Rushmoor Housing

Electrical Safety Standards Policy

Housing and Planning Act 2016
Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

RUSHMOOR BOROUGH COUNCIL

Contents

Introduction

We are committed to improving standards in privately rented homes, making sure that all accommodation is safe, well managed, maintained and that it complies with current regulations and requirements.

We share the government's desire to support landlords who provide good quality accommodation and to take appropriate action against those unscrupulous landlords who flout the law and gain profit from letting sub-standard properties.

The Housing and Planning Act 2016 (the Act) received Royal Assent on 12 May 2016. Part 2 of the Act amended the Housing Act 2004 and introduced new powers to help local authorities tackle rogue landlords and property agents.

Part of this drive is to improve electrical safety in rented homes. Until now, by law, landlords had to keep their properties free from electrical hazards and it has been best practice for landlords to have periodic electrical inspections carried out. On 1 June 2020, a new set of regulations came into force under the Act to formalise the requirement for improved electrical safety standards in privately rented properties. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the regulations) require landlords to keep their properties free from electrical hazards and to arrange periodic electrical inspections and testing in their properties.

The regulations give us the power to request that a landlord has the electrical installation in their rental properties inspected and tested by a qualified and competent person at least every five years. They must provide a copy of the inspection report to the tenant or prospective tenant and to us on request. We have the power to arrange for vital remedial works to carried out and can recover the cost of this work from the landlord.

Failure to comply with the regulations can result in the landlord being charged a financial penalty of up to £30,000. We can use any proceeds from financial penalties for enforcement purposes to help drive up standards in the private rented sector.

This policy forms part of our overall Housing and Homelessness Strategy by enabling people to live in good quality homes that are suitable for their needs. The vision is to have a privately rented housing stock that is in good condition, safe and meets the current housing standards.

A copy of the strategy is available online at **www.rushmoor.gov.uk/housingstrategies**

General principles of enforcement

We have a corporate sanctions and enforcement policy that provides guidance on what can be expected from our regulatory services and how we consider, and take, enforcement action to ensure consistency and good practice.

The principles we use to carry out our regulatory activities are:

- Proportionality
- Consistency
- Openness and accountability
- Risk assessment and targeting

Consideration will be given to:

- The Regulators' Compliance Code
- The code for crown prosecutors
- Equality and diversity

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

The regulations require all private landlords to make sure that electrical installations in their properties are inspected and tested, at least every five years by a qualified and competent person.

Electrical installations are deemed to be:

- Wiring
- Plug sockets
- Light fittings
- Consumer units

The qualified person will provide an Electrical Installation Condition Report (EICR) that will confirm that:

- All installations meet the required safety standards; or
- The landlord must carry out further investigations and repair work within 28 days

The report will give the date when the next electrical safety check is due. The landlord must provide a copy of the report to their tenants within 28 days of the inspection or to a new tenant before they occupy the property.The landlord must also keep a copy of the report and provide it to the person carrying out the next inspection, any prospective tenants and to us within seven days of being asked to do so.

The regulations give us the power to ask a landlord to carry out essential repair work, or to arrange for them to be done, and to recover the cost from the landlord.

The regulations do not cover electrical appliances. However, it is recommended that landlords carry out regular portable appliance testing (PAT).This will make sure that all electrical appliances that the landlord provides with the property and those brought in by tenants are safe.

Tenancies that the regulations apply to

The regulations apply to new tenancies from 1 July 2020 and to existing tenancies from 1 April 2021.

The tenant must:

- Have a right to occupy the property as their main or principle home
- Pay rent

This includes assured shorthold tenancies and licences to occupy Houses in Multiple Occupation (HMOs)

Tenancies that the regulations do not apply to

There are some exemptions to the tenancies covered by the regulations. These are:

- Tenancies with registered providers of social housing
- Long leases
- Student halls of residence
- Hostels and refuges
- Care homes
- Hospitals and hospices
- Other accommodation relating to health care provision

Private landlords' responsibilities

Landlords of privately rented properties must:

- Make sure the property meets national standards for electrical safety during any period that it is let under a specified tenancy
- Have the electrical installation in their rented property inspected and tested by a qualified, competent person, at least every five years
- Obtain a report from the inspector giving the results of the inspection and testing and the date that the next inspection should be carried out
- Supply a copy of the report to the existing tenant within 28 days of inspection
- Supply a copy of the report to any new or prospective tenant within 28 days of receiving it
- Provide a copy of the report to us within seven days of a request to do so
- Keep a copy of the report to give to the person who will carry out the next inspection and test
- Carry out investigatory or remedial work identified in the report within 28 days or sooner, if specified
- Provide the tenant with written confirmation of the completion of any remedial work within 28 days of completion

Enforcement powers under the regulations

We must take enforcement action if we are satisfied that on the balance probabilities that the landlord has not complied with one or more duties under the regulations. This may include remedial action if the landlord does not do the work required on the inspection report within the required timescales or has failed to comply with a Remedial Notice. We also have the power to impose a financial penalty of up £30,000 for failure to comply with the regulations.

Details of the enforcement action that can be taken is shown below:

Remedial Notice

We must serve a Remedial Notice within 21 days from the date that we are satisfied that the landlord has not complied with his duties under the regulations and that any defects identified do not require urgent remedial action.

The Remedial Notice must set out:

- The address to which the notice relates
- The regulations that we consider the landlord has failed to meet
- The remedial action that the landlord needs to take
- The date by which the landlord must take remedial action: this must be within 28 days of the date that the notice is served
- That the landlord can make written representations against the notice within 21 days from the date that the notice is served
- The name and address to which representations should be made
- The effect of Regulations 11 and 12, including the maximum financial penalty that the council may impose

The landlord must carry out all work set out in in the Remedial Notice within 28 days or less, if this is specified in the inspection report.The authorised person selected to do the work must give 48 hours' notice to the tenant before starting the work.

Once the work is completed, the landlord must provide written confirmation to the tenant and us that it has been done within the required 28 days.

If the landlord does not carry out the remedial work set out in the Remedial Notice, we may arrange for the work to be carried out and recover the cost from them. The landlord has the right of appeal against the demand for these costs.

The landlord will not be in breach of the Remedial Notice if they can prove that they have taken all reasonable steps to comply, or that the tenant would not allow access for the work to be carried out. To support this, they may provide copies of all communications with tenants and electricians, along with previous electrical reports and servicing as evidence that they have tried to do the work.

Rights of appeal against a Remedial Notice

The landlord can appeal against the service of a Remedial Notice within 21 days of it being served; this automatically suspends the notice; we must respond to the appeal within seven days. It must confirm the outcome of the appeal to the landlord in writing and advise that the suspension is no longer in place.

Remedial action for not complying with a Remedial Notice

If we are satisfied on the balance of probability that a landlord has failed to comply with a Remedial Notice, we may take remedial action. We must serve notice on the landlord advising that we are intending to do the work and the notice must give:

- The address where the work will be carried out
- The legal power under which the remedial action is being taken
- The date when the remedial action will be taken which must be at least 28 days from the date of the notice
- Details of the right of appeal against the decision to take remedial action

We will arrange for an authorised person to take the remedial action within 28 days of the end of the notice period unless the landlord has lodged an appeal. If they appeal, they must arrange for the work to be completed within 28 days of the appeal decision confirming or varying our requirements.

Rights of appeal against remedial action

The landlord can appeal to a first-tier tribunal against remedial action within 28 days of the date the notice is served. The tribunal may consider an appeal after that date if the landlord has good reason for not appealing within the timescales required.The notice is then suspended until the appeal is determined or withdrawn.

The landlord can appeal on the following grounds that:

- He took all reasonable steps to comply with the Remedial Notice
- He has made reasonable progress towards complying with the Remedial Notice

The first-tier tribunal may confirm, quash or vary the decision of the council.

Urgent remedial action

If an inspection of the electrical installation has identified that remedial work is urgently required, the landlord must do the work in the timescales given in the report. If the council is satisfied that on the balance of probability the landlord has failed to do the work we may, with the consent of the tenant, arrange to carry out the remedial work. We must authorise a qualified and competent person, in writing, to do the work and give 48 hours' notice to the tenant. We can recover the cost of the remedial work from the landlord.

We must serve a notice on the landlord and all occupiers of the premises that we are taking urgent remedial action within seven days of the authorised person starting the work. A copy of the notice must be fixed to the premises.

The notice must set out:

- What action is going to be taken
- The address of the property
- The legal power we are using to carry out the urgent remedial action
- The date that the urgent remedial action was or will be started
- The landlord's rights of appeal and timescales in which an appeal may be made
- Details of any financial penalty we may impose and the right of appeal against the financial penalty

We are able to recover all costs that we have reasonably incurred in taking the remedial action from the landlord on whom it served the notice.

We can do this by serving a demand for the recovery of costs on the landlord. They will then have 21 days to pay the costs.

Rights of appeal against urgent remedial action

The landlord can appeal to the first-tier tribunal within 28 days of the date the urgent remedial action was started or proposed to be started.

The appeal can be made on the following grounds:

- That the landlord took all reasonable steps to comply with the regulations
- That the landlord had made reasonable progress towards compliance when the urgent remedial action started

If the landlord appeals, the urgent remedial action is not suspended. The first-tier tribunal may confirm, quash or vary the decision of the council which may affect our ability to recover its costs.

Recovery of costs of remedial action

We are able to recover all costs that we have reasonably incurred in taking the remedial action from the landlord on whom it served the notice. We can do this by serving a demand for the recovery of costs on the landlord. They will then have 21 days to pay the costs.

Rights of appeal against the recovery of costs for remedial action

The landlord can appeal against the demand for recovery of costs to the first-tier tribunal within 21 days of it being served. The tribunal may consider an appeal after that date if the landlord has good reason for not appealing within the timescales required.

The appeal can be made on the grounds that the landlord took all reasonable steps to comply with the Remedial Notice or that he had made reasonable progress towards compliance with the notice when we gave notice of our intention to enter and carry out the work.

The tribunal may confirm, vary or quash the demand.

If the landlord is not satisfied with the outcome of the appeal to the first-tier tribunal, they may further appeal to the upper tribunal. This will need to be within 28 days and can be made on the same grounds. The upper tribunal will either confirm, quash or vary the demand for the recovery of costs.

Financial penalties for breach of landlord's duties to comply with the regulations

If we are satisfied beyond reasonable doubt that the landlord has failed to comply with the regulations, we may impose a financial penalty of up to £30,000 under Regulation 3. We must serve a Notice of Intent on the landlord advising that we intend to charge a financial penalty for the breach.

We must serve the Notice of Intent within six months from the first day we were satisfied that there had been a breach.

The Notice of Intent must set out:

- The amount of financial penalty
- The reasons for proposing to impose a financial penalty
- Information about the right to make representations against the financial penalty within 28 days of the serving of the Notice of Intent

If we receive a representation from the landlord, we must decide if we intend to uphold the financial penalty within 28 days and how much the financial penalty will be. Depending on the information we receive from the landlord, we may vary the amount from that detailed in the original Notice of Intent.

If we decide to impose the financial penalty, we must serve a Final Notice confirming our intention to the landlord.

The Final Notice must set out:

- The amount of financial penalty
- The reason for imposing the penalty
- How to pay the financial penalty
- The date by which the penalty must be paid
- The consequences of failing to comply with the Final Notice and failing to pay the financial penalty At any time we may withdraw the Notice of Intent or Final Notice or may reduce the amount of financial penalty given in either notice.

Appeal against a financial penalty

The landlord can make representations about the Notice of Intent to charge a financial penalty. We must respond to the landlord within seven days to say if we intend to impose the financial penalty and if so, how much this will be.

The landlord can appeal against a Final Notice to the first-tier tribunal against the decision to impose the financial penalty or the amount of the penalty. This must be within 28 days from the date the notice was served. The appeal suspends the Final Notice until the tribunal decides on it or we withdraw it. The first-tier tribunal may confirm, quash or vary the final notice.

Calculation of a financial penalty

Guidance published by the Ministry of Housing, Communities and Local Government (MHCLG) stipulates that the level of financial penalty should reflect the severity of the offence; the landlord's previous record of offending; the landlord's rental income and assets; the size of his portfolio and the way that a landlord works with his tenants and the council.

So that the highest financial penalties are reserved for the worst offenders and less serious offences receive a lower financial penalty, we have designed a matrix in accordance with the guidance (see Appendix 1).

The factors we will consider as part of the matrix are:

- **Factor 1** – the severity of the breach and the risk of harm caused to the tenant
- **Factor 2** – the culpability of the landlord and history of previous housing offences
- **Factor 3** – the suitable financial punishment for the offence, removal of financial gain for non-compliance and consideration of the andlord's income and assets
- **Factor 4** – that it is a suitable financial punishment to deter the landlord from further offences or other landlords from committing an offence Each factor is broken down into four levels, the higher score resulting in a higher financial penalty. This provides a clear and transparent process in determining the amount of financial penalty to be charged.

Factor 1

We must consider how severe the breach is and how it will affect the tenant's health and wellbeing. We will use the harm outcomes set out in the Housing Health and Safety Rating System – Housing Act 2004 to help to determine the likely risk of harm to the tenant from the breach.

Level 1 – Minor/moderate impact: may cause a risk of injury to the occupier but that does not require intervention by a health practitioner.

Level 2 – Serious impact: may cause a risk of more serious injury to the occupier requiring treatment by a health practitioner.

Level 3 – Severe impact: may cause a risk of severe injury to the occupier requiring hospital treatment.

Level 4 – Extreme impact: may cause death or cause life-threatening injuries.

Factor 2

We must consider how much the landlord's culpability and any previous convictions. We will consider whether they have a history of running poor quality accommodation and deliberately lets out sub-standard properties, not complying with housing standards.

Level 1 – The landlord makes significant efforts to address disrepair issues and there is little or no history of previous offences.

Level 2 – The landlord has insufficient systems in place to ensure good housing standards in the properties. They do not comply with, or implement, the regulations and may have a record of previous minor housing offences.

Level 3 – The landlord has failed to maintain the property to the required housing standards and has ignored requests from tenants and the council to comply with the regulations. They have failed to improve conditions over a long time and have a history of more serious housing offences.

Level 4 – The landlord has deliberately breached housing standards and has a long and recent history of housing offences and a total disregard for the law.

Factor 3

We must consider the most appropriate financial punishment for the offence committed, making sure it is high enough to have an economic impact on the landlord. This will demonstrate the consequences of not complying with their responsibilities.

The financial penalty should remove any financial benefit that the landlord may have had from renting out a sub-standard property.

We will ask the landlord for information about the properties that they own, their rental income and any other assets for consideration when looking at this aspect of the matrix.

We will use the information provided to determine the landlord's financial status. However, if they fail to provide the information, we will calculate a best estimate of income and assets from records we hold. Based on this information, we will assume that they are likely to be able to pay the financial penalty. The landlord is responsible for disclosing all relevant information and if they fail to do so, we will set the penalty based on the information that is available.

Level 1 - The landlord has no significant assets and makes little or no financial profit from renting out a single property. The landlord has tried to comply with the regulations but because of a lack of finances or other restrictions, has been unable to complete them. We must consider if the landlord would be able to pay any financial penalty imposed.

Level 2 – The landlord has a small portfolio of two or three properties and makes minimal profit from rental income. They run the properties as a business but are also in full time employment. They can pay the financial penalty based on their disclosed income and assets.

Level 3 – The landlord has a medium sized portfolio of four or five properties or is a small managing agent. They run the properties as a business and make a reasonable profit from rental income. They have other assets, for example, business premises, which indicate that the financial penalty should be reasonably high so that it has an impact on their income to encourage future compliance with housing standards.

Level 4 – A professional landlord with a large portfolio of five or more properties or a large managing agent. They run the properties as a high asset value business and makes significant profit. The financial penalty must be high enough to have a real economic impact on them, demonstrating the consequences of not complying with their responsibilities and legal obligations to their tenants.

Factor 4

We must consider the effect that a financial penalty will have on the landlord, including whether this will deter them from committing further offences and make sure that they comply with their legal responsibilities in the future. We must also consider the effect that the financial penalty will have on other landlords and the way that they carry out their businesses. We need to make sure that the message to landlords is that we have a pro-active approach to giving financial penalties and will not tolerate poor standards of maintenance and management. Landlords should know that financial penalties are set high enough to punish them for any breach and to deter repeat offending.

Level 1 – We are confident that a financial penalty will deter the landlord from repeat offending and publicity around our approach will deter other landlords from offending. The landlord has fully co-operated with the investigation, accepted responsibility and has a good previous record of compliance. There may be health reasons why they have failed to comply, which may include mental or physical illness.

Level 2 – We are moderately confident that a financial penalty will deter repeat offending by the landlord and that informal publicity will encourage them to comply in the future and act a deterrent to other landlords. The landlord has complied in the past with informal intervention but has not with this offence.

Level 3 – We have little confidence that a financial penalty will deter repeat offending and will need to publicise our action. The landlord is fully aware of the housing standards required and has chosen not to comply; this has happened regularly because the landlord wants to save money and has been convicted of housing offences in the past.

Level 4 – We have little or no confidence that a low-level financial penalty will deter repeat offending. The landlord has a history of past housing offences and of failing to comply with requirements. They have falsified documentation and tried to avoid scrutiny of their business assets by the council. The landlord houses vulnerable tenants and deliberately tries to avoid access to properties for housing inspections.

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Complaints

We are committed to providing a good quality service and needs to know that we are getting things right. If not, please let us know, as feedback, both positive and negative, is an opportunity to learn and improve.

If you are not happy with the response or the explanation, we give you, you can make a formal complaint to us. You can do this at **www.rushmoor.gov.uk/complaint**.

We can also send you information about how to make a complaint on request if you email us on customerservices@rushmoor.gov.uk or call **01252 398399**.

Policy review

We will review and update this policy annually. The Head of Operational Services can agree changes to the policy in consultation with the Cabinet portfolio holder for Operational Services.

Appendix 1

HOUSING AND PLANNING ACT 2016

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
MATRIX TO DETERMINE LEVEL OF FINANCIAL PENALTY
FOR BREACH OF THE ELECTRICAL
REGULATIONS

This matrix must be scored using the information provided in this policy and can be used to determine a financial penalty that is fair, consistent and transparent

1. Choose one option from each row between Level 1 and 4 (1 being the lowest and 4 being the highest).
2. Write your score in the far-right hand column
3. Consideration must be given to all factors within the policy to determine the score.
4. All rows must be scored.
5. There is additional weighting to Factor 1 because of effect of the defects on any tenants' health and wellbeing along with their vulnerability.
6. Add up all the scores in the right-hand column and put the total scored in the bottom right hand box.
7. Look at the score range table, using the total scored which will determine a sliding scale of financial penalties to be levied dependent on the score.

Factors to consider when determining amount of financial penalty	**Level 1** Score = 10	**Level 2** Score = 20	**Level 3** Score = 30	**Level 4** Score = 40	**Score per Factor**
Factor 1 • Severity of the offence • Risk of harm caused to the tenant.					
Factors to consider when determining amount of financial penalty	**Level 1** Score = 5	**Level 2** Score = 10	**Level 3** Score = 15	**Level 4** Score = 20	**Score per Factor**
Factor 2 • Culpability of Landlord • History of housing offences					
Factor 3 • Suitable financial punishment for the offence • Removal of financial gain for non-compliance • Consideration of landlord's income and assets					
Factor 4 • Deter the offender from repeating housing offences • Deter other landlord from committing similar housing offences					
				TOTAL SCORE	

Sliding scale of financial penalties to be given for breach of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Scoring range	Financial penalty to be applied
25 - 35	£100 - £2,499
40 - 45	£2,500 - £4,999
50 - 55	£5,000 - £9,999
60 - 65	£10,000 - £14,999
70 - 75	£15,000 - £19,999
80 - 85	£20,000 - £24,999
90 - 95	£25,000 - £29,999
100	£30,000

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January ww2021