**Summary**

Havant Borough Council (HBC), through its Private Sector Housing Team (PSHT), is the statutory enforcing authority for a number of legislative provisions. We have an important role in ensuring activities undertaken by individuals and businesses comply with a wide range of regulatory standards.

**Purpose of this Document**

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 8 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

**Legal Background**

The ESSPS imposes a duty (Regulation 3) to all landlords operating in the Private Housing Rental Sector, including Houses in Multiple Occupations (HMOs.

Duties placed on Landlords;

A private landlord who grants or intends to grant a specified tenancy must

* Ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy.
* Ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
* Ensure the first inspection and testing is carried out

1. before the tenancy commences in relation to a new specified

tenancy; or

1. by 1st April 2021 in relation to an existing specified tenancy.

In the regulations “regular intervals” means no more than 5 years, unless otherwise specified in the report.

Following the inspection and testing, landlords must;

* Obtain a report from the person completing the inspection and testing,
* Supply that report to each existing tenants within 28 days,
* Supply that report to the local Authority, within 7 days of request
* Retain and supply a copy of that report until the next inspection to be given to the person undertaking the next test

Where a report indicates that there is a breach or potential breach of the duty, and the report requires to undertake further investigative or remedial work, the private landlord must ensure that the investigation or remedial work is carried out by a qualified person within 28 days, or the period specified in the report if less than 28 days, starting with the date of the inspection and testing.

A landlord has a duty to comply with a remedial notice if one is served

Further information are available on this subject by visiting – [insert web link]

Duties placed on Local Authorities;

Should HBC have reasonable grounds to believe that, in relation to a residential premise situated within its area, a private 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, HBC **must**;

* Issue a Remedial Notice within 21 days of having those reasonable grounds.

The RN must contain certain information as set out in Regulation 4.

The landlord has a right to make representation, in writing, to the local authority under certain criteria.

Landlord have a right to make a written representation against the remedial notice within 21 days of receipt. If a representation is made, this remedial notice will be suspended until such time as the local authority has considered the representation and decided upon an outcome. The local authority has 7 days to determine an outcome from the date of expiry of the representation period.

Where the outcome if to confirm that the remedial notice will remain unchanged, the local authority will inform the landlord in writing and this has the effect to cease the suspension.

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 must, 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.

Those regulations apply to

Private Landlords;

as defined by Section 122(6) of the Housing and planning Act 2016; “Private Landlord” means a landlord who is not within section 80(1) of the Housing Act 1985

Existing Specified Tenancy;

Means a specified tenancy which was granted before the coming into force of these regulations.

New Specified Tenancy;

Means a specified tenancy which is granted on or after the coming into force of these regulations

A ‘specified tenancy’ is a tenancy, licence, lease, sub-lease or sub-tenancy of residential premises that gives somebody the right to occupy all or part of the premises as their only or main residence in return for rent.

There are some exemptions (such as for long leases) which are explained in the next section.

Those regulations do not apply to

* Registered Provider of Social Housing
* Live-in landlords; An agreement under which the occupier shares accommodation with the landlord or landlord’s family is excluded. For the purposes of the regulations, a landlord is considered to share accommodation with the tenant if they share an amenity such as a kitchen or living room. This is likely to arise where an owner occupier rents out a room in their own home.
* Long leases; Leases which grant a right of occupation for 7 years or more without a break clause for either party are excluded. This type of arrangement is closer to one of home ownership than the traditional landlord / tenant relationship.
* Student halls of residence
* Hostels and refuges
* Care homes, hospitals, hospices and other NHS accommodation

**ENFORCEMENT**

Landlord must comply with the notice

The landlord has 28 days beginning with the day on which the remedial notice is served to comply with the notice.

If a landlord can show they have taken all reasonable steps, other than legal proceedings, to comply with the notice, they will not be in breach of the duty to comply with the remedial notice in regulation 3.

If a landlord does not prove they have taken all reasonable steps, it is then up to the local authority to decide if they are in breach.

Whether any evidence provided confirms compliance is for the local authority to determine. Some examples of evidence could be dated photographs, confirmations by the tenant or installation records. Local authorities could also issue guidance on supplying evidence when the remedial notice is issued.

If a tenant informs the local authority that no remedial action has been taken is it reasonable for the local authority to be satisfied, on the balance of probabilities, that the landlord is in breach.

Remedial action

If the local authority is satisfied, on the balance of probability, that a private landlord is in breach of the duty to comply with the remedial notice within 28 days (Regulation 5(1)), the authority may, with the consent of the tenants or tenants of the premises, arrange for remedial action to be taken, arrange for an authorised person to enter those premises to take the remedial action specified in the remedial notice.

Financial Penalty

Where a local authority is satisfied, behind reasonable doubt, that a private landlord has breached a duty under regulation 3, it may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

The amount of that financial penalty is for the council to determine, but must not exceed £30,000. In determining the level of penalty charge the council will have regard to:

* This Statement of Principles.
* The Council’s Enforcement Policy.
* The nature of the breach.
* Whether or not the breach under consideration was a first-time breach.
* Whether it was a continuing or repeat breach of the Regulations.
* Any written representations made by the landlord upon service of the remedial notice.
* On a case by case basis taking account of all relevant circumstances and representation, and
* Civil Penalty Policy

The aims of the Financial Penalty

The primary aims of the financial penalty are to;

* Recover the Council’s costs associated with administration, inspection, investigation, supervision, travel, service of notices and in carrying out the necessary remedial work, including contractor costs, under its Regulation 3 duty.
* Be proportionate to the nature of the breach of regulation and the risk posed.
* Deter future breaches by the landlord of duties imposed under the regulations.
* Deter other landlords from breaching duties imposed under the regulations.
* Remove any financial benefit the landlord may have obtained from breaching his duty under the regulations.

Where a local housing authority intends to impose a penalty, it must give written notice of its intention to do so – a “Notice of Intent’. This must set out certain required information including the reasons for the penalty, the amount of the penalty, and that the landlord is required, within the specified period, to pay the financial penalty or make a written representation to the Local Housing Authority (within 28 days beginning with the day after that of the Notice of Intent date).

Within the representation period (28 days) the Local Housing Authority must decide whether to impose a financial penalty on the private landlord and the amount. Once a decision to issue a financial penalty has been made, the local housing authority must serve a “final Notice” on the private landlord. The Final notice requires the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was served. That final Notice must set out, the amount and the reasons for imposing the penalty, information about making payment, the period for payment and consequences of failing to comply with the Final notice. Further, clear information about a right to appeal will be provided and to whom.

The Local Housing Authority reserves the right to withdraw any notices (Intent or Final) and/or reduce the amount of the Financial Penalty at any time. This will be formally communicated to the private landlord.

The calculation of the penalty should be in line with the statement of principles mentioned above, and the Council’s Civil Penalty Procedure and Policy. There is no other provision made in the regulations for enforcement authorities to redeem costs for any remedial works carried out. Collection of the financial penalty is the only method.

Appeals

To ensure that the enforcement process is administered fairly, landlords are provided with a means of appeal against penalties. A landlord may appeal to the First-tier Tribunal if the penalty charge notice is confirmed or varied by a local authority after a review. If an appeal is lodged, the penalty cannot be enforced until the appeal is disposed of.

Appeals can be made on the grounds that the decision of the local authority to vary or confirm the penalty charge notice was based on a factual error, was wrong in law, or was unreasonable for any other reason. Appeals can also be made on the grounds that the amount of the penalty is unreasonable.

Recovery of cost.

Any cost incurred by the local authority to secure compliance to these regulations will be passed on to the landlord. This will be calculated on a case by case basis and will include, Officer(s) time and travel, cost of organising, preparing schedules of works, recover cost incurred by employing a suitably qualified person to undertake the work and effectuating the works as required by the remedial notice. (A further charge of 20% will be added to the total amount of the cost as an administrative cost).

Review

If a landlord does not agree with a penalty charge notice, they can make a request to the relevant local authority for it to be reviewed. This request must be made in writing and within the time period specified in the penalty charge notice.

If a local authority receives a request for a review, the authority must consider any representations made by the landlord, decide whether to confirm, vary or withdraw the notice, and serve a notice of its decision on the landlord. Where an authority decides to confirm or vary a penalty charge notice, it must inform the landlord that they can appeal to First-tier Tribunal.

**Principles**

Please consult the Statement of Principle (approved 2022).

Last reviewed and updated 12/01/2023