

Civil Penalty Policy for Electrical Safety Standards (England) Regulations 2020 offences

Introduction

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on the 1st June 2020 and apply in England to:

- a. All new specified tenancies from 1 July 2020; and
- b. All existing specified tenancies from 1 April 2021.

The '*Ministry for Housing, Communities & Local Government*' (now the '*Department for Levelling Up, Housing & Communities*') have issued guidance to Local Authorities on these regulations, the latest update being on 7th October 2021.

Landlords of privately rented accommodation must:

- Ensure national standards for electrical safety are met. These are set out in the appropriate 'wiring regulations', 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 five 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 seven 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 authority within 28 days of completion of the works.

Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days of a written request from Sefton Council (the local

housing authority) for a copy of the report and must also supply the authority with confirmation of any remedial or further investigative works required by a report.

The authority may wish to request reports following inspections of properties to ascertain the condition of the electrical installation and confirm the landlord is complying with the Regulations.

Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the relevant edition of the Wiring Regulations.

- **Code 1 (C1): Danger present. Risk of injury.**
- **Code 2 (C2): Potentially dangerous.**
- **Further Investigation (FI): Further investigation required without delay.**
- **Code 3 (C3): Improvement recommended.** Further remedial work is **not** required for the report to be deemed satisfactory.

If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.

The C3 classification code does not indicate remedial work is required, only that improvement is recommended.

A remedial notice must be served where the authority has reasonable grounds to believe that a landlord has not complied with one or more of their duties under the Regulations. The notice must be served within 21 days of the decision that the landlord has not complied with their duties.

If the authority is satisfied on the balance of probabilities that 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 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 authority may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Landlords have the right to make written representation and appeal against remedial action. The authority may recover the costs reasonably incurred by them in taking the action from the landlord.

Under regulation 11 of the Regulations where the authority is satisfied, beyond a reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

Regulation 3 states that;

(1) a private landlord who grants or intends to grant a specified tenancy must—

(a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;

(b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and

(c) ensure the first inspection and testing is carried out—

(i) before the tenancy commences in relation to a new specified tenancy; or

(ii) by 1 April 2021 in relation to an existing specified tenancy.

(2) For the purposes of sub-paragraph (1)(b) “at regular intervals” means—

(a) at intervals of no more than five years; or

(b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than five years, at the intervals specified in that report.

(3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—

(a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;

(b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;

(c) supply a copy of that report to the local housing authority within seven days of receiving a request in writing for it from that authority;

(d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and

(e) supply a copy of the most recent report to—

(i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and

(ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.

(4) Where a report under subparagraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under subparagraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—

(a) 28 days; or

(b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.

(5) Where paragraph (4) applies, a private landlord must—

(a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—

(i) the electrical safety standards are met; or

(ii) further investigative or remedial work is required;

(b) supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and

(c) supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.

(6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

(7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person—

(a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;

(b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or

(c) makes an offer, whether oral or written, to rent those premises.

A financial penalty may be of such amount as the authority imposing it determines but must not exceed £30,000.

In determining the Civil Penalty amount, the authority will have regard to the statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016 and also to the developed Civil Penalty Matrix.

The approach to issuing a Civil Penalty is fundamentally made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of Civil Penalty charged.

When determining the appropriate sanction, the Council should satisfy itself that if the case were to be prosecuted there would be a 'realistic prospect of a conviction'. This is currently determined by consulting the Crown Prosecution Service "Code for Crown Prosecutors" which provides two tests: (i) the evidential test and (ii) the public interest test.

The authority currently consults this code when determining whether to seek prosecution for offences committed and will continue to do so on a case by case basis in line with this procedure and its enforcement policy.

The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the authority. Only one penalty can be imposed in respect of the same offence.

Statutory guidance has been issued by the Secretary of State under Schedule 9 (12) of the Housing and Planning Act 2016 and Local Authorities must have regard to this when exercising their functions in respect of civil penalties.

Paragraph 3.5 of the statutory guidance states that "**the actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending**". The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level.

a. **The severity of the offence.**

The more serious the offence, the higher the penalty should be.

b. **Culpability and track record of the offender.**

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c. The harm (or potential harm) caused to the tenant.

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d. 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 demonstrate the consequences of not complying with their responsibilities.

e. 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.

f. 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 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.

g. 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.

The Council will consider the above factors when deciding where, within the relevant band of the Civil Penalties Matrix below, a particular offence and penalty fall. Further, the Council considers factors (d) to (g) above, inclusive, to be primary objectives of financial penalties and will attach particular weight to them when determining the appropriate level of penalty.

Factors in determining penalty level

Clearly, a single level penalty will not be appropriate in all cases and when assessing the level of penalty to be imposed it is expected that the maximum amount would be reserved for the worst offenders. The actual amount levied should reflect the severity of the case and the authority will have regard to the following:

- The culpability of the landlord – Factors to take into account when determining the culpability include where the offender:
 - Has the intention to cause harm, the highest culpability where an offence is planned,
 - Is reckless as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people,
 - Has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results; and
 - Is negligent in their actions.

Examples of Culpability

The authority will determine the level of culpability by considering the relevant breaches of Regulation 3, for example, in the case of a breach of where a report indicates that a private landlord must undertake further investigative or remedial work, the private landlord fails to do such investigation or remedial work then the culpability will be assessed as high because the landlord was fully aware of the issues having received the report.

For lesser culpable acts the authority will consider an alternative level based on the examples shown in the table below.

High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law, i.e. failure to comply with a correctly served improvement notice.
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High (Reckless Act)	Actual foresight of, or wilful blindness to, risk of offending but risks nevertheless taken by the landlord or property agent; for example, failure to comply with HMO Management Regulations
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; for example, part compliance with a schedule of works, but failure to fully complete all schedule items within 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, obstruction by tenant to allow contractor access, damage caused by tenants.

Harm or potential for harm

In determining the level of harm the authority will have regard to:

- the person: i.e. physical injury, damage to health, psychological distress;
- the community; i.e. economic loss, harm to public health; and
- other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood.

The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. tenant.

Where no actual harm has resulted from the offence, the authority will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Presence of C1 classification issues;
- Multiple victims;
- Especially serious or psychological effect on the victim; and
- Victim is particularly vulnerable.

Examples of Harm Categories

High	Defect(s) giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, C1 classification codes or multiple C2 classification codes
Medium	Defect(s) giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, isolated or minimal numbers of C2 classification codes.
Low	Defect(s) giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, isolated C2, C3 or F1 classification codes.

Punishment of the Offender

The authority will also have regard to the following:

- A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution;
- The penalty should be proportionate and reflect the severity of the offence; and
- The penalty should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

Deter the offender from repeating the offence

- The ultimate goal is to prevent further offending and help ensure the landlord fully complies with all their legal responsibilities in future.
- The level of penalty should be set at a high enough level to deter repeat offending.

Deter others from committing similar offences

- An important part of deterrence is the realisation that the authority is proactive in levying Civil Penalties where the need exists and that the level of Civil Penalty will be set high enough to punish the offender and deter repeat offending.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

- 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 managed.

Determining the amount of civil penalty

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which has been developed taking into the factors set out in the statutory guidance provided by Government.

The matrix is intended to provide an indicative minimum ‘tariff’ under the various offence categories, with the final level of the civil penalty adjusted in each case, and generally within the relevant band, to take into account aggravating and mitigating factors.

The authority may, exceptionally, increase the penalty above the band maximum or, again exceptionally, decrease it below the minimum ‘tariff’. In order to meet the objectives of this policy and of financial penalties in particular, however, including the need for transparency and consistency in the use of such penalties, the authority will exercise its discretion to increase or decrease a penalty beyond band limits in exceptional circumstances only [excluding any Discounts as set out below]. The authority will consider on a case-by-case basis, in light of the information with which it is provided, whether any such circumstances exist.

The table below sets out the interrelation between harm and culpability as an initial determinant of the Civil Penalty banding.

Band	Severity	Band Width (£)
1	Low Culpability/Low Harm	£0 to £4,999
2	Medium Culpability/Low Harm	£5,000 to £9,999
3	Low Culpability/ Medium Harm or High Culpability/ Low Harm	£10,000 to £14,999

4	Low Culpability/High Harm or Medium Culpability/ Medium Harm	£15,000 to £19,999
5	Medium Culpability/High Harm or High Culpability/Medium Harm	£20,000 to £24,999
6	High Culpability/High Harm	£25,000 to £30,000

Aggravating Factors

In order to determine the final penalty, the authority will consider all aggravating factors relevant to the case.

Below is a list that will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Previous convictions having regard to the offence to which applies and time elapsed since the offence;
- Motivated by financial gain;
- Lack of co-operation/communication or obstruction of the investigation;
- Deliberate concealment of the activity/evidence;
- Offending over an extended period of time i.e. more than 6 months
- Number of items of non-compliance – greater the number the greater the potential aggravating factor;
- Record of non-compliance;
- Record of letting substandard accommodation;
- Record of poor management/ inadequate management provision;
- Lack of a tenancy agreement/rent paid in cash; and
- Already a member of an accreditation scheme or letting standard

Mitigating factors

In order to determine the final penalty, the authority will consider all mitigating factors relevant to the case.

Below is a list that will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Co-operation with the investigation;
- Voluntary steps taken to address issues e.g. submit a licence application;
- Willingness to undertake training;
- Willingness to join Sefton Council's landlord accreditation scheme;
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns;
- No previous convictions;
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence;
- Good character and/or exemplary conduct;
- Early admission of guilt i.e. within 1 month

When considering aggravating and mitigating factors the Civil Penalty imposed must remain proportionate to the offence.

Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

Process

The procedure for imposing a civil penalty is set out in Schedule 2 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and summarised below.

The authority must give the person a notice of its proposal ('notice of intent') to impose a civil penalty. The notice of intent must set out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right of the landlord to make representations

The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach ("the relevant day"), subject to sub-paragraph (3).

(3) If the breach continues beyond the end of the relevant day, the notice of intent may be served—

(a) at any time when the breach is continuing; or

(b) within the period of 6 months beginning with the last day on which the breach occurs.

The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the authority about the proposal to impose a financial penalty on the private landlord.

After the end of the period for representations, the authority must decide whether to impose a penalty and, if so, the amount of the penalty. If the authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

The final notice must set out:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

The authority may at any time:

- withdraw a notice of intent or final notice; or
- reduce the amount specified in a notice of intent or final notice.

On receipt of a final notice imposing a financial penalty a landlord can appeal to the First Tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

If the private landlord does not pay the whole or any part of a financial penalty which, the private landlord is liable to pay 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.