

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

STATEMENT OF PRINCIPLES and REASONS FOR PENALTY

Introduction

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 introduced legal requirements on private sector landlords from the 1st June 2020 in respect of premises occupied under tenancies starting on or after that date. These regulations also apply to all existing tenancies from 1st April 2021. The requirements are to:

- ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
- ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified 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 specified tenancy.

“At regular intervals” means at intervals of no more than 5 years; or where the most recent report requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.

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 residential premises within 28 days of the inspection and test;
- supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;
- 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 of the specified tenancy to which the report relates 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 indicates that a private landlord is or is potentially in breach of the duty and the report requires the private 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.

Where the above applies, a private landlord must—

- obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—
- the electrical safety standards are met; or
- further investigative or remedial work is required;
- supply that written confirmation, together with a copy of the report which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and
- supply that written confirmation, together with a copy of the report which required the further investigative or remedial work to the local housing authority 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 investigative or remedial work is required, the private landlord must repeat the steps in respect of that further investigative or remedial work.

Electrical Safety is one of the 29 hazards prescribed by the Housing Health and Safety Rating System and can result in serious injury including electrical burns and death. Electrical faults can also cause or contribute to fires occurring.

Unsafe electrical installations within residential premises is a significant factor in producing worse outcomes.

The Office for National Statistics (ONS) estimates that between 2001 and 2016 more than 140 people died as a result of electrical currents. *Electrical Safety First* (formerly The Electrical Safety Council) estimates that every year in the UK about 70 people die and 1.2 million are injured in electrical accidents at home. They also state that approximately 19,300 accidental domestic fires are of electrical origin in the UK, 11 fatalities can be attributed to electrical distribution fires, 321 injuries attributed to electrical distribution fires, 15 fatalities attributed to other electrical appliance fires and 397 injuries attributed to other electrical appliance fires. The Electrical Safety Council estimates that every year in the UK about 70 people die and 1.2 million are injured in electrical accidents at home.

Electric shocks can cause death by inducing ventricular arrhythmia or asystole. Tetany of respiratory muscles can also induce hypoxic cardiac arrest. Much of the morbidity resulting from electrical injury relates to burns and neurological dysfunction.

Enforcement

Remedial Notices

Where a local housing authority has reasonable grounds to believe that, in relation to residential premises situated within its area, a private landlord is in breach of one or more of the duties under the Regulations and the most recent electrical safety report does not indicate that urgent remedial action is required, the authority must serve a remedial notice on the private landlord within 21 days.

Where a remedial notice is served on a private landlord, the private landlord must take the remedial action specified in the notice within 28 days beginning with the day on which the notice was served. The landlord has the right to make written representations to the Council in respect of the remedial notice within 21 days beginning with the day on which the notice was served. Upon receipt of representations the Council will consider the same. The private landlord will be informed of the Council's decision to either confirm or withdraw the remedial notice via written means within the prescribed timeframe.

A private landlord is not to be taken to be in breach of the duty if the private landlord can show they have taken all reasonable steps to comply with that duty. Where a private landlord is prevented from entering the residential premises to which the duty relates by the tenant or tenants of those premises, the private landlord will not be considered to have failed to have taken all reasonable steps to comply with the duty solely by reason of a failure to bring legal proceedings with a view to securing entry to the premises.

Remedial Action and Urgent Remedial Action

There are two types of remedial actions that the Council can conduct:

1.0 The Council is permitted to carry out remedial works if:

The Council has served a remedial notice, the private landlord has not complied with the remedial notice, and the Council is satisfied on the balance of probabilities that the private landlord is in breach of his duty to comply with the remedial notice

2.0 The Council is permitted to carry out urgent remedial works if:

If an electrical report indicates that urgent remedial action is required, the landlord has failed to conduct those works within the period specified in the electrical safety report, and the Council is satisfied on the balance of probabilities that the private landlord is in breach of their duty to undertake the required remedial or investigative work

In either case, the Council may conduct remedial or urgent remedial works as long as the Council has obtained consent from the tenant or tenants of the property in relation to which the remedial action is to be taken.

Remedial action

Before the remedial action is taken the local housing authority must serve a notice on the private landlord specifying the premises in relation to which the remedial action is to be taken by the authorised person and the nature of that remedial action; the power

under which the remedial action is to be taken by the authorised person; the date when the remedial action will be taken by the authorised person; and the right of appeal against the decision of the authority to arrange for an authorised person to take the remedial action.

The local housing authority must arrange for an authorised person to take the remedial action within 28 days of the end of the notice period where there is no appeal; or an appeal decision that confirms or varies the decision of the local housing authority where there is an appeal.

An authorised person must give not less than 48 hours' notice of the remedial action to the tenant or tenants of the residential premises on which it is to be taken; and if required to do so by or on behalf of the private landlord or tenant or tenants, produce evidence of identity and authority.

The private landlord may appeal to the First -Tier Tribunal against the Council's decision to take remedial action. An appeal must be made within the period of 28 days beginning with the day on which the remedial notice is served. If an appeal is submitted to the First Tier Tribunal the remedial notice will be suspended until the appeal is finally determined or withdrawn.

Urgent Remedial Action

Prior to the commencement of urgent remedial action the Council must serve a notice of urgent remedial works on the private landlord and every person who to the authority's knowledge is an occupier of the premises in relation to which the authorised person is taking urgent remedial action; or fix the notice to some conspicuous part of the premises within the period of seven days beginning with the day on which the authorised person commences the urgent remedial work.

The notice must specify and explain the nature of the urgent remedial action required; the premises in relation to which that urgent remedial action was (or is being or is to be) taken by the authority; the power under which that urgent remedial action was (or is being or is to be) taken by the authority; the date when that urgent remedial action was (or is to be) started; the right to appeal against the decision of the authority to take the urgent remedial action; the period within which an appeal may be made; and the effect of regulations in respect of financial penalties (including the maximum final penalty that can be imposed), the procedure for imposing a financial penalty and the procedure for appealing against financial penalties.

An authorised person must give not less than 48 hours' notice of the urgent remedial action to the tenant or tenants of the residential premises on which it is to be taken; and if required to do so by the private landlord or a tenant, produce evidence of identity and authority. The Council may exercise its power to arrange urgent remedial action at any time, as long as 48 hours' notice is provided to the tenant or tenants of the residential premises on which it is to be taken.

Any appeal must be made within the period of 28 days beginning with the date specified in the notice as the date when the urgent remedial action was (or was to be) started. An appeal against the Council's decision to take urgent remedial action will not suspend the notice served on the urgent remedial action notice.

Financial penalties for breach of duties

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

Procedure for and appeals against financial penalties

Schedule 2 to the Regulations (procedure for and appeals against financial penalties) has effect and is by way of Appeal to the First-Tier Tribunal.

First-Tier Tribunal (Property Chamber)
Southern Residential Property First-Tier Tribunal
Havant Justice Centre
The Court House
Elmleigh Road
Havant
Hampshire
PO9 2AL
Tel: 01243 779 394
Fax: 0870 7395 900
Email: rpsouthern@hmcts.gsi.gov.uk

Notice of intent

Before imposing a financial penalty on a private landlord a local housing authority must serve a notice on the private landlord of its intention to serve a financial penalty. (a “notice of intent”), The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the local housing authority about the proposal to impose a financial penalty on the private landlord.

Written representations can be made to the case officer

Email: publichealth.housing@arun.gov.uk

Post: Private Sector Housing & Public Health, Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF

The Council will enclose a Financial Means and Assets Information Form with the notice of intent. This form must be completed and returned by the Landlord.

Final notice

Within 28 days of the end of the period following service of the notice of intent (during which the landlord is permitted to make written representations to the Council), the local housing authority must decide whether to impose a financial penalty on the private landlord; and if it decides to do so, decide the amount of the penalty. If the

authority decides to impose a financial penalty on the private landlord, it must serve a notice on the private landlord (a “final notice”) imposing that penalty. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was served.

Penalty Charge Principles

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation.

In determining the amount of penalty, the following factors will be considered:

- Severity of the offence – the greater the harm or potential for harm the higher the level of fine should be when imposing a civil penalty.
- Culpability and track record of the offender – It will be appropriate to issue a higher penalty where the offender has a history of failing to comply with their legal duties. If a Landlord is running a housing or property business, owns multiple properties which are let or tenanted, or the landlord has been warned (formally or informally) on a previous occasion(s) that he needs to take steps to comply with his or her legal duties a higher penalty will be imposed.
- The harm caused to the tenant – For this purpose, harm includes: the potential harm that could have been caused, the harm that was or is perceived by the tenant, as well as any actual harm caused; the person i.e. physical injury, damage to health, the nature of harm on the personal characteristics and circumstances of the victim e.g. the tenant; where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender’s conduct, the likelihood of harm occurring and the gravity of harm that could have resulted from the offending.
- Number of victims/potential victims.
- Especially serious physical effect on the victim, e.g. electrocution as a result of inaction.
- If a victim is considered vulnerable.
- The number of requirements of the Regulations that have been breached.
- Proportionate punishment of the offender –The penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.
- Deter the offender from repeating the offence - The ultimate goal is to prevent any further offending commissioned by the landlord, or any other persons liable and to help ensure that the landlord and/or any person liable complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- Deter others from committing similar offences – Whilst the personal details of an offender will not be released into the public domain, the Council may

release the fact that a civil penalty notice has been issued into the public domain, as well as the amount of the civil financial penalty. The information released will not identify the offender or any associated persons companies, tenants, or the property concerned. The purpose of releasing this information is to deter other landlords from offending. This information may be released into the public domain if the Council does not receive an appeal from the First Tier Tribunal within 7 days of the end of the period in which the offender may issue an appeal against the Civil Penalty.

- Remove any financial benefit the offender may have obtained as a result of committing the offence.
- Make an assessment of the offender's assets and income.

Examples of harm categories: (the examples below are not exhaustive and each case will be considered on an individual basis).

High	e.g. Danger of electrocution or actual electrocution, Code 1 items identified on an electrical report, without appropriate action being taken.
Medium	Code 2 items identified on an electrical report, without appropriate remedial action being taken.
Low	F1 items identified on an electrical report, without appropriate remedial action being taken.

In determining culpability, the Council will have regard to four levels of culpability.

Examples of culpability

High (Deliberate Act)	An intentional breach by a landlord or flagrant disregard for the law. For example, by failing to comply with a notice or regulation - where the Council has informed the landlord that a breach has occurred, and needs to be rectified, but remedial action is not taken. This level of culpability will include offences that are planned, or the offender had the intention to harm.
High (Reckless Act)	An actual foresight of, or wilful blindness to the risk of offending, but decides to take the risk, nevertheless. The offender may appreciate that some harm could be caused but proceeds anyway.
Medium (Negligent Act)	The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence.
Low (Low or no culpability)	The offence committed has some fault on the part of the landlord but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

The table below provides an indication of the level of fine that is likely to be appropriate taking into account both culpability and harm.

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3

Banding Levels

Band 1	£0 - £4,999
Band 2	£5,000 - £9,999
Band 3	£10,000 - £14,999
Band 4	£15,000 - £19,999
Band 5	£20,000 - £24,999
Band 6	£25,000 - £30,000

£30,000 is the maximum level of fine permitted under the legislation. The starting point in each band will be the mid-point i.e. Band 3 the midpoint will be £12,500.

The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.

The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the top of the band level determined below.

When considering aggravating and mitigating factors the civil penalty imposed must remain proportionate to the offence.

Examples of Mitigating and Aggravating Factors

Below are some examples of matters which may be considered mitigating or aggravating factors. The list is not exhaustive, and the Council will consider each matter on an individual basis.

Aggravating	Mitigating
Multiple Hazards or severe hazards which may have resulted or did result in injury.	A small number of hazards which have minimal impact on tenants
Previous history of non-compliance or offending (whether the non-compliance was dealt with formally or informally)	No previous record of non-compliance or offending.

The landlord was familiar with the relevant regulations eg: the landlord controls numerous properties or has demonstrated experience in letting or managing a property.	The landlord owns one property and does not have experience or a professional role in housing, property management or letting.
There is no justification or a lack of justification for the appropriate action not being taken	The hazards were not remedied due to unforeseen circumstances outside of the offender's control.
The offender has made a profit or financial gain from failing to carry out remedial action	Failings were minor and an isolated incident
An excessive length of non-compliance	
No remorse or responsibility accepted; no steps taken to remedy the situation.	

This is not an exhaustive list and each case will be considered on an individual basis.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

The Council has decided that a penalty charge of up to **£30,000** may be appropriate for non-compliance with a Remedial Notice and up to **£30,000** for non-compliance with an Urgent Remedial Action Notice. These are the maximum amounts allowed under the legislation and each case will be assessed on its own merits. The Council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a representation made by the landlord. This discretion will not apply when:

1. The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
2. The person / company has previously received a penalty charge under this legislation.

Despite the above, the Council will still consider proportionality when determining the level of fine to be imposed.

Recovery of Penalty Charge

The Local Housing Authority may recover the penalty charge as laid out in the regulations. Due to costs incurred by the Council, any penalty charge notice shall be pursued for payment.

Review of Statement

Although not specified within the Regulations that a Statement of Principles is required, it shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance and as a measure of good practice in regard to Financial Penalty Notices.

This document was adopted on **[Insert date]**

This document was last reviewed on: [Date]