

**REPORT FROM: HOUSING, HEALTH AND ENGINEERING SERVICES
MANAGER**

TO: POLICY AND RESOURCES COMMITTEE

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**ADOPTING AND IMPLEMENTING THE
ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR
(ENGLAND) REGULATIONS 2020**

PURPOSE OF REPORT

To implement the new enforcement powers contained in The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 including the use of civil penalty notices under the Housing and Planning Act 2016.

RECOMMENDATIONS

- (1) To recommend that Council adopt and implement the regulations in order to allow the Council to carry out its statutory function in relation to electrical safety standards in the private rented sector and that the Environmental Health Enforcement Policy is updated to incorporate the regulations
- (2) Agree to adopt the same process of issuing and determining levels of civil penalties for the offences in the regulations, in line with the Civil Penalty Policy adopted by the Council on the 24th August 2017.
- (3) Delegate to the Housing, Health and Engineering Manager all powers to issue, use and enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- (4) That the money received from civil penalties returns to the Environmental Health Residential revenue budget to fund further enforcement activity.

REASONS FOR RECOMMENDATIONS

- (1) To ensure that the Housing Health and Engineering Services Manager is authorised to exercise all necessary operational enforcement powers under the in respect of Electrical Safety in the private rented sector.

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| (2) | The use of these powers will support and complement the work that the Council continues to deliver to tackle rogue landlords. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will act as a powerful deterrent to rogue landlord behaviour through the enforcement of significant financial penalties. The additional provision to impose a fine up to £30,000 sends a strong message to any rogue landlord that substandard property conditions and unsafe electrical installations will not be tolerated. |
| (3) | To ensure that the Local Housing Authority is able to undertake its statutory duty to serve remedial notices, to arrange remedial action and serve penalty charge notices. |

ISSUE

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (referred to as 'the regulations') came into force on 1st June 2020. As of 1st April 2021, the regulations now apply to all existing tenancies. In order to meet its statutory obligations, the Council must adopt and implement the regulations into their enforcement policy and working procedures.

The Council has a vital role to play in ensuring that the private rented sector in Pendle is safe and healthy. Under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, the Council has the power to require Landlords to ensure that national standards for electrical safety are met and ensure all electrical installations in their rented properties are inspected and tested every 5 years.

The regulations provide the Council with powers to ensure compliance, including carrying out works in default and enforcement through the issuing of civil penalties up to £30,000 for breach of their duties under the regulations. The Council has a statutory duty under the regulations, to serve a landlord with remedial notices where they are in breach of their duties under regulation 3.

This report seeks to outline the regulations and inform the Policy and Resources Committee how the Council propose to enforce against Landlords who breach their duties under regulations.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, were introduced under section 122 of The Housing and Planning Act 2016 for the purposes of introducing new requirements for electrical safety in the private rented sector.

The regulations place duties on a Landlord. These include:

- To ensure that electrical safety standards are met during any period when the residential premises are occupied under a tenancy, and that every fixed electrical installation is inspected and tested at least every five years by a qualified person;
- To obtain a report which gives the results of the inspection and test, supply that report to each tenant within 28 days, and to the local housing authority within 7 days of a request and retain a copy until the next inspection is due.
- To supply a copy of the last report to any new tenant before occupation, or any prospective tenant within 28 days of a request from the prospective tenant;
- Where the report requires the Landlord to carry out further investigative or remedial work, the landlord must undertake such further investigative or remedial work within 28 days or within such lesser time period as specified in the report and
- To obtain and supply written confirmation of completion of such further investigative or remedial work to the tenant and local housing authority.

Where the Council has reasonable grounds to believe a Landlord is in breach of their duties, the Council has a statutory duty to serve either a remedial or urgent remedial notice under regulations

4 and 10, specifying what action needs to be taken to achieve compliance and when this needs to be achieved by.

The regulations allow for a statutory appeal period against any statutory notice served under the regulations. Landlords are able to make written representations to the Council within 21 days in the first instance. Any written representation will be considered on case by case basis.

Landlords also have rights to appeal to the First-tier Tribunal. The Tribunal may confirm, quash or vary notices served by the Council.

In the case of non-compliance with urgent or non-urgent remedial notices the Council also has the discretionary power to carry out necessary remedial action. The regulations state the local authority 'may' organise with consent of the tenant, urgent or non-urgent remedial action. Where this is exercised, regulation 8 allows the Council to recover costs reasonably incurred by them taking action

If there has been no appeal of the notice requiring action, the costs become payable at the end of 21 days, beginning with the day on which the demand for payment was served.

Where the Council is satisfied beyond all reasonable doubt that a Landlord is in breach of any of their duties under regulation 3, the Council will consider and pursue issuing civil penalties up to £30,000 for a breach of any of duties.

To ensure a fair and graduated approach to enforcement of the regulations, letters and statutory notices which are intended to be used in the enforcement process have been developed in consultation with other East Lancashire Local Authorities and the Councils Legal Services department.

As the Local Authority and Private Rented Sector regulator, the Council intends to use its powers, reclaim costs of taking action where necessary and impose civil penalties up to £30,000 for breaches of regulation 3 of the regulations.

It is proposed that any associated costs of taking urgent and non-urgent remedial action will be recovered in line with the regulations and will be based upon an assessment of officer time, the actual costs of any works undertaken and any other overhead required in taking action. The recovery of costs will be pursued within the Councils existing policies and procedures with regard to sundry debtors.

Non statutory guidance for Local Authorities has been produced by the Ministry of Housing, Communities and Local Government for the regulations, which has been taken into consideration.

Alongside the additional statutory duties placed on the Council by the regulations, regulation 11 empowers the Council to issue civil penalties of up to £30,000 for a breach of duties under the regulation 3 as an additional enforcement sanction. The MHCLG guidance states:

'That the Local Authority should develop and document their own policy on how they determine appropriate financial penalty levels. When developing their policy, local housing authorities may wish to consider the policy they previously developed for civil penalties under the Housing and Planning Act 2016.'

It is therefore proposed that the regulations are incorporated into the existing Civil Financial Penalty Policy, which was developed for Housing Act offences under The Housing and Planning Act 2016 to include the penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. By doing so, the Council is meeting the obligation set out in

the guidance to develop a policy on determining fine levels and is consistent in the way that it issues fines of up to £30,000. A copy of the Policy and Matrix is attached at Appendix 1.

IMPLICATIONS

Policy: The Environmental Health Enforcement policy will need to be revised to take account of these changes.

Financial: There are no major financial implications for the Council as the enforcement will be undertaken by existing members of the Environmental Health Residential Team. If a landlord does not comply with a remedial notice, the Local Housing Authority has a duty to undertake the work in default. Normal cost recovery mechanisms will be used. Section 5 of the guidance issued by the Secretary of state specifies that proceeds of financial penalties can only be retained by the Local Authority provided that it is used to carry out private rented sector enforcement.

Legal: None arising from this report

Risk Management: There are 7,000 privately rented homes in Pendle. Within the existing resources of the Environmental Health Residential Team it is not possible to visit every property to ensure that they are complying with the new regulations. Inspections will be made in where we are made aware of a possible breach of the regulations and during day to day work such as requests for service from tenants There is a risk that there will still be properties within this sector which do not have adequate protection and could lead to loss of life. However, it is the landlords' responsibility and not the Council's to ensure adequate protection.

Health and Safety: None arising from this report

Sustainability: The implementation of these powers will assist the residential team in improving the private rented property on offer across the Borough

Community Safety: None arising from this report

Equality and Diversity: None arising from this report

APPENDICES

Appendix 1 – Policy and Matrix for the use of Civil Penalties

Appendix 2 – Proposed Amendment to the Environmental Health Enforcement Policy

Policy and Matrix for the use of Civil Penalties

Introduction

The Housing and Planning Act 2016 introduces Civil Penalties of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 offences from 6th April 2017.

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

These are:

- Section 30 failure to comply with an Improvement Notice
- Section 72 offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 offences in relation to licensing of houses under part 3 (Selective Licensing)
- Section 139(7) failure to comply with an overcrowding notice
- Section 234 Management Regulations in respect of HMOs

In determining the Civil Penalty amount the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and the Civil Penalty Matrix developed by the Department for Communities and Local Government.

Burden of Proof

The criminal burden of proof, beyond all reasonable doubt must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Local Housing Authority must satisfy itself that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defences available and in certain circumstances the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

Factors to consider when determining to prosecute or issue a civil penalty

Each case will be determined on its own merits taking into account all available evidence.

Prosecution is likely to be the most appropriate action where the offence is particularly serious and/or where the landlord has a history of non-compliance in relation to property condition or property management.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty:

- The offender had no evidence of previous non-compliance with appropriate legislation
- The offender had no previous convictions recorded
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)

- The offenders co-operation is beyond what would be expected
- The offender does not need continuous chasing to rectify the offence

Factors to consider when determining the level of civil penalty

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:

- Severity of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- Punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent from others committing similar offences
- Removing any financial benefit obtained from committing the offence

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.

Financial Penalty Matrix

Officers should first determine the severity of the offence by looking at the harm and culpability categories.

Examples of Harm Categories

The table below contains factors relating to both actual harm and risk of harm.

<p>High</p>	<p>Serious adverse effect on individuals and/or having a widespread impact.</p> <p>High risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Housing defect giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example Housing Health and Safety Rating System (HHSRS) imminent category 1 hazards such as danger of electrocution, carbon monoxide poisoning, serious fire safety risk or excess cold with vulnerable resident.</p>
<p>Medium</p>	<p>Adverse effect on individuals</p> <p>Medium risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Tenant misled/disadvantaged by the failing.</p> <p>The housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example HHSRS category 1 hazards, multiple high category 2 hazards such as falls between levels, excess cold, asbestos exposure.</p>

Low	<p>Low risk of an adverse effect on individuals</p> <p>The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example low category 2 hazards under the HHSRS, localised damp and mould.</p>
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Examples of Culpability Categories

Very High (Deliberate Act)	<p>Where the offender intentionally breached, or flagrantly disregarded, the law.</p> <p>For example repeatedly ignored reminders to apply for a property or HMO licence. Failure to comply with a correctly served improvement notice. No attempt made to contact the local authority to discuss breaches.</p>
High (Reckless Act)	<p>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 HMO Management Regulations.</p>
Medium (Negligent Act)	<p>Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems that prevent the offence being committed, for example part compliance with a schedule of works but failure to fully complete all schedule items within notice timescale. Partially completed licensing application forms.</p>
Low (Low or no culpability)	<p>Offence committed with little or no fault on the part of the landlord or property agent, for example significant efforts were made to address the risk 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 such as low category 2 hazards under the HHSRS found in one property from a large portfolio.</p>

Having determined the category the officers should refer to the following starting points to reach a penalty band. Officers should then consider whether further adjustments should be made for aggravating and mitigating features.

Starting points

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

Banding Levels

Band 1	£0 to £4,999
Band 2	£5,000 to £9,999
Band 3	£10,000 to £14,999
Band 4	£15,000 to £19,999
Band 5	£20,000 to £24,999
Band 6	£25,000 to £30,000

The starting point for each band will be the mid-point e.g. for Band 1 the mid-point will be £2,500.

An offender will be assumed to be able to pay any financial penalty imposed unless they can demonstrate otherwise.

Aggravating Factors

The penalty can be increased by £1000 for each aggravating factor up to a maximum of £5000.

Mitigating Factors

The penalty can be decreased by £1000 for each mitigating factor up to a maximum of £5000.

Appendix 2 – Proposed Amendment to the Environmental Health Enforcement Policy

It is proposed that the Environmental Health Enforcement Policy is amended as follows:

10.3.3 Electrical Safety Enforcement

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 introduced new requirements for electrical safety in the private rented sector. The various enforcement options in relation to this are detailed below.

- Regulation 4: The Council has a duty to serve a Remedial Notice within 21 days for the following breaches of duty by a landlord:
Failure to supply a copy of an electrical safety Certificate within 7 days of the Council requesting it
Failure to complete works determined by an Electrical Safety Report within 28 days.
- Regulation 6: The Council may carry out works in default following the service and non-compliance of a remedial Notice.
- Regulation 11: The Council may issue a financial penalty to a landlord where a landlord has breached a duty. The financial penalty will be determined in accordance with the Civil Penalties Policy and Matrix.