

# LANDLORDS – ARE YOU COMPLIANT WITH THE LAW? ONE THING TO CHECK THIS MONTH: GAS SAFETY CERTIFICATES

By Tessa Shepperson of Landlord Law



Almost every year, the news reports an explosion at a domestic property. Don't let the next one be yours.

## What are the rules?

They are set out in S36 of the Regulations and provide that landlords must:

- Carry out a Gas Safety inspection of properties every 12 months (starting from before the tenants move in).
- The inspection needs to be carried out by a gas engineer registered with the Gas Safe Register <https://www.gassaferegister.co.uk/>.
- Landlords must provide a copy of the inspector's certificate to all new tenants before they move in, and then on tenants within 28 days of subsequent checks.
- If any work is required to be done, this should be done by the landlord at his expense (although if the damage was down to the tenants the cost may be recoverable from them).
- Rooms used for sleeping should not contain any gas appliances which are not 'room sealed' appliances as defined by S30 of the Regulations.
- Responsibility for complying with these regulations cannot be passed on to your tenants.

The regulations also provide that certificates must be kept for two years. However, my advice is that they should be retained at least until the end of the tenancy and preferably for six years afterwards. Just in case any issues arise where you will need to prove that the inspections were done.

For example, if you bring accelerated possession proceedings using Section 21 (while it is still available to us), the Judge will want to see your Gas Safety Certificates.

**M**uch of the content of this magazine is about the business of investing and developing property to rent. However, sometimes people overlook the legal rules and regulations which landlords need to comply with.

Renting property to tenants is heavily regulated. Many of these regulations carry substantial penalties for non-compliance. So, your earnings as an investor are dependent not only on your savvy investment skills but also on legal compliance to avoid fines and penalties.

Every month, we will be looking at one issue where, if you fail to comply, could cause you financial loss.

This month's topic is:

## Gas Safety Certificates

This is one requirement that most landlords should be aware of – the rules have been with us since 1998. There is no excuse for ignorance and non-compliance.

The Gas Safety regulations are perhaps also the most important of the various safety regulations that apply to rented property. If only because gas can be so dangerous. Not only can it poison you if you breathe it in for too long, defective gas appliances can explode, putting not just your tenants but neighbouring properties at risk.

## If your tenants won't let you in

This is often a problem. It sounds extraordinary that tenants should object to landlords carrying out an inspection, which is for their benefit and safety, but some tenants do.

If this happens to you, the Health and Safety Executive (HSE), who enforce these regulations) will expect you to make at least three 'documented' attempts to gain access to get the inspection done.

'Documented' means that you can prove this by letters or emails. Text, WhatsApp and other messaging services may also be acceptable proof.

It is important, therefore, that you keep full records of all your attempts to gain access to carry out the inspection, including records of telephone calls and meetings.

The following is taken from the advice on the HSE website at <https://www.hse.gov.uk/gas/domestic/faqlandlord.htm>

- "leave the tenant a notice stating that an attempt was made to complete the gas safety check and provide your contact details;
- write to the tenant explaining that a safety check is a legal requirement and that it is for the tenants own safety. Give the tenant the opportunity to arrange their own appointment;
- HSE inspectors will look for at least three attempts to complete the gas safety check, including the above suggestions; however the approach will need to be appropriate to each circumstance. It would ultimately be for a court to decide if the action taken was reasonable, depending upon the individual circumstances."

Because of the damage that can be done by gas explosions, you may also need to inform your insurers.

However, although three documented attempts will generally deter the authorities from bringing a prosecution, they will expect you to carry on trying. If the tenants continue to refuse access, then the ultimate solutions are:

- Applying for a court injunction (these are known as 'gas injunctions'), and/or
- Applying for possession

Failure to allow access for Gas Safety inspections is not at present a mandatory ground for possession. However, in view of the dangerous nature of gas (which is why we have these regulations in the first place), Judges are highly likely to grant a possession order in these circumstances. Although they will probably want to grant the tenant additional time to allow the inspection to take place.

## Penalties for default

The HSE can bring a prosecution, in most cases in the Magistrates Courts, which, if successful, will result in either a fine or a custodial sentence. Magistrates Courts fines are now unlimited.

Also, at present landlords cannot use the Section 21 'no fault' ground for possession where no Gas Safety certificate was provided to new tenants at or before the tenancy started.

Section 21 is due to be abolished, but it is likely that the rules which replace it will also require compliance with the gas regulations in at least some circumstances.

There is also the fact that faulty gas appliances have been known to result in tenant death – and I am sure you would not want any of your tenants to die in these circumstances. It would be a heavy burden to bear for the rest of your life.

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If you are worried about carrying out inspections, detailed guidance can be found in Tessa's Property Inspection Kit at [www.landlordlaw.co.uk/pik](http://www.landlordlaw.co.uk/pik).

