

Ms C J Dineage MP,
House of Commons,
London,
SW1A 0AA

by e-mail

26 January 2020

Dear Ms Dineage,

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

1. I would be grateful if you would consider objecting to The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as drafted please.
2. I am a member of a competent persons scheme and hold the City & Guilds level 3 award in the Periodic Inspection, Testing and Certification of Electrical Installations (2395). Accordingly, I am a "qualified person" as defined.
3. The principal difficulty with the draft legislation is that it is, on the face of it, retrospective, which is contrary to established convention.
4. It is potentially retrospective because a private landlord must:

ensure that the electrical safety standards are met during any period when the residential premises are occupied ... R.3(1)(a)

and the "electrical safety standards" are the current edition of BS 7671. (I assume that this paragraph will be amended whenever BS 7671 is updated.)

5. When paragraph 4 of R.3 is applied, the apparently retrospective nature of the proposed legislation may be resolved, but not as drafted.
6. Paragraph 4 states:

Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) 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 ...

The use of the word "and" after "(1)(a)" is useful: it makes the potentially retrospective nature of paragraph 3 subject to a report. However, the problem is that no electrical installation condition report (EICR) requires anybody to do anything: instead, it makes recommendations. This difficulty could be resolved by substituting:

and the report requires the private landlord to undertake further investigative or remedial work

with words to the effect:

and the report recommends that the private landlord undertake further investigative or remedial work which is required to meet the requirements of the electrical safety standards

7. The difficulty with this approach is that it fails to appreciate the technicalities of electrical periodic inspection and reporting (PIR). Please forgive the technical nature of what follows.
8. The results of a PIR may be classified as "C1", "C2", or "C3"; and if the situation is unclear, "FI", which is to say that further investigation is required.
 - a. C1 means "Danger present". An example might be an exposed live conductor - anybody who touched it would get an electric shock.
 - b. C2 means "Potentially dangerous". Normally, a fault in an appliance would trigger "automatic disconnection of supply" so for example, if a live wire were to make contact with the casing of a toaster, the fuse or circuit breaker would trip. However, if the earthing of the socket were inadequate, ADS would not occur; the casing of the toaster would remain live and present the risk of an electric shock.
 - c. C3 means "Improvement recommended". This is often the case where BS 7671 has introduced new measures for safety. An example is the introduction in the 18th Edition of a requirement for RCD protection of domestic lighting circuits. Until the 18th Edition, it was expected that ADS would deal with an earth fault, but the RCD protection is an additional safety precaution: belt and braces.
 - d. Some failures to comply with the current edition of BS 7671 attract no code at all. The most obvious example is the insulation colours, which changed in 2006. It could never be the case that a change in colour suddenly resulted in an electrical installation becoming unsafe, but I might add that BS 7671 does require that a warning notice be placed in the event that the old and new colours exist side by side and the absence of such a notice would be classified as C3.
9. The important concept here is that an EICR grades an installation as "satisfactory" or "unsatisfactory" in terms of suitability for continued use. C1 or C2 renders the installation unsatisfactory; C3 does not. Any other failure to comply with the current edition of BS 7671 does not.
10. If private landlords were required to ensure that their electrical installations met the standards of the current edition of BS 7671, the law would not only be retrospective, but also present a disproportionate burden upon them. In my opinion, landlords should simply be obliged to ensure that their installations

are "satisfactory". Therefore, I respectfully suggest the following amendment to paragraph 4 along with any consequential amendments:

Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report states that the overall assessment of the installation is unsatisfactory, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person ...

Such a provision would ensure that the proposed legislation is not retrospective, but at the same time, it would protect tenants from unsafe electrical installations.

11. I am sorry that this letter is rather lengthy and technical, albeit of necessity, but I believe that it encapsulates the concerns of a number of my colleagues.

Yours sincerely,

cc: luke.spanton@communities.gov.uk