



OPEN REPORT COMMUNITY AND ENVIRONMENT COMMITTEE

Community and Environment Committee 30 July 2024

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

Report of Director of Place and Economy

Report Author and Contact Details

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Wards Affected

All Wards

Report Summary

The Council is working closely with other Derbyshire districts/boroughs to improve the standards of private rented housing. It has been identified that it would be operationally effective to seek delegated authority to enable officers in the Public Health and Housing Team to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Recommendations

1. That the Council adopts the Regulations and the Scheme of Delegation detailed at paragraph 3.1 of this report.
2. That the Civil Penalty Enforcement Policy in Appendix 1 to this report is adopted.

List of Appendices

Appendix 1	Draft Civil Penalty Enforcement Policy
Appendix 2	Civil Penalty Matrix
Appendix 3	Data Protection Impact Assessment (DPIA) checklist
Appendix 4	Equality Impact Assessment (EIA)

Background Papers

None

Consideration of report by Council or other committee

No

Council Approval Required

No

Exempt from Press or Public

No

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

1. Background

- 1.1 Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1 June 2020. They apply to all new specified tenancies from 1 July 2020 and all existing tenancies from 1 April 2021.
- 1.2 Property types to which the Regulations apply include houses, flats, bungalows, and houses in multiple occupation. The Regulations do not apply to social housing landlords or properties that are owner occupied.
- 1.3 The Regulations form part of the Department for Levelling Up, Housing and Communities (DLUHC) work to improve safety in all residential premises but particularly in private rented housing.
- 1.4 Landlords are now required to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested, to their local authority.
- 1.5 Under these Regulations, local authorities can require landlords to carry out vital remedial works or even arrange for the repairs to be done and recover their cost from the landlord. They can decide the level of penalty for landlords who don't comply, up to £30,000, and can spend the proceeds on enforcement purposes, helping them to keep up the good work driving up standards in privately rented homes.

2. Key Issues

- 2.1 Derbyshire Dales District Council's Environmental Health team regulate standards within the private rented housing sector. Officers believe that these Regulations are a much-needed tool to put electrical safety measures on a statutory footing, rather than just relying on landlords to follow best practice, and to ensure that properties are free from electrical hazards.
- 2.2 The Regulations place a duty on private landlords to certify that rented properties comply with electrical safety standards specified in British Standard 7671.
- 2.3 The electrical installations covered by the Regulations include fixed electrical cables and fixed electrical equipment such as hobs, ovens, showers, and extract ventilation located on the consumer's side of the electricity supply meter.
- 2.4 Local housing authorities may wish to request reports following inspections of properties to ascertain the condition of the electrical installation and confirm if the landlord is complying with the Regulations.
- 2.5 Competent inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the 18th 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.

- 2.6 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.
- 2.7 The C3 classification code does not indicate remedial work is required, only that improvement is recommended.
- 2.8 Derbyshire Dales District Council have provided two Environmental Health Officers with sufficient training to enable them to understand these inspection reports and the authority's duties and powers to enforce the Regulations. These Officers will take the lead role in investigating complaints and instigating any action.
- 2.9 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, a remedial notice must be served. The notice must be served within 21 days of the decision of non-compliance.
- 2.10 If a local housing authority has reasonable grounds to believe that a landlord is in breach of one or more of their duties in the Regulations and the report indicates that urgent remedial action is required, the local housing authority may, with the consent of the tenant/s, arrange for a qualified person to take the urgent remedial action and recover their costs.
- 2.11 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.
- 2.12 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. These financial penalties are Civil Penalties introduced by the Housing and Planning Act 2016.
- 2.13 Proceeds of financial penalties can be used to carry out private rented sector enforcement. Any amount that is not used in this way must be paid into the Consolidated Fund (the government's general bank account at the Bank of England).
- 2.14 Local housing authorities should develop and document their own policy on how they determine appropriate financial penalty levels. Generally, it is expected that the maximum amount would be reserved for the very worst offenders. The actual amount levied in any case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. Please refer to the Draft Civil Penalty Enforcement Policy in Appendix 1 to this report.

2.15 A Civil Penalty Matrix was agreed by Council in August 2020. The Matrix can be seen in Appendix 2 of this report. The level of fines from the matrix are set out in the table below:

DETERMINATION OF INITIAL CIVIL PENALTY LEVEL			
Level of culpability	Level of harm/effect		
	HIGH	MED	LOW
HIGH	£30,000	£15,000	£7,500
MED	£15,000	£7,500	£3,750
LOW	£7,500	£3,750	£1,875

2.16 The income received from financial penalties for failure to meet the requirements in the table above may only be spent on functions relating to housing enforcement duties.

3. Options Considered and Recommended Proposal

3.1 To enable this provision to work effectively and efficiently it is necessary for officers to obtain delegated authority to issue notices, instigate remedial action and issue penalty charge notices. A recommended scheme of delegation is set out below:

ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020		
Regulation	Provision	Delegation
4	<p>Duty of local housing authority to serve a remedial notice.</p> <p>4.—(1) Where a local housing authority has reasonable grounds to believe that, in relation to residential premises situated within its area, a private landlord is in breach of one or more of the duties under regulation 3(1)(a), (1)(b), (1)(c), (4) and (6), and the most recent report under regulation 3(3) does not indicate that urgent remedial action is required, the authority must serve a remedial</p>	<p>Environmental Health Manager</p> <p>Principal Environmental Health Officer.</p> <p>All Environmental Health Officers.</p>

	notice on the private landlord.	
6	<p>Power of local housing authority to arrange remedial action.</p> <p>6.—(1) Where a local housing authority is satisfied, on the balance of probabilities, that a private landlord on whom it has served a remedial notice is in breach of the duty under regulation 5(1), the authority may, with the consent of the tenant or tenants of the premises in relation to which the remedial action is to be taken, arrange for an authorised person to enter those premises to take the remedial action specified in the remedial notice.</p>	<p>Director of Place and Economy</p> <p>Environmental Health Manager</p> <p>Principal Environmental Health Officer.</p> <p>All Environmental Health Officers.</p>
8	<p>Recovery of costs</p> <p>8.— (1) The local housing authority may recover costs reasonably incurred by them in</p>	<p>Director of Place and Economy</p> <p>Environmental Health Manager</p> <p>Principal Environmental Health Officer.</p> <p>All Environmental Health Officers.</p>
10	<p>Urgent remedial action</p> <p>10.— (1) Where—</p> <p>(a) the report under regulation 3(3)(a) indicates that urgent remedial action is required in relation to the residential premises, and</p> <p>(b) the local housing authority in whose area the residential premises</p>	<p>Director of Place and Economy</p> <p>Environmental Health Manager</p> <p>Principal Environmental Health Officer.</p> <p>All Environmental Health Officers.</p>

	<p>are situated is satisfied on the balance of probabilities that a private landlord is in breach of the duty under regulation 3(4) to undertake the required remedial or investigative work in relation to those residential premises within the period specified in the report, the authority may, with the consent of the tenant or tenants of those residential premises, arrange for an authorised person to take the urgent remedial action.</p>	
11	<p>Financial penalties for breach of duties</p> <p>11.— (1) Where a local housing authority is satisfied, beyond 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.</p> <p>(2) A financial penalty—</p> <p>(a) may be of such amount as the authority imposing it determines; but (b) must not exceed £30,000.</p>	<p>Director of Place and Economy</p> <p>Environmental Health Manager</p> <p>Principal Environmental Health Officer.</p> <p>All Environmental Health Officers.</p>

3.2 Enforcement action will only be undertaken in accordance with the Council's Enforcement Policy, and this means that officers will adopt a phased approach in general. Officers working in the Environmental Health, Public Health and Housing team will take the lead role in investigating complaints and instigating any action.

4. Consultation

- 4.1 The Department for Levelling Up Housing and Communities
- 4.2 Derbyshire Built Environment Group
- 4.3 Joanna Hill, DDDC's Climate Change Officer
- 4.4 Mark Mealey, DDDC's Information Governance Officer
- 4.5 Claire Allen, DDDC's Corporate Policy Officer
- 4.6 Kerry France, DDDC's Legal Services Manager

5. Timetable for Implementation

- 5.1 Forthwith: Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1 June 2020. They apply to all new specified tenancies from 1 July 2020 and all existing tenancies from 1 April 2021.
- 5.2 The use of Civil Penalties was approved by Council in August 2020.

6. Policy Implications

- 6.1 To achieve more effective and efficient enforcement of standards in the private rented sector, in particular electrical safety standards. This links directly with the District Council's Corporate Plan priority to ensure that all rented housing, private and social, is fit to live in with a robust council team to support tenants.
- 6.2 This also links with the Council's work with the Department for Levelling up Housing and Communities to improve enforcement in the sector and tackling poor quality private rented sector properties in the areas of greatest need.

7. Financial and Resource Implications

- 7.1 As stated in the report, the income from civil penalties can be retained by the local housing authority if it is used to further their statutory functions in relation to their enforcement activities covering the private rented sector. The financial risk of adopting the recommended Civil Penalty Matrix is assessed as low.
- 7.2 There are also financial implications linked with carrying out remedial work/works in default and reclaiming the Council's costs, as described in the report. Given the regulations, this financial risk is assessed as low.
- 7.3 Derbyshire Dales District Council has already provided two Environmental Health Officers with sufficient training to enable them to understand electrical inspection reports and the authority's duties and powers to enforce the regulations and will form part of the Officers' daily duties.
- 7.4 The enforcement of these regulations will likely require advice from the Council's Legal department in the first instance, whilst conducting their investigations, leading to their assistance should enforcement action be taken, such as issuing legal notices, carrying out works in default, issuing financial penalties or prosecution of offenders or reclaiming costs and unpaid penalty notices.

8. Legal Advice and Implications

- 8.1 The imposition of a financial penalty is imposed instead of a criminal prosecution and cannot be imposed if a prosecution has been obtained or has been issued in court.
- 8.2 The Authority must consider that they would be able to prove the offence beyond reasonable doubt to impose the penalty.
- 8.3 Anyone aggrieved by the decision may appeal to a First Tier Tribunal and the penalty is suspended pending the outcome of the appeal.
- 8.4 Recovery of any unpaid penalty is by way of a County Court action and will require legal assistance.
- 8.5 The risk is therefore low, however there may be an increase in appeals, especially on the level of the penalty, and debt actions.
- 8.6 A Data Protection Impact Assessment (DPIA) checklist has been carried out and signed off and a DIPA is not required. Please refer to the DPIA checklist in Appendix 3.

9. Procurement

- 9.1 None arising from this report.

10. Equalities Implications

- 10.1 Private rented tenants have the right to live in safe and healthy home, free from electrical hazards. Private Landlords have the responsibility to provide a good, safe standard of accommodation for their tenants, making good housing standards equal across tenures.
- 10.2 An Equality Impact Assessment has been carried out and can be seen in Appendix 4.

11. Climate Change and Biodiversity Implications

- 11.1 None arising from this report.

12. Risk Management

- 12.1 The principal risk from not adopting the regulations, delegations, and enforcement policy subject to this report would be a lack of delegated officers to carry out this statutory function or to have a written policy in place to successfully implement it.

Report Authorisation

Approvals obtained from Statutory Officers:-

	Named Officer	Date
Chief Executive	Paul Wilson	09/07/2024
Director of Resources/ S.151 Officer (or Financial Services Manager)	Gemma Hadfield	03/07/24

Monitoring Officer (or Legal Services Manager)	Helen Mitchell	02/07/24
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