

## **Introduction**

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 give the local authority significant powers. This policy is to inform landlords, tenants and other stakeholders in the Private Rented Sector about how Lewisham will exercise these powers, and how decisions will be taken in this process.

In applying this policy, we will comply with our duties under the Equalities Act 2010.

## **Who the Regulations apply to and when they apply from**

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Regulations”) apply to all private sector landlords. It comes into force for new tenancies on 1<sup>st</sup> July 2020 and applies to all tenancies issued on or after that date. Properties with tenancies that predate 1<sup>st</sup> July 2020, will have to comply with these regulations from 1<sup>st</sup> April 2021.

These regulations do not apply to private sector landlords who share their homes with their tenants.

## **Landlords’ duties and responsibilities**

The Regulations make landlords responsible for:

1. Ensuring that minimum electrical safety standards are met during any period that the property is occupied.
2. Ensuring fixed electrical cables or fixed electrical equipment located on the consumer’s side of the electricity supply meter is inspected and tested at least every 5 years by a qualified person
3. Carrying out the first inspection and test, before the tenancy commences (new tenancies) or by 1<sup>st</sup> April 2021 (existing tenancies).

In order to comply with the Regulations, landlords **must**:

1. Get a written report from the qualified person who carried out the inspection and test, that provides the result and date of the next inspection and test;
2. Supply a copy of the report to tenants within 28 days of the inspection and test;
3. Supply a copy of the report to the local authority within 7 days of a written request from the authority;
4. Retain a copy of the report and supply this to the qualified person carrying out the next inspection and test; and
5. Supply a copy of the most recent report to new tenants before they occupy the property; and
6. Supply a copy of the report to prospective tenants within 28 days of written request.
7. If the inspection report advises the landlord is or potentially is in breach of the duty to ensure that minimum electrical safety standards are met, and requires the landlord to undertake further work to be carried out to bring the property up to standard, then landlord **must**:

- i. ensure that the work is carried out by a qualified person within 28 days or the period in the report, if less than 28 days; and
- ii. get written confirmation from a qualified person that the standards have been met; and
- iii. supply the written confirmation and a copy of the report to all tenants and local housing authority within 28 days of completion.

We will make all requests electronically where an email address or mobile phone number for the landlord is known to us. In the absence of an electronic address, requests will be made in writing to the address that the landlord has either provided to his tenants or that which can be otherwise determined by our officers. It should be noted that this will be the last known address, if a landlord has relocated and failed to provide a current address. This may include the property address itself, if no other address is known and this is the proprietor's address recorded by the Land Registry or the registered company address, where the landlord operates as a business. It is therefore, the responsibility of the landlord to ensure that their current address is known and provided to tenants, as is legally required.

#### **Local Authority Powers:**

The Local Authority have powers to sanction a landlord who has not complied with their duties under the Regulations. These include:

- a. To serve a **Remedial Action Notice** on the landlord
- b. To take **Urgent Remedial Action**
- c. To take **Remedial Action**
- d. To issue a **Civil Penalty Notice** of up to £30,000

#### **How we will decide whether to take action:**

We will decide which action to take, when we have reasonable grounds to suspect that a landlord has breached one of the duties under the Regulations. The information that may lead us to this conclusion includes:

- Where we have evidence from a qualified person that the landlord is in breach of any duty under the Regulations.
- A tenant or prospective tenant reports that they have not been provided with the qualified person's report and/or the written confirmation from a qualified person informing that remedial works recommended in that report have been carried out. In addition the tenant or prospective tenant can demonstrate that the time limit for the landlord to supply this documentation, has expired.
- We have requested that the landlord supply us with the qualified person's report and/or written confirmation from a qualified person that remedial works recommended in that report have been carried out and have received no response.

### **a. Remedial Action Notices**

We will serve a **Remedial Action Notice** when we have reasonable grounds to suspect that a landlord is in breach of one of the three duties under the Regulations. Landlords have a duty to comply with these notices.

This notice will be served within 21 days of the date upon which we decide that reasonable grounds to suspect that a breach has occurred.

Landlords have a right to make representations; these suspend the duty to comply with the Remedial Action Notice. We will only consider representations that are in writing and received within 21 days of the day upon which the Notice was served. Representations can be made via email. We are unable to consider representations that refer to other documents and/or material unless copies are attached. The name and address of the person to whom representations must be made is on the Remedial Action Notice.

We will respond to representations within 7 days from the end of the 21 day appeal period. We will always respond in writing (although the response may be sent via email). If our decision is to confirm the Remedial Action Notice, then we will inform you when the period of suspension ends.

Landlords must comply with the Notice within 28 days of service, or within 7 days of the end of the suspension period if representations have been received.

#### **What action we can take if a landlord does not comply with a Remedial Action Notice.**

We may take one or more of the following actions:

- Take urgent remedial action
- Take remedial action
- Impose a Civil Financial Penalty

### **b. Urgent Remedial Action**

We may take urgent remedial action when:

- A report recommends urgent remedial action.
- We believe that it is more likely than not that the landlord has not carried out the required work.
- The tenants consent.

### **c. Remedial Action**

We may take remedial action when:

- We have served a Remedial Action Notice
- We believe that it is more likely than not that the landlord hasn't carried out the work required to comply with the notice.
- The tenants consent

The information that we will consider before deciding whether to take remedial action (urgent or otherwise) includes:

- The nature of the remedial action required and the danger to residents, neighbours and visitors if no action is taken
- Any attempts to comply with the Remedial Action Notice
- The likelihood of future compliance and the timescales involved
- The landlord's level of compliance with the Regulations prior to issuing the Remedial Action Notice
- Landlord's general history of engagement and compliance
- Any previous orders or notices served on the landlord and their response.

We will serve notice that we are taking remedial action, urgent or otherwise. This notice will include details of appeal rights, time limits and the address of the Tribunal.

There are 2 grounds to appeal against Remedial Action:

- All reasonable steps have been taken to comply, or
- Reasonable progress has been made towards compliance

### Costs

We will always attempt recover any costs we incur taking remedial action or urgent remedial action. The money spent on making a premises safe is made possible using public money. We will provide landlords with an invoice for our costs and a demand for payment. **Costs become payable at the end of the period of 21 days beginning with the day on which the demand is served**, unless an appeal is lodged. We will also provide landlords with information about the procedure of their right to appeal against a demand for costs, such as the time limits and the address of the Tribunal.

### d. Civil Penalty Notices

We can issue a **Civil Penalty Notice** when we have evidence that meets the criminal standard of proof, that the landlord is in breach in one of the duties under the Regulations (see Landlord's duties and responsibilities above). We can issue a **Civil Penalty Notice** as well as take **Remedial Action**.

The information that we will consider before deciding to issue a civil penalty notice (over and above the question of whether there is sufficient evidence of a breach of duty) includes:

- Landlord's attempts (if any) to comply with the Remedial Action Notice
- Landlord's history of compliance with the Regulations
- Landlord's general history of engagement and compliance
- Any previous orders or notices served on the landlord and their response
- Any convictions or cautions for housing offences
- The level of potential or actual harm caused to tenants, visitors and neighbours.

If we decide to issue a Civil Penalty Notice, we will set the amount using the Council's Civil Penalty Calculator.

The first part of the Civil Penalty Process is serving the landlord with a Notice of Intent.

The landlord has 28 days to make any representations. The **Notice of Intent** will explain how, where and to whom any representations should be made.

Representations **must** be in writing. We will only consider representations that are in writing and received within 28 days of the day after the day upon which the Notice was served. Representations can be made via email. We are unable to consider representations that refer to other documents and/or material unless copies are attached.

We will reply to any representations within 28 days of the end of the period in which representations can be made. Any reply will be in writing. We may confirm, increase or withdraw the Notice following any representations.

Landlords are encouraged to provide us with details of any personal or financial information they consider relevant to the issue of whether to impose a Civil Financial Penalty and to the level of any such penalty. We will consider this information, along with the facts directly relating to the breach of duty, when deciding whether to issue a Final Notice and the level of any penalty.

An uncorroborated assertion will be given little weight in any decision making process. We will give more weight to personal or financial information where it is corroborated by evidence. It is a matter for landlords as to whether they chose to provide this.

If we decide to issue a Final Notice, this will be served on the landlord, and will set out the right to appeal, the time limits for making and appeal and the address of the Tribunal.

We will register any unpaid Final Notices as County Court Judgments and enforce these through the courts if no or partial payment is made.