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

Penalty Matrix

The Electrical Safety Standards in the Private Rented Sector and Social Rented Sector (England) Regulations 2020 provide duties for landlords of rented domestic properties in relation to managing risks associated with the electrical installation. Without prejudice to the wording of the regulations these include:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671.
- Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years.
- 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.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local housing authority with a copy of this report within 7 days of receiving a written request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- 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.

The full wording of the regulations can be found online and at the time of draft are located here : www.legislation.gov.uk/uksi/2020/312/contents

Where a local housing authority is satisfied, beyond reasonable doubt, that a landlord has breached a duty under regulation 3, the authority may impose a financial penalty of up to £40,000.

The regulations detail the steps required by a local authority to take as well as the right of a landlord to make representations and the right of appeal against any subsequent decision to issue a financial penalty.

In determining the value of a financial penalty Stafford Borough Council will have regard to the matrix below.

In using this matrix, the council has regard to the non-statutory guidance issued by the government "Electrical safety standards in the private and social rented sectors: guidance" available from www.gov.uk

General principles (to be applied to all financial penalties made under the Electrical Safety Standards in the Private Rented Sector and Social Rented Sector (England) Regulations 2020
No penalty charge shall be issued above the statutory maximum of £40,000
No penalty charge shall be less than 20% of the starting value after all aggravating and mitigating factors are considered and after perpetrator income has been taken into account.
Mitigating factors will be considered based on evidence submitted by the landlord or their agent to the Housing Standards Team prior to and including any representations that the landlord provides following service of a Notice of Intent to issue a Financial Penalty
In recovering the value of any financial penalty, The Council will consider the incomes, savings and assets of the perpetrator and where appropriate a payment plan considered.

Failure to comply with duties under with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ***(Note 8)***

Starting value of penalty charge *(note 1)*	Tier 1 (£)	Tier 2 (£)
1st relevant penalty	6000	1200
2nd subsequent penalty issued to same person/company	15000	3000
Subsequent penalty issued same person/company	24000	4800
Aggravating Factors (use all that apply) *(note 2)*		
Evidence of failure to comply with multiple duties. *(note 6)*	3000	N/A
Acts or omissions demonstrating high culpability *(note 4)*	3000	600
Large housing portfolio *(note 5)*	3000	600

Vulnerable occupant and/or significant harm occurred as result of failure to comply with regulations *(note 7)*	3000	600
Mitigating Factors (use all that apply) *(note 3)*		
Evidence of Low culpability *(note 9)*	-3000	-600
Rapid action take to remedy failings (note 10)	-3000	-600

Notes 1-3 set out the overall process for determining the value of a given financial penalty. Notes 4-10 give detail on specific other issues.

Note 1 Determining the starting value of a financial penalty.

The starting point for a financial penalty is based on the number of previous financial penalties issued under these regulations in the previous four years.

The Council will take into account any such financial penalties irrespective of the locality to which the breach of legal duty relates.

Note 2 Aggravating factors.

After the starting point as per note 1 has been determined any relevant aggravating factors are considered and where appropriate to do so, the given value is added to the starting point to provide the maximum level of financial penalty.

At this stage it is possible for the notional penalty to be above the statutory maximum, but once mitigation and income are considered, if the value is still above the statutory maximum it will be capped as per the “general principles”.

Note 3 Mitigating factors.

After aggravating factors are considered and applied where appropriate, mitigating factors are considered and where there is sufficient and compelling evidence the relevant value will be discounted from the Financial Penalty.

In considering whether it is appropriate to include a mitigating factor, evidence shall be considered that has been gathered by the inspecting officer in the course of any investigation as well as any representations that have been provided following a served Notice of Intent.

Note 4 Acts or omissions demonstrating high culpability.

This aggravating factor will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with a statutory notice or previous relevant formal advice.

Note 5 Large housing portfolio.

The aggravating factor is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this aggravating factor, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 6 Multiple failings

To be included where there is a evidence of a failure to comply with three or more regulations, irrespective of whether they are defined as “Tier 1” or “Tier 2”.

For the avoidance of doubt, multiple failures of the same regulation do not apply, it is based on evidence of failure of duties under separate provisions within the regulations.

Note 7 Vulnerable persons and/or serious harm.

This factor will be applied if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the failure to comply with the duties imposed by these regulations.

a vulnerable person is defined as:

A person who suffers, or be at risk of suffering harm or detriment which the ordinary person would not suffer or be at risk of suffering due to age, disability or severe financial insecurity”

This factor applies where an occupant is vulnerable and, due to the underlying failure to comply with the relevant legislation is placed at additional risk or harm compared with a non-vulnerable resident.

For purposes of this factor, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm as recorded in Housing Act 2004 Section 9 Operating Guidance for the Housing Health and Safety Rating System.

Note 8 Tier 1 and Tier 2 Penalties

Where the starting value lists separate penalty values for Tier 1 and Tier 2 penalties, further detail is provided in the tables below.

The Electrical Safety Standards in the Private Rented Sector and Social Rented Sector (England) Regulations 2020	**Regulation**	**Tier**
Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671.	3(1)(a))	Tier 1
Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years.	3(1)(b))	Tier 1
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.	3(3)(a)	Tier 1
Supply a copy of this report to the existing tenant within 28 days of the inspection and test.	3(3)(b)	Tier 2
Supply a copy of this report to a new tenant before they occupy the premises.	(3(3)(e)(i)	Tier 2
Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.	3(3)(e)(ii)	Tier 2
Supply the local housing authority with a copy of this report within 7 days of receiving a written request for a copy.	3(3)(c)	Tier 2
Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.	3(3)(d)	Tier 2
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.	3(4) – 3(6)	Tier 1

Note 9 Low culpability.

This factor will apply where the perpetrator provides sufficient evidence that they only marginally fell short of their legal obligations, for instance:

- significant efforts were made to address the relevant breach of duty, although they were inadequate to mitigate the underlying cause to issue the penalty;
- they have offered a reasonable defence for why they were unaware of the breach of duty
- failings were minor and occurred as an isolated incident.

It will not be sufficient to claim not to have known of the legal requirement or deficiency that forms the underlying reason for the financial penalty in order to benefit from this factor.

It will also not apply where the underlying failure was due to the inaction of the perpetrator in properly managing rented properties, responding to complaints of poor standards, carrying out routine visits, instruct others to assist where necessary etc.

Note 10 Rapid action take to remedy failings.

This factor will apply where, on notification of the alleged failure of the legal duty, the perpetrator took rapid action to remedy the underlying failings which could mean:

- Undertaking remedial works to address the deficiencies noted.
- Obtaining copies of existing electrical reports and provide them to the relevant party

In order to benefit from this factor, it is the responsibility of the perpetrator to provide sufficient evidence of compliance. It will not be sufficient to simply claim works have been completed, but photographs, videos, arrangements with Housing Standards officers to visit are all appropriate measures to demonstrate compliance.

In assessing whether “rapid action” was taken, Stafford Borough Council will take into account the extent of the remedial works or actions required and the time taken from receipt of any requirement to action. This could be evidence of quotes for works, agreed start dates from contractors etc.