



costs owed to the Environment Agency and costs incurred in relation to compliance with statutory notices were outside the scope of standard public liability insurance. General liability policies may cover some of the liabilities under the Regulations but coverage is uncertain and will depend on individual policy wording.

We hope that the scope and impact of Regulations will become even clearer once the results of the consultations are published and the final Regulations and guidance are published in early 2009.

Further details on the Regulations and court cases cited are available on request.

FURTHER INFORMATION

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Gas Safety: Whose responsibility is it?

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According to statistics published by the Health and Safety Executive, in 2006/7 there were 150 gas-related incidents, 82% of which involved carbon monoxide exposure caused by gas appliances and flues that had not been properly installed or maintained. Most of us will have a gas appliance in our own home, for example a gas fire or boiler, and most of us will know that we should get these appliances checked every so often to ensure that they are safe. This is not a legal requirement - as it is our own private home and our own appliance, the only person exposed to any risk is ourselves, and so it is up to us to ensure our own homes are safe. However, in the case of certain other domestic and commercial premises, and rented accommodation, control of gas appliances is subject to regulation by statute - specifically the Gas Safety (Installation and Use) Regulations 1998 (the "Regulations").

The Regulations cover gas systems, appliances and flues in:

- certain domestic premises (eg, rented accommodation);
- commercial premises such as office buildings;
- public premises such as shops, hotels and public houses;

- holiday homes e.g. chalets, caravans, mobile homes and boats on inland waterways.

This is because, unlike private domestic accommodation, members of the public (including tenants) are put at potential risk from fire, explosion or carbon monoxide poisoning if any gas appliance in the premises is faulty. The law therefore imposes certain duties on landlords to carry out annual gas safety checks and ensure that appliances are maintained in good working condition in order to avoid such incidents.

THE LAW ON GAS SAFETY: WHO HAS A DUTY?

The Regulations are complex, but essentially aim to prevent injury to consumers and the public from carbon monoxide poisoning, fire or explosion. The Regulations place duties on installers, landlords and some gas suppliers, which exist in addition to the general health and safety duties under other legislation such as the Health and Safety at Work etc Act 1974 ("HSWA 1974") and the Management of Health and Safety at Work Regulations 1999. As will be seen below, no duties are imposed upon tenants, but it should be noted that certain



- To view INDG285 (Landlords: A Guide to Landlords' duties: Gas Safety (Installation and Use) Regulations 1998) [click here](#).

- L56 (Safety in the Installation and Use of Gas Systems and Appliances) can be purchased from the HSE by visiting their website at www.hse.gov.uk.

tenants would be accountable for gas safety in circumstances where the landlord is not legally responsible.

There are specific requirements within the Regulations regarding gas safety checks; who should carry these out, and how often. With leasehold premises, this will depend upon the type of lease agreement that exists between the tenant and landlord. Essentially the Regulations state that landlords will be responsible for gas checks and maintenance for short term leases, where the policy is that the burden of repairs and maintenance should fall on the landlord rather than the tenant. A short term lease is considered to be a lease of less than 7 years' duration, or a periodic tenancy, such as a tenancy at will. On the other hand, where a tenant is in occupation under a long lease (i.e. of more than 7 years' duration), or there is an option in favour of the tenant to renew for a period which, when aggregated, takes the tenancy to over 7 years duration, then the landlord is not responsible for carrying out gas safety checks and maintenance under the Regulations, and therefore this should be carried out by the tenant. Landlords will also be responsible where premises are occupied under a licence. The table below summarises the position.

Landlords cannot contract out of their statutory obligations under the Regulations, and neither can they delegate to the tenant their legal duty for ensuring gas safety. This is analogous to the non-delegable employer's general duty of care owed under HSWA 1974.

The Regulations are accompanied by HSE Guidance (INDG285 "Landlords: A Guide to Landlords' duties: Gas Safety (Installation and Use) Regulations 1998"), as well as a comprehensive Approved Code of Practice (L56 "Safety in the Installation and Use of Gas Systems and Appliances"), both of which should be borne in mind when considering application of the Regulations and the practical steps required to comply with these.

WHERE GAS SAFETY IS THE LANDLORD'S DUTY (REGULATION 36)

If the premises and lease are of the type that is caught by the Regulations and the landlord is therefore responsible for gas safety (as

identified by the table below) then the landlord will be legally responsible for:

- arranging for annual gas safety checks to be carried out on each gas appliance (including flues to the appliances) that is provided for the tenant's use;
- ensuring that the gas appliances installation pipe work, appliances and flues provided for tenants are maintained in a safe condition;
- ensuring maintenance and annual safety checks are carried out by a competent, CORGI registered installer;
- ensuring that a record of each safety check is kept for 2 years, and issuing a copy of the safety check to each existing tenant (within 28 days of the check being completed and to any new tenant before they move in); and
- ensuring that all gas equipment (including any appliance left by a previous tenant) is safe or otherwise removed before re-letting.

Landlords are entitled to use a managing agent to assist in complying with their duties under the Regulations, although in such circumstances the management contract should set out clearly who is responsible for making the necessary arrangements for statutory testing and maintenance, and for keeping records. It is important to note that, as the duties under the Regulations are non-delegable, employing a management agent or other contractor to arrange and carry out testing will not exempt the landlord from their overall responsibility for gas safety under the Regulations.

Whilst in these circumstances tenants need not be concerned with gas safety per se, landlords should nevertheless ensure that the tenant has a general understanding of the arrangements surrounding the testing of appliances within the premises so that they can assist, e.g. by ensuring engineers have access to the property to carry out any maintenance or safety checks.

WHERE GAS SAFETY FALLS TO THE TENANT

If the premises and/ or lease arrangement is such that the landlord is not legally responsible for gas safety under the Regulations, then it will remain for the tenant to assume such



responsibility, and they should therefore make their own arrangements to have regular gas safety checks and maintenance carried out on all appliances in the premises. This is not a legal requirement under the Regulations (as these only apply to landlords, installers and suppliers) and so tenants would not be liable to prosecution if they did not carry these out; however, this is something that should be part of the tenant's overall responsibility in relation to the safety of the premises.

Landlords may therefore consider it appropriate to include provisions regarding gas testing within lease agreements where they are not legally responsible for gas safety, thus making it a contractual, rather than legal duty of the tenant to carry out regular gas safety checks and maintenance as part of the upkeep of the premises. In this way, whilst the landlord is not legally responsible, they will nevertheless be demonstrating a responsible attitude to gas safety and ensuring that this does not go unmonitored.

As the Regulations do not apply to tenants, there is no statutory period of time for when they should carry out gas safety checks, although it is suggested that the same 12-month period is adopted as in the Regulations. Again, to be safe, tenants should also ensure that appliances are maintained in safe working order; that testing is carried out by a CORGI registered engineer; and that a copy of the gas safety certificate is retained.

WHAT SHOULD LANDLORDS DO?

As discussed at the beginning of this article, the Regulations apply to a number of different premises, and therefore will permeate a variety of industries, particularly the leisure, pub and hotel sector. The Health and Safety Executive takes enforcement of the Regulations very seriously; an individual landlord who owned and rented out 12 houses was recently fined nearly £25,000 for failing to carry out gas safety checks and provide in-date gas safety certificates to his tenants. Had there been injury resulting from fire or carbon monoxide poisoning, this sum would have been much higher, and in the event of a death could have resulted in an investigation for gross negligence manslaughter.

Corporate enterprises, on the other hand, that own and operate large portfolios of public premises to which the Regulations may apply - such as pub or hotel chains - will face much greater scrutiny and, consequently, much higher fines should they fail to comply with their duties regarding gas safety. Where a death occurs, companies can be investigated for corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007. Accordingly, it is crucially important for such businesses to review their gas safety procedures, satisfy themselves that these comply with the Regulations, and ensure that such procedures are being adhered to in practice.

Steps to take if the Regulations may affect your business:

- As discussed above, review the company's gas safety policy and procedures and ensure this is drafted in accordance with the Regulations.
- Review all lease agreements and relevant provisions regarding gas safety - and consider imposing contractual duties on the tenant if gas safety is not your responsibility for certain premises.
- For premises where gas safety is the landlord/ company's responsibility, review existing gas safety records and ensure all gas safety certificates are in-date (i.e. within the last 12 months). Commission gas safety checks immediately for any premises where the gas safety certificate is more than 12 months' old.
- Pay particular attention to premises which undergo frequent tenancy changes and/ or amendments to the term of the lease: landlords have the potential to be caught out if premises that previously were held on a long lease (and therefore were not covered by the Regulations) change hands and revert to a short-hold tenancy - thus falling within the Regulations for the first time and whereupon the landlord will become responsible for gas safety. On this basis, procedures regarding tenancy changeovers should also be reviewed to take account of such situations, and to ensure an in-date gas safety certificate is in place before the new tenant enters into occupation.

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FURTHER INFORMATION

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TYPE OF LEASE/ AGREEMENT	DO THE REGULATIONS APPLY?	WHOSE RESPONSIBILITY?
Long lease of more than seven years' duration	NO	Tenant
Short term lease of less than seven years	YES	Landlord
Short term lease of less than seven years with no option to renew, or renewable for periods of one year at a time (and still less than seven years)	YES	Landlord
Short term lease of less than seven years with a block renewal option, taking tenancy to more than seven years' duration (e.g. five year lease with a renewal option for a further five or more years)	NO	Tenant
Periodic tenancies, such as a "Tenancy at Will" agreement	YES	Landlord
Licence	YES	Landlord