
COMMUNITY CONNECTIONS
THE ELECTRICAL SAFETY STANDARDS IN
THE PRIVATE RENTED SECTOR (ENGLAND)
REGULATIONS 2020 – POLICY.



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1.0 INTRODUCTION

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 1st June 2020. These changes to PCC's processes were incorporated in accordance with the legislation.

2.0 OVERVIEW OF THE PROCESS AND DUTIES.

2.1 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 1st July 2020
 - 1st 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.
- Inspections & tests must be undertaken by a competent person who is part of the electrical safety industry competent-person scheme.

The inspection report will show that the installation is one of the following:

- Safe and no further action is required
- Danger is present and there is a risk of injury (Code 1 (C1)). In this situation the cause of the danger would be rectified by the competent person before leaving the property
- The installation poses a potential danger (Code 2 (C2))
- Further investigation is required without delay (FI)
- Improvement to the installation is recommended (Code 3 (C3)); however, this is not sufficient to deem the installation as unsatisfactory.

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; then a copy of the existing report should be provided to the person undertaking the next inspection.
- Where the work undertaken reveals further issues that require either further remedial work or further investigation, this should be addressed within a further period of 28 days (or shorter period, where this is required).
- The person completing the works should supply the landlord with a confirmation that the works have been completed (so the installation is now safe) or further work/investigation is needed. The landlord must provide a copy of this confirmation together with the original inspection certificate to each tenant and to the LHA within 28 days of the work being undertaken.
- Where further work or investigation is required, the requirements to complete work and provide the necessary confirmation are repeated (as per the original inspection).

2.2 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 within 21 days of deciding that it has reasonable grounds for service.
- The notice includes:
 - the remedial action required to be taken within 28 days of service
 - Details of how to make representations
 - Explanation of the penalties (including the potential maximum penalty) that may result from non-compliance.
- The landlord may make written representations within 21 days, if made the notice is suspended until the representations have been considered.
- The LHA must consider any representations and confirm that outcome of those considerations, in writing, within seven days of the end of the representation period.

2.3 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.

2.4 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 doing so, the LHA must be satisfied on the balance of probability that there has been a breach of the remedial notice.
- Before undertaking such works, the LHA must serve a notice of intention to take remedial action (NIRA) 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
- 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.

2.5 Appeal against LA remedial works

- A landlord may appeal against a NIRA to the First-tier Tribunal (Property Chamber) 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.

2.6 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.

2.7 Appeal against costs

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

2.8 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. The URAN includes:
 - The nature of the urgent remedial action required
 - The date when the urgent work is or has been started
 - The right of appeal and the appeal period
 - The provisions relating to the issue of financial penalties.

2.9 Appeal against urgent remedial action

- A landlord may appeal against a URAN to the First-tier Tribunal (Property Chamber) 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.

2.10 Recovery of costs for urgent remedial action

- The recovery process is like those under 2.5 above.

2.11 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 2.1), 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 notice includes:
 - The amount of the proposed penalty
 - The reasons for imposing the penalty
 - Information about the right to appeal
- The landlord may make written representations within 28 days.

2.12 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 which includes:
 - The amount of the penalty
 - The reasons for imposing the penalty
 - Information about rights of appeal
 - Consequences of failure to comply
- 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.

2.13 Appeal against financial penalty

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

2.14 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.

2.15 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.

3.0 ENFORCEMENT OF THE REGULATIONS

3.1. Where it is believed that a landlord may be in breach of one of the duties the Local Authority will consider the most appropriate form of action. Typically this will involve initial contact with the landlord to ascertain if the relevant inspection and testing has occurred and seek evidence of this. Where this is not forthcoming, leaves doubt or it is believed a breach has occurred then the Local Authority will serve a relevant notice or notices as described above.

There are a range of offences that can occur. This includes where there is no harm to occupiers, (for example non provision of certification of a system that has been tested and is compliant), to serious breaches where the landlords have had a system tested which has identified serious defects but has failed to undertake remedial action.

3.2. 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 & Safety 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.

3.3. 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 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.

3.4. 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.

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

4.0 APPEALS & REPRESENTATIONS

Representations and appeals are built into the process and these will be highlighted as part of our actions. In particular, the process includes the opportunity for any individual who is advised of the Local Authority's intent to issue a penalty upon them to make representations

before the service of a final penalty notice. In addition any penalty notice can be appealed through the First-tier Tribunal (Property Chamber).

5.0 PUBLICITY

The Council will aim to publicise details of action taken in enforcing these regulations to increase awareness of the obligations of the legislation and to deter others from offending.

To ensure landlords and other interested parties are aware of this policy it will be published on the Council's internet web pages. We will also raise awareness through our partners for example via landlord associations and the Private Rented Sector Partnership Group.

6.0 CONSULTATION

We have consulted with a number of partners, internal and external agencies including: South West Landlord Association, Plymouth Community Homes, Plymouth Residential Lettings, Trading Standards, Plymouth Access To Housing, Plymouth Citizen's Advice, AHAH lets, Plymouth University and Shelter. We have incorporated feedback received from SWLA into revisions of the policy.

7.0 IMPLEMENTATION

Following adoption the policy will be announced by publishing it on the Council's web site, using social media, dissemination via the local landlord associations and presentation to the Private Rented Sector Partnership Group.

The policy needs to be implemented to ensure there is consistency in its application. Decisions to take formal enforcement activity are jointly made by the case officer and Housing Improvement (Technical Lead). This enables the process of the case, and the course of action, to be reviewed.

Each closed case may be subject to random auditing; this is to ensure that proper procedures have been followed.

8.0 REVIEW

The Council will keep the policy under review the effectiveness of the policy and may make amendments accordingly.

Any comments in respect of this policy can be sent to:

Community Connections
Plymouth City Council
Ballard House
West Hoe Road
Plymouth
PL1 3BJ

Or by emailing:

communityconnections@plymouth.gov.uk

9.0 ANNEX A

Determination of penalty amount.

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

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:	<hr/> 17 Points
Indicative fine	£2,000

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	£3,000

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	<u>10 points</u>
Total score:	<u>32 Points</u>
Indicative fine	£5,000

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

II. ANNEX C: Q&A:

How do we decide if it's a first, second, third of subsequent offence?

We will take into account how many final civil penalties have been issued, where the appeal period has expired, in relation to this policy, to the landlord in the previous 4 years.

Who will be issued a penalty?

The penalty will be raised against the private landlord(s) of the property. Where this is a limited company the limited company will be served, in preference to the individual directors.

The definition of "private landlord" is in section 122(6) of the Housing and Planning Act

What is a "valid report"?

A valid report - is one that meets the requirements of the regulations in that it has been produced:

- Following inspection and testing by a qualified competent person,
- In advance of any tenant's occupation of the property, (where required by the regulations)
- Within the last 5 years and/or has not expired, (i.e. is not older than the period of retesting stated on the report), and
- Covers the entirety of the electrical installation for the premises, and
- States the installation address, and is for the residential premises that is let.

What about where tenancies “Roll over” into periodic tenancies? Will these count as new tenancies?

Whether or not a ‘periodic’ tenancy is a new tenancy, as defined in Regulation 2, depends on the type of tenancy issued.

- For ‘contractual periodic tenancies’ – where it is written in the original tenancy agreement that on expiry of the fixed term the tenancy will become periodic – the periodic tenancy will be part of the same tenancy and no new tenancy will be created.
- For ‘statutory periodic tenancies’ – where on expiry of the fixed term the tenancy rolls over into a periodic tenancy automatically by statute (rather than by contract) – the periodic tenancy will be a new tenancy.
- Properties let on statutory periodic tenancies where the fixed term expires between July 2020 and April 2021 will require an inspection and test at this point under the Regulations

If I fail to issue the relevant documents to more than one tenant will I face multiple fines?

If you have a joint tenancy, or separate tenancies, starting on the same day and you fail to give the documents to more than one tenant then this will be counted as one instance and one fine.

If you have failed to give the relevant documents to tenants who are on separate tenancy agreements, which have started on different days, then you will be issued with separate penalties for each instance.

If you fail to provide relevant documents to any or all of your tenants after relevant works/investigations have been completed this will be treated as one instance and one fine. Any other situations will be treated on a case by case basis.

What if a landlord already has a report?

If a landlord has had an inspection carried out before the Regulations come into force and they have complied with all relevant requirements, the next test will not be due until 5 years have passed from the date of the report, or less if the report specifies a shorter period.

Will all installations have to comply with the 18th edition of the Wiring Regulations, even if they were installed before this edition was in force?

The Regulations state that a landlord must ensure that electrical safety standards are met and that investigative or remedial work is carried out if the report requires this.

All electrical installations should be safe for continued use. In practice, if the report does not require investigative or remedial work, the landlord will not be required to carry out any further work.

Reports can also recommend improvement, in addition to requiring remedial work. If a report only recommends improvement but does not require any further investigative or remedial work to be carried out – indicated with a 'C3' classification code – then while it would be good practice to carry out this work, it would not be required in order to comply with the Regulations.