

Manchester City Council

Electrical Safety Regulations Civil Penalty Policy

Manchester City Council policy on applying Civil (Financial) Penalties pursuant to S123 Housing and Planning Act 2016 for failing to comply with the duties set out under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

1. Introduction

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on the 1st June 2020 and introduced Civil Penalties of up to £30,000 that could be imposed in respect of all new specified tenancies from 1st July 2020 and all existing specified tenancies from 1st April 2021 where private landlords were found to be in breach of the said Regulations.

In determining the Civil Penalty amount, the Local Housing Authority will have regard to the Regulations and to the Government's Department for Levelling Up, Housing and Communities guidance.

2. Interpretation

"the Regulations" means The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

"electrical safety standards" means standards specified in, or determined in accordance with the regulations in relation to –

- (a) the installations in the premises for the supply of electricity, or
- (b) electrical fixtures, fittings or appliances provided by the landlord

"private landlord" means a landlord who is not within section 80(10) of the Housing Act 1985 (the landlord condition for secure tenancies)

"residential premises" means premises all or part of which comprise a dwelling

"existing specified tenancy" means a specified tenancy which was granted before the coming into force of the Regulations

"new specified tenancy" means a specified tenancy which is granted on or after the coming into force of the Regulations

"qualified person" means a person competent to undertake the inspection and testing required under regulation 3(1) of the Regulations and any further investigative or remedial work in accordance with the electrical safety standards

"prospective tenant" in relation to a residential premises means a person who –

- (a) requests any information about the premises from the prospective landlord for the purposes of deciding whether to rent those premises:
- (b) makes a request to view the premises for the purpose of deciding whether to rent those premises: or
- (c) makes an offer, whether oral or written, to rent those premises.

“authorised person” means a person authorised in writing by the local housing authority for the purpose of taking remedial action under regulations 6 and 10 of the Regulations.

“regular interval” means

- (a) at intervals of no more than 5 years or
- (b) where the most recent report under the regulations requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report

“remedial notice” means a notice served under regulation 4(1) of the Regulations

“urgent remedial notice” means such action identified in a report under regulation 3(3) of the Regulations as is immediately necessary in order to remove the danger present and risk of injury.

3. Duties of private landlords in relation to electrical installations

Under Regulation 3(1) a private landlord who grants or intends to grant a specified tenancy must –

- (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;
- (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
- (c) ensure the first inspection and testing is carried out –
 - (i) before the tenancy commences in relation to a new specified tenancy; or
 - (ii) by 1st April 2021 in relation to an existing specified tenancy

Following the inspection and testing a private landlord must –

- (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;
- (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;
- (c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;
- (d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
- (e) supply a copy of the most recent report to -
 - (i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and
 - (ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant

Where a report indicates that a private landlord is or is potentially in breach of the duty and the report requires the private landlord to undertake further investigative or remedial work the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within –

- (a) 28 days; or
- (b) the period specified in the report if less than 28 days starting with the date of the inspection and testing.

In such circumstances a private landlord must-

- (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that –
 - (i) the electrical safety standards are met; or
 - (ii) further investigative or remedial work is required
- (b) supply that written confirmation, together with a copy of the report which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and
- (c) supply that written confirmation, together with a copy of the report which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.

This process must be repeated if the outcome of that further investigative work is that further investigative or remedial work is required

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 Regulation 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 , the authority must serve a remedial notice on the private landlord

A remedial notice must –

- (a) specify the premises to which the notice relates;
- (b) specify the duty or duties that the local housing authority considers the private landlord has failed to comply with;
- (c) specify the remedial action the local housing authority considers should be taken;
- (d) require the private landlord to take that action within 28 days beginning with the day on which the notice is served;
- (e) explain that the private landlord is entitled to make written representations against the notice within 21 days beginning with the day on which the notice is served
- (f) specify the person to whom, and the address (including if appropriate any email address) to which, any representations may be sent, and
- (g) explain the effect of regulations 11 and 12, including the maximum financial penalty which a local housing authority may impose.

The local housing authority must serve a remedial notice within 21 days beginning with the day on which the local housing authority decides it has reasonable grounds to do so.

If representations are made against the remedial notice then the notice is suspended until the local authority has considered the representations and informed the private landlord in writing of the outcome of such consideration within 7 days beginning with the expiry of the period referred to in (e) above. Where the outcome of the consideration is to confirm the notice then the private landlord must be notified in writing that the notice is confirmed and that its suspension ceases to have effect.

The Local Housing Authority may withdraw the remedial notice at any time.

A private landlord is not taken to be in breach of the duty to comply if the private landlord can show that they have taken all reasonable steps to comply with the duty.

Where a private landlord is prevented from entering the residential premises to which the duty relates by the tenant or tenants of those premises, the private landlord will not be considered to have failed to have taken all reasonable steps to comply with the duty solely by reason of a failure to bring legal proceedings with a view to securing entry to the premises.

5. Power of Local Housing Authority to arrange remedial action

The Local Housing Authority may if satisfied, on the balance of probabilities, that a private landlord on whom it has served a remedial notice is in breach of the duty may with the consent of the tenant or tenants of the premises arrange for an authorised person to take the remedial action in the remedial notice.

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 officer and the nature of that remedial action;
- (b) the power under which the remedial action will 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 the 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

Where the report under regulation 3(3)(a) indicates that urgent remedial action is required and the Local Housing Authority are satisfied on the balance of probabilities that a private landlord is in breach of the duty to undertake the required remedial or investigative work in relation to the residential premises within the period specified in the report, the authority may, with the consent of the tenant or tenants, arrange for an authorised person to take the urgent remedial action.

The Notice must specify and explain –

- (a) the nature of the urgent remedial action required;
- (b) the premises in relation to which that urgent remedial action was (or is being or is to be) taken by the authority;
- (c) the power under which that urgent remedial action was (or is being or is to be) taken by the authority;
- (d) the date when that urgent remedial action was (or is to be) started;
- (e) the right to appeal under regulation 7 against the decision of the authority to take the urgent remedial action;
- (f) the period within which an appeal may be made; and
- (g) the effect of regulations 11 and 12, including the maximum financial penalty which an authority may impose.

An authorised person must-

- (a) give not less than 48 hours notice of the urgent 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 by the private landlord or a tenant, produce evidence of identity and authority.

6. Financial Penalties for Breach of Duty

Each case will be decided upon its own merits taking into account all the evidence available.

Where the Local Housing Authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under Regulation 3 the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

A financial penalty –

- (a) may be of such amount as the authority determines in accordance with this Policy and the matrix identified in Schedule 1 below; but
- (b) must not exceed £30000

7. Factors in determining the level of Civil Penalty

In order to ensure that the civil penalty is set at an appropriate level the following factors will be considered-

- The seriousness of the offence, determined by the harm caused and the culpability of the offender
- The history of compliance by the offender
- The punishment of the offender for the breach
- The deterrent value to prevent the offender from repeating the breach
- The deterrent value to prevent others from committing similar breaches
- Removing any financial benefit obtained from committing the breach

7.1 Harm Caused

In determining the level of harm the Local Housing Authority will have regard to:

- The person: e.g. physical injury, damage to health, psychological distress
- To the community; e.g. economic loss, harm to public health
- Other types of harm; e.g. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. the tenant.

Where no actual harm has resulted from the breach, the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- A very low EPC score

- Serious or psychological effect on the victim
- Victim is vulnerable tenant occupying the property for an extended period of time since non-compliance.

7.1.1 Examples of Harm Categories

High	Housing defect giving rise to the breach poses a serious and substantial risk of harm to the occupants and/or visitors; for example , danger of electrocution or serious fire safety risk, C1 Danger present requiring immediate remedial action and failure on the part of the responsible person to act . Significant number of C2 electrical safety issues requiring urgent remedial action.
Medium	Housing defect giving rise to the breach poses a serious risk of harm to the occupants and/or visitors; for example, C2 Potentially Dangerous urgent remedial action required and failure on the part of the responsible person to act. Loss of electricity to provide essential services for sustained period of time, financial costs to tenants.
Low	Housing defect giving rise to the breach poses a risk of harm to the occupants and/or visitors; for example, F1 Further investigation required and failure on the part of the responsible person to act, temporary lack of service provision e.g. heating and lighting , failure to provide certificates to tenants/ local housing authority

7.2 Culpability

In determining culpability the Local Housing Authority will have regard to 4 levels of culpability.

Where the offender -

- has the **intention** to cause harm, the highest culpability where a breach of duty is deliberate.
- Is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results
- Is **negligent** in their actions.

7.2.1 Examples of Culpability

Very High (Deliberate Act)	Intentional breach by landlord or flagrant disregard for the law e.g. where an unregistered electrician is allowed to carry out electrical work and the landlord/property agent has made no checks that he is registered. No current certification has been produced and there has been non-compliance with urgent remedial notice.
High (Reckless Act)	Serious or systemic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord or property agent; e.g. failure to comply with a remedial notice in the required time frame,

	obtaining electrical safety certificates and failing to act on its requirements and knowingly failing to provide certificates where hazards identified.
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the breach of duty; e.g. part compliance with a schedule of works but failure to complete all items within the remedial notice timescale..
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent; e.g. taken steps to comply with earlier remedial notice but overlooked complying with a requirement to act, damage caused by tenants

7.3 Correlation between Harm and Culpability in determining the Civil Penalty Amount

In assessing the seriousness there is a need to consider both culpability and harm.

The table below sets out the interrelation between harm and culpability as a determinant of the appropriate Civil Penalty banding level to be applied.

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6	Very High Culpability/High Harm Band 8
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5	Very High Culpability/Medium Harm Band 7
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3	Very High Culpability/Low Harm Band 4

8. Level of Civil Penalty to be imposed

In determining the financial value of an imposed penalty, subject to a maximum of £30,000, the Local Housing Authority shall have regard to the Banding Levels referred to in Appendix 1.

Where there is more than one breach of duty there will be given a banding level based upon the criteria identified in this Policy. Each of those breaches may have a different banding level dependent upon the circumstances of the offence.

The Civil Penalty should be fair and proportionate given the circumstances of the case but in all instances should act as a deterrent and remove any gain as a result of the offence.

The starting point for the Civil Penalty will be the mid –point of the relevant band level and is based upon the assumption that no aggravating / mitigating factors apply to the offending.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

8.1 Aggravating Factors

The penalty may be increased by £1000 for each aggravating factor up to the maximum of the band level determined in Appendix 1.

8.2 Mitigating Factors

The penalty may be decreased by £1000 for each mitigating factor to the minimum of the band level determined in Appendix 1.

8.3 Assessment of Assets and Income

Where the Local Housing Authority are satisfied that the assets and income (not just rental income) of the offender are such that it is just and appropriate to increase or reduce the penalty then the penalty may be increased or reduced on a sliding scale, dependent upon the financial circumstances of the offender, up to the maximum or minimum point of the banding level identified for the offence.

8.4 Reduction in Penalty Imposed

The Local Housing Authority may reduce the penalty imposed where corrective action is taken in respect of the offence committed in a timely and appropriate manner in circumstances where the Local Housing Authority have assessed the category of culpability as being low or medium.

Such reduction will only be applied where the corrective action has been taken prior to the service of the Final Notice.

The maximum level of reduction to be applied will be 30% of the penalty amount and each case will be considered on its own merits.

9. Civil Penalties

9.1 Multiple Offences

Where the Local Housing Authority are satisfied that more than one breach has been committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices for each breach.

9.2 Multiple Penalties

Where satisfied on the merits of the case and/or where the Local Housing Authority consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the authority to do that. The authority may take action in respect of one or some of the breaches and warn the offender that future action in respect of the remaining offences will be taken if they continue.

10. Process for Imposing Penalty Charges

Where it has been determined that a Financial Penalty will be imposed the Local Housing Authority will apply the following process:-

10.1 Notice of Intent

- A "Notice of Intent" shall be served on the private landlord suspected of committing a breach of a duty under regulation 3. The Notice shall specify:-

- (a) The amount of any proposed financial penalty
 - (b) The reasons for proposing the financial penalty
 - (c) Information about the right to make representation to the Local Housing Authority
- The Notice must be served before the end of the period of 6 months beginning with the first day on which the authority is satisfied, that the private landlord is in breach (“the relevant day”)
 - If the breach continues beyond the end of the relevant day, the notice of intent may be served:-
 - (a) at any time when the breach is continuing; or
 - (b) within the period of 6 months beginning with the last day on which the breach occurs.
 - The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the local housing authority about the proposal to impose a financial penalty

10.2 Final Notice

- If the Local Housing Authority decides to impose a financial penalty, a final notice shall be served, within 28 days of the end of the period for representations to be made, on the private landlord imposing that penalty.
- The Final Notice will specify:
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,
 - (d) the period for payment of the penalty,
 - (e) information about rights of appeal to the First tier Tribunal
 - (f) the consequences of failure to comply with the notice.

11. Consequences of Non-Compliance and Miscellaneous Provisions

If, after any Appeal has been finally determined or withdrawn, a private landlord receiving a financial penalty does not pay all or part of the penalty charge, the Local Housing Authority will recover the penalty by order from a County Court. Where appropriate, the Local Housing Authority will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

The Local Housing Authority may, at any time:

- (a) Withdraw a Notice of Intent or Final Notice
- (b) Reduce the amount specified in a Notice of Intent or Final Notice

Where the Local Housing Authority decides to take either action, it will write to the private landlord on whom the notice was served.

12. Record of the Decision

A record of each decision and the reasons for the financial penalty will be made by an appropriate officer and how the amount of the penalty was obtained and the reasons for imposing it.

APPENDIX 1

Banding Levels of Financial Penalties Imposed under the Housing and Planning Act 2016

Band 1	£0 – 4999
Band 2	£5000 – 9999
Band 3	£10000 – 14999
Band 4	£15000 – 17999
Band 5	£18000 – 20999
Band 6	£21000 – 23999
Band 7	£24000 – 26999
Band 8	£27000 – 30000

The starting point in each band will be the mid-point, i.e. for Band 3 the mid-point will be £12,500.