



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

Report No 2 in relation to

***Gas Standards (Gasfitting and Consumer Gas Installations) Regulations
1999***

Presented by the Hon R L Wiese MLA (Chairman)

and

Hon T R Helm MLC (Deputy Chairman)

Report 49

Joint Standing Committee on Delegated Legislation

Date first appointed:

November 19 1987

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

Members as at the time of this inquiry:

Hon Bob Wiese MLA (Chairman)
Hon Tom Helm MLC (Deputy Chairman)
Hon Simon O'Brien MLC
Hon Ray Halligan MLC
Hon Jim Scott MLC
Mr Iain MacLean MLA
Mr Norm Marlborough MLA
Mr Bill Thomas MLA

Staff as at the time of this inquiry:

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**Report No 2 of the Joint Standing Committee
on Delegated Legislation**

in relation to

Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999

1 INTRODUCTION

1.1 This is a supplementary report to the Forty-Fifth Report of the Joint Standing Committee on Delegated Legislation (“Committee”) in relation to the *Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999*¹ (“Regulations”).

1.2 In its Forty-Fifth Report, the Committee identified five concerns with the Regulations and the *Gas Standards Act 1972* (“Act”) as follows:

- (a) the ambiguity arising from the definitions of “appliance” under the Regulations and “gas appliance” under the Act;
- (b) the potential for Section 13D of the Act to cause hardship to manufacturers of Type B appliances some of which may not be capable of approval prior to advertising;
- (c) the apparent conflict between the procedure for supplying “commissioning” gas for inspection and testing under Regulation 22 and the prohibition on the supply of gas to a consumer’s gas installation other than with the exemption of the Director contained in Regulation 35;
- (d) the apparent shift of liability from gas suppliers and inspectors to gasfitters; and
- (e) the failure to publish inspection plans and policies of gas suppliers granted exemptions under section 13(2) of the Act.

1.3 As a result of the above concerns, the Committee recommended in its Forty-Fifth Report that the Minister for Energy should take steps to:

¹ Tabled in the Legislative Council on Wednesday, November 10 1999.

- (a) amend the definition of “gas appliance” in section 4 of the Act so that it is consistent with the definition of “appliance” in the Regulations, thereby removing any doubt that a Type B appliance is a “gas appliance” for the purposes of section 13D of the Act;
 - (b) amend section 13D of the Act to provide for conditions on the advertising of Type B appliances which have not been approved by the Director;
 - (c) amend regulation 35 of the Regulations so as to remove the need for the Director to exercise his discretion in sub-regulation (3) for the provision of “commissioning gas”;
 - (d) amend regulation 28(4) of the Regulations so that it places an obligation on gasfitters which is similar to (but no greater than) the obligation placed on inspectors in regulation 22(2); and
 - (e) consider amending section 13 of the Act to provide for the publication of current inspection plans and policies of gas suppliers and pipeline licensees granted exemptions under section 13(2).
- 1.4 Prior to its Forty-Fifth Report being tabled in the Legislative Council on November 10 1999, the Committee wrote to the Minister by facsimile dated October 27 1999 expressing its concerns in relation to what were to become items (c) and (d) of its recommendations. A copy of the Committee’s facsimile dated October 27 1999 to Hon Colin Barnett, Minister for Energy, is attached as “Annexure A” to this supplementary report.
- 1.5 The Committee’s correspondence requested an urgent response from the Minister by November 5 1999 so the Committee could consider its position in relation to its motion for disallowance of the Regulations. The Committee’s motion was due to be debated and put to a vote in the Legislative Council on November 11 1999.
- 1.6 Unfortunately the Minister was not able to respond within the time allocated. At its meeting on November 9 1999, the Committee resolved not to recommend disallowance of the Regulations, to seek the leave of the Legislative Council to withdraw its motion for disallowance and to table its Forty-Fifth report recommending the changes to the Act and Regulations in paragraph 1.3 above. Leave was granted by the Legislative Council and the motion withdrawn on November 10 1999 prior to the tabling of the Committee’s report.

2 EVENTS SUBSEQUENT TO THE TABLING OF THE COMMITTEE'S FORTY-FIFTH REPORT

- 2.1 The Minister responded by letter dated November 9, 1999 being "Annexure B" to this supplementary report. The Committee considered the Minister's reply at its next meeting on November 15 1999. The Committee welcomed the amendments proposed by the Minister in relation to recommendation (c) in paragraph 1.3 above so as to rectify the apparent conflict between regulation 35 and the procedure set out in regulation 22 for the supply of "commissioning gas".
- 2.2 However, the Minister was not prepared to make the Committee's proposed amendment to regulation 28(4). This regulation requires gasfitters to certify that " ... every part of the gas installation on which the gasfitting work was done *or that is affected by the work* complies with the requirements referred to in regulation 32, is safe to use and is completed to trade finish." [emphasis added].
- 2.3 The Committee remained concerned that in at least some circumstances, the regulation unfairly shifts responsibility to gasfitters for ensuring that a consumer's gas appliance is safe to use. An example is where a gasfitter connects a Type B appliance to gas and must certify under the Regulations that every part of the appliance affected by the work complies with the requirements of regulation 32. Regulation 32 incorporates the requirements of Schedule 6 as well as the applicable Code or Standard in Schedule 7 to the Regulations. The certification by the gasfitter would be required because the work required to connect the appliance to gas would necessarily affect the entire appliance.
- 2.4 The Committee noted that in circumstances where a gasfitter connects a Type B appliance to gas, the gasfitter's responsibility for certifying the safety of the Type B gas appliance is in fact greater than that of a Type B gas inspector. Under regulation 22(2) a Type B gas inspector may issue a certificate of compliance for a Type B appliance if he has " ... inspected the appliance and ascertained, *so far as is practicable*, that it complies with the requirements referred to in regulation 32." [emphasis added].
- 2.5 Despite his refusal to amend regulation 28(4), the Minister did propose an amendment to the Regulations by the introduction of item 501(2)(c) to Schedule 6. The proposed amendment is to clarify the responsibility of the vendor or provider of the appliance to ensure approval for the appliance is obtained prior to installation.
- 2.6 The Committee is of the view that the proposed amendment would indeed clarify the responsibility of manufacturers in relation to the requirement to obtain approval for the installation of a consumer's Type B appliance. However, the amendment does not directly address the Committee's concern with the certification requirement of gasfitters when connecting a Type B appliance to gas.
- 2.7 The Committee therefore resolved to again write to the Minister requesting that he respond to the Committee's continuing concerns with regulation 28(4) and to also advise what action he intended to take in relation to the Committee's other

recommendations. The copy of the letter from the Chairman to the Minister dated November 16 1999 is attached as “Annexure C”.

3 THE MINISTER’S RESPONSE TO THE COMMITTEE’S FORTY-FIFTH REPORT

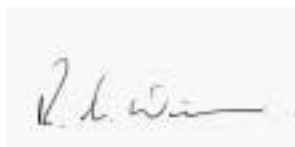
- 3.1 The Minister responded to the Committee by facsimile dated December 30 1999, a copy of which is attached as “Annexure D” to this Supplementary Report.
- 3.2 The Minister accepted four of the five changes to the Regulations and the Act recommended by the Committee in paragraph 7.3 (a), (b), (c), and (e) of its Forty-Fifth Report. The Minister advised the Committee that the recommendations accepted by him would result in amendments to the Act and Regulations being introduced this year.
- 3.3 In respect to paragraph 7.3 (d) of the Forty-Fifth Report relating to the Committee’s recommendation to amend regulation 28(4) so that gasfitters only certify that their work complies with the requirements of regulation 32, the Minister stated:

“I acknowledge that in the particular case of a person who merely connects pipework to a Type B appliance this could be justified. However, simply changing Regulation 28(4) in the way indicated is likely to have repercussions in relating to other areas of gasfitting and I could therefore not agree to that specific change. I can, however, commit to any changes necessary to achieve the desired outcome, taking advice of Parliamentary Counsel as to the most appropriate means of achieving it.”

- 3.4 The Minister appears to have accepted that in least some circumstances the amendment proposed by the Committee could be justified. Despite the Minister not agreeing to the specific amendment recommended by the Committee, he has committed to effect the necessary changes to address the Committee’s concerns in relation to regulation 28(4) by appropriate redrafting.

4 CONCLUSION

- 4.1 The Committee thanks the Minister for his cooperation and trusts that the amendments required to implement those recommendations of the Committee’s Forty-Fifth Report agreed to by the Minister and in relation to regulation 28(4) will be introduced as soon as possible.



Hon R L Wiese MLA,

Chairman

March 29 2000

ANNEXURE A



Joint Standing Committee on Delegated Legislation

Our Ref: 3534/36

27 October 1999

The Hon C J Barnett MLA
Minister for Energy
19th Floor
197 St. George's Terrace
Perth WA 6000

By facsimile: (08) 9481 0223

URGENT

Dear Minister

Gas Standards (Gasfitting & Consumer Gas Installations) Regulations 1999

The Joint Standing Committee on Delegated Legislation ('Committee') has initiated an inquiry in relation to the above Regulations and is currently finalising its report in preparation for it being tabled when Parliament resumes sitting in November 1999.

At its meeting on Monday 25 October 1999, the Committee resolved to write to you in relation to its concerns with two of the regulations and to seek your urgent response.

Regulation 22 and 35 and the Supply of "Commissioning" Gas

Regulation 35(1) provides that if gasfitting work is done on a consumer's gas installation that is not supplied with gas, a gas supplier must not supply gas to the installation unless the gas supplier has received a notice of completion of the work. However, the only way a gasfitter can complete a notice of completion of work is if "commissioning" gas is supplied. This is prohibited by sub-regulation (1). Sub-regulation (3) provides that the Director may, in a particular case or class of case, exempt a gas supplier from sub-regulation (1). The concern of the Committee is that this means that in every case the Director must give an exemption and by this discretion has the ultimate control of the supply of gas.

The relevant provisions of regulation 22 are as follows:

- "22 (1) A gas fitter must not leave a Type B appliance permanently connected in a consumer's gas installation unless an inspector has issued a certificate of compliance for the appliance.
- (2) The inspector may issue a certificate of compliance for the appliance if the

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Joint Standing Committee on Delegated Legislation

inspector has inspected the appliance and ascertained, so far as is practicable, that it complies with the requirements referred to in regulation 32.

...

- (8) For the purposes of this regulation an appliance is not to be regarded as permanently connected if it is connected for a period approved in writing by an inspector pending inspection of the appliance by that inspector.
- (9) For the purposes of sub-regulation (8), an inspector may approve any period of no more than -
 - (a) 21 days; or
 - (b) If in a particular case a longer period is required and the inspector gives written notice to the Director of the approval - 90 days."

In the Committee's opinion, it is by no means clear from a reading of regulation 22 that without the exemption being provided under regulation 35(3), "commissioning" gas can be supplied by a gas supplier to a newly installed consumer's gas installation without the gas supplier breaching the prohibition in regulation 35(1). This is because a notice of completion of the work can only be completed after gas has been supplied for testing and inspection purposes.

The Committee is of the view that this anomaly could be cured by inserting the word "permanently" into regulation 35(1) so that the regulation reads:

- "35(1) Except as provided in this regulation, if gasfitting work is done on a consumer's gas installation that is not supplied with gas, a gas supplier must not **permanently** supply gas to the installation unless the gas supplier has received a notice of completion of the work."

Shift of Liability to Gasfitters

The Committee is concerned with the extent of the obligations on gasfitters and their potential legal liability due to the very broad wording of regulation 28(4), particularly when this wording is compared with the obligations placed on inspectors under regulation 22(2).

Under regulation 28(4) a gasfitter who must complete a notice of completion:

"...must certify that every part of the gas installation on which the gasfitting work was done *or that is affected by the work* complies with the requirements referred to in regulation 32, is safe to use and is completed to a trade finish."[emphasis added].

Under regulation 22(2) an inspector may issue a certificate of compliance for a Type B appliance:

"...if the inspector has inspected the appliance and ascertained, *so far as is practicable*, that it complies with the requirements referred to in regulation 32."[emphasis added].

Joint Standing Committee on Delegated Legislation

It is the Committee's understanding that due to the current level of expertise and training of gasfitters, it may be difficult, if not impossible for a gasfitter to sign a notice of completion in which he or she can genuinely certify that every part of the appliance which is affected by the work complies with the requirements of regulation 32. This is particularly the case with more complex Type B appliances

The Committee is concerned that the requirement in regulation 28(4) appears unrealistic and is probably unachievable in at least some cases. The regulation also appears to unfairly shift responsibility to gasfitters for ensuring that an appliance is safe to use. The Committee's view is that although all participants must take an active role to ensure the safety of an appliance, including the gasfitter who does work on an appliance, the primary responsibility should rest with the manufacturer, inspector and gas supplier.

The Committee is concerned that the reality of the inspection process is recognised in regulation 22(2) by requiring an inspector to only ascertain *so far as is practicable*, that an appliance complies with the requirements of regulation 32, whereas the same recognition is not extended to gasfitters who are in many cases by reason of their training and experience not in a position to determine the absolute safety of every part of an appliance which is affected by the work.

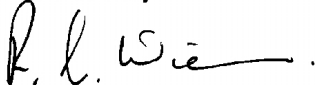
As you are aware from my letter to you dated 23 September 1999, the Committee has moved a "protective" motion for disallowance of the whole of the Regulations. The motion was moved on Wednesday 13 October 1999 and will be debated and put to a vote in the Legislative Council no later than 11 November 1999.

The Committee is currently of the view for the reasons expressed above that regulations 28(4) and 35(1) of the Regulations need to be amended. If this is not able to be done, the Committee would have no choice but to recommend disallowance of regulations 28(4) and 35(1). The Committee requests that you give consideration to its concerns regarding these regulations and advise whether you are prepared to provide the Committee with a written undertaking that the regulations will be amended so as to satisfactorily address the Committee's concerns. Your undertaking should include the proposed re-wording of regulations 28(4) and 35(1) for consideration by the Committee at its next meeting.

The Committee would prefer to reach agreement with you in relation to the re-wording of regulations 28(4) and 35(1) prior to finalising its report. As the Committee has only a limited time before it must report to the Parliament, I ask that you provide your reply as a matter of urgency and by no later than 4:00pm, Friday 5 November 1999.

Should you have any questions regarding the above please contact the Committee's Advisory/Research Officer, Nigel Pratt on 9222 7406.

Yours sincerely



Hon Bob Wiese MLA
Chairman

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ANNEXURE B



MINISTER FOR RESOURCES DEVELOPMENT; ENERGY;
LEADER OF THE HOUSE IN THE LEGISLATIVE ASSEMBLY

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Your Ref: 3534/36
Our Ref: 075642

Hon Bob Wiese MLA
Chairman
Joint Standing Committee on Delegated Legislation
Legislative Council
1110 Hay Street
WEST PERTH WA 6005

Dear Bob

**GAS STANDARDS (GASFITTING AND CONSUMER GAS INSTALLATIONS)
REGULATIONS 1999**

Thank you for your letter dated 29 October 1999, outlining the concerns of the Committee in respect of these regulations.

I appreciate the concerns of the Committee in relation to the two regulations 22 and 35. However, I am not convinced that the suggested amendments would satisfactorily resolve the problems identified without creating adverse effects elsewhere in the regulations and possible implications in relation to gas safety.

I can, however commit to amendments along the following lines (they will of course be formalised by Parliamentary Counsel's Office), and I am confident that these will achieve the objectives of the Committee.

Commissioning Gas

Add new sub-regulation 35(4):

- (4) Notwithstanding the provisions of sub-regulation 35(1), a gas supplier may provide gas for the commissioning of a Type B appliance which has been approved in accordance with Schedule 6, Item 501(2) providing:
 - (i) the relevant gas fitter has submitted a Notice of Completion for the gas installation leading up to the Type B appliance; and
 - (ii) the period for which the gas for commissioning is provided does not exceed a period approved under regulation 22(8).

Shift of Liability to Gasfitters

I acknowledge the Committee's comments regarding the level of responsibility the regulations impose upon a gasfitter in the overall construction of a consumer's gas installation, including work on appliances. It must, however, also be acknowledged that licensed gasfitters need to be responsible for their actions, both in respect of the work they do, and regarding the effect of that work on the rest of an installation. I feel, therefore, that it is realistic and necessary for them to certify the safety and compliance of their work in this way.

I do also acknowledge, however, in relation to certifying the approved-for-installation-status of a Type B appliance, that the person who provides (or sells) that appliance clearly has primary responsibility for the technical and safety compliance of the design and construction, the obtaining of approval and then the providing of that information to the gasfitter (and user).

I therefore propose the following amendment to specifically identify this responsibility:

Schedule 6

Add Item 501(2)(c) as follows:

- (c) The person responsible for ensuring that the approval referred to in (a) and (b) is obtained for the end user, shall be the provider or vendor of the appliance.

As previously stated the actual words of the necessary amendments will be for Parliamentary Counsel to draft. However, subject to the Committee confirming that the proposals are in line with their wishes, I can firmly commit to ensuring that the amendments follow the intent of the proposals.

Yours sincerely



COLIN J BARNETT
MINISTER FOR ENERGY

9 November 1999

ANNEXURE C



Joint Standing Committee on Delegated Legislation

Our Ref: 3534/36

Hon C J Barnett MLA
Minister for Energy
19th Floor
197 St. George's Terrace
Perth WA 6000

By Courier

Dear Minister

Gas Standards (Gasfitting & Consumer Gas Installations) Regulations 1999

Thank you for your letter dated November 9 1999. I enclose a copy of the Committee's Forty Fifth Report in relation to the *Gas Standards (Gasfitting & Consumer Gas Installations) Regulations 1999* ("Regulations") which was tabled in the Legislative Council on Wednesday November 10 1999.

The Joint Standing Committee on Delegated Legislation ('Committee') considered your correspondence at its meeting on Monday November 15 and resolved to write to you in relation to the amendments you have proposed to regulation 35 and to Schedule 6 of the Regulations subject to final wording being approved by Parliamentary Counsel.

Regulation 35 and the Supply of "Commissioning" Gas

The Committee welcomes the proposed inclusion of sub-regulation (4) to this regulation and is of the opinion that this will rectify the apparent conflict between the previous regulation 35 and the procedure set out in regulation 22 for the supply of "commissioning" gas.

Shift of Liability to Gasfitters

The Committee's concerns with the apparent shift of liability from gas suppliers and inspectors to gasfitters has in part been addressed by your proposed inclusion of item 501(2)(c) in Schedule 6. The Committee acknowledge that the proposed amendment makes it clear that the manufacturer or vendor has responsibility for ensuring that a Type B appliance has been approved prior to it being put into service. The Committee concurs with the proposed amendment.

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Joint Standing Committee on Delegated Legislation

However, despite the proposed change to item 501 of Schedule 6, the Committee's concerns with the current wording of sub-regulation (4) of regulation 28 remain. If a gasfitter who has obtained the new I class licence permitting work on Type B appliances is appropriately qualified, the Committee accepts that it is appropriate that he or she certify that *their* work complies with the requirements of regulation 32. The gasfitter, by regulation 28(4) is required to do more than certify *their* work complies with the requirements. The gasfitter is required to certify that, "... *every part of the gas installation that is affected by the work complies with the requirements referred to in regulation 32 and is safe to use.*"

"Gas installation" under section 4 of the *Gas Standards Act 1972* "means any appliance, pipes, fittings or other apparatus installed or to be installed for or for purposes incidental to the conveyance, control, supply or use of gas." The definition will include a Type B appliance as defined by the Regulations. A gasfitter's connection of a Type B appliance to a gas supply line will be work that affects the entire appliance as it is only by the supply of gas that it can operate.

It is the Committee's view that it is neither fair nor appropriate that in the circumstances described above, a gasfitter should be required to certify that every part of the Type B appliance (ie gas installation) complies with the requirements of regulation 32 and is safe to use. This is, as you have impliedly acknowledged in your proposed amendment to Schedule 6, a matter for the manufacturer or vendor and the inspector.

The Committee requests that the changes you have proposed to Schedule 6 be complimented by a suitable re-wording of regulation 28(4) to indicate that a gasfitter should only be required to certify in the certificate of compliance that *their* work carried out on the appliance or installation complies with the requirements of regulation 32. The Committee remains of the view that a gasfitter should not be required to certify matters which at least in some cases will be the sole responsibility of the manufacturer or vendor and inspector.

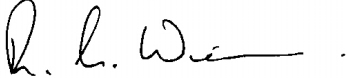
Despite its concerns with the regulations as set out in my letter to you dated October 27 1999, the Committee resolved at its meeting on November 9 1999 to seek the leave of the Legislative Council to remove its motion for disallowance of the Regulations. Leave was granted and the motion withdrawn on Wednesday November 10 1999 when the Committee's report was also tabled. The report raises the two issues dealt with above and also sets out three additional recommendations of the Committee at paragraph 7.3 being sub-paragraphs (a), (b), and (e).

The Committee again requests that you give consideration to amending regulation 28(4) and advise what action you intend to take regarding the Committee's other recommendations. The Committee may consider tabling a supplementary report to include your replies to the Committee's concerns and recommendations.

I ask that you provide your reply by no later than **4:00pm, Friday 26 November 1999** so that the Committee can consider your correspondence prior to the summer recess. Should you have any questions regarding the above please contact the Committee's Advisory/Research Officer, Nigel Pratt on **9222 7406**.

Joint Standing Committee on Delegated Legislation

Yours sincerely



Hon Bob Wiese MLA
Chairman

November 16 1999

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ANNEXURE D



MINISTER FOR RESOURCES DEVELOPMENT; ENERGY;
LEADER OF THE HOUSE IN THE LEGISLATIVE ASSEMBLY

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Hon Bob Wiese MLA
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Joint Standing Committee on Delegated Legislation
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1110 Hay Street
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Dear Bob

**GAS STANDARDS (GASFITTING AND CONSUMER GAS INSTALLATIONS)
REGULATIONS 1999**

Thank you for your letter dated 16 November 1999 and attached Report No.45, setting out the outcomes of the Committee's review of these regulations.

I was pleased to note the Committee concluded that the Regulations are within power and resolved to not recommend their disallowance.

The Committee provided me with the following recommendations to improve the regulations, and I discuss each briefly:

- (a) Amend the definition of "gas appliance" in the *Gas Standards Act 1972* to make it clear it includes a Type B (industrial) gas appliance – I accept this recommendation and will include it with other amendments to that Act expected to be introduced during next year.
- (b) Amend s.13D of the *Gas Standards Act 1972* to provide for conditions on the advertising of Type B gas appliances which have not yet been approved by the Director of Energy Safety – I also accept this recommendation and will include it with other amendments to that Act expected to be introduced during next year.
- (c) Amend Regulation 35 so as to remove the need for the Director of Energy Safety to exercise his discretion in sub-regulation (3) for the provision of "commissioning" gas – I have already indicated per my letter of 9 November 1999 that I will authorise a suitable amendment and note that the Committee supported the proposal.

- (d) Amend Regulation 28(4) so that it places an obligation on gas fitters which is similar to (but no greater than) the obligation placed on inspectors in regulation 22(2) – as also covered in my letter of 9 November 1999, I am prepared to amend Item 501 (2)(c) in Schedule 6 of the Regulations to deal with this issue and I note the Committee supports that approach. The Committee has further requested that I give this issue additional consideration, to the extent of providing an amendment that would expressly limit the liability of gas fitters to ensuring the compliance of work *they* have performed, either on a Type B appliance or on the gas installation.

I acknowledge that, in the particular case of a person who merely connects pipework to a Type B appliance this could be justified. However, simply changing Regulation 28(4) in the way indicated is likely to have repercussions in relation to other areas of gasfitting and I could therefore not agree to that specific change. I can, however, commit to any changes necessary to achieve the desired outcome, taking the advice of Parliamentary Counsel as to the most appropriate means of achieving it.

- (e) Consider amending s.13 of the *Gas Standards Act 1972* to provide for the publication of current inspection plans and policies of persons (gas undertakers and pipeline licensees) granted exemptions under s.13(2) – I believe this recommendation also has merit and I will seek to include it with other amendments to that Act expected to be introduced during next year.

I thank the Committee for its advice in regard to these matters.

Yours sincerely



COLIN J BARNETT
MINISTER FOR ENERGY

30 December 1999