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		OC 440/30	
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Target Audience:
All FOD Operational Staff Bands 0-6

GAS SAFETY PROCEDURE AND ENFORCEMENT ADVICE

This revised OC provides advice and guidance for Inspectors and Gas Officers (GO's) during their dealings with gas safety matters and highlights areas to consider when dealing with dutyholders under both The Gas Safety (Installation and Use) Regulations 1998 (GSIUR) and more general health and safety legislation, in particular HSW Act s3.

INTRODUCTION

1 Gas safety work is likely to fall into one of the following categories:

- (1) Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) reg.6 (1) reports of gas incidents attributable to either carbon monoxide poisoning or fires/explosions from the ignition of gas. Such reports will generally be made by the gas conveyor or emergency service provider, or very occasionally by Liquefied Petroleum Gas (LPG) suppliers;
- (2) RIDDOR reg.6 (2) reports of dangerous gas fittings, made by Council for Registered Gas Installers (CORGI) - registered installers, or by the emergency service provider following emergency call-out visits;
- (3) complaints or concerns received directly from tenants, or indirectly from local authority (LA) housing sector inspectors, Energywatch (the Gas and Electricity Consumers Council) or CORGI, about landlords failing to comply with their duties under GSIUR reg.36;
- (4) complaints received directly from members of the public about the standards of workmanship of gas fitters (registered or not) who have installed appliances for them; or indirectly referred by consumer bodies such as Energywatch acting on their behalf;
- (5) information/complaints from CORGI about the activities of unregistered installers;

- (6) planned proactive work to deal with locally perceived problems, e.g. publicity to target landlords in the LA or private rented sector who are failing to comply with their duties under GSIUR.
- (7) complaints or reports that manufacturers of commercial catering equipment or industrial space heaters do not meet the requirements of the Gas Appliances (Safety) Regulations 1995. HSE enforces this legislation for such equipment and the normal PI supplier/manufacture system applies. Reference should be made to the HSE Guide to the Inspection of Manufacture and Supply Chapter 4.6.

2 Other than for matters relating to the Gas Appliances (Safety) Regulations 1995, incoming RIDDOR reports or complaints should be processed through the appropriate Quality Procedure.

RIDDOR REG 6(1) REPORTS OF GAS INCIDENTS

3 The Investigation Procedure requires fatal incidents to be brought to the attention of an inspector immediately; it identifies events to be selected for investigation i.e. all 6(1) reports should normally be investigated, where a dutyholder is implicated.

4 The Gas Safety (Management) Regulations 1996 (GSMR) place duties on natural gas **suppliers** to carry out investigations of 6(1) Carbon Monoxide (CO) incidents. Similar duties are placed on gas **conveyors** in relation to 6(1) reportable fire and explosion incidents arising out of gas escapes from fittings in domestic premises. ([See OC 440/28](#) for demarcation and liaison arrangements with HID). Inspectors should be notified before the investigation starts and are advised to attend wherever possible. Subsequent reports/statements often provide essential technical evidence in the event of legal action.

5 There is no statutory requirement for LPG suppliers to carry out investigations. Where a duty holder is implicated, inspectors should make arrangements for technical support through their local Specialist Group (SG). LPG suppliers may assist with some investigations and where there is a death the coroner may arrange his/her own investigation or call on HSE to assist.

6 Some RIDDOR reg.6 (1) reports of 'suspected' carbon monoxide incidents might later prove to be false. This is most likely to happen in the event of an unexplained death in a room with a heating appliance, or following visits by engineers responding to an emergency call, as their standard procedure is to assume the worst and isolate the gas supply. Gas suppliers will usually want to be assured that CO is involved before starting an investigation and Inspectors/Gas Officers should provide assistance when requested. Please remember where it is a false alarm it will be necessary to arrange for the details on the ICC record AND if appropriate, FOCUS, to be amended.

7 Investigations of incidents reported under RIDDOR reg.6 (1) may be closed down if it becomes clear that establishing further facts of the case, particularly the identify

or location of dutyholders, would consume more time than is justifiable on the grounds of public interest. Where people have, or could have died, ensure the reasons for curtailing the investigation are recorded and, for the former, countersigned at Band 1 Level.

RIDDOR REG.6 (2) REPORTS OF DANGEROUS GAS FITTINGS AND COMPLAINTS

8 Events or complaints where there is an ongoing risk, where the dutyholder has previous history with HSE, where the work done was carried out over 12 months ago or where there is a third party with duties, will be passed to the Band 2 for a decision on further action.

9 The [Investigation Procedure](#) gives guidance for events passed to the Band 2, but the following information on matters causing particular concern may assist in the decision making process.

- (1) Ongoing risks
- (2) Complaints or reports about the activities of registered or unregistered installers where there are grounds to believe that lives have been or could be put at risk, with particular attention given to the following:
 - a. leaving uncapped pipes (GSIUR reg.6),
 - b. faulty installation of appliances, giving rise to clear danger, representing a prima facie breach of GSIUR reg.26;
 - c. provision of dangerous flues for appliances,
 - d. installation of new appliances to seriously defective flues (GSIUR reg.27);
 - e. any other installations with gross deviations from the requirements of relevant British Standards, current at the time, in particular BS 5440, Part 1: 2000 **Specification for installation of flues and Part 2: 2000 Specification for installation and maintenance for gas appliances**, dealing with flueing and ventilation matters;
 - f. installation of unsuitable appliances in bathrooms and bedrooms, in contravention of GSIUR reg 30.
- (3) Breaches of landlords' duties under GSIUR reg.36, especially if a number of properties are implicated and/or tenants fall into vulnerable groups. Evidence that landlords are failing to maintain appliances provided for tenants, or have failed to arrange annual gas safety checks, should be given the greatest priority; those involving simply the non-provision of gas safety check records to tenants would not be

assigned as high priority, if there is good evidence that safety checks have been carried out.

- (4) Unregistered installers who have been previously warned about carrying out work while not CORGI registered.
- (5) DIY stores, kitchen installers etc, which subcontract gas work, should also receive careful consideration, as there is a history of such duty holders using non registered installers.

ADVICE

10 HSE has a dedicated freephone line (0800 300 363) to deal specifically with gas safety enquiries, quite distinct from its general 'Infoline' service. Some callers to either line will be referred to local HSE offices for more detailed advice and help, and any such calls, raising particular queries or complaints should be dealt with in the normal way.

HSE has a gas safety website including a Frequently Asked Questions section at www.hse.gov.uk/gas/index.htm which inspectors may find useful.

PROACTIVE GAS SAFETY WORK

11 When HSC/E first assumed responsibility for gas safety matters early in 1984 (from what was then the Department of Energy) it was on the basis that enforcement of gas safety legislation would be reactive, based on reports and information received. This broad principle remains.

12 However, proactive initiatives to highlight particular local gas safety problems in rented accommodation, to support national HSE or Department of Trade and Industry (DTI) publicity campaigns, or to contribute to local gas safety fora, should be looked on sympathetically. The value of such initiatives, based on knowledge of local circumstances and local data, will be a matter for the local FMU and division to evaluate.

ENFORCEMENT ADVICE

Landlords (or their managing agents)

13 One of the main changes introduced in gas safety legislation in the last decade has been the specific duties placed on landlords in both the public and private rented sectors to maintain the gas installations provided for their tenants in a safe condition, **and** have them checked for safety at least once a year by a CORGI-registered gas installation business. These duties add to the more general duties on landlords under HSW Act s.3, and those vicariously placed on any managing agents that they choose to look after their business interests under HSW Act s.36. For small scale landlords, where the letting is not their main work, Inspectors should give careful

consideration as to whether an "undertaking" exists and Section 3 applies; this does not affect their GSIUR obligations.

14 In the case of managing agents operating on behalf of landlords, inspectors and GOs should closely examine any contractual agreements detailing the managing agent's role. If it is clear that the agent has agreed to undertake gas safety responsibilities on the landlord's behalf (as is more than likely in the case of 'absentee' landlords living abroad or remotely from their property), and they have failed to discharge their contractual obligations, inspectors/GOs should treat them as they would landlords, and consider action under either HSW Act s.3 or s.36 linked to GSIUR reg.36.

15 Where HSE's investigation has shown that an appliance is unsafe, and there are concerns that the landlord or managing agent will not rectify immediately, the emergency service provider should be notified, so that they may decide whether to disconnect the gas supply to ensure safety.

Installers

16 If it is clear that installers have carried out particular work that could have endangered lives, and where the installer is already known to HSE, inspectors should give serious consideration to legal proceedings. In the case of their activities having resulted in fatalities, or near fatalities, inspectors should consider taking legal proceedings for first time offences if adequate supporting evidence can be obtained for breaches of specific duties under GSIUR e.g. Reg 26 (9). Inspectors should take account of the HSC's Enforcement Policy Statement, which states that **"HSC expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, death was a result of a breach in the legislation."**

17 A distinction should be made between duties under GSIUR placed on installing businesses and those on individuals. The Regulations clearly distinguish both between 'any person carrying out gas work' and the 'employer of any person' and between the duties imposed on the two parties. Regulations such as 26 (9) only impose duties on an individual installer. ¹

18 In considering enforcement action against installers, the next consideration (irrespective of whether the installer is registered or not) should be competence in gas fitting work, and the associated risks that may arise as a result (for comment on the additional factors which lack of registration adds, [see para 22](#) onwards). Important factors that should be taken into account when considering competence are whether or not:

- (1) they hold current, Nationally Accredited Certification Scheme (ACS) certificates in the work they are undertaking ([see para 19 \(2\)](#));
- (2) they have met specific requirements in GSIUR e.g. Reg 30

- (3) they have complied with manufacturer's installation instructions;
- (4) their work has been carried out in accordance with the requirements of relevant British Standards (BS 5440 Parts 1 and 2 in particular; [see para 9\(2\)\(e\)](#));
- (5) they have complied with the guidance contained in CORGI's **Gas Installer's Manual** (subject file 440), provided to all registered installation businesses;
- (6) the range of evidence of poor workmanship is sufficient to question the individual's competence. A single event could be attributed to a lack of diligence rather than proof of incompetence.

Registered Installers

19 When considering competence of registered installers inspectors should bear in mind:

- (1) that CORGI registration represents a means by which the installer has, and should continue to be, assessed for competence. Therefore, any case alleging incompetence is going to be difficult to prove. CORGI should have information on previous assessments of the installers, and thereby their abilities and competence.
- (2) CORGI deems installers to be competent in designated activities. Hence the installers ID card will have on its reverse side a list of those activities for which competence has been demonstrated. In the past this was the ACoP certificate based scheme but the ACS fully replaced this from August 2003, when ACoP certificates for most areas of work where GSIUR applies will have expired ([but see para \(4\) below](#)).
- (3) CORGI's own rules require an installer to have the required ACS for the type of appliance they are working on. Working without a specific competence is not in itself a breach of GSIUR regulation 3 (3), (which only demands the installer is registered), nor is it usually sufficient proof of a lack of competence under reg 3 (1). It is still necessary to provide other evidence of lack of competence to sustain prosecution.
- (4) For certain specialised gas work e.g. work in the industrial/large commercial sector, or on new types of equipment such as fuel cells, there may not be a relevant ACS; some of this work is still covered by ACoP and otherwise reliance is placed on competencies in similar areas and manufacturer training. In cases of doubt, advice may be sought from CORGI who will have agreed such arrangements.

20 Thus, before inspectors proceed they should, if at all possible, consult their local CORGI senior inspectors, and if appropriate CORGI HQ, where a record of ACS certification, previous assessments etc for individual installers will be held.

21 It should be noted that any registered installers acted against by HSE will have their registration status reviewed, and, in the case of a prohibition notice being served or prosecution taken, the installer will be suspended or removed from their register. It is therefore important that details of any action taken against registered installers are notified to CORGI's Customer Services Manager at their Basingstoke HQ (Tel No 0870 401 2300).

Unregistered Installers

22 Unregistered installers carrying out work incompetently require particular attention, more so if they have made false claims of registration.

23 Carrying out 'work in relation to a gas fitting' without being registered is an offence, meriting action in its own right. However, if there is no ongoing risk, and there are no other factors to consider such as previous advice, the unregistered installer should be contacted by letter. Such letters should be kept on file to support any further action should evidence come to light that they have subsequently undertaken further gas fitting work, and chosen to disregard the letter. If, and when, that is shown to be the case then enforcement action as detailed below should be considered.

- A Prohibition Notice (PN) should be considered if there is evidence of risk from the work that has been done.
- Where evidence does not support a PN, an Improvement Notice (IN) may be used for requiring registration if the installer intends to continue to do gas work. The sector has taken advice on the difficulties of checking compliance with such an IN if the installer fails to gain CORGI registration. A written confirmation that gas work has been given up can be sought but the installer cannot be required to respond. Enforcement for failure to comply with the IN if subsequent gas work comes to light should take into account the time period involved, and checks should be made to ensure registration and deregistration have not taken place in the intervening time. Further guidance is given in the [Enforcement Guide](#) and [OM 2002/104](#).

24 Any reports that companies are falsely claiming to be registered, e.g. through advertisements in the local press or letterheads on quotes for gas fitting work, and gas work has taken place, such reports should be given particular attention. For second offences legal proceedings under GSIUR should be considered against any who have displayed incompetence. However it should be noted that trading standards officers (TSOs) are responsible for separate consumer protection legislation, which also makes false claims of CORGI registration an offence and the

matter may have been separately referred to them. Where action is likely to be for false claims alone, the case should be passed to local TSOs to take action.

Building and home improvement contractors

25 Building contractors' work can put lives at risk, e.g. through capping-off active chimneys serving gas appliances, blocking chimneys with rubble during chimney repairs, or enclosing flues within newly built extensions or conservatories.

26 Where evidence is provided that such activities have given rise to possible risks to gas consumers, the minimum action should be to write to the company to explain what has been reported, and remind them of their duties under both GSIUR (reg.8) and HSW Act s.3

27 If there is a repeat offence or where a serious incident, perhaps fatal, occurs following building or house improvement work, inspectors should consider legal proceedings if there is sufficient evidence that the work caused the incident.

28 Builders may also be involved in carrying out gas work whilst unregistered, in some cases arranging for a subsequent check/approval by a CORGI registered installer. There is **no** facility in GSIUR for this; as an example, in the case of a domestic gas boiler, **all** installation work involving the appliance and gas pipework should only be undertaken by a CORGI registered business; work on the 'wet' side such as radiators and associated water pipework may however be done by others. There are indications that this is a widespread practice, either to avoid costs or based on a misapprehension of the law, but inspectors should consider legal proceedings if the offence is repeated after warning.

Manslaughter considerations

29 There are signs that the police and the Crown Prosecution Service increasingly consider manslaughter charges following the deaths of tenants, and others from the use of gas appliances.

30 Inspectors should follow the guidance given in [OC 165/8](#) and the work related death protocol in any such cases.

TECHNICAL SUPPORT FOR INVESTIGATIONS

31 Advice on technical support should be obtained from the local Support Group specialist.

32 This OC cannot cover all situations, and enquiries on general or particular enforcement advice on situations not covered by this OC should be directed to Utilities Section, CACTUS, Nottingham Office.

33 Advice on more general enforcement issues such as difficulties in obtaining evidence, serving summonses, finding details of landlords' properties etc, should be referred to FOD Safety Unit OR Legal Adviser's Office.

CANCELLATION OF INSTRUCTIONS

34. OC 440/30v2 - **cancel** and **destroy**.

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¹ R v Nelson Group Services (Maintenance) Ltd