

RECORD OF OFFICER DECISION

Adoption of policy to allow penalty charge notices and the recovery of costs of work undertaken to be made under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Decision made

To adopt the policy set out in Appendix 1 Wiltshire Council - The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 Policy

Made by;

Simon Hendey, Director for Housing and Commercial Development

Background

1. As the Director for Housing and Commercial Development, I am responsible for any matters relating to the enforcement of poor housing condition in Wiltshire. The adoption of the policy outlined in Appendix 1 will add to the tools to achieve this made available under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. The power to make a decision in respect of this matter is delegated to me pursuant to Wiltshire Council's Constitution. The adoption of the policy allows for easier more robust decisions to be made in a timely manner and to ensure that the powers conveyed by the regulations are available.
2. The Regulations require private rented sector landlords, from 1 July 2020 for new tenancies and from 1st April 2021 for existing tenancies to have the electrical installation in their property inspected and tested by a person who is a qualified and competent, at least every 5 years. A landlord must do the following :
 - Ensure national standards for electrical safety are met. These are set out in the 18th Edition of the Wiring Regulation which are published as British Standard 7671.
 - Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years.
 - Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
 - Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
 - Supply a copy of this report to a new tenant before they occupy the premises.
 - Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
 - Supply the local housing authority with a copy of this report within 7 days of receiving a written request for a copy.
 - Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
 - Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
 - Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing

A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations.

If a local housing authority has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is required, the local housing authority may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.

Otherwise, they must serve a remedial notice requiring the landlord to take remedial action within 28 days. Should a landlord not comply with the notice the local housing authority may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Landlords have rights to make written representation and appeal against remedial action. The local housing authority can recover the costs of taking the action from the landlord and may also impose a financial penalty of up to £30,000 on landlords who are in breach of their duties.

- 3 It is expected that majority of landlord will ensure that their properties have been inspected and that they meet the required standard, however, there will be a minority of landlord who either choose not to comply or by default do not comply. Influencing this minority of landlord to undertake their business in a responsible manner will require that a council uses its statutory powers in a judicious manner ensuring landlords do not put their tenants at risk. The use and level of Civil Penalties as well of the cost of remedial works are an important consideration in adopting a policy under the Regulations. It is felt that use of civil penalties should be used and made at a level that reflect the severity of the offence, culpability of the offender, harm, punishment and as a deterrent. Likewise it is considered that the cost works undertaken in default by the council is recovered from the landlord.

Reason for decision

1. The decision is required to allow the council to have a robust policy that is in keeping with good practice and provide the opportunity should it arise to make full use of the enforcement tools that are available to tackle poor housing standard.
2. I confirm that in making this decision I have considered the following in line with Wiltshire Council's Constitution:
- 3.

Key decision requirements	N/A
Views of relevant cabinet member(s), committee chairman, area board(s)	No
Consideration of the area boards and delegated decision checklist for officers on the issue of when and how to involve local councillors and area boards in decisions about local services	N/A
Implication of any council policy, initiative, strategy or procedure	Yes
Consultation in accordance with the council's consultation strategy	N/A
Range of options available	Yes – see

	below
Staffing, financial and legal implications	N/A
Risk assessment	Yes – see below
Involvement of statutory officers and/or directors	N/A
Regional or national guidance from other bodies	N/A
The council's constitution	Yes
This contract is suitable for execution under the e-signature process.	N/A

Conflict of Interest

4. Not applicable

Other options considered

5. Not to adopt a policy which would reduce the council's ability to tackle poor housing conditions and have negative implication in terms of reputation of the council



Made by:

Simon Hendey, Director for Housing and Commercial Development

Date: 14/8/2020

THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020 ENFORCEMENT POLICY

1. Introduction and scope

This policy addresses the practical application of the Electrical Safety Standards in the Private Rented Sector (England) Regulation 2020 enforcement procedures and aims to provide a fair and effective approach to enforcement action by officers of the authority including the use of Civil Penalties and Recovery of Cost from private landlords who do not ensure that their properties meet the expected minimum standard of electrical safety and ignores their obligations.

The enforcement action we take must be compliant with the Electrical Safety Standards in the Private Rented Sector (England) Regulation 2020 (the Regulations) and the Housing and Planning Act 2016.

This policy seeks to assist officers in the decision making process when dealing with enforcement issues and to sets out a consistent approach. This policy should be read in conjunction with the Private Sector Housing Enforcement policy as well as corporate policies and, national guidance on enforcement issues.

This policy sets out when the council will levy civil penalties and make charges for enforcement including charging for undertaking work in default. The council would wish to avoid prosecution of private landlords through the courts in all but the most serious cases.

2. Context of the Enforcement of the Regulation

Principally the purposes of enforcing the Regulations is to support the use of statutory powers as an effective means of ensuring that private landlord's comply with minimum safety standards and to safeguards their tenants and other members of the public from potential harm. It is acknowledged that the vast majority of landlords will ensure that they fully comply with the Regulations but it is expected that a minority of landlords will not be conscientious about their responsibilities. Resident's of Wiltshire, including responsible landlords, would have a reasonable expectation that the enforcing authority deals effectively with rouge landlords in a manner that ensures that faults are remedied and transgressors amend poor practices.

The council will assist, advise and encourage wherever possible but will also take proportionated enforcement action on those landlords who ignore the Regulations. The council when enforcing the Regulations will provide opportunities to landlords to remedy their negligence and comply. Those private landlords who transgress should expect to receive civil penalty which reflect the level of cooperation and further transgression.

Our regulatory effort will be directed in accordance with the Government's "Regulators Code" and we will carry out our work with due regard to the following;

- in a way that supports those we regulate to comply and grow,
- that provides a simple and straightforward ways to engage with those we regulate and hear their views ,
- based on risk
- by share information about compliance and risk,
- by ensuring clear information, guidance and advice is available to help those we regulate to meet their responsibilities to comply
- Ensuring transparency

The Council has also adopted the Enforcement Concordat, which establishes principles of good enforcement and set out what businesses and others being regulated are entitled to expect from enforcement officers.

The service will endeavour to ensure that enforcement action is consistent by taking a similar approach in similar circumstances. However, officers will take into account many variables such as level of risk, compliance history and the attitude and actions of those involved which may result in different outcomes in what appear potentially similar investigations. Any enforcement action we take will be proportionate to the risk and seriousness of the breach of legislation.

3. Formal Action

Once the council has reasonable ground to believe that a private landlord is in breach of one or more of the his duties under the Regulations the council must serve a formal notice. The maximum civil penalty fine of £30,000 clearly established that the breaches of the regulations are considered serious and requires urgent attention.

Formal action will involve the proportionate use of formal mechanism to achieve compliance including service notice, financial civil penalties and charging for the cost of remedial work taken in default.

Landlords will be given reasonable time to carry out essential works to ensure health and safety hazards associated with electrical safety installations are remedied in a safe and timely manner.

4. Financial Penalty, Prosecution through the court and recovery of costs of remedial work undertaken by the council

The council will impose civil penalty where it is satisfied beyond reasonable doubt that a landlord has breach a duty under Regulation 3. A council can only impose a civil penalty as an alternative to a prosecution. In some cases the council may choose to prosecute if it is considered proportionate to do so. For example, where the landlord is a persistent offender or the standard of electrical safety is extremely poor and dangerous.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action the council must satisfy itself that if the case were to be prosecuted in the magistrates court there would be a realistic prospect of conviction.

Part 5 of the regulation allows a council to impose financial penalties for breaches of landlord duties. The level of civil penalty in a particular case should reflect the severity of the offence and taking into account the landlords previous record of offending and their cooperation in remedying the fault.

Appendix A of this policy sets out the level of civil penalty that will be imposed for breaches of the Regulations. The level of fine have been set to reflect the severity of the offence, culpability and track record of the offender, harm caused to the tenant, as a punishment, to deter further breaches and to remove any financial benefit.

In the case of landlords arguing that they are financial stricken and they will have problems paying the civil penalty then the council will consider a statements from the landlord's or agent's providing details of their income and assets. In cases where a landlord provides evidence that they cannot pay the fine immediately then the council will in the first instance provide an opportunity to make payments by instalment.

Regulation 8 allows a council to recover their costs reasonably incurred in undertaking remedial action as outline in the regulation and in particular to regulations 6(1) and 10(1) . If the council takes remedial action then the full cost of the action will be charged and recovered from the landlord

5. Appeals & Representation

The process, timescales and reason that allow a private landlord to be make representation to the council and make appeals to the 1st Tier Tribunal are set out in the Regulations.

Appendix A

Wiltshire Council Civil Penalties in the case of Offences under the Electrical Safety Standard in the Private Rented Sector (England) Regulation 2020 (The Regulations)

1. Offence: Breaches 3 (1)(b) (1)(c) of the Regulations

In the event of a remedial notice being served on a private landlord which requires the landlord to provide an electrical condition report and the landlord is in breach of Regulations 3(1)(b)(c) then a civil penalty of £2,000 will be made. However, the civil penalty will be reduced to £250 in the case of an electrical report being submitted by the landlord to the council and tenant(s) within 28 days of the service of the remedial notice provided that the report contains no unsatisfactory matters defined as C1, C2 or F1 and provided that Wiltshire Council or another Local Authority has not served a remedial notice for an infringement of the Regulations on another property owned by that private landlord. In the event of subsequent offences where the private landlord is served with a remedial notice then the level of civil penalty will be calculated as the number of remedial notices served on the landlord multiplied by £2,000. For example, the civil penalty will be 2 times £2,000 for the second offence and 3 times £2,000 for the third offence etc.

NB. Subject to the tenant allowing the landlord access. Should the tenant prevent the landlord from access to undertake the work then the timescales will be extended by a period equivalent to that which the tenant prevented the landlord access. A landlord would be required to provide evidence to the council that he has been prevented from gaining access by the tenant.

2. Offence: Breaches of 3(1)(a)

If a remedial notice is served on a private landlord for breaches under paragraph 3(1)(a) and it is a first offence and the landlord does not undertake the remedial action within 28 days and also undertake any further investigation and remedies in the timescales set out in paragraph 3(4) (5) & (6) of the Regulations then a civil penalty of £1000 will be made plus a further £500 for every unsatisfactory item (C1, C2, F1) detailed in the remedial notice. In the event of the work being completed in timescales specified in the remedial notice then the civil penalty will be £250 provided that Wiltshire Council or another Local Authority has not served a remedial notice for an infringement of the regulations on another property owned by that private landlord. In the event of further subsequent offences where the private landlord is served with a remedial notices then the level of civil penalty will be calculated as the number of remedial notices served on the landlord multiplied by £1,000. For example, the civil penalty will be 2 times £1,000 for the second offence and 3 times £1,000 for the third offence etc plus £500 for every unsatisfactory item (C1, C2, F1) detailed in the remedial notice.

NB: Subject to the tenant allowing the landlord access. Should tenant prevent the landlord from access to undertake the work then the timescales will be extended by a period equivalent to that which the tenant prevented the landlord access. A landlord would be

required to provide evidence to the council that he has been prevented from gaining access by the tenant.