

Report of:	Meeting	Date
<p>Councillor Roger Berry, Neighbourhood Services and Community Safety Portfolio Holder and Marianne Hesketh, Corporate Director Communities</p>	<p>Cabinet</p>	<p>19 October 2022</p>

<p align="center"><b>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</b></p>
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**1. Purpose of report**

- 1.1** To implement the enforcement powers contained in The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 including the use of civil penalty notices under the Housing and Planning Act 2016.

**2. Outcomes**

- 2.1** The use of these powers will support and complement the work that the council continues to deliver to tackle landlords who neglect repairing obligations. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will act as a powerful deterrent to rogue landlord behaviour through the enforcement of significant financial penalties. The additional provision to impose a fine up to £30,000 sends a strong message to any negligent landlord that substandard property conditions and unsafe electrical installations will not be tolerated.
- 2.2** To enable the Local Housing Authority to undertake its statutory duty to serve remedial notices, to arrange remedial action and serve penalty charge notices.
- 2.3** To update the Housing and Planning Act Enforcement Powers Policy to incorporate the regulations in relation to the issuing of civil penalties.

### **3. Recommendations**

- 3.1** The council adopts and implements the regulations in order to allow the council to carry out its statutory function in relation to electrical safety standards in the private rented sector and that the Housing and Planning Act Enforcement Powers Policy is updated to incorporate the regulations.
- 3.2** Agree to adopt the same process of issuing and determining levels of civil penalties for the offences in the regulations, in line with the Housing and Planning Act Enforcement Powers Policy adopted by the council in 2020.
- 3.3** Delegate to the Head of Housing and Community Services all powers to issue, use and enforce the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 3.4** That the monies received from civil penalties, issued under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, are ring-fenced and used to support private rented sector enforcement activities.

### **4. Background**

- 4.1** The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (referred to as 'the regulations') came into force on 1 June 2020. As of 1 April 2021, the regulations now apply to all existing tenancies. In order to meet its statutory obligations, the council must adopt and implement the regulations into their enforcement policy and working procedures.
- 4.2** The council has a vital role to play in ensuring that the private rented sector in Wyre is safe and healthy. Under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, the council has the power to require landlords to ensure that national standards for electrical safety are met and ensure all electrical installations in their rented properties are inspected and tested every five years.
- 4.3** The regulations provide the council with powers to ensure compliance, including carrying out works in default and enforcement through the issuing of civil penalties up to £30,000 for breach of their duties under the regulations. The council has a statutory duty under the regulations, to serve a landlord with remedial notices where they are in breach of their duties under regulation 3.
- 4.4** This report seeks to outline the regulations and details how the council proposes to enforce against landlords who breach their duties under the regulations. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, were introduced under section 122 of The Housing and Planning Act 2016 for the purposes of introducing new requirements for electrical safety in the private rented sector.

- 4.5** The regulations place duties on a landlord. These include:
- To ensure that electrical safety standards are met during any period when the residential premises are occupied under a tenancy, and that every fixed electrical installation is inspected and tested at least every five years by a qualified person;
  - To obtain a report which gives the results of the inspection and test, supply that report to each tenant within 28 days, and to the local housing authority within 7 days of a request and retain a copy until the next inspection is due;
  - To supply a copy of the last report to any new tenant before occupation, or any prospective tenant within 28 days of a request from the prospective tenant;
  - Where the report requires the landlord to carry out further investigative or remedial work, the landlord must undertake such further investigative or remedial work within 28 days or within such lesser time period as specified in the report; and
  - To obtain and supply written confirmation of completion of such further investigative or remedial work to the tenant and local housing authority.
- 4.6** Where the council has reasonable grounds to believe a landlord is in breach of their duties, the council has a statutory duty to serve either a remedial or urgent remedial notice under regulations 3, 4 and 10, specifying what action needs to be taken to achieve compliance and when this needs to be achieved by.
- 4.7** The regulations allow for a statutory appeal period against any statutory notice served under the regulations. Landlords are able to make written representations to the council within 21 days in the first instance. Any written representation will be considered on a case by case basis. Landlords also have rights to appeal to the First-tier Tribunal. The Tribunal may confirm, quash or vary notices served by the council.
- 4.8** In the case of non-compliance with urgent or non-urgent remedial notices the council also has the discretionary power to carry out necessary remedial action. The regulations state the local authority 'may' organise with consent of the tenant, urgent or non-urgent remedial action. Where this is exercised, regulation 8 allows the council to recover costs reasonably incurred by them taking action.
- 4.9** If there has been no appeal of the notice requiring action, the costs become payable at the end of 21 days, beginning with the day on which the demand for payment was served. Where the council is satisfied beyond all reasonable doubt that a landlord is in breach of any duties under regulation 3, the council will consider and pursue issuing civil penalties up to £30,000 for a breach of any of duties.
- 4.10** It is proposed that any associated costs of taking urgent and non-urgent remedial action will be recovered in line with the regulations and will be based upon an assessment of officer time, the actual costs of any works

undertaken and any other overheads required in taking action. The recovery of costs will be pursued within the council's existing policies and procedures with regard to sundry debtors.

## 5. Key issues and proposals

- 5.1** It is intended that the council will embed and utilise this extra legislative power by way of updating its Housing and Planning Act Enforcement Powers Policy, which was adopted by Cabinet in 2020 through delegation of authority to Corporate Director Communities to allow minor amendments to be made.
- 5.2** Non statutory guidance for Local Authorities has been produced by the Department for Levelling Up, Housing and Communities (DLUHC) for the regulations, which has been taken into consideration. Alongside the additional statutory duties placed on the council by the regulations, regulation 11 empowers the council to issue civil penalties of up to £30,000 for a breach of duties under the regulation 3 as an additional enforcement sanction.
- 5.3** The DLUHC guidance states: 'That the Local Authority should develop and document their own policy on how they determine appropriate financial penalty levels. When developing their policy, local housing authorities may wish to consider the policy they previously developed for civil penalties under the Housing and Planning Act 2016.'
- 5.4** It is therefore proposed that the regulations are incorporated into the existing Housing and Planning Act Enforcement Policy, which was developed for offences under The Housing and Planning Act 2016 to include the penalties under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. By doing so, the council is meeting the obligation set out in the guidance to develop a policy on determining fine levels and is consistent in the way that it issues fines of up to £30,000. A copy of the proposed amended Policy and Matrix is attached at Appendix 1.

<b>Financial and legal implications</b>	
Finance	There are no immediate financial implications for the council as the enforcement will be undertaken by existing members of the Private Sector Housing Team. If a landlord does not comply with a remedial notice, the Local Housing Authority has a discretionary power to undertake the works in default. Normal cost recovery mechanisms will be used. Section 5 of the guidance issued by the Secretary of State specifies that proceeds of financial penalties can only be retained by the Local Authority provided that it is used to carry out private rented sector enforcement.

Legal	Section 126 of the Housing and Planning Act 2016 allows civil penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which deals with civil penalties as an alternative to prosecution. The Council has a statutory duty as a Local Housing Authority to enforce relevant Housing Legislation.
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### **Other risks/implications: checklist**

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	✓
equality and diversity	x
sustainability	x
health and safety	✓

risks/implications	✓ / x
asset management	x
climate change	✓
ICT	x
data protection	x

### **Processing Personal Data**

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a third party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

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<b>List of background papers:</b>		
name of document	date	where available for inspection
N/A		

### **List of appendices**

Appendix 1 – Updated Housing and Planning Act 2016 Enforcement Powers Policy