

Asbestos licence assessment, amendment and revocation guide (ALAARG)

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Introduction

1 This document provides guidance on the asbestos licensing system. It should be read together with the other documents referred to.

2 This guide is primarily for regulators, but will be of interest to others involved with licensed asbestos work, including licence holders, applicants and clients. The Health and Safety Executive (HSE) website provides comprehensive information about all matters concerning asbestos www.hse.gov.uk/asbestos/index.htm.

Permissioning regimes

3 Permissioning is used where the normal forms of regulation are not sufficient and where the extra demands imposed by the regime are justified by the benefits it brings.

4 Asbestos is a highly dangerous material and presents substantial risks to the health of those who work with it and those who may be affected by it. Asbestos is a category 1 carcinogen, responsible for over 4000 deaths in the UK every year. It is the single greatest cause of work-related deaths in the UK. Consequently, work with asbestos is strictly controlled and is subject to a permissioning regime. Given the risks associated with working with asbestos, it is imperative that licensed contractors carry out their work with great professionalism and care.

5 Asbestos licensing is one of only a few permissioning regimes operating in the UK. The Health and Safety Commission's (now the Board of the Health and Safety Executive) *Policy Statement: Our approach to permissioning regimes*¹ should be consulted. Asbestos licensing is an addition to the general framework of health and safety law and is resource intensive. It will have a greater degree of regulatory intervention compared to non-licensed industries.

6 Permissioning regimes build on the fact that the legal duty to manage risks lies with the organisations that create them. Consequently, exemplary management standards and arrangements are expected of licence holders, in addition to the specific knowledge required to carry out work with asbestos.

The Control of Asbestos Regulations 2012 (CAR)

7 Full information on the legislation can be found in the Approved Code of Practice (ACOP) *Work with materials containing asbestos* L143,² available from www.hse.gov.uk/pubns/books/l143.htm.

8 All work with asbestos has to be carried out in accordance with CAR. Most work with asbestos is also subject to licensing. Regulation 8 requires that work with asbestos can only be carried out by an employer, or self-employed person, who has been granted a licence to work with asbestos by HSE. The only work with

asbestos that can be carried out without a licence is specified under regulation 3(2) and is detailed in the accompanying ACOP.

Licensing

9 It is the employer (ie the limited company, partnership etc employing workers undertaking work with asbestos) who is required to hold the licence. Licences to work with asbestos are granted for any period up to a maximum of three years, and are subject to conditions. Decisions taken by HSE regarding licensing are subject to the civil standard of legal proof, ie that on the balance of probabilities the appropriate decision has been taken.

Licence types

10 'Full' licences enable the licence holder to undertake all work with asbestos. Licensed asbestos work also includes:

- **Supervisory work** (only for direct supervision of licensable work).
- **Ancillary work**, including scaffolding where asbestos is liable to be disturbed and which provides access for licensable work.
- **Work with asbestos in your own premises** with your own employees.
- **Supply of labour (not management or supervision)** to other licence holders to undertake licensable work.

See the appropriate ALG memo. ALG memos are available online at www.hse.gov.uk/aboutus/meetings/committees/alg/memos_issued.htm. For full details of licensable work with asbestos see paragraphs 87 to 90 of the ACOP.

Licence conditions

11 All licences have three 'standard' conditions:

1 This licence or a copy thereof, should be made available by the licensee for inspection at the request of any person to whom the licensee submits a tender or quotation for work with asbestos and shall be available for inspection at all work sites. A copy of the licence shall accompany each notification required by Condition 2.

2 The licensee shall give notice in writing of the work to the appropriate HSE or local authority office at least 14 days before the work is commenced, or such other period as the authority will allow. The notice shall specify the type of work to be carried out, the likely duration of the work, the address of the premises at which the work is to be carried out and the date of commencement of the work activity. The enforcing authority must be informed in writing as soon as possible if this information changes. This condition will not apply for any work carried out with asbestos, which is subject to the exemptions specified in regulation 3(2) of the Control of Asbestos Regulations 2012, or when the licensee hires out employees (at operative level) to other licensees.

3 (a) Prior to submitting the notice of work required by Condition 2 the following documents shall be prepared by the licence holder:

- (i) a suitable and sufficient written statement of the plan of work to be used.*

(ii) *a suitable and sufficient written specification for the equipment for the protection and decontamination of those engaged in asbestos work and also for the protection of other persons, as appropriate to the work.*

(b) *The licensee shall, on request by HSE and/or the local authority provide copies of the documents referred to in 3(a) and/or allow inspection of those documents as required.*

(c) *Work carried out under the notice of work required by Condition 2 shall be carried out in accordance with the suitable and sufficient plan of work and the equipment, as specified in (a)(i) and (ii).*

The plan of work and written specification must be provided on request and be available at the time of notification.

12 Note that:

- In addition to condition 2, regulation 9 also requires licensed work to be notified.
- In addition to condition 3, regulation 7 requires a suitable written plan of work and for the employer to ensure that the work is carried out in accordance with it.

13 Additional conditions may be added requiring the licence holder to achieve specific objectives by the detailed actions in the condition.

Licensing: General requirements

14 HSE expects licence holders to meet exemplary standards and to demonstrate that they have a sound overall health and safety record, which shows wider health and safety compliance beyond asbestos legislation alone.

15 The high levels of professionalism and integrity expected of licence holders extend to their behaviour generally – inappropriate behaviour may bring into doubt an applicant's fitness to hold a licence. Where there is evidence of inappropriate behaviour towards enforcing authorities (eg HSE, local authorities, police forces, HM Revenue and Customs etc) or other behaviour that calls into doubt an applicant's suitability to hold a licence, a licence application may be refused (or an existing licence revoked).

16 As working with asbestos is such a high-risk activity, licence holders are expected to continually develop and maintain their experience and expertise in carrying out licensed asbestos work. HSE would therefore expect working with asbestos to be a core part of a licence holder's business.

17 A licence holder has to be able to demonstrate that senior management is actively responsible for health and safety. Effective management systems must be in place and operational. As a licensed industry, exemplary standards of management are expected. Ineffective management and poor standards are not acceptable.

18 Further guidance can be found in *Successful health and safety management* HSG65 at www.hse.gov.uk/pubns/books/hsg65.htm.³

19 A licence holder has to be able to demonstrate excellent knowledge, competencies and skills involved with asbestos work, including:

- risk assessments, plans of work and work methods;
- training for employees, supervisors and managers;
- personal protective equipment (PPE) and respiratory protective equipment (RPE);
- enclosures for asbestos work;
- controlled techniques for asbestos work; and
- decontamination and clearance.

20 Further guidance can be found in the ACOP¹ and in *Asbestos: The licensed contractors' guide* HSG247 (www.hse.gov.uk/pubns/books/hsg247.htm).⁴

21 Only those organisations that believe they possess all the required attributes of a licence holder should apply for a licence to work with asbestos.

The Asbestos Licensing Unit (ALU)

22 ALU has delegated authority from HSE to grant, amend or revoke licences under CAR. The responsibility to carry out this function lies with the Head of ALU.

Applications

23 ALU processes applications for licences to work with asbestos and liaises with the asbestos licensing principal inspector (ALPI) responsible for the assessment. Once a licence has been granted ALU liaises with operational inspectors carrying out inspections of the licence holder.

Monitoring performance

24 The greater degree of regulatory intervention required of a permissioning regime means that licence holders will receive more inspections than they would if they were not licensed. All licensed jobs are notifiable and are liable to be inspected by the relevant enforcing authority (HSE or local authorities). ALU will monitor the performance of licence holders using information from these inspections and other sources.

25 Following inspections of their work, inspectors' reports are received and considered by ALU. Any action will be made in liaison with the relevant ALPI and inspectors. Where appropriate, the licence holder will be contacted. This will normally be because ALU has concerns about the licence holder's performance. ALU's actions include:

- sending warning letters;
- amending licences; and
- revoking licences.

26 Sending warning letters will highlight concerns. Licence holders are expected to act on these letters as failure to deal with concerns can lead to licence action.

27 Licence action includes amendments to and revocation of a licence. Where appropriate licence action can be taken with no prior warning letter.

Priority visit contractor (PVC)

28 If, when monitoring performance, ALU becomes concerned about a particular licence holder that licence holder may be allocated 'PVC' status. PVC status means that they will receive proportionately more inspections than other licence holders to closely monitor their performance.

29 Being a PVC does not allocate any legal status on the licence holder. It is simply an internal procedure for HSE to allocate and target inspections. The licence holder will be informed in writing with an explanation of the reasons why they are now a PVC.

30 The inspections provide HSE with information from more work sites. This enables the licence holder to demonstrate that they can work to the standard expected of a licence holder (ie ensuring risks are adequately controlled). Once they are able to demonstrate this consistently ALU will remove the PVC status.

31 If a licence holder is unable to consistently demonstrate that they can achieve the required standard, ALU may consider that is indicative of a pattern of poor performance, which could instigate revocation proceedings.

Applying for a licence to undertake work with asbestos

32 Requests for applications should be sent to ALU, which will supply the application form ASB1 (see www.hse.gov.uk/asbestos/licensing/index.htm). Applying for a licence should not be undertaken lightly. As stated previously, exemplary standards of health and safety management and performance are expected of licence holders. Paragraph 99 of the ACOP lists those factors where HSE may refuse to issue a licence.

33 If, after considering all factors, the applicant feels that they are capable of holding a licence, the required application details need to be completed and sent to ALU. There is a non-refundable application fee that needs to be paid before any assessment.

34 The ASB1 application form confirms the identity of the applicant (and the details of relevant directors, senior managers etc). It is also a declaration with regard to previous licences and any relevant enforcement or convictions. It incorporates a 'self-assessment' of the applicant's arrangements. This should describe a readiness to work with asbestos within HSE's permissioning regime.

35 ALU will carry out an initial assessment, checking the ASB1 for accuracy, checking company and directors' previous records and also whether there has been any enforcement action. If no concerns are identified at this initial assessment, ALU will request the local ALPI to arrange a formal meeting with the directors and senior management to continue the assessment. The aim of the formal meeting is to examine, in detail, the fitness of the applicant to hold a licence to work with asbestos.

36 Licences will only be granted to employers who actually require the licence under regulation 8 of CAR. Applicants who do not need a licence under the regulation, but apply for licences for 'commercial' purposes, such as to get on an approved tender list, will not be granted a licence. Therefore, if no licence is required to carry out asbestos work it is not worthwhile carrying out all the required work and effort or paying the application fee to try and acquire a licence.

Licensing: Formal meetings

37 Operational inspectors, who may be accompanied by ALU inspectors, will hold formal meetings with applicants and licence holders for the following purposes:

- to assess an applicant's fitness to be granted a licence to work with asbestos;
- to assess whether a revocation of a licence to work with asbestos is appropriate; and
- to assess whether other licence action, such as a licence amendment, is appropriate.

38 Formal meetings will be held at the request of the ALPI, in conjunction with ALU, at a suitable time and venue. An ALU inspector may also be present. The meeting will assess the ability of the licence holder or applicant to manage health and safety and work with asbestos in the appropriate manner.

39 The applicant/licence holder can, if they wish, have their legal representative present. The presence of any other third party, such as a consultant, will be at the discretion of the ALPI. The assessment is of the applicant/licence holder and not any third party present. Therefore, any contribution made by that third party may not be directly relevant and may even be counter-productive. See the appropriate ALG memo.

40 Notes will be taken by the assessing inspector(s) during the meeting to record the matters discussed. These will include a detailed assessment of:

- health and safety management (using *Managing for health and safety: Guidance for regulatory staff on the practice of assessing health and safety management*⁹);
- asbestos knowledge and expertise (using the ACOP and *Asbestos: The licensed contractors' guide*); and
- if appropriate, discussing past performance as a licence holder.

These notes will then be used by the inspector(s) to complete the form ASB4, which goes into HSE's database (COIN).

Form ASB4

41 This form is used by the operational inspector to record findings from the formal meeting. It is divided into six sections:

- 1 Assessing inspector's details
- 2 Licence holder or applicant's details
- 3 Record of discussion about previous performance
- 4 Health and safety management evaluation and assessment
- 5 Report on asbestos-specific matters
- 6 Inspector's final comments and recommendations

All relevant details must be completed in sections 1 and 2.

Completing the ASB4 form

42 Form ASB4 is important to ensure the efficiency of the licensing system. It enables the assessing inspector and/or ALPI to provide ALU with codified information to enable the Head of ALU to make a decision.

43 The assessment is a safety management system audit so sufficient time has to be allocated to the formal meeting and to enable the findings of the assessment to be recorded on form ASB4.

44 Guidance on the HSE website should be followed during the assessment and used to record findings on the ASB4, eg:

- *Management Assessment Tool for SMEs (MAST)* www.hse.gov.uk/foi/internalops/fod/inspect/mast/index.htm.
- *Managing for health and safety: Guidance for regulatory staff on the practice of assessing health and safety management.*⁵

(Also see 'Health and safety management assessment' in this section for further guidance on management).

45 Information on asbestos-specific issues also needs to be also recorded on the ASB4.

46 This will enable the ASB4 to be completed consistently and with sufficient detail for a decision to be made.

HSE's database (COIN)

47 The inspector should attach the completed ASB4 to the service order on the master case for the licence holder/applicant. The service order can then be assigned to ALU for the decision to be made.

Performance history

48 This will be an issue for existing licence holders at renewal, revocation or amendment meetings. However, it may also be an issue with a new applicant with relevant previous work with another company.

49 Paragraphs 99(b) and 108(b) of the ACOP are identical and specify that HSE may refuse to issue a licence or consider revocation of a licence:

'where a pattern of poor performance has emerged over several site visits, demonstrating evidence of poor working conditions and control. This may have resulted in enforcement action (eg conviction(s) for asbestos-related offences, enforcement notices for asbestos-related deficiencies, warning letters etc).'

50 It is vital that licence holders maintain expertise and competence by demonstrating good performance with the work they carry out. Conditions found during site inspections by the enforcing authorities provide the assessing inspector with evidence to judge whether it is appropriate for an applicant to be granted a licence or if a licence holder is to remain a licence holder. Although inspection may result in enforcement action, poor performance with no formal action will also be taken into account.

51 As licensing is an additional process to the general framework of health and safety law the intervention of the regulator should not be required to achieve compliance. The formal meeting is to enable the applicant (or licence holder) to provide the assessing inspector with sufficient information, by way of evidence, that they will not require the intervention of the regulator (or any other third party) to achieve compliance.

52 The assessing inspector will use the record of inspections from the HSE database (COIN) and from ALU reports during the formal meeting. These will be discussed in detail so the applicant/licence holder should be prepared to answer questions related to previous work carried out. Formal records of this work (job sheets/specifications/contracts etc) may need to be produced.

Little or no work during period of licence

53 Where a licence holder has done little or no work it will be difficult for them to provide evidence that they are able to work competently and possess the required expertise. HSE accepts that there may be circumstances where no work has been obtained, but the applicant must be able to show that they have actively been trying to obtain licensed asbestos work. Where appropriate, licences may be granted for a limited period to applicants with limited experience; licensed work must be a core part of the applicant's business to continually develop and maintain their experience and expertise in carrying out licensed asbestos work. If no licensed work has been carried out during in the time period provided for by a licence without an adequate explanation it is unlikely that a further licence will be granted.

54 This applies equally to ancillary licence holders in addition to full licence holders.

55 If the applicant does not intend to carry out licensed asbestos work a licence will not be granted.

Health and safety management assessment

56 Paragraphs 99(d) and 108(d) of the ACOP are identical and specify that HSE may refuse to issue a licence or consider revocation of a licence:

'if you cannot demonstrate that you have adequate knowledge or arrangements in place to protect the health of your employees and others during work with ACMs'

57 A licence holder must have excellent health and safety management. Even if an applicant or licence holder has sufficient knowledge of working with asbestos licences, a licence will not be granted if management systems are unable to ensure that knowledge is put into practice at site.

58 Guidance on health and safety management can be found on the HSE website at www.hse.gov.uk/managing/index.htm. *Successful health and safety management* HSG65 also provides useful guidance.

59 A key element of effective health and safety management is leadership. Guidance on leadership can also be found on the HSE website at www.hse.gov.uk/leadership/index.htm.

60 The assessment should test and validate the applicant's stated management arrangements. Any of the references/evidence referred to by the applicant on the ASB1 form may be asked for and reviewed before the formal meeting. The management arrangements should be an accurate reflection of the way that the organisation operates (all applicants have signed a declaration to that effect). The applicant should be able to demonstrate how the arrangements described will help in achieving satisfactory standards on site.

61 In assessing health and safety, the inspector will make use of the published guidance for regulators on assessing health and safety management (see general requirements section). The inspector will consider the following topics:

- core principles of managing for health and safety;
- leadership and management;
- competence;
- worker involvement; and
- legal compliance.

62 All licence holders must be able to demonstrate at the formal meeting that they have effective health and safety management systems. These systems must be functional and operational and not simply an aspiration to be achieved.

63 Effective health and safety management is not a bureaucratic paper-driven process. Large organisations may require documentation detailing management procedures, but smaller organisations may not need it. Instead, the focus for smaller organisations will be on the behaviours and attributes of perhaps one person – the business owner – or a very small group. For most micro and small dutyholders, discussion of leadership and management processes may not be the most appropriate approach, but the owner has to set an example and provide a lead on health and safety to staff. Managers may rely on minimal health and safety paperwork (eg a simple health and safety policy, risk assessments for the most significant risks, and statutory documents) provided that the systems are effective. The lack of a formal documented system does not necessarily mean that there is no system at all. Medium-sized enterprises may have a mix of formal and informal health and safety arrangements. See *Managing for health and safety: Guidance for regulatory staff on the practice of assessing health and safety management*.

64 The relationship between the employer and employees is very important. To protect employees when working with asbestos there are a number of key issues that require long-term commitments:

- training;
- health records and medical surveillance; and
- provision and maintenance of RPE.

65 Training is an ongoing process, not simply attending a training course. Do they analyse training to assess their employees' competence and to help decide what to include in annual refresher training?

66 Provision of RPE, the last line in protection, requires face fitting to the individual employee and ongoing examination.

67 Medical surveillance requires health records to be kept for at least 40 years.

68 It is therefore preferable for the employee to be permanent and directly employed. Where this is not the case, the applicant or licence holder must be able to demonstrate that their policies are as robust as they would be for permanent directly employed workers. Inevitably, this will involve a greater resource commitment. The use of 'self-employed' people is not permissible, as a self-employed person would require a licence in their own right, and would be directly in control of their work.

69 Leadership will be examined in detail. Managing directors are expected to play a key role in controlling work. For larger organisations there may be a separate individual director appointed to manage the licensed asbestos work. In all cases the 'controlling mind' of the business must be able to demonstrate their leadership with a commitment to ensuring the health and safety of employees. Effective health and safety performance comes from the top and should then filter down to reach every level. A managing director must exercise a high degree of control over their company.

Asbestos-specific matters

70 Applicants and licence holders must be able to demonstrate that they possess excellent knowledge of asbestos and how to work with it competently.

71 Full knowledge of all applicable law is required, with particular emphasis on CAR. The requirements as detailed in the ACOP should be fully understood and complied with.

72 *Asbestos: The licensed contractors' guide* HSG247 provides comprehensive guidance on licensed asbestos work. This was published in 2006 and predates CAR but its guidance remains valid. It provides the following guidance:

- An introduction to working with asbestos-containing materials (ACMs).
- Licences for work with ACMs.
- Risk assessments, plans of work and notifications for work with ACMs.
- Training for employees, supervisors, and others working with ACMs.
- PPE for work with ACMs.
- Enclosures for work with ACMs.
- Controlled techniques for the removal and repair of ACMs, including waste removal.
- Decontamination.

73 Licensed work with asbestos will always require RPE. This should be selected in accordance with chapter 5 of HSG247. Face fit testing should be carried out by a competent person (eg through accreditation under the 'Fit2Fit RPE Fit Test Providers Accreditation Scheme' and in accordance with guidance *Fit testing of respiratory protective equipment facepieces*.⁶

74 Applicants and licence holders should understand the guidance contained in HSG247. The industry also produces guidance via the Asbestos Liaison Group (ALG), which is published on the ALG section of the HSE website as ALG memos – see References and further reading. Applicants and licence holders should refer to the ALG web pages regularly so that they are aware of current developments and up-to-date guidance.

Inspector's final comments and recommendation

75 At the end of the formal meeting the assessing inspector is required to make a recommendation to ALU. This could be to:

- grant a licence to work with asbestos (for any period up to a maximum of three years);
- refuse an application (either conditionally or outright);
- revoke an existing licence;
- amend an existing licence; or
- no change to an existing licence.

76 The inspector should provide information on how this recommendation has been made using the final comments section.

Granting or refusing licences to work with asbestos

77 Applications for licences to work with asbestos are made to ALU. Applicants will be provided with full information and references. The onus is on the applicant to ensure that they have the required attributes of a licence holder. Each application needs to include:

- a completed application form (ASB1), with correct and accurate details and a completed management self assessment; and
- payment for the application (the asbestos licensing process is part of HSE's charging regime and as such is audited and reviewed regularly in line with public sector accountability). The fee is based on the cost to HSE of providing the activity and is reviewed annually. It includes the overhead and administrative elements together with the staff time spent on the process. The fee which is set by means of the Health and Safety Fees Regulations is not refundable if a licence is not granted after the assessment is carried out. See www.hse.gov.uk/asbestos/licensing/index.htm for the current fees.

78 The application process is the same for new applicants and renewal applicants with an existing licence due to expire. However, with existing licence holders or applicants with previous licensed asbestos work experience, past health and safety performance will be taken into account.

ALU action

79 On receipt of the application ALU will carry out a preliminary assessment. This will include:

- a check on the accuracy of detail included in your application form;
- making use of relevant databases to check corporate details, including directorships;
- checking HSE databases for enforcement information;
- confirmation that the application form has been completed appropriately; and
- any other relevant action required to ensure that it is appropriate to proceed with the application.

80 If it is appropriate to do so the application will be forwarded to the local ALPI for action. ALU will also supply the ALPI with all relevant information to enable an assessment to be carried out.

ALPI action

81 On receipt of the ASB1 and other application documentation from ALU the ALPI will contact the applicant and make an appointment to carry out the assessment by way of a formal meeting.

82 The assessment will follow the formal meeting procedure.

Recommendation and decision

83 The Head of ALU will receive the recommendation from the ALPI via COIN. Where there is agreement a licence will be granted or refused in accordance with the recommendation. If there is no agreement the Head of ALU will discuss with the ALPI and reach a decision.

84 The decision is subject to the civil standard of legal proof, ie on the balance of probabilities.

85 If the decision is to refuse ALU will write to the applicant and explain the reasons for refusal. If additional conditions are included on the licence, an explanation will also be given.

Licence duration

86 Regulation 8 of CAR states that a licence 'shall be valid for any period up to a maximum of three years'. There is no 'standard' period for a licence and the period granted will depend on a range of factors considered by the ALPI and the Head of ALU. These factors will include:

- the experience of the applicant in carrying out licensed asbestos work (new applicants and renewal applicants with little or no work are unlikely to be granted a licence for more than one year);
- the stage of development of the applicant (eg with action plans);
- prospective future management plans;
- issues concerning poor performance; and
- any other relevant factors as judged by the ALPI and Head of ALU.

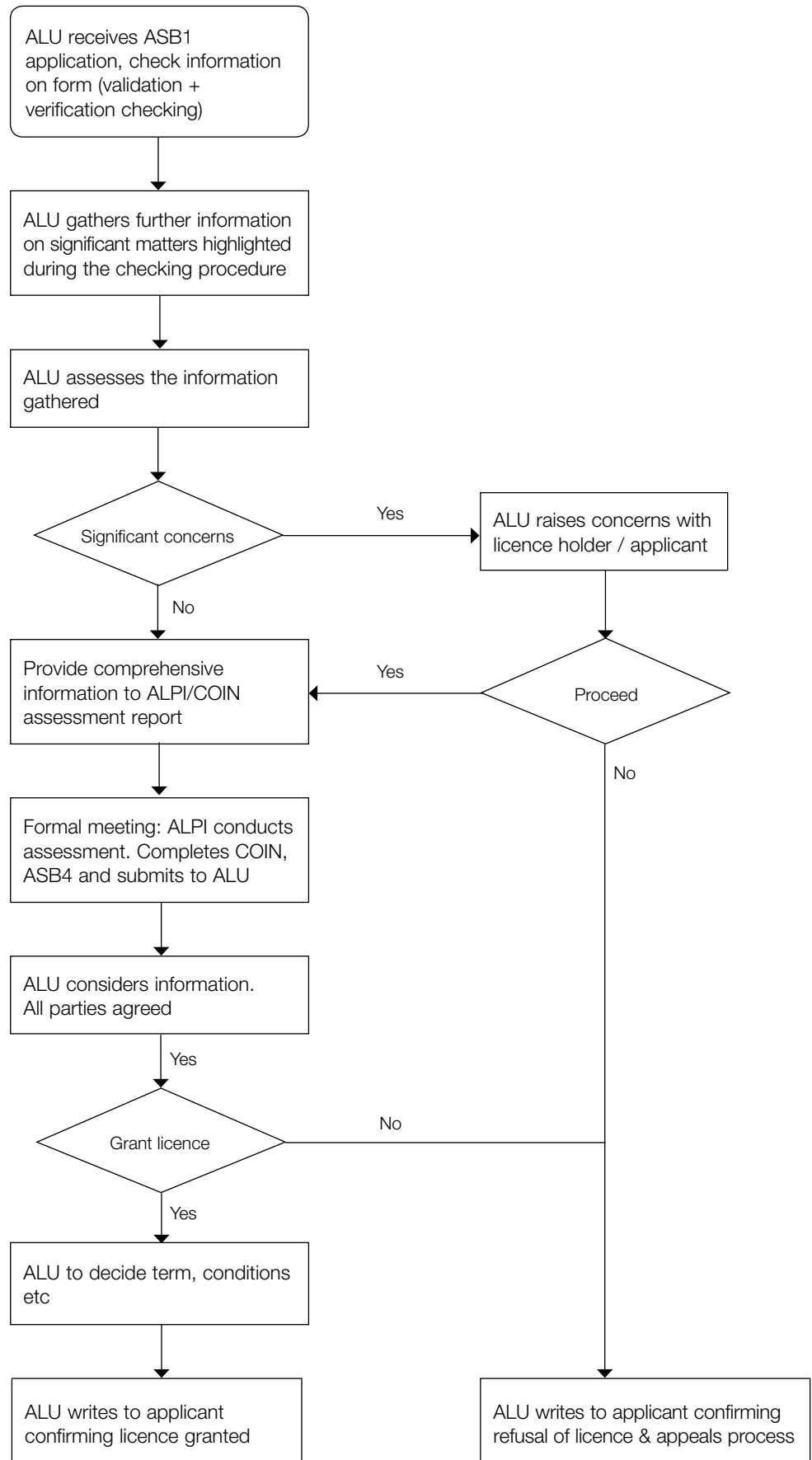
Licence refusal

87 If you are unsuccessful at your assessment, we will write to you explaining why you are not being granted a licence.

88 If the identified failings are relatively minor, you will be conditionally refused and you will be given four months to rectify the matters outstanding and be reassessed (if appropriate). There is a charge for reassessments.

89 If the identified failings indicate you fall well short of the standards required, you will be outright refused. If you wish to pursue another application in the future, it will incur the full licence fee and the entire process will commence again.

Figure 1 Application process



Licence revocation

90 As explained previously, licensing enables HSE to ensure that only those employers who are competent to carry out work with asbestos are permitted to do so. Regulation 8(5) of CAR enables HSE to revoke a licence if it considers it appropriate. If it becomes evident that it is appropriate to consider revocation, those proceedings will take precedence over any other pending action. Asbestos work should only be carried out by employers who are competent to do so, and those who are not should be prevented from doing so.

91 A decision to revoke a licence to work with asbestos may be made where the criteria specified in paragraph 108 of the ACOP have been identified. These could be made by an operational inspector, an ALPI or ALU.

92 It is HSE policy to proceed with revocation action as speedily as possible once we identify it is appropriate, even if there are outstanding criminal or notice appeal proceedings against the company concerned.

ALU action

93 Where HSE is considering whether to revoke, ALU will prepare a revocation file:

- This will provide detail of all inspections, including all correspondence and COIN information.
- Each inspection will be analysed by ALU. Details of the analysis and resulting conclusion must be included with each inspection.
- Where the information is insufficient or inconclusive contact with the relevant inspector(s) must be made to clarify issues.
- Each inspection must be clearly identified in the report so it can be referenced in a matrix of 'revocation evidence'.
- ALU will produce a summary of the analysis detailing why it is considered appropriate to revoke the licence.
- The revocation file should be fully understood by the ALPI as it will form the basis of the discussion at the formal revocation meeting. This will require good liaison between the ALPI and ALU.

94 All appropriate evidence should be used to support the revocation.

95 ALU will write to the licence holder and explain the reason(s) for the proposed action. A copy of the revocation file will be provided. The licence holder will be asked for a written response which will be considered by ALU. This reply must be received by ALU no later than the date specified in the letter and will be added to the revocation file.

96 The Head of ALU will consider any response carefully and if necessary will consult with the ALPI. If ALU considers it is appropriate to continue with the revocation process, ALU will write and inform the licence holder.

97 This letter will also state that they will be contacted by an ALPI to arrange a formal meeting. The formal meeting is not about investigating the alleged breaches of asbestos-related legislation; to assess the licence holder's ability to work safely in the future, it is necessary to address the alleged facts, as detailed in the revocation file, which gave rise to the revocation proceedings. The same issues covered at the initial licence assessment will be re-explored to gauge whether the licence should be retained. The object of the interview is to give the licence holder the opportunity to demonstrate:

- that they have robust and reliable management arrangements and procedures in place to comply with the terms and conditions of their licence;
- that they have robust and reliable management arrangements and procedures in place to comply with current asbestos legislation; and
- that no one will be put at risk as a result of their work with asbestos.

98 There may be cases where issues of prejudice are raised by the licence holder because of outstanding criminal or notice appeal proceedings against the company concerned. The potential prejudice may relate to the outstanding proceedings or, more rarely, to the revocation itself. In such cases the inspector should seek advice from HSE's Legal Adviser's Office in the very early stages of the case to check how to proceed.

ALPI action

99 The ALPI will contact the licence holder to arrange the formal meeting. This will be at a mutually convenient time. The ALPI may be accompanied by an inspector from ALU. The licence holder will be given time to prepare their case, but as they will already be aware of the proposal to revoke the licence, the meeting will be arranged promptly. This will normally be within two weeks of the ALPI contacting the licence holder.

100 In cases where the licence holder refuses to attend the meeting, the ALPI should write again to the licence holder, inviting them to make written comments within 14 days of receipt of the letter. The letter should explain that if the licence holder does not respond, then the revocation process will continue regardless, but without the benefit of HSE being able to consider any comments/information the licence holder might have provided.

101 As with other formal meetings, the licence holder may bring their legal representative to the meeting.

Record of meeting

102 A record of the meeting must be made:

- As with any other licence assessment an ASB4 must be completed detailing the findings at the meeting.
- In addition to the ASB4 a revocation report will be produced.
- The ALPI must make a recommendation on the ASB4, supported by evidence contained within it and the revocation report.
- All documents prepared by HSE or provided by the licence holder must be added to the revocation file.

Recommendation and decision

103 The Head of ALU will consider the recommendation, discuss as is appropriate with the ALPI and reach a decision.

104 The final decision is made by the head of ALU. This will be done by considering all the evidence justifying revocation against any written representation made by the licence holder. The decision must be made in writing with a signed and dated explanation.

105 The Head of ALU will write to the licence holder and inform them of the decision. This will specify the date of the revocation. It will be illegal to carry out licensable work after that date and the licence must be returned to ALU.

Amendment procedure

106 HSE may also vary the terms of a licence by adding further conditions or reducing the period for which the licence is valid. This may be for a variety of reasons, but will normally follow a warning letter(s) from ALU.

ALU action

107 Where HSE is considering amending the licence ALU will write to the licence holder and explain the reason(s) for the proposed action. The licence holder will be asked for a written response which will be considered by ALU. This reply must be received by ALU no later than the date specified in the letter. The Head of ALU will consider any response carefully and if necessary consult with the ALPI. If ALU considers it is appropriate to pursue the possibility of amending the licence, ALU will write and inform the licence holder.

108 This letter will also state that they will be contacted by an ALPI to arrange a formal meeting.

ALPI action

109 The ALPI will contact the licence holder to arrange the formal meeting. This will be at a mutually convenient time. The licence holder will be given time to prepare their case, but as they will already be aware of the consideration to amend it is expected that the meeting will be arranged promptly. This will normally be within two weeks of the ALPI contacting the licence holder.

110 As with other formal meetings, if the licence holder wishes, their legal representative may be present at the meeting.

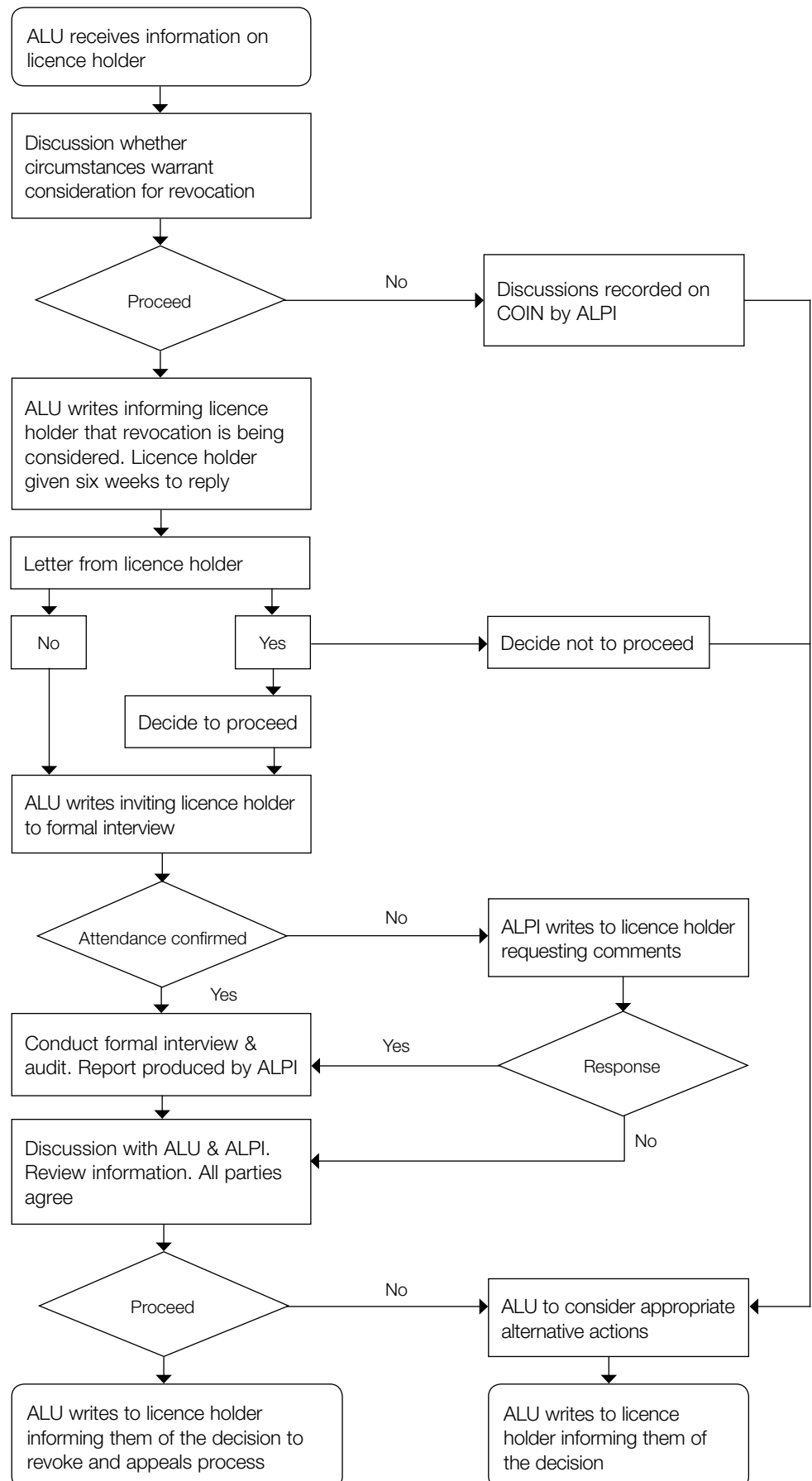
111 The ALPI will make their report to ALU on HSE's database (COIN) with the recommendation.

Recommendation and decision

112 The Head of ALU will consider the recommendation. Where there is agreement, the licence will be amended, or not amended, in accordance with the recommendation. If there is no agreement the Head of ALU will discuss with the ALPI and reach a decision.

113 The Head of ALU will write to the licence holder and inform them of the decision. The licence must be returned to ALU. There is a payment for the amendment.

Figure 2 Revocation procedure



Appeals procedure

114 Before any decision is made by ALU all of the evidence will be considered carefully to ensure the action taken is fully justified. Decisions are made in light of the fact that they must withstand scrutiny to the civil standard of proof, ie that the decision is appropriate on the balance of probabilities. The licence holder/applicant will be informed of the reasons for any decision to ensure they fully understand why the decision has been made.

115 The decision made by ALU will remain in place until the outcome of any appeals process. If after considering the reasons provided to explain the decision, the applicant or licence holder has valid reasons which suggest that the wrong decision has been made, there are three options available to the licence holder:

- Have an informal (verbal) discussion with the Head of ALU to discuss the decision and the explanation of the reasons for it.
- A request to HSE to review the decision made by ALU. This will be by way of a licence review board (LRB) with members who were not involved with the decision made by ALU.
- A formal appeal against the decision made under section 44 of the Health and Safety at Work etc Act 1974 to the Secretary of State for Work and Pensions against the decision.
- It is important to note that a section 44 appeal can be made at any stage with or without an internal HSE review of the decision.

LRB review

116 The LRB will consist of the following members:

- a member of the Senior Civil Service (SCS) with overall responsibility for ALU;
- an independent ALPI not involved with the decision being reviewed; and
- a principal inspector who is not involved with licensed asbestos work.

117 The members of the LRB are chosen to ensure that they have not been involved in the decision made by ALU.

118 Any request for an LRB review should be made to ALU who will arrange for it to be processed. Full details should be supplied with the request to explain why the licence holder considers an LRB is justified. The SCS member of the LRB will inform the applicant of the date of the LRB and the date for any further submissions to be considered.

119 The applicant will be informed of the LRB's decision immediately following the meeting.

Section 44 appeal

120 Under section 44 of the Health and Safety at Work etc Act 1974, the appeals against the decision should be addressed to the Secretary of State for Work and Pensions, Department for Work and Pensions (DWP), 79 Whitehall, London, SW1A 2NS.

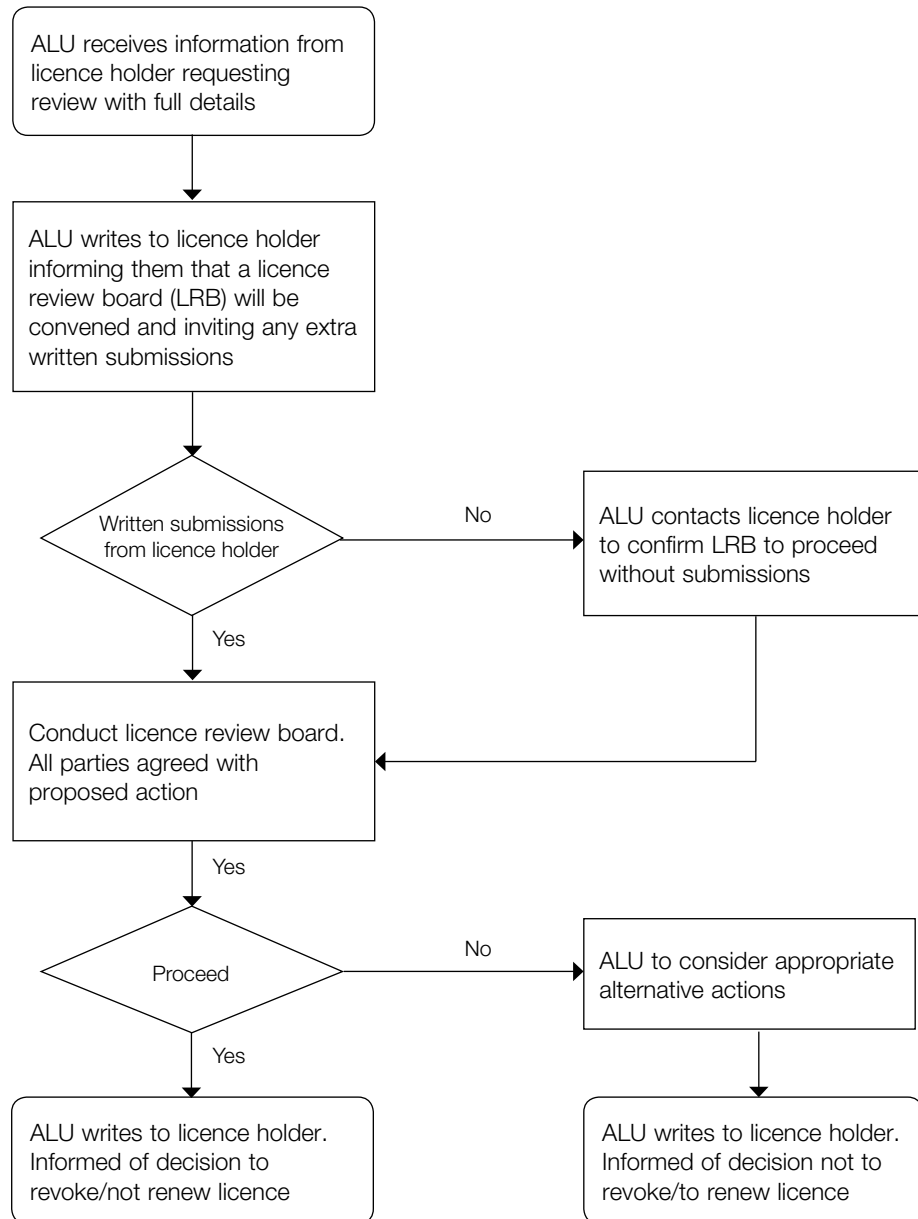
121 The appeal must include the following:

- appellant's name and address;
- the specific decision against which the appeal is made; and
- the grounds for the appeal.

122 The right to appeal to the Secretary of State will be explained with all correspondence from ALU concerning decisions to refuse, amend or revoke licences to work with asbestos.

123 The applicant will be contacted by DWP once the appeal has been made.

Figure 3 Appeals procedure



References and further reading

- 1 Health and Safety Commission *Policy Statement: Our approach to permissioning regimes* HSE 2003 www.hse.gov.uk/enforce/how.htm
- 2 *Work with materials containing asbestos. Control of Asbestos Regulations 2006. Approved Code of Practice and guidance* L143 HSE Books 2006 ISBN 978 0 7176 6206 7 www.hse.gov.uk/pubns/books/L143.htm (This is still applicable to 2012 Regulations).
- 3 *Successful health and safety management* HSG65 (Second edition) HSE Books 1997 ISBN 978 0 7176 1276 5 www.hse.gov.uk/pubns/books/HSG65.htm
- 4 *Asbestos: The licensed contractors' guide* HSG247 HSE Books 2006 ISBN 978 0 7176 2874 2 www.hse.gov.uk/pubns/books/HSG247.htm
- 5 *Managing for health and safety: Guidance for regulatory staff on the practice of assessing health and safety management* HSE 2010 www.hse.gov.uk/managing/regulators/regulators.pdf
- 6 *Fit testing of respiratory protective equipment facepieces* Operational Circular OC 282/28 HSE 2011 www.hse.gov.uk

HSE's asbestos web pages: www.hse.gov.uk/asbestos/index.htm

Asbestos Liaison Group (ALG): www.hse.gov.uk/aboutus/meetings/committees/alg/index.htm

ALG guidance is published on the HSE website as ALG memos at www.hse.gov.uk/aboutus/meetings/committees/alg/memos_issued.htm.

Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit www.hse.gov.uk/. You can view HSE guidance online and order priced publications from the website. HSE priced publications are also available from bookshops.

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