

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**COMMUNITIES and HOUSING ADVISORY BOARD**

**21 July 2020**

**Report of the Director of Planning, Housing and Environmental Health**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020**

**Summary**

**This report recommends the level of financial penalties that will apply to private rented sector landlords for breaches of the new Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.**

**1.1 Introduction**

- 1.1.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will apply from the 1 July 2020 to new tenancies in the private rented sector starting on or after 1 June 2020 and all existing tenancies from 1 April 2021.
- 1.1.2 This requires landlords to ensure that every electrical installation in the residential premises is inspected and tested at regular intervals of no more than five years by a qualified and competent person to ensure it meets electrical safety standards. The national standard for the safety of the electrical installation is specified in British Standard 7671. The electrical installation includes fixed electrical cables or fixed electrical equipment (for example oven, shower and mechanical extract ventilation) located on the consumer's side of the electricity supply meter.
- 1.1.3 Previously the requirement to have electrical installations tested a minimum of every five years, was only applicable to houses in multiple occupation (HMOs), however these new regulations extend this duty to most types of privately rented accommodation.
- 1.1.4 The landlord is required to supply a copy of the inspection and test report (the Electrical Installation Condition Report (EICR) or the Electrical Installation Certificate (EIC) where it is a new property or has been completely rewired) to the tenant before they occupy or within 28 days for an existing tenant. If the report identifies further investigative or remedial work is required the landlord must ensure this is carried out by a qualified and competent person within 28 days or the lesser period as specified in the report.

- 1.1.5 Landlords must supply the Council with a copy of this report within 7 days of receiving a written request from them.
- 1.1.6 If the report requires remedial work or further investigation, landlords must provide written confirmation that the work has been carried out to their tenant and to the local authority within 28 days of completing the work.
- 1.1.7 Landlords must retain a copy of the report and any confirmation of remedial work undertaken to give to the inspector and tester who will undertake the next inspection and test.
- 1.1.8 The Private Sector Housing team will be responsible for enforcing the new Regulations and can impose a financial penalty of up to £30,000 if they find a landlord is in breach of their duties.
- 1.1.9 Also if the landlord is in breach of these regulations and the recent report indicates remedial or further investigative work is required and it is not urgent remedial work the Council must serve a remedial notice on the landlord. Non-compliance with this notice or where urgent remedial works are required may result in the Council arranging the remedial work, subject to consent from the tenant, and recovering their costs in doing so from the landlord. A landlord is not in breach of the duty to comply with a remedial notice or urgent remedial work if they can show on the balance of probabilities they have taken all reasonable steps to comply.
- 1.1.1 Landlords have rights to make written representation within 21 days against a remedial notice or 28 days against the intention to impose a financial penalty. The local housing authority has seven days to respond to the representations.
- 1.1.2 Landlords then have the rights of appeal to the First-tier Tribunal (Property Chamber) for appeals relating to remedial action, urgent remedial action, recovery of costs and financial penalties.
- 1.1.3 Government guidance regarding this new legislation can be found at:  
<https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities>

## **1.2 Level of Financial Penalty for Non-compliance**

- 1.2.1 The level of financial penalty, up to a maximum of £30,000, and the process for imposing a financial penalty for a breach of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will be as set out in the Council's adopted Private Sector Housing 'Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016'.
- 1.2.2 This policy utilises the government guidance 'Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' on setting the levels of financial penalty. The level of financial penalty must be just and

proportionate. In deciding the level of financial penalty a local housing authority should consider the severity of the breach, culpability and track record of the landlord, the harm caused to the tenant(s), whether there should be a punitive element to the fine and deterrence. The guiding principle should also be to remove any financial benefit the person in breach may have obtained as a result of breaching the Regulations.

- 1.2.3 The proceeds of the financial penalties can be re-used to fund other private rented sector related enforcement work. 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.

### **1.3 Legal Implications**

- 1.3.1 The Council is under a statutory duty to enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

### **1.4 Financial and Value for Money Considerations**

- 1.4.1 Under paragraph 7 of Schedule 2 of the Regulations the Council can use the proceeds of imposing a financial penalty to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. However any part of the financial penalty recovered which is not re-used in this way must be paid into the Consolidated Fund.

### **1.5 Risk Assessment**

- 1.5.1 Enforcement of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 is a statutory function of the local housing authority. Without a charging policy in place to define the level of financial penalty to be imposed for a breach of the Regulations the Council may find it more difficult to justify the level of any penalty imposed (for example on appeal to the First Tier Tribunal).

### **1.6 Equality Impact Assessment**

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act, with no perceived impact to end users.

### **1.7 Policy Considerations**

- 1.7.1 The proposed financial charging policy for enforcement of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 links in with the Council's Corporate Strategy, Corporate Enforcement Policy, and the West Kent Housing and Homelessness strategy.

## 1.8 Recommendations

- 1.8.1 That Cabinet is **REQUESTED** to **ENDORSE** the use of the Council adopted Private Sector Housing Financial Civil Penalties Policy to determine the level of fine to be imposed on private rented sector landlords for breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Nil

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