EXPLANATORY MEMORANDUM TO

THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument imposes duties on private landlords in relation to electrical installations. Section 122 of the Housing and Planning Act 2016 empowers the Secretary of State for Housing, Communities and Local Government to make regulations to ensure that electrical safety standards are met in properties in the private rented sector, how and when checks of electrical installations are carried out, who may carry out checks and that certificates are provided confirming that standards are met. Section 123 makes provisions for the enforcement of the electrical safety standards. This section allows for proportionate enforcement powers, including the imposition of financial penalties and local housing authority-led remedial works if the landlord does not comply with the duties set out in Section 122. Section 123 also allows for an appeal process and the recovery of costs from landlords by local housing authorities after remedial works.

2.2 This instrument makes provision for remedial action, urgent remedial action and a financial penalty to be imposed in respect of a breach, using the powers set out in section 123 of the Housing and Planning Act 2016.

2.3 This instrument applies to private landlords, including landlords of Houses in Multiple Occupation ("HMOs"). This instrument makes amendments to the Management of Houses in Multiple Occupation (England) Regulations 2006, which have the effect of omitting regulation 6(3). This will ensure electrical safety standards are clear and consistent across all private rented tenures, to minimise confusion when landlords implement the new duty. It will also prevent a two-tier system where HMOs and other privately rented properties are required to meet different standards.

2.4 Schedule 4 of the Housing Act 2004 is amended by this instrument which has the effect of introducing new and revised conditions in respect of electrical safety standards which must be included in a licence under Parts 2 or 3 of the Housing Act 2004.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The department has reached this view because it considers that the primary purpose of the instrument relates to housing, which is within the devolved legislative competence of each of the three devolved legislatures.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

4.3 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 Esther McVey, Minister of State at the Ministry of Housing, Communities and Local Government, has made the following statement regarding Human Rights: "In my view the provisions of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are being made to impose duties on private landlords of residential premises in England in relation to electrical safety standards. Section 122 of the Housing and Planning Act 2016 confers power on the Secretary of State to make these Regulations. This is the first use of the power under this Act. Section 123 of the HPA relates to enforcement of the electrical safety standards in section 122, and allows the Secretary of State for Housing, Communities and Local Government to confer functions on local housing authorities.

7. Policy background

What is being done and why?

7.1 The Housing and Planning Act 2016 gives the Secretary of State for Housing, Communities and Local Government the power to impose duties on private landlords to ensure electrical safety standards are met and to provide local authorities with enforcement options against landlords who fail to comply, including financial penalties.

7.2 This instrument imposes duties on landlords to have an electrical installation inspection and test, carried out by a qualified and competent person, at least every five years. This is alongside other duties on private landlords including:

- Obtaining a report from the person conducting the inspection and test which explains the outcomes of the report, supplying a copy of this report to the existing / resident tenant within 28 days of the inspection and test, to a new tenant before they occupy the premises, and to any prospective tenant within 28 days of receiving a request for the report. The landlord must also supply the local housing authority with a copy of this report within 7 days of receiving a request for a copy and retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that remedial work is necessary, the landlord must complete this work within 28 days or any shorter period if specified as necessary in the report. The landlord must supply written confirmation of the completion of the remedial works to the tenant and the local housing authority within 28 days of completion of the works.
- The Regulations repeal the electrical safety requirements in Regulation 6(3) of the Management of Houses in Multiple Occupation (England) Regulations 2006 and bring HMOs into the scope of the new Electrical Safety Regulations. This is to ensure electrical safety standards are clear and consistent across all private rented tenures, to minimise confusion when landlords and letting agents implement the new duty. It will also prevent a two-tier system where HMOs and other privately rented properties are required to meet different standards.

7.3 If the local housing authority finds that landlords are in breach of their duties in relation to electrical installations, they must serve a notice, which will set out the remedial works required to comply with these duties.

7.4 If the local housing authority finds that landlords are in breach of their duties in relation to electrical installations, they may impose a financial penalty of up to £30,000. Right of appeal is to the First Tier Tribunal. This is consistent with the financial penalties used for the enforcement of housing standards as set out in the Housing and Planning Act 2016 and the Housing Act 2004.

7.5 Landlords will be given reasonable time to carry out essential works to ensure health and safety hazards associated with electrical safety installations are remedied in a safe and timely manner. An appeal may be brought against remedial action by a local authority on the grounds that reasonable progress is being made. This means the need to protect tenants is balanced with the practicalities of a landlord finding a competent person to undertake the work.

7.6 Local Authorities will have the power to arrange for a person to enter the property with the tenant's consent if the landlord fails to comply with the remedial notice and do the work in their place. Any costs reasonably incurred will be recoverable from the landlord who failed to complete the remedial work. This is to ensure that if the landlord does not get the remedial work done, the hazard will be dealt with in a timely manner to make the tenants safe. If urgent remedial action is required, the local housing authority has the power to arrange this at any time.

7.7 Schedule 4 of the Housing Act 2004 will also be amended by the Electrical Safety Regulations to make it a mandatory condition for licences under Parts 2 or 3 of the

Housing Act 2004 that every electrical installation is in repair and proper working order and safe for continued use. As is the case with all mandatory conditions for licences under Parts 2 and 3 of the Housing Act 2004, failure to comply with this condition will be considered a criminal offence under Section 72(3) of the Housing Act 2004.

7.8 This will ensure that a situation cannot exist where a landlord is granted a licence under Parts 2 or 3 for a property whilst noncompliant with these Regulations. Amending schedule 4 of the Housing Act 2004 will also bring electrical safety into alignment with provisions already in place for gas safety.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not applicable

10. Consultation outcome

10.1 The department consulted extensively on the changes this instrument introduces. The Electrical Safety Standards working group was set up by the department in 2016, comprising of industry stakeholders, to advise on what legislation might be necessary. Following receipt of the working group recommendations, the department conducted a consultation between February and April 2018.

10.2 The department published a public consultation paper on 17 February 2018 (*Electrical Safety in the Private Rented Sector*). The consultation set out the recommendations of the working group: the introduction of 5 yearly mandatory electrical installation checks for private rented properties, as well as other safety measures to be encouraged as good practice, such as testing landlord supplied appliances, and for this to be set out in non-statutory guidance.

10.3 The consultation invited views and comments from the public to gather additional evidence on the recommendations made by the working group. 582 responses were received. Following the working group recommendations and this consultation, the Government announced on 19 July 2018 that regulations would be introduced requiring private sector landlords to undertake five yearly safety checks of electrical installations in their properties.

10.4 There was support for the introduction of mandatory electrical installation inspections, with 333 respondents to the public consultation agreeing this should be introduced.

10.5 The full government response to the consultation was published on 29 January 2019. In it the Ministry of Housing, Communities and Local Government announced the decision not to introduce a mandatory competent person scheme for the inspection of electrical installations in the privately rented housing. 290 of respondents were against the mandatory introduction of any such scheme as opposed to 203 in favour.

10.6 The department agreed with the majority of consultees that a mandatory scheme would be overly bureaucratic and expensive. However, the department accepted the views of the working group that landlords will need a way of ensuring that those carrying out electrical inspections have the required skills. The department therefore

also announced that new guidance would be produced for landlords that sets out the required skills, qualifications and competency.

10.7 A copy of the Government's response to the consultation is published at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774124/Government_Response_to_Electrical_Safety_in_the_Private_Rented_Sector.pdf. It sets out how the Government proposes to introduce the Regulations through secondary legislation. It also sets out that the local housing authority is the enforcing body for non-compliance with the Regulations.

11. Guidance

11.1 The Ministry of Housing, Communities and Local Government will be issuing non-statutory guidance for landlords, tenants and local authorities on the new private rented sector electrical safety duties to which this instrument gives effect.

11.2 The guidance will be published when the Regulations come into force.

12. Impact

12.1 The impact on business, charities or voluntary bodies is set out in paragraphs 12.4 – 12.12.

12.2 The impact on the public sector as enforcers is set out in paragraph 12.8. There is no impact on the public sector as landlords as the requirements only apply to the private rented sector.

12.3 An Impact Assessment has not been prepared for this instrument because this regulatory provision has been certified as meeting the exemption to the business impact target as it relates to the safety of tenants, residents and occupants.

12.4 The average cost of mandatory five-yearly electrical safety checks is estimated at £31 per year per property, totalling £33m. 78% of landlords already have electrical safety checks, so they will not be affected by this cost until they are due for a new inspection. There will also be an estimated one-off familiarisation cost of £14m to landlords.

12.5 Costs associated with checks were estimated by taking into account the number of private rental sector properties (4.8m, 2016/17), the number of landlords who have not carried out an electrical safety check by a qualified tester in their most recently let properties (22%) and average tenancy lengths (3.9 years, 2016/17). Figures are from the English Housing Survey and the English Private Landlord Survey.

12.6 Costs associated with familiarisation were estimated by assuming it would take the average landlord 30 minutes to read and understand the legislation and relevant guidance.

12.7 There are also likely to be remedial costs associated with fixing any hazards identified in the electrical safety checks. These are not a direct impact of the legislation because landlords are already legally required to ensure there are no serious electrical hazards in their properties.

12.8 Mandatory regulations will also require associated local housing authority enforcement, and therefore a new burden will occur. However, local housing authorities may impose financial penalties of up to £30,000 for non-compliance with the Regulations, and then apply the proceeds of these penalties to meet the costs and expenses incurred in private rented sector enforcement.

12.9 In practice, it is the remedial work that landlords carry out in response to the five-yearly checks that will deliver the benefits to the private rented sector. These benefits will be in the form of reduced numbers of fires, injuries and fatalities associated with unsafe electrical installations in the private rented sector. It is not possible to accurately estimate the financial aspects of these benefits as the existing statistical evidence from the Office for National Statistics, the NHS and Fire and Rescue services do not specify tenure.

12.10 Carrying out an inspection of electrical installations is a complex task that requires an extra level of qualification and competence achieved beyond the standard 4-year vocational route commonly followed by qualified inspectors and testers. Therefore, Government will develop, with industry experts, new guidance for landlords stipulating who can carry out the mandatory electrical installation checks.

12.11 Within the new guidance landlords will be advised that competence will be met if an inspector and tester is a member of a competent person scheme or has met the requirements set out in a checklist. In addition to the checklist in the new guidance, industry scheme operators will be invited to set up a new electrical inspection and testing competent person scheme which inspectors and testers could choose to join. A reference to these schemes would also be made in the Government's 'How to Rent Guide'.

12.12 In order to allow the market time to adjust and ensure there are sufficient numbers of competent and qualified inspectors and testers, the introduction of the requirement is phased. The Regulations will first apply to new tenancies, and existing tenancies will come into scope after one year. A familiarisation period including a communications campaign has begun and will continue to the full introduction of the legislation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The majority of landlords have small portfolios, it is estimated that landlords on average own 2.3 private rental sector properties and that 62% of landlords only own a single rented property. We are therefore not proposing to exempt small and micro businesses as this would result in the policy failing to meet its objectives of protecting tenants from unsafe conditions.

13.3 Under the Housing Act 2004 all landlords are already required to ensure their properties are free from serious electrical safety hazards, so this instrument will have minimal impact on the majority of landlords who already comply with legal standards. The only new burden on landlords is to get the electrical installation inspected every five years to show that it is safe. The main upfront cost will be the time taken to become familiar with the regulations.

14. Monitoring & review

14.1 Local authorities are responsible for enforcing the provisions of this instrument and recording this enforcement. We will contact local housing authority stakeholders at regular intervals to monitor enforcement.

15. Contact

15.1 Luke Spanton at the Ministry of Housing, Communities and Local Government (0303 44 41693 or luke.spanton@communities.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Emma Garrett, Deputy Director for Private Rented Sector, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Esther McVey MP, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.