

## COMMUNITY CONNECTIONS

### THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020 – BRIEFING NOTE.



This sets out our approach to enforcing the electrical safety standards in the private rented sector regulations within domestic rented dwellings within Plymouth.

1. **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.

A private landlord (as defined in section 122(6) of the Housing and Planning Act 2016) who grants or intends to grant a specified tenancy must ensure that the fixed electrical installation is safe during the period of the tenancy.

The regulations set out excluded tenancies which include amongst others, registered providers of social housing, shared accommodation with a landlord or landlord's family, long leases, student halls of residence, hostels and refuges, care homes, hospitals and hospices and other accommodation relating to healthcare provision.

The regulations apply to HMOs and introduced a new mandatory condition for HMO licences from the 1<sup>st</sup> June 2020. These changes to PCC's processes were incorporated in accordance with the legislation.

The following is an overview of the process and powers. These are expanded upon in the policy.

#### 1.1 **Landlord duties - testing & certification.**

- Duty for first inspection and testing of the electrical installation
  - New, specified tenancies, granted or intended to be granted on or after 1<sup>st</sup> July 2020
  - 1<sup>st</sup> April 2021 - Existing tenancies must be inspected before this date.
- Repeat inspections are required at least every 5 years (sooner if the report recommends a lesser period).
- Ensure that the electrical safety standards are met during any period when the premises are occupied under a specified tenancy.
- Where the inspection report shows a C1, C2 or FI outcome, the landlord must ensure that suitable remedial works or investigations are undertaken. A C3 outcome is advisory and therefore works do not have to be completed.
- A copy of the inspection certificate must be provided by the landlord to:
  - Each existing tenant within 28 days of the inspection
  - A new tenant before they occupy the property, or
  - A prospective tenant within 28 days of receiving a request for the report
  - The LHA within seven days of receiving a request for the certificate in writing

- A copy of the report must be kept by the landlord until the next report is due;

#### **1.2 Local Authority duties - Remedial Notice.**

- Where the LHA believes that the landlord has breached one or more of their duties, (excluding provision of certificates), the LHA must serve a remedial notice on the landlord.
- The landlord may make written representations within 21 days
- The LHA must consider any representations

#### **1.3 Landlord duties - Remedial Notice**

- 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. tenant has prevented access.

#### **1.4 Local Authority power to arrange remedial action.**

- Failure to comply with a remedial notice also allows the LHA to undertake remedial works in default, with the consent of the tenants.
- Before undertaking such works, the LHA must serve a notice of intention to take remedial action (NIRA) on the landlord.
- Works are to be undertaken within 28 days of the end of the remedial notice expiry date (or within 28 days after confirmation of notice, if appealed).
- The tenants must be given at least 48 hours' notice of the remedial works.

#### **1.5 Appeal against LA remedial works**

- A landlord may appeal against a NIRA to the First-tier Tribunal within 28 days of service.
- An appeal suspends the NIRA until the appeal has been determined. The tribunal may affirm, vary, or quash the NIRA.

#### **1.6 Recovery of costs**

- The LHA may issue a demand to recover costs relating to works undertaken in accordance with the NIRA which becomes payable after 21 days from the day of issue unless an appeal is submitted.

#### **1.7 Appeal against costs**

- An appeal can be made to the First-tier Tribunal within 21 days of the date of issue.

#### **1.8 Urgent remedial action**

- Where an electrical report indicates that urgent action is required and the LHA 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 LHA must issue an urgent remedial action notice (URAN) either prior to or up to seven days from the date when the remedial action commences.

**1.9 Appeal against urgent remedial action**

- A landlord may appeal against a URAN to the First-tier Tribunal within 28 days of either the date that the work was started or was planned to start (whichever was the first date).
- A URAN is not suspended on appeal.

**1.10 Recovery of costs for urgent remedial action**

- The recovery process is like those under 1.6 above.

**1.11 Financial penalties - notice of intention**

- Where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3 (see 1.2), 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 (See Appendix 1); but must not exceed £30,000.
- Before imposing a financial penalty a notice of intention must be served on the private landlord.
- The landlord may make written representations within 28 days.

**1.12 Financial penalties – final notice**

- Within 28 days of expiry of the representation period the LHA must decide whether to impose a financial penalty on the landlord.
- If it decides to impose a penalty it must serve a final penalty notice.
- The penalty is payable within 28 days.
- The LHA may, at any time, withdraw a NOI or Final notice, or reduce the penalty amount specified in a notice by doing so in writing.

**1.13 Appeal against financial penalty**

- A landlord can appeal a final notice within 28 days to the First-tier Tribunal.
- If appealed the final notice is suspended until withdrawn or determined.

**1.14 Recovery of financial penalty**

- The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

**1.15 Proceeds of financial penalty**

- The LHA may apply the proceeds to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. If not so applied, it must be paid into the Consolidated Fund.

2. There is an overlap of legislation with the Housing Act 2004. A property may have undertaken testing in accordance with these regulations but may be inspected under the Housing Act 2004 and served with a notice to reduce hazards identified under the Housing Health & Rating System. This may include the need to undertake electrical testing, and to obtain and supply a certification to the LA. Should the notice not be complied with prosecution or a civil penalty (up to £30,000) may be made by the LHA.

Where an offence is open to a penalty under both the Housing Act 2004 (as amended by the Housing and Planning Act 2016) and the electrical regulations then the most appropriate piece of legislation will be used taking into account circumstances on a case by case basis.

3. The penalties in respect of breaches of this legislation sit outside of, but are aligned with, Plymouth City Council's Civil Penalty Policy in that they consider the guidance published by the government for civil penalties under the Housing and Planning Act 2015.

The proposed penalty structure form Annex A of the policy together with a range of scenarios. An overview can be found at the end of this document.

The aim of the legislation is to ensure that the electrical installation within rented properties is regularly checked and that deficiencies are rectified in a speedy manner to minimise risk to the occupants. The provision of certification allows parties to see evidence that this has occurred.

The failure to provide certification does not automatically mean that the electrical installation is unsafe.

Civil penalties will be determined on a case by case basis taking into account Annex A which is in line with the Government's guidance on civil penalties.

See Annex A.

The regulations allow the Local Authority, with the consent of the tenants, to undertake remedial works. Where the Local Authority exercises this function the Local Authority will seek to recover the costs involved.

4. The majority of landlords are good and comply with the law, however, the Government is clear that the small minority of rogue landlords and property agents who knowingly break their legal obligations, rent out accommodation which is substandard and harass their tenants should be prevented from managing or letting housing. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are a measure to promote improvements to rented accommodation which are to the benefit of the occupiers and reduce carbon emissions to improve the environment for all.

5. The policy aims to inform interested parties, and those that may be subject to enforcement.

### **Overview of Proposed Determination of penalty amount.**

The Authority will decide the amount of penalty up to the maximum within the regulations up to a maximum of £30,000.

A penalty may be awarded under either Part A and/or Part B.

**PART A:**

This applies where:

- An electrical report indicates that CI defects are present and where the works haven't been undertaken in accordance with the regulations.
- A remedial notice has been served by the Local Authority and the landlord has failed to take all reasonable steps to comply with it and the regulations have been breached.

The indicative penalty shall be determined in accordance with Plymouth City Council's Civil Penalty Policy as if an offence of failing to comply with an improvement notice in respect of I Category I hazard (electrical) has occurred.

Examples are highlighted in Annex B.

**PART B:**

This applies in respect offences not covered by Part A. It may include for example:

- Failing to provide certification to tenants/prospective tenants
- Where the Local Authority have served a remedial notice which the Landlord has complied with.
- Where the landlord has failed to ensure the testing has been undertaken at regular intervals by a qualified person in accordance with the regulations but has recently complied with the regulations.

Consideration will be given to the issue of a penalty as a "repeat offender". Instead of a scoring matrix the following indicative penalties will be used:

First offence	£Nil – Advice will be given
Second offence:	£300
Third:	£500
Forth & subsequent	£1,000

**Considerations:**

After the indicative penalty has been determined, considerations of sections (e) – (i) will be applied together with any reductions under section (j). Please refer to PCC's Civil Penalty Policy for detail. In brief these are:

**e) Remove any financial benefit the offender may have obtained as a result of committing the offence** – *The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.*

**f) Multiple offenders** – *fine sharing in cases where there are multiple offenders.*

**g) Punishment of the offender** – *A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high*

enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

**h) Deter the offender from repeating the offence** – The ultimate goal is to prevent any further offending and help ensure that the landlord fully 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.

**i) Deter others from committing similar offences** – While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

**j) Reductions**

- Level of compliance by perpetrator, their attitude in doing so, and early payment
- Financial hardship

## 10. ANNEX B: EXAMPLE SCORING

The following are example indicative penalties under Part A before considerations are applied.

Scenario 1: Where the landlord has failed to comply with a remedial notice served in respect of a single family let and regulations breached. Single landlord who has been assessed as Low Culpability. There has been no direct harm and is considered a first offence.

Offence severity:	5 points
First offence:	5 points
Culpability: Negligent	5 points
Harm: Potential for harm	2 points
Total score:	<u>17 Points</u>
Indicative fine	<b>£2,000</b>

Indicative fine may be altered following considerations set out in (e)-(j).

Scenario 2: Where the landlord has failed to undertake works, in accordance with the regulations, following a test indicating the presence of CI electrical defect/s in a single family home. Single landlord who has been assessed as Negligent. There has been no direct harm and is considered a first offence.

Offence severity:	5 points
First offence:	5 points

Culpability: Negligent	10 points
Harm: Potential for harm	2 points
Total score:	<u>22 Points</u>
Indicative fine	<b>£3,000</b>

Indicative fine may be altered following considerations set out in (e)-(j).

Scenario 3: Where the landlord has failed to undertake works, in accordance with the regulations, following a test indicating the presence of CI electrical defect/s in a HMO where the defect/s affect more than one household. Single landlord who has been assessed as Negligent. There has been no direct harm and is considered a first offence.

Offence severity:	5 points
First offence:	5 points
Culpability: Negligent	10 points
Harm: Potential for harm	2 points
HMO: multiple households affected	10 points
Total score:	<u>32 Points</u>
Indicative fine	<b>£5,000</b>

Indicative fine may be altered following considerations set out in (e)-(j).