Air sampling will be conducted inside the enclosure to:

- Disturb surfaces at the start of air sampling
  - By sweeping floors with a long handled brush
  - By brushing other surfaces using a short handled brush
  - Brush sweep for at least 1½ minutes per sample
- All air sample results must be <math><0.010\text{ fibres/cm}^3</math>

All surfaces are brushed vigorously for a minimum of 1½ minutes per sampling location. When the air test has been carried out and the fibre concentration deemed to be less than 0.010 fibres/cm<sup>3</sup> the enclosure can be dismantled.

### Stage 4 – Final assessment post-enclosure / work area dismantling

After the enclosure/work area has been carefully removed the analyst will undertake the final assessment:

- Visually inspect where the enclosure was located \*
- Reinspect waste and transit routes for asbestos debris

*\*If during this inspection any residual asbestos is identified from the removal works the enclosure may have to be re-built and the asbestos residue removed.*

## Re-occupation certificate

Once the '4-stage re-occupation test' is completed and approved, a re-occupation certificate will be issued by the analyst to both the licensed asbestos removal contractor and the end-client.

Photographic evidence of each stage should be provided to support this final re-occupation certification.

**This certificate confirms that the building, or a specific part of the building, is fit for re-occupation.**

Guidance is available in the 'clients' section at [www.arca.org.uk](http://www.arca.org.uk), together with contact details of the licensed asbestos removal contractors who are members of ARCA.

Also, details of UKAS accredited analytical companies, who are members of ATaC can be found at [www.atac.org.uk](http://www.atac.org.uk)

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**Asbestos Removal Contractors Association**

Unit 1 Stretton Business Park 2 Brunel Drive Burton upon Trent Staffordshire DE13 0BY  
T 01283 566467 E [info@arca.org.uk](mailto:info@arca.org.uk) [www.arca.org.uk](http://www.arca.org.uk)



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