

Health and Safety Executive		Operational Circular	
Field Operations Directorate		OC 440/31	
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To
 AFQ Inspectors
 Specialist Group Inspectors (Process Safety)

ENFORCEMENT OF GAS SAFETY AT RENTED RESIDENTIAL ACCOMMODATION

This OC gives advice on the application and enforcement of the Gas Safety (Installation and Use) Regulations 1998 and the Health and Safety at Work etc Act 1974 section 3 at rented residential accommodation, and separate housing legislation enforced by local authority enforcement officers.

INTRODUCTION

1 The Gas Safety (Installation and Use) Regulations 1998 (GSIUR) apply across a range of premises including domestic premises, hostels, hotels, public houses and offices. Premises to which they are disapplied, in full or in part, are set out in GSIUR reg.2(4)-(8).

2 Among other things, GSIUR require that at premises to which they apply:

- (1) all persons must be competent to do any gas installation or maintenance work which they undertake (reg.3(1));
- (2) all businesses doing any gas fitting work must be registered with the Council for Registered Gas Installers (CORGI) (reg.3(3)); and
- (3) at premises used for residential purposes (occupation being in return for money/money's worth), landlords should ensure that any gas appliances and associated flues that they provide for tenants should be maintained in a safe condition, and checked for safety at intervals of not more than 12 months.

3 These Regulations are relevant statutory provisions under HSW Act, acting alongside the general provisions of HSW Act, including those of HSW Act s.3. Whether or not the provision of accommodation by a landlord is an undertaking under HSW Act will depend on the circumstances. Section 3 will apply if the landlord provides accommodation in the course or furtherance of a business; however where for example a person lets out a single property, it may not amount to a business, and therefore not be an undertaking to which HSW Act s.3 applies. In cases of doubt, Solicitor's Office can be consulted.

THE HEALTH AND SAFETY (ENFORCING AUTHORITY) REGULATIONS 1998

4 The enforcement of HSW Act provisions, including those of GSIUR, at any particular premises is determined by the Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations) ([OC 124/7](#) refers). Inspectors should note:

- (1) schedule 1, which allocates premises to LAs, is linked to EA Regulations reg.3(1) which deals with non-domestic premises only. Houses rented out to

tenants by landlords are usually domestic premises and any related gas safety matters under GSIUR and HSW Act remain with HSE;

(2) schedule 2, para 4(b) claws back to HSE any gas installation, maintenance or repair work at local authority (LA)-assigned premises which is done by persons who do not normally work in the premises. Maintenance in this context should be regarded as actual work on an appliance, rather than failure to do any maintenance work at all;

(3) HSE is responsible for all gas safety matters at council houses and flats (EA Regulations reg.4(1)(a) and 4(3));

(4) this does leave some gas safety matters to LAs at premises assigned to them under schedule 1. These are:

(a) the use of gas, eg the use of unsafe appliances;

(b) gas installation etc work done by employees or the self-employed, who normally work there; or

(c) any failure on the part of an employer or landlord to maintain appliances at the premises (see (2) above).

5 A flow diagram to help understand enforcement allocation is given at the [appendix](#).

SHORT-TERM RESIDENTIAL ACCOMMODATION

6 Among the classes of premises assigned to LAs under EA Regulations schedule 1 are those provided for permanent or temporary residential accommodation. Whilst excluding domestic premises this does include hostels and hotels. The question arises as to whether homes rented out for holiday accommodation fall into this category.

7 Where premises are occupied for most of the time by the owners, who rent it out only occasionally as a holiday home, the premises should be regarded as domestic, and should fall to HSE for enforcement. However where premises are normally used as holiday accommodation over the course of a year, eg where they are occupied or made available for temporary or permanent accommodation for more than 20 weeks in a year, they should be regarded as 'non-domestic' residential accommodation, subject to LA HSW Act enforcement.

8 On a multi-occupancy site, eg a caravan park, there may be a mixture of ways in which the accommodation is used, and in determining enforcement allocation, each individual accommodation unit should be considered separately (rather than considering the site as a whole, and the major use to which it is put).

9 For further information on the above, see [OC 124/11](#) and HELA Circular 38-4.

10 When people lodge for short periods in private homes, eg when foreign students are placed there by language schools, they will usually have their own room but share other parts with the family. The whole premises will be domestic premises, and subject to HSE enforcement. The 'lodger' will usually be there under 'licence' (see the definition of 'relevant premises' in GSIUR reg.36(1)). If students or language schools pay for the accommodation, the landlord (as defined by GSIUR reg.36(1)) will be subject to the landlord's duties under

GSIUR reg.36, and they must ensure that gas appliances are maintained in a safe condition (GSIUR reg.36(2)). However, the requirement for an annual check may not apply immediately; it is believed that in the case of premises occupied under a 'licence', the check for existing appliances/flues is first required within 12 months of the start of the premises becoming 'relevant premises' (the requirement for an annual check before occupation, as in reg.36(3)(b), only applies to leases).

THE HOUSING (MANAGEMENT OF HOUSES IN MULTIPLE OCCUPATION) REGULATIONS 1990

11 The Housing (Management of Houses in Multiple Occupation) Regulations 1990 (HMO Regulations) (SI 1990 No 830) are enforced by local housing authorities, in most instances by LA environmental health offices (EHOs). Despite some doubts about the definition of the premises affected, it is clear that the HMO Regulations will apply to most rented houses or hostels occupied by persons who do not form a single household. Similar regulations apply in Scotland.

12 The HMO Regulations place various duties on the 'manager' of an HMO. The key provisions in the context of gas safety are those which require the manager to:

- (1) maintain installations in common use 'in repair, a clean condition and good order (including where appropriate, proper working order)' (reg. 7(1)(a)); and
- (2) maintain installations in living accommodation 'in repair and proper working order' (reg.8(1)(b)).

duties overlap with GSIUR and HSW Act s.3 'maintenance' duties. **Inspectors should note that besides gas installations, these 'HMO' duties also extend to appliances using other fuels, eg solid fuel appliances.**

ENFORCEMENT AT HMOs ON MATTERS OF MAINTENANCE

13 At the start of any HSE investigation into a report of a gas incident at rented houses which are likely to be, or could be HMOs, contact should be made with the environmental health department of the relevant LA to inform them of the incident and the HSE interest, and to decide whether the HMO Regulations are relevant and, if so, how the matter is to be handled.

14 While agreement on the best way forward is left to local discretion, inspectors should bear the following factors in mind when deciding how to proceed with the investigation:

- (1) HSE's greater experience in dealing with gas safety matters and easier access to specialist help;
- (2) the more specific requirements on landlords under GSIUR in respect of annual safety checks and production of records of these checks; and
- (3) where there has been an incident involving a fatality or major injury, then there are duties on suppliers or conveyors to investigate the incident under the Gas Safety (Management) Regulations 1996; these Regulations by law create an interface between the investigator and HSE, and HSE will have greater experience of shadowing these investigations or undertaking an investigation jointly.

15 Inspectors are also reminded of the doubts surrounding the definition of an HMO. Any serious or fatal incidents can attract local, perhaps national interest and expectations of prosecution. Inspectors should consider the possible effects for HSE of having taken no action under GSIUR or HSW Act in cases in which action has been left to LAs on the initial basis that HMO Regulations apply, but it is subsequently decided that they do not.

16 If it is agreed that EHOs should lead, it is recommended that inspectors shadow their investigation to establish whether there has been any breach of GSIUR or HSW Act, whether it has been decided that the HMO Regulations do apply, and, if not, what HSE action is needed.

ENQUIRIES

17 Any enquiries on this OC, or the matters it covers, should be referred to the Engineering and Utilities Sector, Nottingham Office.

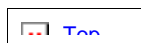
CANCELLATION OF INSTRUCTIONS

18 OC 440/22 and OC 440/22 Supplement 1 - **cancel** and **destroy**.

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APPENDIX
(para 5)

ENFORCEMENT ALLOCATION FOR GAS SAFETY

