

Electrical Safety Standards in the Private Rented Sector Policy

This policy explains how the Council will extend its Civil Penalty powers under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 “the Electrical regulations” to serve Civil Penalty Notices on non-compliant landlords and managing agents for failing to provide an Electrical Safety Certificate to tenants and at the request of the Council.

The approach set out in this policy aligns with the Council’s Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016 and should be read as an addendum to this policy.

Introduction

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Regulations) came into force on 1 June 2020 and were released in two phases:

- For new tenancies granted from 1 June 2020, from 1 July 2020.
- For existing tenancies, from 1 April 2021.

Their purpose is to require landlords to ensure that electrical installations in rented properties are safe, by having them inspected and tested by a qualified and competent person, at least every five years, and providing a copy of the electrical safety report to their tenants and if requested to their local council.

Under these Regulations, we can require landlords to carry out remedial works or even arrange for the repairs to be done and to recover the cost from the landlord.

The level of penalty for landlords who do not comply is up to £30,000, and section 5 contains information about how we will decide what the level will be.

Duties of private landlords in relation to electrical installations

Under the Regulations, a private landlord who grants or intends to grant a specified tenancy, which is not an excluded tenancy¹ must:

- Ensure that the electrical safety standards are met during any period when the premises are occupied (as set out in the 18th edition of the Wiring Regulations (British Standard 7671).
- Ensure every electrical installation in the premises is inspected and tested at least every 5 years by a qualified and competent person; and
- Ensure the first inspection and testing is carried out:
 - before the tenancy commences in relation to a new specified tenancy; or
 - by 1st April 2021 in relation to an existing tenancy.

Under the same Regulations, following the inspection and testing required a private landlord must:

- Obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test
- Supply a copy of that report to each existing tenant of the premises within 28 days of the inspection and test
- Supply a copy of that report to Local Authority within 7 days of receiving a request in writing for it from that authority

¹ Schedule 1 Excluded tenancies <http://www.legislation.gov.uk/ukxi/2020/312/schedule/1/made>

- Retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
- Supply a copy of the most recent report to any new tenant before that tenant occupies those premises; and any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.

Where a report giving the results of the inspection and test (see below) indicates that a landlord is or is potentially in breach of the duty to ensure that the electrical safety standards are met during any period when the premises are occupied, and the report requires the landlord to undertake further investigative or remedial work, the private landlord must:

- ensure that further investigative or remedial work is carried out by a qualified person within 28 days (or the period specified in the report if less than 28 days) starting with the date of the inspection and testing
- obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out
- supply that written confirmation, together with a copy of the report under subparagraph (3)(a) of the Electrical Regulations which required the further investigative or remedial work to each existing tenant of the residential premises and to the Council within 28 days of completion of the further investigative or remedial work

Where further investigative work is carried out and the outcome of that further investigative work is that further work is required, the landlord must repeat the steps above in respect of that further investigative or remedial work.

Results of the inspection and test

The following codes are used to indicate where a landlord must undertake remedial work:

- Code C1 – danger present and risk of injury.
- Code C2 - potentially dangerous.
- Code C3 – improvement recommended.
- Further investigation (FI) – further investigation required without delay.

If the report contains a code C1, C2 or FI, then the landlord must ensure further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report. As regards C3 codes, we will not require landlords to undertake remedial work but we may draw the recommended improvement to their attention.

Electrical Safety offences under the Electrical Regulations:

- Regulation 3 (Failing to meet any duty as a private landlord)

Where the Council is satisfied, beyond reasonable doubt, that a private landlord has breached a duty above, or has failed to comply with a remedial notice served under Regulation 3(1)(a), (1)(b), (1)(c), (4) or (6) of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Enforcement of the Regulations

If the Council are satisfied that the landlord is in breach of the requirements and the report doesn't indicate urgent remedial action is required, they have a duty to serve a remedial notice under the Regulations. Breaching the remedial notice may result in the Council serving a financial penalty.

Remedial Action

If the Council have reasonable grounds showing that the landlord has breached the regulations the Council must serve a remedial notice on the landlord within 21 days of deciding that it has reasonable grounds for service. The notice includes:

- The remedial action that is required to be undertaken within 28 days of service
- Details of how to make representations to the Council
- Explanation of the penalties (including the potential maximum penalty) that may result from non-compliance.

The landlord may make written representations against such a notice within 21 days, if made the notice is suspended until the representations have been considered. The Council must consider any representations and confirm that outcome of those considerations, in writing, within 7 days of the end of the representation period.

A landlord must comply with a remedial notice where either no representations are made, or the notice is confirmed (after consideration of the representations) unless they are able to claim that they have taken all reasonable steps e.g. Providing evidence that the tenant has prevented access. If the landlord fails to comply with a remedial notice the Council may undertake the required remedial work themselves if the tenants agree.

Before doing so, the Council must be satisfied on the balance of probability that there has been a breach of the remedial notice. Before work starts the Council must serve a notice of intention to take remedial action on the landlord. The notice includes:

- The nature of the proposed remedial work
- The date when the work will be undertaken
- Information on the right of appeal against the decision to do the work

The Council must arrange for an authorised person to undertake the remedial work within 28 days of the end of the intention to take remedial action notice expiry date (or within 28 days after confirmation of notice, if appealed). The tenants must be given at least 48 hours' notice before the remedial works starts. A landlord may not be in breach of the Remedial Notice if they can evidence that they have taken all reasonable steps to comply with that duty.

Where the landlord is prevented from entering property for the purposes of the Remedial Notice by the tenant or tenants of that property, the landlord will not be considered to have failed to have taken all reasonable steps to comply with the Remedial Notice. To support this defence evidence of attempted appointments and refused access will be required.

Urgent Remedial Action

Where an electrical report indicates that urgent action is required and the Council is satisfied that the landlord is not undertaking the necessary work, they may arrange (with the consent of the tenants) for an electrician to undertake the urgent work.

The tenants must be given at least 48 hours' notice of the date to carry out the work. The Council must issue an urgent remedial action notice to the private landlord and every occupier either prior to or up to 7 days from the date when the remedial action commences. The urgent remedial action notice must include:

- The nature of the urgent remedial action required
- The date when the urgent work is or has been started
- Information on the right of appeal against the decision to do the work

Recovery of the Costs of Remedial Work

The Council may issue a demand to recover costs from the private landlord relating to remedial works undertaken which becomes payable after 21 days from the day of issue unless an appeal is submitted.

Financial Penalties

Where the Council is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3 (see 1.2), the Council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. The financial penalty may be of such amount as the Council imposing it determines; but must not exceed £30,000

In determining the civil penalty amount for offences under the electrical regulations, the Council has had regard to the non-statutory guidance published by the Ministry of Housing, Communities and Local Government (MHCLG) and has updated and adopted its existing Civil Penalty Policy to include offences under the regulations.

Therefore the Council's policy on Civil Penalties under the Housing Act 2006 (as amended by the Housing and Planning Act 2016) and associated scoring matrixes will also apply to civil penalties issued in respect of breaches of regulation 3 of Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 unless otherwise specified.

Right of Appeal

A landlord can appeal to the First-Tier Tribunal within 28 days from the day the Remedial Notice is served. The Tribunal may allow an appeal to be made after this date if it is satisfied that there are good reasons for the failure to appeal on time. The Tribunal may confirm, quash or vary notices served by the Council.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance with the notice when the Council gave notice of their intention to enter and take the remedial action.