



DARLINGTON
Borough Council

**Civil Penalties Enforcement Policy
and Guidance:
The Electrical Safety Standards in the
Private Rented Sector Regulations 2020**



**Community Safety
Private Sector Housing**

Civil Penalties Enforcement Policy & Guidance: The Electrical Safety Standards in the Private Rented Sector Regulations 2020

Version 1.0

Produced by Private Sector Housing, Darlington Borough Council

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This document has been produced as a guide to provide information and anyone affected should refer to the legislation for further information.

This document should be viewed in conjunction with the Civil Penalties Enforcement Policy and Guidance: Housing and Planning Act 2016

Financial Penalty Policy and Guidance for Domestic Private Rented Properties in relation to The Electrical Safety Standards in the Private Rented Sector Regulations 2020

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Section 1 Introduction & Overview

1.1 Introduction

This document contains both policy and guidance.

This policy sets out how the Council will use notices of intention and civil penalties where landlords fail to meet or improve the electrical safety standards of Private Rented Properties to the required standard.

The aim of the policy is to improve the standards of domestic private rented properties. Ensuring homes are of a certain standard, and that they are free of serious electrical hazards and meet the minimum level of electrical safety conditions.

This Policy outlines:

- (a) The regulations;
- (b) How the council will undertake the enforcement duties and make decisions ensuring they are fair and accountable and within the legislation framework;
- (c) A summary of the available penalties;
- (d) Factors in determining the level of Civil Penalty;
- (e) How a landlord can appeal the decision.

The **Electrical Safety Standards in the Private Rented Sector Regulations 2020** are referred to in this Policy as “the Regulations”.

The Regulations are designed to tackle the most hazardous electrical safety conditions in England and Wales – those with C1 or C2 defects¹ on their Electrical Installation Condition Report (EICR).

The minimum level of electrical safety conditions means that landlords of privately rented accommodation must:

- (a) Ensure national standards for electrical safety are met. These are currently set out in the [18th edition of the ‘Wiring Regulations’](#), which are published as British Standard 7671.
- (b) Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years.

¹ When an inspection is carried out on the installation, the electrician will issue an Electrical Installation Condition Report (EICR), which will highlight any electrical hazards that need to be addressed. The classification codes on the report are:

- C1** - **Danger present, risk of injury (immediate remedial action required)**
- C2** - **Potentially dangerous (urgent remedial action required)**
- C3** - Improvement recommended
- FI** - Further investigation required without delay

- (c) 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.
- (d) Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- (e) Supply a copy of this report to a new tenant before they occupy the premises.
- (f) Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- (g) Supply the local housing authority with a copy of this report within 7 days of receiving a written request for a copy.
- (h) Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- (i) 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.
- (j) 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.

Darlington Borough Council intends to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make a financial penalty.

As part of a proactive enforcement approach, the Council will also carry out visits under the Housing Act 2004, to undertake assessments under the Housing Health and Safety Rating System. This approach will enable the Council to advise landlords on what actions are necessary for them to take in order for them to be compliant.

Private Sector Housing Officers are authorised to check for different forms of non-compliance with the Regulations and issue penalties for non-compliance. This document outlines the Council's Civil Penalty Policy and protocol in relation to the Regulations.

1.2 Outline of the Regulations - Local housing authorities' duties and powers

The **Electrical Safety Standards in the Private Rented Sector Regulations 2020**, introduced a duty of local authorities to enforce section 4 of the regulations and a power to arrange remedial action in section 6.

Section 2

How the council will undertake the enforcement duties

2.1 Informal Action

In the first instance the Council will informally advise Landlords who rent properties with an EICR with C1 and C2 recommendations that they do not meet the minimum standard and are therefore committing an offence under the Regulations.

Landlords will be given an appropriate time, normally 14 days, to respond to this advice, either showing evidence that they now have a compliant EICR or to set out a plan to achieve the required standard.

They will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered, both under the Regulations and the Housing Act 2004, Part 1.

- (a) The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.
- (b) The enforcement authority may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light.
- (c) The enforcement authority may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.
- (d) It is the decision of the enforcement authority or its authorised officer to determine what action is appropriate when they determine that breaches of the regulations are being committed.
- (e) It may be that providing advice and information is sufficient to ensure compliance.
- (f) However, in some cases, it may be that only imposing a penalty will do. It is for the enforcement authority or its authorised officer to decide what is the appropriate action in the circumstances.

2.2 Section 4 - Duty of local housing authority to serve a remedial notice

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 the regulations and the most recent report does not indicate that urgent remedial action is required, the authority must serve a remedial notice on the private landlord within 21 days beginning with the day on which the authority decides it has reasonable grounds.

2.3 Section 6 - Power of local housing authority to arrange remedial action

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 and to recover their costs.

2.4 Remedial action following non-compliance with a remedial notice

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.

Before the remedial action is taken the local housing authority must serve a notice on the private landlord specifying -

- (a) The premises in relation to which the remedial action is to be taken by the authorised person and the nature of that remedial action;
- (b) The power under which the remedial action is to be taken by the authorised person;
- (c) The date when the remedial action will be taken by the authorised person; and
- (d) The right of appeal under regulation 7 against the decision of the authority to arrange for an authorised person to take the remedial action.

The local housing authority must arrange for an authorised person to take the remedial action within 28 days of:

- (a) The end of the notice period in regulation 7(3) where there is no appeal; or
- (b) An appeal decision that confirms or varies the decision of the local housing authority where there is an appeal.

An authorised person must:

- (a) Give not less than 48 hours' notice of the remedial action to the tenant or tenants of the residential premises on which it is to be taken; and
- (b) If required to do so produce evidence of identity and authority.

The remedial notice should:

- (a) Specify the premises to which the notice relates
- (b) Specify what the local housing authority believes the landlord has failed to do
- (c) Specify what needs to be done

- (d) Require the landlord to take action within 28 days from the day the notice is served
- (e) Explain the landlord's entitlement to make written representations within 21 days
- (f) Specify the person and address, or email address, that representations can be sent to
- (g) Explain provisions about financial penalties and rights of appeal

A landlord is **not in breach** of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply.

A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with electricians as they tried to arrange to carry out the work, including any replies they have had. Landlords may also want to provide other evidence they have that the electrical installation is in a good condition while they attempt to arrange works. This could include the servicing record and previous condition reports.

A landlord who has been prevented from accessing the premises will not be required to begin legal proceedings against their tenant in order to show that all reasonable steps have been taken to comply with their duties.

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.

2.5 Urgent remedial action

Within 7 days of the authorised person starting to take the urgent remedial action the local housing authority must either:

- (a) Serve a notice on the landlord and all occupiers of the premises in relation to which the authorised person is taking urgent remedial action; or
- (b) Fix a notice to the premises

The notice must specify:

- (a) What action is going to be undertaken
- (b) The address of the property where the action will be undertaken
- (c) The legal power
- (d) The date when that urgent remedial action was or will be started
- (e) Rights of appeal and the period of time within which an appeal may be made

- (f) Details of any financial penalty and the right of appeal against the financial penalty

Section 3 Financial penalties

3.1 Financial penalties

Following failure to comply with the Regulations, a local housing authority can impose a financial penalty of up to £30,000 on a landlord. Proceeds of financial penalties can be used to carry out private rented sector enforcement.

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.

3.2 How a landlord can appeal a decision

A landlord has the right to ask the enforcement authority to review its decision to serve a penalty notice.

Where the penalty has been amended following a review. The landlord will be served a Notice after the review with an explanation of any adjustment made.

A landlord has the right to ask the enforcement authority to review its decision to serve a penalty notice.

Any request for review must be submitted to the Council within 28 days of the Penalty Notice being served.

Requests for review after the prescribed time will be considered at the Council's discretion if there is good reason for failing to comply with the time limit set in the Notice.

Appeals concerning penalties are initially to be made to the Council. This request must be made in writing (by a period of fourteen days beginning with the day after that on which the notice was given) to: Private Sector Housing, Feethams, Darlington Town Hall, DARLINGTON, DL1 5QT.

When the Council receives the request, everything the landlord has said in the request will be considered and a decision will be made whether or not to withdraw the penalty notice.

On a review the Council may:

- (a) Waive a penalty;
- (b) Allow the landlord additional time to pay any financial penalty;
- (c) Substitute a lower financial penalty where one has already been imposed; or
- (d) Modify the application of a publication penalty.

The Council must serve a further notice on the landlord withdrawing the penalty notice if, on a review the Council:

- (a) Ceases to be satisfied that the landlord committed the breach specified in the penalty notice;
- (b) Is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice; or
- (c) Decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on Landlord.

If the Council does not decide to withdraw the penalty notice, a decision may be made to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty, and must explain the appeals process and how financial penalties can be recovered.

The Council will inform the landlord of the decision reached in writing. If the Council upholds a penalty notice on appeal.

3.3 Appeals against remedial action

An appeal must be made to the First-Tier Tribunal within 28 days from the day on which a remedial notice is served. The Tribunal may allow an appeal to be made after this date if it is satisfied there are good reasons for the failure to appeal on time.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance when the notice was served. If a landlord appeals, the remedial notice is suspended until the appeal is finally determined or withdrawn.

3.4 Appeals against urgent remedial action

An appeal to the First-Tier Tribunal must be made within 28 days from the date the urgent remedial action was, or was to be, started.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance when the urgent remedial action started.

3.5 Appeals against demands for the recovery of costs

An appeal must be made within 21 days from the day on which the demand is served.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance with the notice when the local housing authority gave notice of their intention to enter and take the remedial action.

3.6 Appeals against a financial penalty

An appeal must be made within 28 days beginning with the day after that on which a final notice to impose a financial penalty was served.

Landlords can appeal the decision to impose the penalty or the amount of the penalty. On appeal the final notice is suspended until the appeal is determined or withdrawn.

3.7 A summary of the available penalties & Factors in determining the level of Civil Penalty

If breaches under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This protocol provides guidance on how officers will determine the appropriate penalty.

The process for determining the financial penalty to be imposed has two steps.

3.8 Seriousness of the offence

The more serious the offence the higher the penalty.

Offence	Band 1	Band 2	Band 3
Electrical Safety Standards Regulations 2020	Reports not obtained and supplied within required timescales before tenancy.	Inspection and testing not completed at intervals of no more than 5 years;	Required electrical safety standards not met; failure to carry out remedial work required by an inspection report where the installation is unsatisfactory; failure to comply with a Remedial Notice.

3.9 Factors in determining the level of Civil Penalty

In determining the Civil Penalty amount, Darlington Borough Council will have regard to the statutory guidance outlined above and also to the Civil Penalty Policy (taking into account Culpability of the offender and the potential for tenant harm) to ensure a cohesive approach is taken.

The culpability of the offender as set out in the regulations and the level of severity taking into account the potential for tenant harm. Collectively these factors identify the seriousness of the offence. The seriousness is then categorised, which then will be used to determine the amount of penalty as shown in the tables below.

3.10 Level of severity

Band	Band 1	Band 2	Band 3
Low	£1,000	£5,000	£6,000
Medium	£2,000	£10,000	£14,000
High	£3,000	£15,000	£22,000
Very high	£4,000	£20,000	£30,000

The level of severity within the allotted band determines the level of the financial penalty.

3.11 Consideration of Aggravating and Mitigating Factors

Officers may consider it appropriate to adjust the penalty from that determined in the table either up or down. If there are particular aggravating or mitigating factors such as landlord has a previous history of non-compliance with housing related regulatory requirements. Factors may come to light as part of the investigation for the breaches these adjustments will be made and included in the Financial Penalty.

Factors affecting severity can include:

- (a) First breach under these regulations, no previous history of non-compliance of with Housing related regulatory requirements.
- (b) Complex issues partially out of control of the landlord have led to noncompliance
- (c) More than two Category C1 hazards.
- (d) No vulnerable tenants and/or short period of non-compliance.
- (e) A determination of the offender's history of legal compliance.
- (f) Landlord has failed to comply with requests to comply with these regulations.
- (g) Knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.
- (h) Vulnerable tenants occupying property and/or, extended period of time since non-compliance.

Details of these factors will be included in the Penalty Notice. In addition factors may be provided in representations from a landlord in his request to review after the Penalty Notice has been served. Officers will have regard to these factors and adjust the penalty to increase (up to the Maximum of £30,000) or to reduce the penalty as they feel appropriate.

The Council must check whether the level of penalty is proportionate to the overall means of the defendant. If necessary the initial amount may be amended to ensure it fulfils the general principles outlined above.

The Council will, when issuing a financial penalty for more than one offence, or where an offender has also been issued with another financial penalty, consider the total penalties are just and appropriate to the offending behaviour and make adjustments accordingly. The overriding principle is that the overall penalty must be just and proportionate.

3.12 Financial penalties

Following failure to comply with the Regulations, a local housing authority can impose a financial penalty of up to £30,000 on a landlord. 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.

3.13 Recovery of financial penalties

If a landlord does not pay a financial penalty imposed on them, the enforcement authority may take the landlord to court to recover the money. In proceedings for the recovery of a financial penalty a certificate signed by or on behalf of the person with responsibility for the financial affairs of the enforcement authority and stating that payment of the financial penalty was or was not received by a given date, will be accepted as evidence of the landlord's non-compliance with the penalty notice.

The Council may not take the landlord to court to recover the money:

- (a) During the period in which the landlord could ask the enforcement authority to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice; or
- (b) During the period in which the landlord could appeal to the First-tier Tribunal, or while there is an ongoing appeal to the First-tier Tribunal, against the penalty notice.

3.14 Further Guidance

[Electrical Safety Standards in the Private Rented Sector \(England\) Regulations](#)
[Guide for tenants: electrical safety standards in the private rented sector](#)
[Guide for landlords: electrical safety standards in the private rented sector](#)