



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

Enforcement Policy for Electrical Safety in the Private Rented Sector

December 2021

Contents Page

Introduction	3
Requirements of the Regulations	3
Tenancies that the Regulations apply to	4
Enforcement of the Regulations	4
Remedial action	4
Urgent remedial action	5
Recovery of the cost of remedial action	6
Civil Penalties	7
Recovery of the Civil Penalties	7
Appeals	7
Selective and HMO Licensing	8
Enforcement Inspections	8
Review of the Policy	8
Making a Complaint	8
Appendix 1 – Determining the amount of civil penalty	9

1. Introduction

The Council are committed to improving standards in the private rented sector by supporting those landlords that provide good quality accommodation and by taking appropriate action against those unscrupulous landlords who breach legal requirements. Part of improving standards in the sector is ensuring electrical installations within the property are safe and adequately maintained.

On 1 June 2020 the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("Regulations") came into force. This introduces new legal requirements for rented homes for new tenancies from 1 June 2020 and existing tenancies from 1 April 2021.

Dangerous electrical installations in the home can cause electric shocks, burns or fire. This can happen through damage to sockets, switches and appliances, deterioration of the electrical installation, a lack of maintenance, misuse of the installation or work undertaken to the installation by an unqualified person.

The electrical installation includes the fuse box, wiring and cables, socket outlets for connecting a range of appliances such as fridges or mobile phones and switches and light fittings within the home. An electrical safety installation and test will include these elements to ensure the installation is safe for the residents and visitors to the property. Landlords should carry out visual inspections of the installations as part of their regular inspections of the property to ensure no damage has occurred and the installation is not being misused, including the overloading of sockets.

The regulations do not cover electrical appliances. Landlords are required to undertake regular portable appliance testing (PAT) for appliances they have supplied.

This policy sets out how Burnley Borough Council will impose civil penalties under the Regulations in accordance with Government Guidance. The policy broadly aligns with the council's Policy and Matrix for the use of Civil Penalties under the Housing and Planning Act 2016.

This policy forms part of the Council's private sector enforcement policy which sets out the broad principles and processes which Officers will follow when enforcing housing related legislation to ensure the approach is fair and consistent which will stand up to scrutiny.

2. Requirements of the Regulations

For the purposes of the regulations a landlord is defined as a person who grants or intends to grant a specified tenancy (Section 122(6) of the Housing and Planning Act 2016).

Landlords must have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at an interval of at least every 5 years (sooner if the report recommends a lesser timescale in between tests).

Landlords must ensure that the first inspection and testing is carried out before the tenancy commences in relation to a new specified tenancy; or by the 1st April 2021 in relation to an existing specified tenancy.

Landlords must ensure that the electrical safety standards are met during any period when the premises are occupied under a specified tenancy.

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)). Advisory and therefore works do not have to be completed.

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

Landlords must provide a copy of the electrical safety report to their tenants, and if requested to their local authority:

- Each existing tenant within 28 days of the inspection and test
- A new tenant before they occupy the property
- A prospective tenant within 28 days of receiving a request for the report
- The Council within 7 days of receiving a request for the certificate in writing

Landlords must keep a copy of the report 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 must 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 Council 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).

3. Tenancies that the Regulations apply to

The regulations apply to new specified tenancies from the 1st July 2020 and for existing specified tenancies from the 1st April 2021. A specified tenancy allows one or more persons the right to occupy all or part of the premises as their only or main residence and provides for payment of rent (whether or not a market rent); and is not:

- A tenancy where the occupier shares any accommodation with the landlord or a member of the landlord's family;
- A tenancy that is a long lease; or grants a right of occupation for a term of 7 years or more. A tenancy does not grant a right of occupation for a term of 7 years or more if the agreement can be terminated at the option of a party before the end of 7 years from the commencement of the term.
- A tenancy for student halls of residents, hostels, refuges, care homes, hospitals or hospices and other accommodation relating to the health care provision.

4. 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

5. 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

6. Civil Penalties

Where the Council are satisfied, beyond reasonable doubt, that a private landlord has breached a duty under Regulation 3 they may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. A civil penalty may be of such amount as the Council determine to impose (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 to the Council within 28 days. Within 28 days of expiry of the representation period the Council 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

The penalty is payable within 28 days. The Council may, at any time, withdraw a Notice of Intention or a Final notice or reduce the penalty amount specified in a notice by doing so in writing.

7. Recovery of the Civil Penalties

The Council may recover the penalty or part on the order of the county court as if it were payable under an order of that court. The Council 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.

8. Appeals

A landlord may appeal against a notice of intention to take remedial action to the First-tier Tribunal within 28 days of service. An appeal suspends the remedial notice until the appeal has been determined. The tribunal may affirm, vary, or quash the remedial notice. A landlord can also appeal the costs of the remedial action, this appeal must be made to the First-tier Tribunal within 21 days of the date of issue.

A landlord can also appeal an urgent remedial action notice within 28 days of either the date that the work was started or was planned to start (whichever was the first date). This appeal does not however suspend the urgent remedial action notice.

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

9. Selective and Houses in Multiple Occupation (HMO) Licensing

The Regulations introduced a new mandatory condition for Selective and HMO licenses stating that a licence holder must ensure that every electrical installation in the house is in proper working order and safe for continued use; and to supply the authority, on demand, with a declaration by him as to the safety of such installations.

As part of the licensing application process the Council requests an Electrical Installation Condition report.

10. Enforcement Inspections

Under Part 1 of the Housing Act 2004 the Council have a duty or a power to investigate complaints of disrepair which may result in a Category 1 or 2 hazard. In all such cases the Council will request from the landlord a copy of the Electrical Installation Condition Report.

11. Review of the Policy

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

If you would like further advice or clarification, the private sector enforcement team can help by calling 01282 425011 or emailing housing@burnley.gov.uk.

Alternatively, you can write to us at:

Private Sector Housing
Burnley Borough Council
Town Hall
Manchester Road
Burnley
BB11 9SA

12. Making a Complaint

The Private Sector Housing Team aims to provide the best possible service. However, if you are not happy with the service you receive you can make a formal complaint. More information about how to make a formal complaint can be found on the council's website at: www.burnley.gov.uk/complaint

Appendix 1 – Determining the Amount for the Civil Penalty

1. A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the breach, the higher the penalty should be. The penalty for each breach must therefore be determined on a case-by-case basis.
2. The actual amount levied in any particular case should reflect the severity of the offence, as well as the landlord's previous record of offending. The Council should consider the following factors to help ensure the civil penalty is set at an appropriate level:
 - Risk of Harm
 - Culpability
 - History of Compliance
3. These factors are contained in the financial penalty matrix which helps officers to determine the level of fine that should be imposed by creating a score and band for each case. Officers should first determine the severity of the offence by looking at the risk of harm and culpability categories detailed in the tables below.

Risk of Harm Categories

High	Serious adverse effect on individuals and/or having a widespread impact. High risk of an adverse effect on individuals including where persons are vulnerable. Electrical defects giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example C1 defects.
Medium	Adverse effect on individuals Medium risk of an adverse effect on individuals including where persons are vulnerable. Tenant misled/disadvantaged by the failing. The electrical defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example multiple C2 defects.
Low	Low risk of an adverse effect on individuals The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example isolated C2 defects or a failure to carry out further investigations.

Culpability Categories

Very High (Deliberate Act)	Where the offender intentionally breached, or flagrantly disregarded, the law. For example, repeatedly ignored reminders to comply with the Regulations. Failure to comply with a correctly served compliance notice. No attempt made to contact the local authority to discuss breaches.
High (Reckless Act)	Actual foresight of or wilful blindness to the risk of offending but risks nevertheless taken by the landlord or property agent, for example failure to comply with the Regulations.
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems that prevents the offence being committed. For example, part compliance with a compliance notice but failure to fully complete all scheduled items within the notice timescale.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent. For example, significant efforts were made to comply with the Regulations, but they were obstructed by the tenant to allow contractor access or damage caused by tenants. Failings were minor and occurred as an isolated incident.

Having determined the category of harm and culpability, the officers should refer to the following table to reach a penalty band 1 to 6.

Penalty Band

Culpability	Harm Category 1	Harm Category 2	Harm Category 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Having made the penalty band assessment above, officers will then determine the landlords history of compliance to reach a starting point for the financial penalty.

History of Compliance

- The Council would expect a good private landlord to have very little contact with the Council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are private landlords who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.

5. A historically non-compliant private landlord should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's compliance is therefore appropriate. This should help deter repeat offending.
6. The Council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the breach date will be considered. The evidence reviewed will include:
 - Any previous convictions for housing related offences;
 - Whether previously subject to a civil penalty for a housing related contravention;
 - Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
 - The number of genuine housing condition complaints received in respect of properties associated with the offender

Following the review, the landlord's compliance will be classed as one of the following categories and then set at the lowest amount as detailed in the starting points table e.g. for Band 1 with a significant history of non-compliance the fine will be £4,000.

Significant	Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. This category may be used for any landlord who has been successfully prosecuted for a housing offence or been subject to a housing related civil penalty.
Some	This category will be used where the landlord is associated with more evidence than would normally be expected of a good private landlord having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.
None/negligible	This category will be used if, following a review of the council's records, there is no relevant evidence associated with the landlord. Any unsubstantiated housing condition complaints will be disregarded.

Starting Points

Band	Compliance	Amount
Band 1	None/Negligible	£1,000 to £2,333
	Some	£2,334 to £3,999
	Significant	£4,000 to £4,999
Band 2	None/Negligible	£5,000 to £6,666
	Some	£6,667 to £8,332
	Significant	£8,333 to £9,999

Band 3	None/Negligible Some Significant	£10,000 to £11,666 £11,667 to £13,332 £13,333 to £14,999
Band 4	None/Negligible Some Significant	£15,000 to £16,666 £16,667 to £18,332 £18,333 to £19,999
Band 5	None/Negligible Some Significant	£20,000 to £21,666 £21,667 to £23,332 £23,333 to £24,999
Band 6	None/Negligible Some Significant	£25,000 to £26,666 £26,667 to £28,332 £28,333 to £30,000

7. The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.

8. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant:

Aggravating

- Evidence that the landlord has been motivated by financial gain
- Evidence that the landlord deliberately concealed the offence/evidence
- Evidence to show the tenant is a vulnerable individual
- If actual harm has occurred, the Council may consider increasing the amount of financial penalty.

Mitigating

- That the landlord has cooperated with the investigation
- That the landlord has taken steps to rectify the offence promptly
- The landlord has provided evidence of ill physical or mental health preventing reasonable compliance
- There is evidence that the landlord is a vulnerable person which is linked to the breach

9. The starting point of the penalty can be increased or decreased. This adjustment range will usually be limited to an amount equal to 50% of the starting point.
10. There are cases where there will be multiple breaches of the Regulations. When considering imposing more than one civil penalty on a landlord as a consequence of them committing more than one breach, the Council will consider where the cumulative penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.