

ANGUS COUNCIL

Housing Committee - 26 August 2004

**GAS SAFETY (INSTALLATION & USE) REGULATIONS 1998 -
REVISED HARD NON-ACCESS PROCEDURES**

REPORT by DIRECTOR OF HOUSING

ABSTRACT

This report recommends revised hard non-access (including forced access) procedures apply against the minority of tenants who fail to give access in accordance with the above regulations.

1. RECOMMENDATIONS

It is recommended that Committee agree to implement the revised hard non-access proposals outlined in this report with effect from 1 September 2004.

2. BACKGROUND

Housing Revenue Account tenants are obliged, per the conditions of tenancy, to give access to their homes thus allowing Council officers (or representatives - in this case CORGI registered Gas Engineers) to attend for repair, inspection and maintenance etc purposes.

This is covered by paragraph 4.27 of the Scottish Secure Tenancy Agreement adopted by Council which obliges tenants to allow Council employees, or other persons authorised by the Council, access to their homes "for the purposes of carrying out required repairs, improvements or inspections". The Council is authorised by Schedule 4 of the Housing (Scotland) Act 2001 to enter its houses for these purposes.

Under the Gas Safety (Installation & Use) Regulations 1998, landlords (including local authorities) shall ensure that there is maintained in safe condition:-

- a) any relevant gas fittings, appliances, boiler etc and
- b) any flue which serves any relevant gas fitting, appliances, boiler etc. so as to prevent the risk of injury to any person in lawful occupation of relevant properties.

These Regulations also place a duty on landlords to carry out servicing/inspection of gas fittings etc. at least every 12 months to ensure the safety of tenants and others from gas appliances which may become defective. This duty is strictly enforced by the Health and Safety Executive (HSE) and breach without reasonable excuse is a criminal offence.

The Council's current procedures to ensure the 1998 Regulations are adhered to are satisfactory in the majority of cases. Required servicing, inspections and certification are thus carried out within the 12-monthly cycle with contact arrangements in place during the lead in period.

3. HARD NON-ACCESS CASES

Despite the benefits to be gained, a minority of tenants continues to frustrate our efforts to adhere to the regulations, particularly within the required 12 months cycle.

The recent Communities Scotland Pathfinder Inspection Report recommended (No 45) that:

"The Council should ensure its procedures are designed to achieve the servicing of all properties within the 12-month period required by the gas safety legislation."

Whilst in the majority of situations access difficulties are overcome, there are a small number of cases which necessitate additional procedures, efforts to contact/access, written communication and ultimately (until now) the raising of Court Action in an attempt to secure a Decree for enforced access.

4. REPEAT NON-ACCESS CASES

A small number of cases cause repeat/annual non-access difficulties and associated additional expense in relation to Officer supervision, contractor repeat calls and (until now) the raising of Court Action to secure access.

These tenants are in breach of the Conditions of Tenancy and are causing potential danger to themselves, immediate family and neighbours. The Council may also find it is in breach of the relevant Gas Safety regulations and may be prosecuted by the HSE.

The annual inspection and certification process costs are met by the Council with no direct recharge against the tenants.

5. PROPOSED REVISED PROCEDURES (INCLUDING FORCED ENTRY)

To minimise risk, ensure the Council adhere to the required regulations and has robust arrangements in place, it is recommended that the raising of Court Action be dropped in favour of a procedure whereby:-

- no later than six weeks prior to due date - contractor issues a card/letter advising tenant of AM or PM appointment on a date 14 days ahead,
- (-if access is not gained or arranged-), this now being no later than four weeks prior to due date - contractor leaves a second card/letter requesting tenant to call within 14 days and arrange an AM or PM appointment with a minimum of 48 hours notice being required for the contractor. This communication will point out forced access arrangements may be made,
- during the subsequent period a reminder letter is issued to the tenant, and
- (-again if access is not gained or arranged-), a brief review of the case is undertaken by a senior member of the housing department to ensure that procedure to date has been properly followed and that it is appropriate to move on to the next and last stage of forced entry,
- not less than five days before execution of forced entry - a letter of intent to force access will be issued to the tenant advising of the date and one hour window set for this to take place. (A similar letter will be issued at the same stage addressed to "Non tenant occupiers").

A Gas Engineer, Joiner and member of Housing staff will attend if forced access applies. Upon gaining entry the Engineer will either carry out the required service or cap the supply. Police will be asked to attend only in exceptional circumstances.

This process will result in the locks being changed on that particular door. A notice will be displayed to that effect. Depending on the circumstances and timings, this may lead to the department having to make arrangements for out of office hours access for the returning tenant.

In ultimately forcing access the Council will be acting within the Scottish Secure Tenancy Agreement and ensuring compliance with the Gas Safety Regulations.

It will be appreciated that the tenant concerned can, at any time during the aforementioned procedures, contact staff or contractors and allow access thus avoiding forced entry and the resultant re-charge of associated costs.

6. PREVIOUS ANCILLARY DECISIONS

Within report 400/03 (Gas Safety (Installation and Use) Regulations 1998 - Hard Non-Access Cases - Tenants' Choice on Heating Replacement), the Council agreed to:

- (i) "consider taking action (for recovery of tenancy for breach of the Tenancy Agreement) against any tenant who is subject to repeat non-access Court Action in relation to Gas Safety, and
- (ii) such tenants not be given the choice of selecting gas as an alternative fuel source when heating is being installed or replaced in the home they tenant."

For the avoidance of doubt these are repeated above and, despite the forced access regime being recommended within this report, should remain active as "working tools" for the future.

7. HUMAN RIGHTS IMPLICATIONS

The following Articles from the European Convention on Human Rights must be considered in making a decision in respect of this report:

1. Article 8, the right to respect for private and family life, home and correspondence. The article relates to tenants' rights to enjoy their home. Angus Council may interfere with this right in accordance with the law as necessary in the interests of public safety or to protect the rights of others.
2. Article 1 of the First Protocol, the protection of property. Tenants are entitled to peaceful enjoyment of their possessions. Angus Council may take such action as it deems necessary to control use of the property in accordance with the interests of others.

As long as the Council has duly carried out the legal procedure required as a preliminary to forcing access (i.e. provision of at least 24 hours notice), has been duly diligent in ensuring that tenants/occupiers have received and understood the prior warning of forced entry given and is satisfied that the use of forced entry is truly a last resort and is carried out in the least intrusive way (i.e. in accordance with the principle of proportionality), then no infringement of Human Rights occurs.

It is considered that the revised procedures, properly applied, achieve that result. It should be particularly noted that the Council will only be enforcing entry where truly

necessary and in the interests of protection of the health and safety of the tenants/occupiers themselves as well as neighbours.

It may also be noted that it would be for the tenant/occupier to establish any claim alleging that the Council has infringed their Human Rights in the application of these procedures.

8. FINANCIAL IMPLICATIONS

The financial implications arising from this report are believed to be minimal with the potential saving in Court Action (for access) being balanced against forced entry access costs (potentially joinery-related).

9. CONSULTATION

The Chief Executive, Director of Finance, Director of Law & Administration and Director of Property Services have been consulted in terms of preparing this report.

10. CONCLUSION

The aforementioned recommendation is felt, on balance, to be fair and reasonable given the overall circumstances experienced and the benefits to be gained by tenants and their neighbours. They will hopefully encourage hard non-access cases to comply with Council's reasonable requests to gain access for inspection etc purposes.

Ron Ashton
Director of Housing

Note:- The following background paper as defined by Section 50d of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information), was relied upon to any material extent in preparing this report.

- R400/03 - Gas Safety (Installation and Use) Regulations 1998 - Hard Non-Access Cases - Tenants Choice on Heating Replacement