

READING BOROUGH COUNCIL

REPORT BY EXECUTIVE DIRECTOR OF ECONOMIC GROWTH & NEIGHBOURHOOD SERVICES

TO:	HOUSING NEIGHBOURHOODS AND LEISURE COMMITTEE		
DATE:	6 JULY 2021	AGENDA ITEM:	
TITLE:	THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATION 2020		
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report sets out the provisions of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("the ESS Regulations") which came into force on 1st June 2020 and the Tenants Fees Act 2019 which came into force on 1st June 2019 for new tenancies and was subsequently extended to cover all tenancies from 1st June 2020
- 1.2 These measures alongside the existing enforcement powers the Council has will assist in tackling criminal landlords and agents and will contribute to improving housing standards in the private rented sector.
- 1.3 This report seeks delegations to authorise officers to carry out these functions.
- 1.4 The Housing Standards Enforcement Policy has been updated to reflect these new enforcement powers and the charging process for financial penalties

Appendix 1 - Housing Standards Enforcement Policy

2. RECOMMENDED ACTION

- 2.1 That the Assistant Director of Planning, Transport and Regulatory Services, in consultation with the Assistant Director of Legal and Democratic Services and the Assistant Director of Finance be given delegated authority, to enforce the requirements of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the Tenants Fee Act 2019.
- 2.2 That the Assistant Director of Planning, Transport and Regulatory Services, in consultation with the Assistant Director of Legal & Democratic Services, be authorised to discharge the Council's duties and powers under the Electrical Safety Standards in the Private Rented Sector (England)

Regulations 2020 and the Tenants Fee Act 2019 along with subsequent Regulations and Orders as well as policies and procedures relating to both pieces of legislation.

- 2.3 That the revenue arising from financial penalties issued under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (schedule 2) and the Tenants Fees Act 2019 (Schedule 3) be reinvested into the Regulatory Services - Private Sector Housing Team.

3. POLICY CONTEXT

- 3.1 Private rented accommodation provides a flexible and accessible housing solution for many residents. The Council recognises the valuable contribution the sector makes to providing decent and safe homes for many tenants. There are however, a minority of landlords and agents who provide poorly managed, substandard and unsafe homes, often to the most vulnerable in society. In some areas with high densities of private rented accommodation, there can be a direct impact on neighbourhood cohesion.
- 3.2 The Regulatory Services Private Sector Housing Team receives over 1,000+ service requests relating to housing enforcement matters each year. This drives the way in which the service is delivered leading to a more reactive approach rather than proactive or programmed inspection of the private rented stock. Currently only mandatory licensed properties are on a programmed inspection approach, meaning that they are inspected based on risk.
- 3.3 Regulatory compliance includes information, advice, inspection, warnings, enforcement and prosecutions. Officers' work also includes partnering with Royal Berkshire Fire & Rescue as part of their risk-based inspection programme, liaison with the University of Reading, in respect of accommodation occupied by students, and the inspection and compliance of B&Bs used by the Council as emergency temporary accommodation as required.
- 3.4 The Council has a statutory duty to enforce housing standards in the private sector and more specifically in the private rented sector. The Housing Standards Enforcement Policy details these powers.
- 3.5 Over the remainder of this financial year and next year Officers will be visiting 84 agents across the Borough to ensure compliance with the Tenants Fees Act 2019. However, most of the work carried out by Officers is as a result of complaints received from tenants and there are currently several investigations on going which may result in enforcement action
- 3.6 With reference to the ESS Regulations we have received 51 enquiries since April 2021 and for 31 of these cases we have received the relevant Electrical Installation Condition Reports (EICR) and no further action was required. With the remaining 21 in the case of approximately 16 the EICR found some remedial work was needed and landlords/agents have arranged for these to be undertaken, the remainder require further investigation by Officers and enforcement action if deemed appropriate

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

3.8 To further improve standards in the private rented sector, the Government passed the ESS Regulations, which came into force on 1st June 2020. They applied to new tenancies in the private sector from 1st July 2020 and to all tenancies in the private sector from 1st April 2021.

3.8 When introducing the decision to pass legislation in relation to electrical safety in rental properties, the then Housing and Homelessness Minister Heather Wheeler MP said:

“Everyone has the right to feel safe and secure in their own home. While measures are already in place to crack down on the small minority of landlords who rent out unsafe properties, we need to do more to protect tenants.

These new measures will reduce the risk of faulty electrical equipment, giving people peace of mind and helping to keep them safe in their homes.”

3.6 The ESS Regulations place several duties on private sector landlords in that landlords must have every fixed electrical installation inspected and tested by a properly qualified person at least every 5 years. The Electricians must meet the relevant standards and landlords must give tenants proof of this.

3.7 If a landlord fails to comply with their duties, the local authority must serve a remedial notice requiring the landlord to take the specified remedial action within 28 days. If the landlord fails to comply with a remedial notice the local authority can, with the permission of the tenant, undertake the specified action themselves.

3.8 In cases where a test report states urgent remedial action is required, the ESS Regulations provide the local authority with a power to undertake that emergency remedial action. Notice of the action taken must be served upon the landlord within seven days of the commencement of works. At least 48 hours’ notice must be provided to tenants before the remedial action begins.

3.9 Where a landlord fails to comply with a duty under the ESS Regulations, the local authority has a power under Regulation 11 to impose a financial penalty of up to £30,000. The local authority can also seek to recover the costs incurred from the undertaking of remedial action.

3.10 The ESS Regulations allow landlords to appeal to the First Tier Tribunal.

3.11 To ensure fairness, the Government has indicated that action should not be taken where landlords can demonstrate they have attempted to comply with their duties but have been frustrated by the actions of their tenant (for example, by refusing access). Further the Local Authority must be satisfied beyond reasonable doubt that a breach has occurred before beginning the process of imposing a financial penalty can begin.

- 3.12 The ESS Regulations repealed a power under the 2006 HMO management regulations that required landlords of HMOs to arrange for testing of electrical installations and to produce a test report to the Local Authority on request. The ESS Regulations now extend this power to both HMOs and privately rented properties occupied by single households
- 3.13 **Tenants Fee Act 2019**
- 3.14 The Tenants Fees Act 2019 (TFA) came into force on 1st June 2019 for any new tenancies and was then extended to cover all tenancies from 1st June 2020
- 3.15 The TFA prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted in accordance with schedule 1 of the TFA which include:
- Rent
 - Limiting Tenancy Deposits to 5 weeks rent
 - Limiting holding Deposits to 1 weeks rent
 - Default payments
 - Payment for variation or assignment of a tenancy
 - Payment on termination of a tenancy
 - Payment of Council Tax, Utilities, TV Licence, Communication Services
- 3.16 The TFA 2019 provides that Enforcement Authorities may impose financial penalties of up to £30,000 depending on the breach as follows
- a) In respect of a Prohibited Payments under SS 1&2 of the TFA 2019 a financial penalty of not exceeding £5,000 for a first breach
 - b) Under s12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed
- 3.17 In line with the ESS Regulations detailed above the Local Authority must be satisfied beyond reasonable doubt that a breach has occurred before the process of imposing a financial penalty can begin
- 3.19 in the case of both the ESS Regulations and the TFA on receiving a Notice of Intent to impose a financial penalty the landlord/Agent can make representation to the Local Authority which must consider such representation and either confirm, vary, or withdraw the notice and inform the landlord/agent of the outcome. If the outcome is to confirm or vary the notice the landlord/agent has the right to appeal to the First Tier Tribunal which will involve a hearing of the Council's decision to impose a penalty. The Tribunal has the power to confirm, vary (increase or decrease) or cancel the financial penalty imposed by the Council. The Tribunal can also dismiss the appeal if it concludes the appeal is frivolous, is an abuse of process or vexatious, or that it has no reasonable prospect of success.

4. THE PROPOSAL

4.1 Current Position

- 4.2 The Council has a variety of enforcement powers and the ESS Regulations along with the TFA will add to the toolkit for tackling criminal landlords and agents and contribute to improving housing standards in the private rented sector.

4.3 Option Proposed

ESS Regulations

- 4.4 Approval is sought to implement the powers set out in the ESS Regulations as detailed in this report and in the updated Housing Standards Enforcement Policy (pages 46 to 48 attached as Appendix 1)
- 4.5 The Government has also indicated the maximum penalty of £30,000 should be reserved for the worst cases. This is the same maximum penalty as can be issued as a financial penalty under section 249A of the Housing Act 2004, Officers therefore seek approval to adopt the existing policy for determining the size of a financial penalty under section 249A of the Housing Act 2004 for financial penalties under the ESS Regulations. (pages 46 to 48 attached as Appendix 1).
- 4.6 Paragraph 7 to Schedule 2 of the ESS Regulations sets out how the proceeds of financial penalties under these regulations can be further invested by the local authority. While this paragraph allows for proceeds to be used for housing law enforcement more generally, it specifically refers to the following functions: -
- On-going enforcement of the ESS Regulations.
 - Parts 1 to 4 of the Housing Act 2004.
 - Part 2 of the Housing and Planning Act 2016.

These functions are currently carried out by the Private Sector Housing Team within Regulatory Services. Officers therefore seek approval for proceeds from financial penalties under the ESS Regulations to be reinvested into the Private Sector Housing Team.

4.7 Tenants Fees Act 2019

- 4.8 Approval is sought to implement the powers set out in the TFA 2019 as detailed in this report and in the updated Housing Standards Enforcement Policy (pages 32 to 42)
- 4.9 The Ministry of Housing, Communities & Local Government (“MHCLG”) has published the following document; **Tenant Fees Act 2019: Statutory Guidance for enforcement authorities.**
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819633/TFA_Statutory_Enforcement_Guidance_190722.pdf
- 4.10 Local Authorities must have regard to this guidance in relation to enforcing the TFA 2019. This statutory guidance recommends certain factors that an

enforcement authority should consider when deciding on the level of financial penalties under the TFA 2019 and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a case. The Council will consider the following factors as part of its decision-making process:

- a. The history of compliance/non-compliance
 - b. The severity of the breach
 - c. Deliberate concealment of the activity and/or evidence
 - d. Knowingly or recklessly supplying false or misleading evidence
 - e. The intent of the landlord/agent, individual and/or corporate body
 - f. The attitude of the landlord/agent
 - g. The deterrent effect of a prosecution on the landlord/agent and others
 - h. The extent of financial gain as a result of the breach
- 4.11 The financial penalty fee matrix is detailed on pages 36 to 37 of the Housing Standards Enforcement Policy and the Council will consider any aggravating and mitigating circumstances. This matrix covers fines for Prohibited Payments under SS 1&2 of the TFA 2019, s83(3) of the Consumer Rights Act 2015, Redress Scheme for Letting Agency Work and Property Management Work (requirement to belong to a Scheme etc), England) Order 2014, Regulations 4(1) & (2) of the Client Money Protection Schemes for Property Agents (Requirements to belong to a Scheme etc) Regulations 2019
- 4.12 There are two tables one for a first breach and a second table covering a second or subsequent breach within 5 years
- 4.13 Schedule 3 of the TFA 2019 states that where an enforcement authority imposes a financial penalty under this Act, it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.
- 4.14 These functions are currently carried out by the Private Sector Housing Team within Regulatory Services. Officers therefore seek approval for proceeds from financial penalties under the TFA to be reinvested into the Private Sector Housing Team.
- 5.0 CONTRIBUTION TO STRATEGIC AIMS
- 5.1 In relation to the Council's Corporate Plan the following themes are appropriate
- 5.2 *"Keeping Reading's environment clean, green and safe"* - working with landlords and agents to address poor property conditions that attracts crime and anti-social behaviour.
- 5.3 *"Ensuring access to decent housing to meet local needs"* by ensuring homes in the private rented sector are of a good quality and meet health and safety standards.

6. ENVIRONMENTAL IMPLICATIONS

- 6.1 The service impact on the Climate Change Strategy is minor, though ensuring properties are kept in a good and safe condition and any improvements are carried out in line with Approved Document L1B, Building Regulations 2010 thus private rented accommodation become more energy efficient, warmer and cheaper to keep warm.

7.0 COMMUNITY ENGAGEMENT AND INFORMATION

- 7.1 Neither the TFA or The ESS Regulations require any consultation prior to introducing the powers detailed in the report.
- 7.2 Publicity will be carried out through press releases and newsletters in line with the introduction of these powers.

8.0 EQUALITY IMPACT ASSESSMENT

- 8.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to: -
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.2 *These powers will improve housing conditions and tackle criminal landlords and agents.*

9. LEGAL IMPLICATIONS

- 9.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("the ESS Regulations")
- 9.2 These regulations came into force on 1st June 2020 and place several duties on landlords as summaries on the Government website as follows: -
- *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 the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of 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 authority with a copy of this report within 7 days of receiving a 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 remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.*
 - *Supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.*
- 9.3 Regulation 11 of the ESS Regulations allows for a financial penalty of up to £30,000 to be imposed on a landlord for a failure to comply with their duties under these regulations.
- 9.4 Where a local authority intends to impose a financial penalty it must be satisfied beyond reasonable doubt that a breach has occurred. It must first issue a notice of intent upon the landlord. This must contain the following information:
- (a) the amount of the proposed financial penalty;
 - (b) the reasons for proposing to impose the penalty; and
 - (c) information about the right to make representations.
- 9.5 If a landlord does not agree with a penalty charge notice, they can make a written request to the local authority for it to be reviewed. On receiving 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. If the Council decides to confirm or vary the penalty charge notice, it must inform the landlord it can appeal to the First Tier Tribunal.
- 9.6 The ESS Regulations allow landlords to appeal to the First-tier Tribunal against the following:
- The service of a remedial notice.
 - The taking of urgent remedial action by the local authority.
 - The imposition of a financial penalty.
 - The recovery of costs relating to the taking of remedial action.
- 9.7 Where the landlord or agent fails to pay the civil penalty, the local authority should refer the case to the County Court for an Order of that Court and if necessary, use the County Courts Bailiffs to enforce the order and recover the debt.
- 9.8 If a landlord receives a Civil Penalty that can be considered when considering if the landlord is a 'fit and proper' person to be the licence holder of an HMO or any other property subject to licensing.
- 9.9 Paragraph 7 to Schedule 2 of the ESS Regulations sets out how the proceeds of financial penalties under these regulations can be further invested by the local authority. While this paragraph allows for proceeds to be used for housing law enforcement more generally, it specifically refers to the following functions: -

- On-going enforcement of the ESS Regulations.
- Parts 1 to 4 of the Housing Act 2004.
- Part 2 of the Housing and Planning Act 2016.

9.10 Tenants Fees Act 2019

9.11 The Tenant Fees Act 2019 (TFA) prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted and amends other legislation as follows:

- a) in respect of the duty of letting agents to publicise fees etc under Section 87 of the Consumer Rights Act 2015
- b) in relation to the duty placed on enforcement authorities to have regard to any guidance issued by the Secretary of State (“the SoS”) relating to the enforcement of an order under s83(1) of 84(1) as per Section 85 of the Enterprise & Regulatory Reform Act 2013
- c) in respect of the duty to enforce being subject to Section 26 of the TFA 2019 under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014
- d) in relation to the meaning of ‘Lead Enforcement Authority’; under Section 135 of the (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016
- e) in respect of the LEA as an alternative to the SoS where the SoS is not the LEA under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014

9.12 The TFA 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

- a) In respect of Prohibited Payments under SS 1& 2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.
- b) Under s 12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000.00 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

The Council will determine what is the most appropriate and effective sanction, whether it is appropriate to impose a financial penalty or prosecute in any relevant case having due regard to the RBC Enforcement Policy.

9.13 Additionally the TFA 2019 amends the legislation referred to in paragraph 8.11 above and which separately provide that penalties may be imposed as follows:

- a. In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the CRA 2015 a financial penalty not exceeding £5,000.00.
- b. In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property

management work) to a financial penalty not exceeding £5,000. Note that it is not enough to simply register for redress - the correct category of membership must be obtained depending on the work carried out.

c. In respect of a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £30,000.00.

d. In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.00.

e. In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.00.

9.14 Where a local authority intends to impose a financial penalty it must be satisfied beyond reasonable doubt that a breach has occurred. It must first issue a notice of intent upon the landlord. This must contain the following information:

- (a) the amount of the proposed financial penalty;
- (b) the reasons for proposing to impose the penalty; and
- (c) information about the right to make representations.

9.15 If a landlord does not agree with a penalty charge notice, they can make a written request to the local authority for it to be reviewed. On receiving 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. If the Council decides to confirm or vary the penalty charge notice, it must inform the landlord it can appeal to the First Tier Tribunal.

9.16 An appeal to the First Tier Property Tribunal which will involve a hearing of the Council’s decision to impose the penalty. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty imposed by the Council. The Tribunal can also dismiss an appeal if it concludes the appeal is frivolous, is an abuse of process or vexatious, or that it has no reasonable prospect of success.

9.17 Where an enforcement authority imposes a financial penalty under the Tenants Fees Act, it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under this Act or otherwise in relation to the private rented sector.

- 9.18 Any proceeds of a financial penalty imposed under this Act which are not applied in accordance with paragraph 10 must be paid to the Secretary of State.

In paragraph 10, “enforcement functions in relation to the private rented sector” means enforcement functions relating to—

- (a) residential premises in England that are let, or intended to be let, under a tenancy,
- (b) the common parts of such premises,
- (c) the activities of a landlord under a tenancy of residential premises in England,
- (d) the activities of a person carrying on English letting agency work within the meaning of section 54 of the Housing and Planning Act 2016 in relation to such premises, or
- (e) the activities of a person carrying on English property management work within the meaning of section 55 of the Housing and Planning Act 2016 in relation to such premises.

10. FINANCIAL IMPLICATIONS

- 10.1 As noted above, both the ESS Regulations and the TFA advise that any income derived from financial penalties can be retained within the service area to enhance the statutory function in relation to enforcement action in the private rented sector.

- 10.2 An estimate of income has been detailed in the table below, however it is important to recognise the purpose of enforcement is to create change and reduce the number of criminal landlords/agents in the Borough. As with any new scheme it is difficult to anticipate what the outcomes will be, and this will be reviewed once the scheme has been fully implemented. Any income derived from the fines will be reinvested in enforcement work to improve the sector.

- 10.3 The financial implications arising from this report are set out below:

See note below	2021/22 £000	2022/23 £000	2023/24 £000
Employee costs Other running costs	Within existing resources	Within existing resources	Within existing resources
Expenditure			
Income from:			
Financial Penalties			
ESS Regulations	£5,000	£5,000	£5,000
Tenants Fees Act	£5,000	£5,000	£5,000
Total Income:	£10,000	£10,000	£10,000

10.4 Risk Assessment

- 10.5 The key risk from the adoption of these powers will be landlords/agents appealing to the First Tier Tribunal. The risk can be mitigated by ensuring Officers work with colleagues in legal services on potential appeal cases. All cases are required to be up to the criminal standard and robust enough to be presented at Tribunal should this occur. As this is a new area for all local authorities, training will be provided to Officers around best practice and consistency with other councils. Procedures will be updated, and fines reviewed considering decisions made by the First Tier Tribunal.
- 10.6 An additional risk will be landlords/agents not paying the fines which will result in legal action having to be taken to recover the debt which can take the form of a County Court judgement, a charging order or an enforced sale. This will require specialist support from legal services and debt recovery team.

Background Papers

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2021

The Tenants Fees Act