

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

2020 Policy

Scope

These regulations are designed to ensure the safety of the fixed electrical installation within private rented properties within England and provide additional powers to local housing authorities (LHAs) to enforce the requirements of the regulations.

Legislation

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

Summary

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) came into force on 1 June 2020 (although the requirements apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021). The regulations are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.

General Procedures

1. A private landlord (as defined in section 122(6) of the Housing and Planning Act 2016) who grants or intends to grant a specified tenancy must ensure that the fixed electrical installation is safe during the period of the tenancy.
2. A specified tenancy is one that:
 - a. Grants one or more persons the right to occupy all or part of the premises as their only or main residence
 - b. Provides for the payment of rent (whether at market value or not)
 - c. Is not an excluded tenancy.
3. The ESSPRS Regulations apply to HMOs (where they meet the foregoing requirements) and the requirements relating to electrical safety in the Houses in Multiple Occupation (England) Regulations 2006 have been repealed. Where HMOs are licensable, then a new mandatory condition is required on the licence relating to the safety and testing of the electrical installation.
4. The ESSPRS Regulations also apply to additional licensing schemes (Part 2) and licensable houses situated in designated landlord licensing areas (Part 3). Schedule 4 of the Housing Act 2004 has been amended to include a new mandatory condition required on a licence relating to the safety and testing of the electrical installation.
5. Excluded tenancies are:
 - a. Tenancies where the landlord is a registered social landlord
 - b. Where the tenant shares the property or part with the landlord or a member of the landlord's family

- c. Long leases of seven years or more
- d. Student halls of residence
- e. Hostels and refuges
- f. Care homes
- g. Hospitals, hospices and other healthcare-related accommodation.

Duties of a landlord (section 3)

6. For new, specified tenancies granted or intended to be granted on or after 1 July 2020, the electrical installation must be inspected before the tenancy begins, and for existing tenancies the first inspection must take place before 1 April 2021.

7. Once the first inspection has been undertaken, a repeat inspection is required at least every five years but sooner if the inspection report recommends a lesser period (where it must be within that lesser period).

8. Each inspection examines the installation against the electrical safety standard laid down in the 18th Edition of the Wiring Regulations and reports against this standard.

9. The person undertaking the inspection of the installation must be competent and be part of the electrical safety industry competent-person scheme. The person undertaking the inspection will certify their competence as part of the issue of the inspection certificate.

10. Where an existing inspection certificate is available (which is not more than five years old), as the property is a new build or the electrical installation has been renewed, then this can be relied upon (until the five years expires).

11. The inspection report will show that the installation is one of the following:

- a. Safe and no further action is required
- b. Danger is present and there is a risk of injury (Code 1 (C1)). In this situation the cause of the danger would be rectified by the competent person before leaving the property
- c. The installation poses a potential danger (Code 2 (C2))
- d. Further investigation is required without delay (FI)
- e. Improvement to the installation is recommended (Code 3 (C3)); however this is not sufficient to deem the installation as unsatisfactory.

12. Where the inspection report shows a C1, C2 or FI outcome, the landlord must ensure that suitable remedial works or investigations are undertaken. A C3 outcome is advisory and therefore works do not have to be completed.

13. A copy of the inspection certificate must be provided by the landlord to:

- a. Each existing tenant within 28 days of the inspection
- b. A new tenant before they occupy the property, or
- c. A prospective tenant within 28 days of receiving a request for the report
- d. The LHA within seven days of receiving a Notice requesting a copy of the Electrical Safety Inspection Certificate in writing.

14. A copy of the report must be kept by the landlord until the next report is due; then a copy of the existing report should be provided to the person undertaking the next inspection.

15. Where work is required, this should be completed within 28 days or a shorter period where the inspection certificate requires this.

16. Where the work undertaken reveals further issues that require either further remedial work or further investigation, this should be addressed within a further period of 28 days (or shorter period, where this is required).

17. The person completing the works should supply the landlord with a confirmation that the works have been completed (so the installation is now safe) or further work/investigation is needed. The landlord must provide a copy of this confirmation together with the original inspection certificate to each tenant and to the LHA within 28 days of the work being undertaken.

18. Where further work or investigation is required, the requirements to complete work and provide the necessary confirmation are repeated (as per the original inspection).

Duties of an LHA (Section 4)

19. Where the LHA believes that the landlord has breached one or more of their duties under:

- a. Regulation 3(1)(a) – electrical safety standards have not been met during the period of a tenancy, or
- b. Regulation 3(1)(b) – that the electrical installation has not been inspected at regular intervals (5 years or shorter as required), or
- c. Regulation 3(1)(c) – that the first inspection was carried out before the tenancy began (for new tenancies) or by 1st April 2021 (for existing tenancies), or
- d. Regulation 3(4) – that remedial or investigative work was required to the electrical system and that this was not undertaken within 28 days (or a shorter period where required), or
- e. Regulation 3(6) – that remedial or investigative work was required to the electrical system as a result of further investigations and that this was not undertaken within 28 days (or a shorter period where required) of the further investigations; and
- f. The most recent inspection report does not indicate that urgent remedial action is required

then the LHA must serve a remedial notice on the landlord within 21 days of deciding that it has reasonable grounds for service.

Remedial notice

20. The remedial notice must:

- a. Specify the premises to which the notice relates
- b. Specify the duty or duties that the LHA considers have been breached
- c. Specify the remedial action required
- d. Require the action to be taken within 28 days of service
- e. Explain that the landlord is able to make representations in relation to the notice within 21 days of service and the process for doing this
- f. Set out the address and contact details for the receipt of representations, and
- g. Explain the penalties (including the potential maximum penalty) that may result from non-compliance.

21. If the landlord makes written representations, then the notice is suspended until the representations have been considered. The LHA must consider any representations and confirm that outcome of those considerations within seven days of the end of the period specified in paragraph 20e (above).

22. The outcome of the considerations may be one of the following:

- a. Withdrawal of the remediation notice
- b. To confirm the notice and lift the suspension on the notice.

23. The outcome of the considerations should be provided in writing.

Duties of a landlord to comply with a remedial notice (section 5)

24. A landlord must comply with a remedial notice where either no representations are made or the notice is confirmed (after consideration of the representations) unless they are able to claim that they have taken all reasonable steps. Where the landlord (or electrician) has tried to gain access to the property to undertake the work and the tenant has prevented this, then this may be considered to be reasonable steps.

25. If a landlord makes representations and the notice is confirmed, works must be completed within 21 days from when the landlord is told the remedial notice has been confirmed.

26. Where a landlord fails to comply with a remedial notice, they may be subject to a financial penalty, and the LHA will need to apply its financial penalty policy to the facts of the case to determine whether a penalty is justified and the extent of that penalty (if applicable). The imposition of a financial penalty is a two-stage process. The first stage is to issue a notice of intention with a period (28 days) for the receipt of representations. The second stage, having taken into account any representations, is to issue the financial penalty (assuming that it is still appropriate to do so).

Power of LHA to arrange remedial action (section 6)

Notice of intention to take remedial action

27. Failure to comply with a remedial notice also allows the LHA to undertake remedial works in default, with the consent of the tenants. Before doing so, the LHA must be satisfied on the balance of probability that there has been a breach of the remedial notice.

28. Before undertaking such works, the LHA must serve a notice of intention to take remedial action (NIRA) on the landlord. The NIRA must:

- a. Specify the premises where the remedial work is to be undertaken
- b. Describe the nature of the proposed remedial work
- c. Detail the legal power that is being used to pursue the work
- d. Specify the date when the work will be undertaken
- e. Give information on the right of appeal against the decision to do the work.

29. The tenants must be given at least 48 hours' notice of the remedial works, and the electrician should be provided with evidence of identity and authority to carry out the work.

Appeals (section 7)

30. A landlord may appeal against a NIRA to the First-tier Tribunal within 28 days of service (although the tribunal may allow appeals outside of this time period where there is a good reason). The basis of the appeal can be that reasonable steps have been taken to comply or reasonable progress has been made before the NIRA was served.

31. An appeal suspends the NIRA until the appeal has been determined. The tribunal may affirm, vary or quash the NIRA.

32. The remedial works must be undertaken within 28 days from either the end of the appeal period or, if an appeal is made, once the appeal has been determined (as long as it supports the notice).

Recovery of costs by the LHA (section 8)

33. The LHA may recover costs relating to works undertaken in accordance with the NIRA. A demand must be issued with details of the costs being recovered and this money becomes payable after 21 days from the day of issue, unless an appeal is submitted.

Appeals against recovery of costs (section 9)

34. An appeal can be made to the First-tier Tribunal within 21 days of the date of issue (although later appeals may be allowed – see above). The basis of the appeal can be that reasonable steps have been taken to comply with the remedial notice, or reasonable progress has been made towards compliance before the NIRA was served. An appeal against a demand cannot be used to raise issues that should have been raised in an appeal against the remedial notice. The tribunal can confirm, quash or vary the decision to recover the costs.

Urgent remedial action (section 10)

35. Where an electrical report indicates that urgent action is required and the LHA is satisfied that the landlord is not undertaking the necessary work, they may arrange (with the consent of the tenants) for an electrician to undertake the urgent work. The tenants must be given at least 48 hours' notice of the date to carry out the work and the electrician should be provided with evidence of identity and authority.

36. The LHA must issue an urgent remedial action notice (URAN) either prior to or up to seven days from the date when the remedial action commences. A copy of the URAN must be served on the landlord and either all known residents of the premises or affixed in a conspicuous position at the premises.

37. The URAN must explain:

- a. The nature of the urgent remedial action required
- b. The premises where the urgent work is to or has been taken
- c. The power being used to justify the urgent work
- d. The date when the urgent work is or has been started
- e. The right of appeal
- f. The appeal period
- g. The provisions relating to the issue of financial penalties.

38. A landlord may appeal against a URAN to the First-tier Tribunal within 28 days of either the date that the work was started or was planned to start (whichever was the first date). A URAN is not suspended on appeal.

39. An LHA can recover the costs associated with a URAN in the same way as with a NIRA.

Power of Entry

40. Powers provided under section 239 of the Housing Act 2004.

41. In accordance with section 11 of the regulations, where the Local Authority is satisfied beyond reasonable doubt that the landlords has breached a duty under regulation 3, the authority may impose a fine of up to £30,000 in accordance with its financial penalties policy.