

GAS SAFETY MATTERS

pull-out feature from Regulation & Inspection

We all know that the quality of housing can affect the quality of life for tenants. But there is an added dimension where gas safety is concerned: poor practice can have fatal consequences.

Over the last few years there has been an increasing awareness among Scottish social landlords of the importance of the effective management of gas safety – R&I's inspections have been a catalyst for this. In this pull-out special feature we highlight findings from those inspections and provide advice and examples of positive practice from Scotland and England to help landlords manage gas safety in their houses.

What inspectors found

Inspectors look to see that landlords are meeting their legal duties to check the safety of gas appliances. In doing this, inspectors can identify weaknesses in policies, procedures or practice that could hinder landlords meeting these duties, but will also look for examples of positive practice that add up to effective management of gas safety.

To date, R&I has reported on the performance of 36 councils and registered social landlords. In general, the management of gas safety was one of the weaker areas of inspected landlords' performance. Indeed, inspectors found that a landlord's overall performance is often a poor predictor of performance in the management of gas safety; they found examples of poor gas safety management among some landlords who were otherwise performing very well.

During the pathfinder inspection programme inspectors found some good performance on gas safety, but:

- nearly two thirds of inspected landlords had failed to check a high percentage of their gas appliances within the required 12-month period;

- some landlords were checking as few as one in three properties on time;
- few had managed to deal effectively with the minority of cases where they were unable to get access to a property;
- landlords are not always managing their gas safety contractors effectively;
- landlords' risk management systems did not always identify poorer performance in gas safety and some landlords had not responded well to identified risks; and
- few landlords were effectively monitoring their gas safety performance.

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Inspectors have found a similar pattern of performance in inspections since the pathfinder programme. Gas safety was reported as a significant weakness in 8 out of the 11 inspection reports published since April 2005. Taken together, the inspected landlords had a current safety certificate for only 91 per cent of their homes – this varied from 100 per cent to 81 per cent for individual landlords. Only 55 per cent of safety checks had been carried out within 12 months of the previous check and 7 per cent of checks were not carried out until more than three months after the due date. The best performing landlord had carried out 90 per cent of gas safety checks within 12 months of the previous checks, while the poorest had carried out only 39 per cent.

Much of the recent discussion about gas safety in the housing sector has been focused on the problem of how landlords can obtain entry to properties where tenants have failed to provide access. While it is an important and complex issue, inspectors found that this was *not* the main factor in poor performance in getting checks done in the required timescale. Broader weaknesses in landlords' management of gas safety were more significant contributory factors.

The legal framework

In accordance with powers provided by the Health and Safety at Work etc Act 1974, the Gas Safety (Installation and Use) Regulations 1998 place a number of duties on landlords.

Some of the key duties on gas safety for landlords:

- make sure installation pipe-work, appliances and flues provided for tenants are maintained in a safe condition;
- make sure an annual safety check is carried

out on each appliance and flue provided for tenants' use;

- make sure maintenance and annual safety checks are carried out by a CORGI-registered installer;
- keep a record of each safety check for two years; and
- issue a copy of the safety check to each existing tenant within 28 days of the check, and to any new tenant before they move in.

Landlords must also:

- make sure all gas equipment (including any appliance left by a previous tenant) is safe before re-letting a house;
- remove any unsafe equipment before a house is re-let;
- make sure anyone carrying out work on gas appliances, fittings and flues provided for tenants' use has the required competence and that only CORGI-registered installers are used; and
- if they use a managing agent, make sure the management contract clearly specifies who is to make arrangements for carrying out maintenance and safety checks and for keeping records. However, the landlord has the overall responsibility for making sure duties are met, whether or not a managing agent is employed.

The regulations state that no person shall be guilty of an offence by reason of contravention of various sections of the regulations in any case in which he or she can show that he or she took all reasonable steps to prevent that contravention.

In short, all landlords have a clear statutory obligation to ensure that a current gas safety certificate is available for every relevant property and that this is renewed before or on the relevant anniversary date. If a landlord can demonstrate

HIGHLIGHTING POSITIVE PRACTICE

Scheduling gas service visits

South Lakes Housing schedules all its gas servicing visits between May and October to reduce number of breakdowns and minimise disturbance to residents. When a tenant reports a fault there is a check to find out when the annual service is due and, if appropriate, the gas service done at same time as the repair.

Audit Commission Inspection report – June 2004

that it has taken all reasonable steps to attempt to discharge its duties but has not been able to, then it will still have contravened the Regulations, but could have a defence in any prosecution it may face for that contravention. The Court, and initially the Health and Safety Executive (HSE) and the Procurator Fiscal, would determine what constitutes "all reasonable steps" in any legal action against a landlord for contravention of the Regulations.

Since 1999, 31 landlords have been convicted of offences relating to the Regulations, including two Scottish social landlords.

Full text of the Regulations is available on HMSO's website at www.hmsso.gov.uk

Managing gas safety

To manage its gas safety responsibilities effectively, a landlord needs a well thought-out and carefully designed procedure. A good procedure will include:

- good communication with tenants;
- good information flows, both internally and with contractors;
- good quality management systems; and
- a clear set of actions for when things go wrong.

When developing gas safety procedures, landlords should consider their own operating

context, ensure that their approach is proportionate and that it achieves value for money. It is landlords' responsibility to ensure that their approach to gas safety complies with all relevant aspects of the law, and they should consider testing their procedures with their legal advisors. It's also a good idea to start at the end point and work back. For example, consider what actions are needed if there are difficulties gaining access to a house, how long will these take, and build this into the overall timescale.

A key objective of any gas safety procedure should be to maximise quick access to houses to carry out inspections and to minimise the problems of 'no accesses'.

There may be a number of questions about maximising access that landlords will want to ask themselves when developing or reviewing their gas safety procedures.

HIGHLIGHTING POSITIVE PRACTICE

Meeting tenants' needs

Islington Borough Council's Housing Management section is responsible for co-ordinating all 'no-access' (for gas safety inspections) monitoring, with one officer acting as the lead for developing positive practice. Staff carry out joint visits to 'no access' properties on Saturdays and Sundays. The Council also has an officer whose job it is to identify tenants who are 'hard to reach' and at high risk in terms of gaining access.

Audit Commission Inspection Report – June 2004

Are we properly informing tenants of the importance of gas safety?

Landlords need to explain the importance of gas safety to their tenants, and should look for all opportunities to do this. Features on gas safety could be included in regular tenants' newsletters, handbooks and websites. Landlords could highlight messages on the importance of having gas appliances checked on all written communications with tenants. Prominently displayed posters in reception areas can be an effective way to reinforce these messages. Landlords can discuss gas safety with tenants during tenancy sign-up interviews and settling-in visits, and during any routine contact with tenants.

Does our communication with tenants rely solely on the use of letters?

Landlords should be aware that tenants' lack of response to letters may be the result of language or literacy difficulties or other problems such as mental health or learning difficulties. In the same way as managing other processes – for example, rent arrears – landlords need to consider what forms of communication may be most effective. Having good information about tenants' needs will help landlords target their communication appropriately. Good communication within the organisation and with contractors is also vital to make sure tenants' needs are met appropriately.

Is our approach to gaining access to houses flexible enough to meet tenants' needs?

Landlords should consider whether their gas safety procedures are flexible enough to meet tenants' needs. For example, tenants may be offered appointments for gas safety checks, but how convenient are appointment times? Are appointments available during evenings and weekends if necessary?

HIGHLIGHTING POSITIVE PRACTICE

Procedure and quality control

East Lothian Council carries out gas servicing on time in almost 100 percent of its houses. It begins its gas servicing process no later than 30 days before the anniversary of the last service. It has a very detailed process, with a three-stage 'no access' procedure that can be fully carried out before the due servicing date.

One of the strengths of East Lothian's approach is the degree of quality assurance it has built into its process. This includes quality control by both its contractor and an independent company, a Gas Monitoring Team to manage the process and a corporate Health and Safety Team carrying out monthly audits of the Gas Monitoring Team.

(Communities Scotland Inspection Report – January 2004)

Do we use all opportunities for getting access to properties for gas safety?

Landlords should look for all opportunities to get access to houses to carry out gas safety checks. For example, a gas safety check could be scheduled at the same time as another appointment to visit a tenant or at the same time as a repair is due to be carried out.

Do we review our approach on the basis of knowledge and experience of past performance?

Landlords should continuously review their procedures and learn from their experiences of what works well and what doesn't work well. Landlords can often experience recurring difficulties in getting access to a small number of properties, and should consider adopting a more tailored or fast-tracked approach for these particular properties. Other questions landlords will want to consider:

- Do we check the quality of gas safety inspections and remedial work?
- Do we get good, regular information from our contractors on which houses they are having difficulty getting into?
- Are we clear on who is responsible for acting on information about 'no accesses', and do we give good guidance on what action to take?
- Do we have good internal reporting on gas safety to ensure all relevant people in the organisation are aware of our performance?

Gaining access

Many landlords experience difficulties getting into some houses to carry out gas safety checks. This can make it very challenging to achieve the necessary timescales and comply with the Regulations. Landlords must do everything possible to avoid the need to force entry to a house; however, when all else fails, they will need to make a decision on the action to take to make sure they get access.

The Gas Safety Regulations, while imposing a duty on landlords to carry out annual inspections, do not give landlords powers to enter a property.

The Housing (Scotland) Act 2001 allows landlords, where a Scottish secure tenancy is in place and upon issuing a tenant with 24 hours' notice in writing, to enter a house to inspect its condition or to carry out any work necessary to make sure that it is wind and watertight and in all respects fit for human habitation. However, this provision does not specify how the right of entry can be exercised.

Clause 5.12 of the model Scottish secure tenancy agreement establishes a contractual right of entry for the landlord and, provided it has given

every reasonable opportunity to the tenant to allow access voluntarily, a right to make forcible entry and recover the cost of any damage from the tenant.

Landlords with a contractual right of entry through their tenancy agreements may be reluctant to force entry without clear legal authority for doing so. They may choose to raise a summary cause action at the sheriff court for a decree that the tenant must implement the specific obligations in the tenancy agreement. This type of action is called an action for specific implement. The landlord, if successful, can get an extract of the court's decision – often referred to as a 'warrant'.

Whether a landlord chooses to rely on the contractual provision in the SST agreement to force entry or prefers to have the reassurance of court approval for their action, it needs to accommodate the timescales for its actions within its overall objective of doing gas safety inspections within 12 months of the previous check.

For more information...

The Health and Safety Executive (HSE)

The HSE is responsible for regulating almost all risks to health and safety in Britain and aims to protect people's health and safety by making sure such risks are properly controlled. The (HSE) provides answers to some frequently asked questions about gas safety to help landlords interpret the legislation.

www.hse.gov.uk/gas/domestic/faqlandlord.htm

Council for Registered Gas Installers (CORGI)

www.corgi-gas-safety.com/

HIGHLIGHTING POSITIVE PRACTICE

Risk management

Rosehill Housing Co-operative's risk management review in April 2003 identified a number of performance issues around the internal delivery of the gas maintenance service. Rosehill then carried out a full audit of the gas maintenance service and put in place a remedial action plan. This plan included:

- the appointment of an external contractor to undertake gas safety checks;
- fitting carbon monoxide monitors in all of the properties with gas fires; and
- establishing a 10 to 11-month cycle of gas safety inspections to minimise the risk of any lapse of annual certificates.

Rosehill has successfully implemented the action plan and is now considering longer-term improvements to the service, including:

- a proposed partnering arrangement for the delivery of gas maintenance; and
- proposals to fully audit the current contractor's work.

Rosehill is now effective in ensuring that its tenants' gas heating systems are checked annually in line with its statutory duty. Tenants we spoke to were aware of the changes to gas maintenance and were happy with the service, particularly the level of quality control by the contractor.

Communities Scotland Inspection Report
– February 2004

Want to know more? Follow this link...

www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/rics_003818.hcsp