**Havant Borough Council**

**The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

**Statement of Principles for Determining Fixed Penalty Notice.**

**January 2021**

**Purpose of statement**

This statement is to define the principles that will be applied by Havant Borough Council (“the Authority”) when determining the sum of financial penalty under Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (”the Regulations”)

**Legal background**

**Duties placed upon relevant landlords**

The ESSPS imposes a duty (Regulation 3) on all relevant private landlords, including those operating Houses in Multiple Occupations (HMOs)

The duties with which a Landlord must comply are listed in Table 1 under the section heading Principles in determining sum.

There is an additional duty placed upon the private landlord to comply with a remedial notice served by the Authority. There is no specific penalty for a breach of duty to comply with a remedial notice. Any such breach though, will indicate additional culpability in failure to comply with the duties laid out in Regulation 3.

**Enforcement**

Where the authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under the Regulations 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 notice on the landlord to include the necessary remedial action within 21 days.

Where a local housing authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with the remedial notice the authority may, if the necessary consent is given, arrange for an authorised person to take the remedial action specified in the Remedial Notice and/or Urgent Remedial Action.

**Penalty**

Where the authority is satisfied, beyond all reasonable doubt, that a landlord has breached any duty imposed by Regulation 3 of the Regulations may require the landlord to pay a penalty charge of such amount as the authority may determine.

The amount of the penalty charge must not exceed £30,000.

Where a local housing authority decides to impose a penalty charge, the authority must serve notice of that fact on the landlord.

**Principles**

The Authority considers it good practice to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

**Principles for service of fixed penalty charge**

The purpose of a penalty charge is:

1. To ensure a relevant landlord gains no financial advantage from not complying with the regulations.
2. To improve protection of the public by acting as a deterrent to relevant landlords.
3. To reduce the likelihood of future non-compliance
4. Influence behaviour of relevant landlords
5. To reclaim the Authority’s expenses to ensure tax payers are not unfairly penalised.

**Principles in judgement of duty breach**

A Team Leader in Environmental Health (or equivalent in the event of change of title) shall review the evidence and determine whether beyond any reasonable doubt a breach of any duty under Regulation 3 of the Regulations has occurred.

In doing so that person may make any reasonable request for information from the investigating officer’s case file or question the officer as they consider necessary to make a determination.

**Principles in determining sum**

The authority will serve a fixed penalty notice on a relevant landlord who breaches any duty imposed upon them by Regulation 3 of the Regulations.

The financial penalty shall be the accumulative total of the sums shown in Table 1 for each breach of duty identified.

**TABLE 1.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.** | | | |
| **Relevant Offences**  Note that the maximum fine per breach is £30,000 | **Relevant paragraph of**  **Regulation 3** | **First penalty (£)** | **Subsequent penalties (£)** |
| Failure to ensure that the electrical safety standards are met during any period when the residential premises are occupied. | (1)(a) | 1000 | 2000 |
| Failure to ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person of intervals of not more than 5 years or lesser time as specified in the report. | (1)(b) | 1000 | 2000 |
| Failure to 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; | (3)(a) | 250 | 500 |
| Failure to supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test; | (3)(b) | 250 | 500 |
| Failure to supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority; | (3)(c) | 250.00 | 500.00 |
| Failure to 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; | (3)(d) | 250.00 | 500.00 |
| Failure to supply a copy of the most recent report to—   1. any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and 2. any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant. | (3)(e) | 250.00 | 500.00 |
| Failure to ensure that further investigative or remedial work is carried out by a qualified person within—   1. 28 days; or 2. the period specified in the report if less than 28 days | (4) | 1,000.00 | 1,000.00 |
| Failure to obtain written confirmation from a qualified person that the required further investigative or remedial work has been carried out and that-   1. the electrical safety standards are met; or 2. further investigative or remedial work is required; | (5)(a) | 250 | 500.00 |
| Failure to supply written confirmation, together with a copy of the report under sub-paragraph (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 | (5)(b) | 250.00 | 500.00 |
| Failure to supply that written confirmation, together with a copy of the report under sub-paragraph (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. | (5)(c) | 250.00 | 500.00 |
| **Additional weighting for culpability and severity** | | | |
| Additional penalty where a breach of Regulation 3(1)(a) or 3(4) occurs; and   * One to three Code 2 items are identified on the report. * One Code 1 or four or more Code 2 Items are identified on the report. * More than one Code 1 items are identified on the report. |  | 0.00  250.00  500.00 | 0.00  500.00  1,000.00 |
| Additional penalty in respect of a breach of Regulation 3(1)(b) where additional culpability through failure to comply with the subsequently served remedial notice occurs | N/A | 2000.00 | 5000.00 |
| Additional penalty in respect of a breach of Regulation 3(1)(a) or 3(4) where additional culpability through failure to comply with the subsequently served remedial notice occurs; and   * One to three Code 2 items are identified on the report. * One Code 1 or four or more Code 2 items are identified on the report. * More than one Code 1 items are identified on the report. |  | 2,000.00  3,000.00  4,000.00 | 10,000.00  15,000.00  20,000.00 |

An early payment reduction of 25% shall apply to first offences only if paid within 14 days.

**Service of Notice of Intent to Serve Penalty Notice**

The authority will serve a notice of its intention to issue a fixed penalty notice within 6 months of non-compliance with a remedial notice in accordance with regulations 11 of the Regulations.

**Representation and** **Review**

The 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 local housing authority about the proposal to impose a financial penalty on the private landlord.

The authority will review its decision based on landlord’s representations when made in writing within 28 days from the date stated on the Notice of Intent. All reviews will be conducted by the manager responsible for Environmental Health or alternatively a manager above that level in the cooperate hierarchy. The payment period (including the early payment reduction period) shall be suspended whilst the authority conducts its review.

Where a landlord can show on the balance of probabilities that the sum of the fixed penalty will cause unreasonable hardship to him or his family the reviewer may use discretion to extend the allowable payment period by varying the penalty notice.

In extreme cases a senior manager may use their discretion to reduce or waive the penalty but must have consideration of the capital and rental value of the subject premises in doing so.

**Issue of Financial Penalty – Final Notice**

After the end of the period of 28 days in which time the landlord may make representations, the Authority mustdecide whether to impose a financial penalty; and if so the amount of that penalty.

Where the Authority decides to impose a financial penalty, it must serve a “Final Notice” on the landlord imposing that penalty and requiring it to be paid within the period of 28 days beginning with the day after that on which the notice was served.

**Appeals**

A landlord on whom a final notice is served may appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of the penalty.

**Revision of statement**

The authority may revise this statement of principles at any time and, where it does so, it will publish the revised statement.