

Gas safety

Guidance note for landlords

December 2005

Introduction

This briefing note indicates how we will make judgements about the compliance of housing organisations with the domestic gas safety legislation. It should be read in conjunction with the Audit Commission's Key Lines of Enquiry 3, 'Stock investment and asset management'.

Sensible health and safety is about managing risks. The risks presented by domestic gas appliances can be easily controlled where landlords are aware of their duties and act upon them. Any appliance which burns fossil fuels, such as gas, coal or oil, can give off carbon monoxide. Excess gas, which is poisonous, is produced when the fuel does not burn properly. It can kill or maim without warning in just a matter of hours.

Every year at least 20 people die from carbon monoxide poisoning caused by gas fires, central heating boilers, cookers and flues that have not been properly installed or maintained. In many cases these deaths could have been prevented if a maintenance regime was followed and an annual safety check performed.

The Health and Safety Executive (HSE) is responsible for domestic gas safety policy within the scope of the Gas Safety (Installation & Use) Regulations 1998. The HSE operates a 'gas safety advice line' on freephone 0800 300 363 and can answer general enquiries on 0845 345 0055.

Since 1991 the Council for Registered Gas Installers (CORGI) has kept a register of competent gas installers on behalf of the HSE. Registration is now a legal requirement for businesses and self-employed people working on gas fittings or appliances. To check if gas installers are registered with CORGI, or for technical advice relating to gas appliances phone: 01256 372300.

Relevant Documentation

There are two main documents that are relevant in assessing an organisation's approach to gas safety.

The first of these, 'Safety in the installation and use of gas systems and appliances', (published by the HSE) provides practical guidance with respect to the provisions of the Gas Safety (Installation and Use) Regulations 1998. It has the status of being the HSE's code of practice with regard to domestic gas safety. The latest version of this was published in 2004.

The second key document relates to the fundamental review of the gas safety regime undertaken by the HSE. This review led to the report 'Fundamental Review of Gas Safety Regime - Proposals for Change' which included 47 recommendations. These included action on both publicity and awareness. These recommendations have been accepted by both the Health and Safety Commission and Government Ministers and as such are part of the procedural requirements. A copy of the report is available from HSE's Gas Safety website at <http://www.hse.gov.uk/gas/domestic/change.pdf>.

The gas safety regulations are outlined in 'Safety in the installation and use of gas systems and appliances'. These regulations make reference to 'all reasonable steps'

being taken to ensure safety checks are undertaken. The important word here is 'all'. Each housing organisation has a tenancy agreement for all of its lettings. This should contain the right for the organisation to take steps to undertake work or for the right of access to the property. In the unfortunate event of a fatality occurring where an appliance has not had a safety check within the last 12 months, the housing organisation has to satisfy the HSE that all reasonable steps have been taken to check the safety of that appliance.

Regulation 36 details the duties of landlords to 'ensure that each appliance and flue to which the duty extends' has been checked within a 12 month period, that proof of this is kept for two years and is available for the tenant(s) of the premises. The relevant sections of the guidance to this Regulation are:

208. *Regulation 36 places important duties on most landlords of domestic property to ensure that gas appliances and flues are maintained in a safe condition, annual safety checks are carried out, and records are kept and issued (or in certain cases displayed) to tenants. These duties are in addition to the more general ones that landlords have under the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999.*
213. *All reasonable steps should be taken by landlords (including through tenancy agreements) to ensure access to property for safety checks and maintenance work to be done, this may involve giving written notice to a tenant (e.g. by recorded delivery) explaining the reasons why access is required and requesting arrangements to be made (at a mutually agreed date/time); follow-up action, including personal visits, might be required, for instance, if there is no response to a written request. Tenants should co-operate with landlords in allowing the necessary access to their accommodation. However, landlords should keep a record of their action in case a tenant refuses entry and it is necessary to demonstrate the steps taken to discharge their duties (see regulation 39). Action to gain access does not involve making arrangements for forced entry into property. See also paragraph 245.*

The key words within the above paragraph are '**including through tenancy agreements**' and the '**follow-up action including personal visits**' after there has been no response to a more formal approach.

Regulation 39 deals with how to avoid committing an offence by not following the regulations. It states that all reasonable steps must be taken to comply with these Regulations to avoid committing an offence under these regulations. The relevant section of the guidance for this Regulation is:

245. *This regulation provides certain exceptions as to liability, under which a person is not deemed to be guilty of an offence, where they can show that they took all reasonable steps to prevent contravention of the provision concerned. This publication contains guidance in various areas, e.g. concerning access to premises to discharge landlords duties under regulation 36 (e.g. see paragraph 213.) However, it is finally for a court to decide whether 'all reasonable steps' have in fact been taken in particular circumstances and whether a person is guilty of an offence.*

We would therefore ask the following question: 'How confident would the organisation be in defending its position if a fatality occurred in one of its properties where access to undertake a safety check to the appliance had not been achieved'.

Good practice examples from a cross section of local authorities and housing associations have demonstrated an ability to meet the 'all reasonable steps' requirement within the Regulations. A number of organisations have also sought additional legal advice from specialist disrepair solicitors of their existing procedures and, where appropriate, arranged for these to be amended accordingly.

Any housing organisation would need to be explicit as to the reasons why these other options had not been explored for any appliance that had not been serviced within the 12 month legal requirement. It is reasonable to assume that the risk of an appliance being faulty and posing significant risk of injury or death to a property's occupants, or those from neighbouring properties, increases significantly the longer the period is between safety checks.

Some organisations currently force access to properties where repeated attempts at access have failed. This cannot be seen as good practice. In all cases where forced access is used this should be in accordance with the requirements of the relevant housing legislation and with specialist legal advice and/or a court order.

In addition to the above, the review of the gas safety regime undertaken by the HSE developed a series of recommendations that were agreed by Government and the HSE. Recommendation 30 considered the requirements of landlords. The relevant section from this document is:

279. (e) – (f) While sympathising with views on practical difficulties sometimes encountered, we believe that the existing regulations (including exceptions as to liability in regulation 39) already provide an adequate level of protection for landlords. We are concerned that more specific provisions could tie the hands of courts, by removing the flexibility currently offered to take account of specific circumstances (e.g. for defining levels of gas safety management responsibility commensurate with the extent of control exercised through contractual arrangements). With regard to access powers, we believe that separate provisions (i.e. through Court Order), e.g. in the Landlord and Tenant Act 1985 (s 11(6)) and the Housing Act 1988 (s 16) already provide adequate recourse generally, and it is neither necessary or appropriate for GSIUR [the Gas Safety (Installation and Use) Regulations 1998] to extend the law in this difficult and controversial area. Again we propose that additional guidance is the best way of addressing landlords concerns for clarification in this regard.

The key point here is the clear reference to the expectation that landlords will now use the options available to them under the existing housing legislation (usually as detailed in their tenancy agreements)

As well as the risk of prosecution and liability from a lack of a thorough approach to ensuring gas safety checks are undertaken, we would also point to some of the adverse publicity that arises when a fatality or serious injury arises due to a failure by the landlord to discharge their duties under the legislation.

Legal Options

Tenancy agreements are central to landlords' rights to ensure gas safety checks are carried out. In most cases the tenancy agreement gives the landlord rights to access the property and to undertake work. The legal options include:

1. obtaining an injunction, this places an obligation upon the occupier of the premises to allow access while not endangering occupancy rights;
2. landlords have the legal right to gain access to their properties to undertake necessary work;
3. possession suspended in return for allowing the landlord access to conduct necessary work; and
4. Section 81/Schedule 3 of Environmental Protection Act 1990 which covers the issue of a warrant by a magistrate allowing forcible entry. This does not allow for servicing to be undertaken, only inspection and disconnection gas appliances (not supply).

The Regulations and their guidance are intended to make sure that landlords take all reasonable steps to undertake full safety checks of the appliances for which they have responsibility. Landlords need to make a rigorous risk assessment of their own and residents' circumstances when considering their policies in relation to gas servicing. The key driver for this should be to ensure the safety of residents as well as ensuring compliance with the law.

Good practice examples include the use of injunctions (not to gain access to the property but to place additional pressure on the tenant to allow the landlord reasonable access) or possession proceedings dependant upon the conditions as outlined within the tenancy agreement.

Where a small number of safety checks are not completed within the regulation 12 month period, it is important that landlords take action to prioritise gaining access to those properties and to complete any outstanding safety checks and resulting works at the earliest opportunity. The successful completion of gas appliance servicing in a high percentage of properties can be seriously undermined by the existence of properties where services have not been carried out for two years or more.

The use of external specialist legal services represents another example of good practice employed by a number of councils and housing associations. They have recognised that there are issues for landlords in fully complying with their responsibilities under the Regulations in this specialist area. To ensure these are fully met they have employed the services of specialist external advice to confirm their policies and procedures are rigorous and sufficiently robust to withstand external scrutiny should the worst happen.

Key Things the Inspectorate will look for

1. Governance, Monitoring and Compliance

- Is there a clear procedure to gain access to properties to undertake a gas safety check every 12 months?
- Is this followed and clearly documented/recorded?
- Are actions taken within the prescribed timescales?
- How many properties have CP12s older than 12 months and what stages of action are they all at?
- In cases of no access how is the housing organisation ensuring it meets its legal obligations?
- Is the final stage letter sent by Recorded Delivery or hand delivered?
- In cases where Recorded Delivery has been found to be locally ineffective have other options been considered?
- Has the fitting of limiting devices been considered?¹
- Is there a 'policing' role for gas safety check within the landlord function? If so are they suitably qualified?
- Is progress on safety checks and servicing monitored at least weekly?
- Does the landlord do its own cross-checks upon completion of servicing?
- Does the landlord cross-check whether paperwork has been completed appropriately?
- Are front line housing staff and other agencies involved in cases of persistent no access?
- Are there clear procedures for dealing with persistent no-access properties and prioritising them for access in subsequent years?
- Has the housing organisation's gas servicing policy been approved and reported through its governance structures?
- Have the governance structures been informed of risk in relation to its policy on gas servicing and are there assessments of progress and effectiveness of its practices?
- Do the governance structures receive progress or monitoring reports on a regular or an exceptions basis?
- Does the organisation involve contractors, quality assurance agents and residents in reviewing the effectiveness of its arrangements for servicing and the legal remedies available to it?
- Is there an external independent quality & compliance audit?

2. Contractors

- What checks does the housing organisation undertake to ensure the competency of the contractors they employ?
- Are the same competency checks of contractors applied to planned maintenance contract works?
- What quality checks are undertaken of the gas paperwork and by who?
- Is servicing approached on a structured basis (area/street etc) and clear procedure for advising tenants in advance

¹ Care needs to be taken to ensure the type of device fully complies with the Human Rights Act. These appliances do **not** cut off the use of the boiler but limits its use to one hour periods for up to ninety hours

- Are there regular meetings/liaison arrangements with contractors?
- Is performance on annual servicing close to 100 per cent?
- Do contractors make appointments for servicing?
- What use is made of evening and weekend appointments?

Residents

- Do tenants know when gas servicing will take place?
- What measures are in place to identify and make specific access arrangements for vulnerable and non-English speaking residents?
- Do the procedures have a safety net built in for potentially vulnerable tenants or those with particular needs?
- Is the importance of gas safety positively promoted to tenants?
- Are CP12 (safety certificates) provided to tenants at the time of the safety check and are they also issued to any new/incoming tenants?
- Are customer satisfaction surveys undertaken on a regular basis?
- Are newsletters, letters, and local press used to inform tenants of the importance of gas checks?
- Is there specific provision within the tenancy agreement to the obligation to provide access for servicing?
- Is there an escalation procedure based on risk assessment of the length of period overdue, property type, and previous non compliance by the resident?
- Are access arrangements for servicing works widely available and customer focussed?
- Is sufficient notice given to residents of their proposed appointment and is there sufficient opportunity to rearrange it to a mutually convenient appointment?
- Are appointment reminders sent to residents? Some positive examples seen to date include the use of SMS text messaging, follow up letters and advance phone calls

Other areas we also consider include arrangements for service programming; the use of legal remedies; incentives to tenants; and arrangements for maintaining carbon monoxide detectors. Some organisations include the servicing of smoke alarms at the same time as gas appliances are serviced.

Further Information Sources

- HSE - www.hse.gov.uk/gas/index.htm and HSE booklet L56 'Safety in the installation and use of gas systems and appliances' It also produces basic information to help landlords and tenants understand their rights and responsibilities. Copies of Gas Appliances: Get Them Checked, Keep Them Safe (INDG238REV2) and Landlords – A Guide To Landlords' Duties: Gas Safety (Installation and Use) Regulations 1998 (INDG285REV1) are available free from HSE Books, PO Box 1999, Sudbury, Suffolk, CO10 2WA, tel: 01787 881165 or fax: 01787 313995. These leaflets are also available online as PDF files at: <http://www.hse.gov.uk/pubns/gasindex.htm>. They are also available in the following languages: Albanian, Arabic, Bengali, Chinese, Czech, Gujarati, Hindi, Polish, Punjabi, Turkish, Urdu and Welsh.
- CORGI - <http://www.corgi-gas-safety.com/>

- National Grid (formerly Transco) - <http://www.nationalgrid.com/uk>
- National Association of Chimney Sweeps - <http://www.chimneyworks.co.uk/>

Our comments and observations in respect of gas safety have been made in good faith and in an attempt to assist housing organisations in fully complying with their responsibilities as a landlord.