

Electrical safety Standards Process and Overview

1. GUIDANCE

The aim of the legislation is to ensure that the electrical installation within rented properties is regularly checked and deficiencies are rectified in a speedy manner to minimise risk to the occupants. The provision of certification allows all parties to see evidence that this has occurred.

Responsibility of managing the documents is owned by the Public Protection Team.

Contents

GUIDANCE	2
NWL/ESS – A1 – Overview of legislation and coding	3
NWL/ESS – A2 – Flow chart – Initial Investigation	5
NWL/ESS – A3 – Flow chart – Remedial action	6
NWL/ESS – A4 – Flow chart – Notice of Intended Remedial Action	7
NWL/ESS – A5 – Flow chart – Notice of Urgent Remedial Action	8
NWL/ESS – A6 – Accompanying Notes – Investigation, Remedial action, Notice of Intended Remedial Action and Urgent Remedial Action.....	9
NWL/ESS – A7 – Flow chart – Recovery of non-payment financial penalty.....	17
NWL/ESS – A9 – Flowchart – Recovery of costs following remedial work by LA.....	20
NWL/ESS – A10 – Accompanying Notes – Recovery of costs following remedial work by LA....	21
NWL/ESS – A11a – Flow chart – Appeal against remedial action to First Tier Tribunal.....	23
NWL/ESS – A11b – Flow chart – Appeal against recovery of costs to First Tier Tribunal.....	24
NWL/ESS – A12 – Accompanying Notes – Appeal to First Tier Tribunal.....	25
NWL/ESS – A13 – Worked examples	27

2. NWL/ESS – A1 – Overview of legislation and coding

Purpose of process	Version	Last reviewed	By
To provide a basic overview of Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	0.1		

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.¹

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020²

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020		
Regulation	Provision	Required notices / Letters
Part 2	Duties of Landlords	
Reg 3	<p>3(1) (a) – electrical safety standards have not been met during the period of a tenancy.</p> <p>3(1) (b) – that the electrical installation has not been inspected at regular intervals (5 years or shorter as required).</p> <p>3(1) (c) – that the first inspection was not carried out before the tenancy began (for new tenancies) or by 1st April 2021 (for existing tenancies).</p> <p>3(4) – that remedial or investigative work was required to the electrical system and this was not undertaken within 28 days (or a shorter period where required).</p> <p>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.</p> <p>Duty to supply a copy of the most recent Electrical Inspection and Testing</p>	<p>Notice Requesting an Electrical Inspection and Testing Certificate.</p> <p>More than one penalty can be issued for a continuing failure. The maximum penalty for each offence is £30,000. Financial Penalty (Reg 11).</p> <p>Appeal provisions relating to the issue of financial penalties are contained within Schedule 2 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.</p>

¹ <https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector>

² <https://www.legislation.gov.uk/ukdsi/2020/9780111191934>

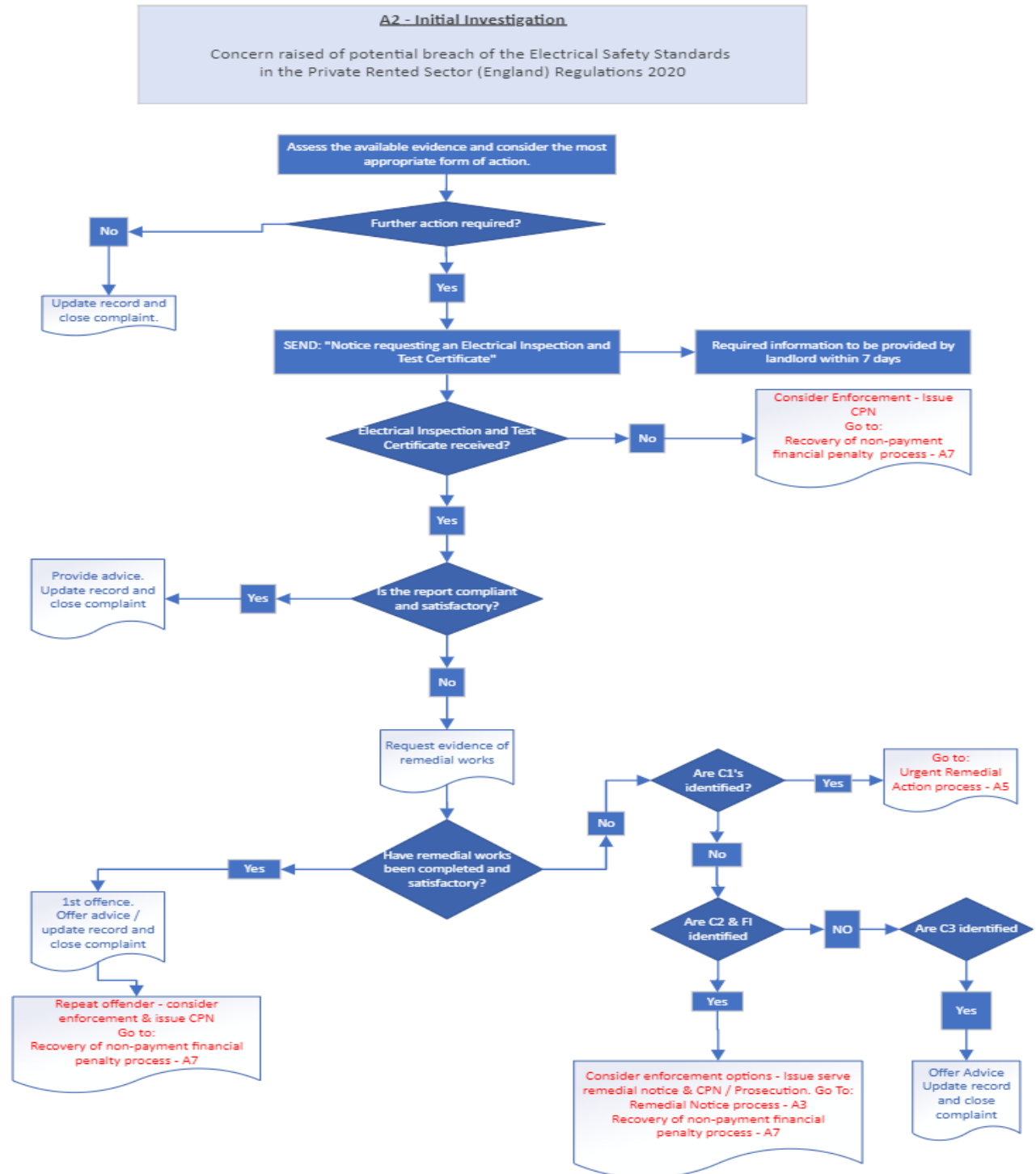
	Certificate relating to the fixed electrical installation at the foregoing property.	
Part 3	Remedial Action	
4	Duty of local housing authority to serve a remedial notice	Remedial notice
5	Duty of landlord to comply with remedial notice	
6	Power of LHA to arrange remedial action	Notice of intention take remedial action. Letter giving notice to tenant for remedial action. Letter providing 48hrs notice and contact details of contractor.
7	Appeals relating to remedial action by local housing authorities	Letter – response to representations received
8	Recovery of costs	Financial Demand (appeal to FTT)
9	Appeals against recovery of costs	
Part 4	Urgent Remedial Action	
10	Urgent Remedial Action	Urgent remedial action notice
Part 5	Financial Penalties	
11	Financial penalties for breach of duties	Issue financial penalty. More than one penalty can be issued for a continuing failure. The maximum penalty for each offence is £30,000.
12 & Sch 2		Notice / Final Notice to issue financial penalty
Part 6	Licences under Parts 2 & 3 of the HA 2004	
Part 7	Duty of manager to supply and maintain gas and electricity	
Schedule 1	Excluded Tenancies	
Schedule 2	Procedure for appeals against financial penalties	

Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days with a written request from the local housing authority for a copy of the report and must also supply the local housing authority with confirmation of any remedial or further investigative works required by a report. Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work.

Codes		
Code 1 (C1)	Danger is present and there is a risk to injury	The Landlord must ensure remedial work or further investigative work is carried out by a qualified person within 28 days or less if specified in the report.
Code 2 (C2)	Potentially dangerous	
Further Investigation (FI)	Further investigation without delay	
Code 3 (C3)	Improvement recommended	Draw recommended improvement to the attention of the landlord.

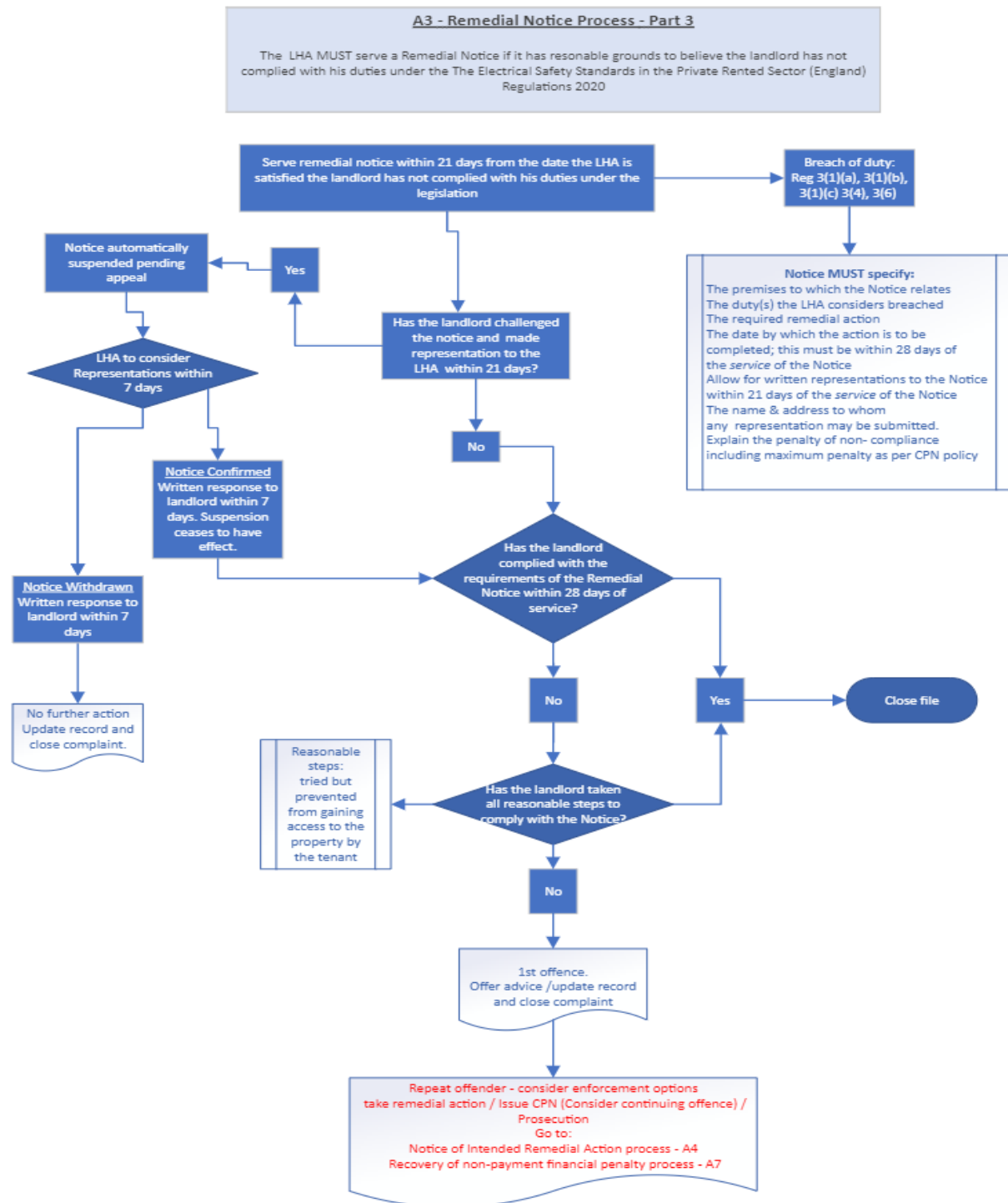
3. NWL/ESS – A2 – Flow chart – Initial Investigation

Purpose of process	Version	Last reviewed	By
To provide a basic overview of initial investigative process and procedure relating to a concern of a potential breach of legislation	0.1		



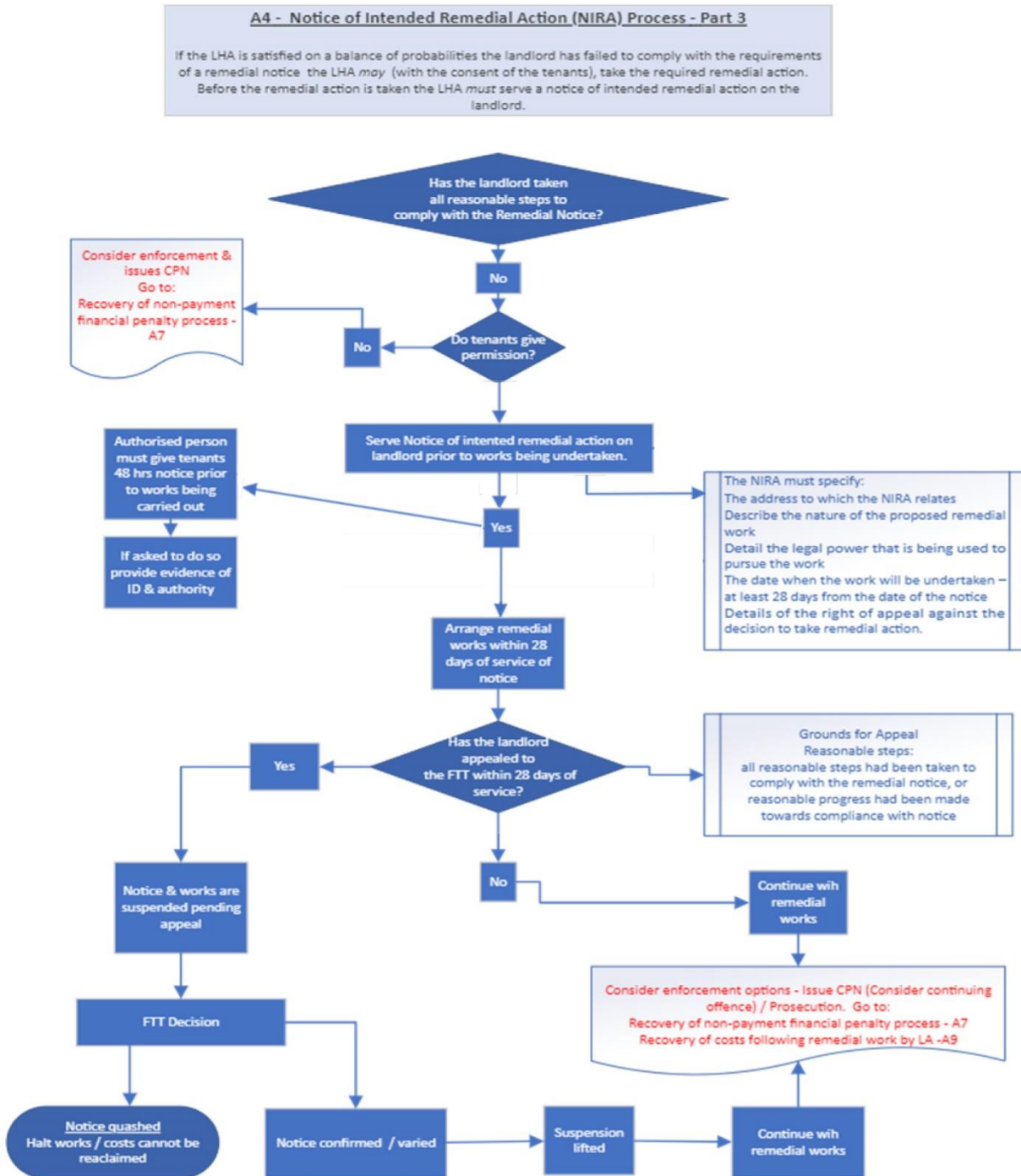
4. NWL/ESS – A3 – Flow chart – Remedial action

Purpose of process	Version	Last reviewed	By
To provide a basic overview of the process of serving a remedial notice, appeal and enforcement options	0.1		



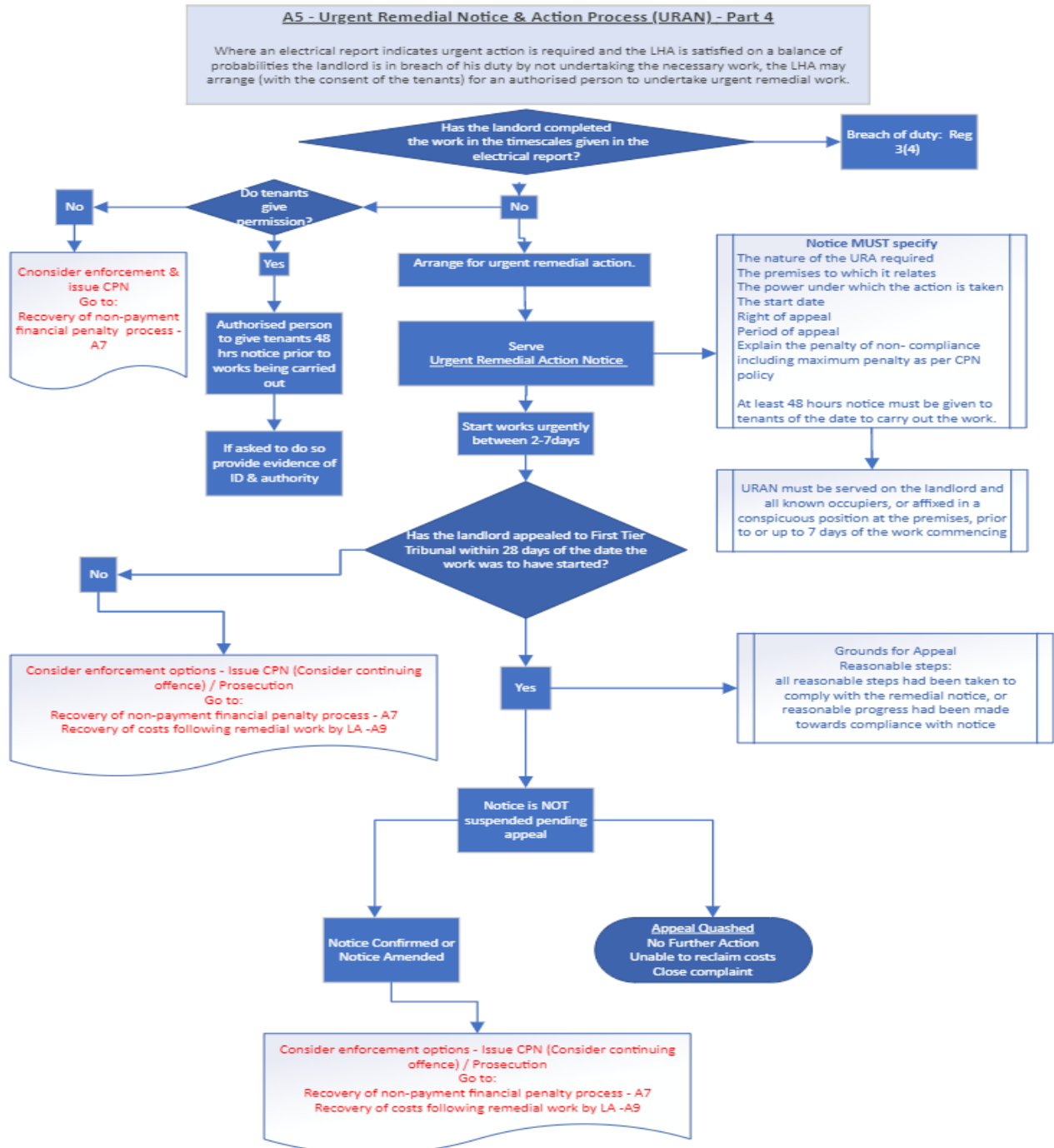
5. NWL/ESS – A4 – Flow chart – Notice of Intended Remedial Action

Purpose of process	Version	Last reviewed	By
To provide a basic overview of the process of serving a urgent remedial action notice, appeal and enforcement options	0.1		



6. NWL/ESS – A5 – Flow chart – Notice of Urgent Remedial Action

Purpose of process	Version	Last reviewed	By
To provide a basic overview of the process of serving a urgent remedial action notice, appeal and enforcement options	0.1		



7. NWL/ESS – A6 – Accompanying Notes – Investigation, Remedial action, Notice of Intended Remedial Action and Urgent Remedial Action

Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowcharts: A2, A3, A4, A5	0.1		

INITIAL INVESTIGATION (A2)

The regulations require the LHA to enforce the duties imposed on private landlords and include the power to arrange remedial action.

The 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.

Tenancies (schedule 1 of the Regulations)

Specified tenancy – tenancies to which the regulation apply:

- ▶ Grants one or more persons the right to occupy all or part of the premises as their only or main residence
- ▶ Provides for the payment of rent (whether at market value or not)
- ▶ Is not an excluded tenancy.

Excluded Tenancies – tenancies to which the regulations do not apply:

- ▶ Tenancies where the landlord is a registered social landlord
- ▶ Where the tenant shares the property or part with the landlord or a member of the landlord's family
- ▶ Long leases of seven years or more
- ▶ Student halls of residence
- ▶ Hostels and refuges
- ▶ Care homes
- ▶ Hospitals, hospices and other healthcare-related accommodation.

Duties of a landlord – Part 2

Ensure the property meets the national standards for electrical safety for the period it is let under a specified tenancy.

Ensure the electrical installations are inspected every five years against the electrical safety standard laid down in the 18th Edition of the Wiring Regulations and by a competent person who is part of the electrical safety industry competent-person scheme.

Electrical installations are deemed to be:

- ▶ Consumer units
- ▶ Light fittings
- ▶ Plus sockets
- ▶ Wiring

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

- ▶ All existing tenant(s) within 28 days of the inspection
- ▶ New or prospective tenant before they occupy the property, or receiving a request for the report
- ▶ To the LHA within seven days of receiving a written request to do so.
- ▶ To the next person undertaking the next inspection and test.

Complete required works with 28 days or a shorter period where the inspection certificate requires this.

Complete further remedial work or further investigation within a further period of 28 days (or shorter period, where this is required).

Where a LHA has cause to do so it may request a copy of the most recent Electrical Inspection and Testing Certificate and condition report relating to the fixed electrical installation at the rented property pursuant to Regulation 3(3) of the regulations. Failure to comply with request is a breach of duty and can result in the LHA imposing a civil penalty in accordance with its civil penalty policy. There is no statutory appeal against the notice although the landlord may make representations to the LHA. Alternatively, the landlord may challenge the notice through Judicial Review.

OVERVIEW OF ENFORCEMENT – LHA POWERS

- ▶ Regulation 3(1)(a)
electrical safety standards have not been met during the period of a tenancy, or
- ▶ Regulation 3(1)(b)
electrical installation has not been inspected at regular intervals (5 years or shorter as required), or
- ▶ Regulation 3(1)(c)
the first inspection was carried out before the tenancy began (for new tenancies) or by 1st April 2021 (for existing tenancies), or
- ▶ Regulation 3(4)
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
- ▶ 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
- ▶ The most recent inspection report does not indicate that urgent remedial action is required

Where the Council believes that a landlord has breached their duties under the Regulations, they may do one, or a combination of, the following:

- ▶ Serve a remedial notice on the landlord, requiring them to take action in respect of the breach;
- ▶ Carry out urgent remedial action where a report indicates it is required;
- ▶ Carry out remedial action where a landlord is in breach of a remedial notice;
- ▶ Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- ▶ Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12-month period.
- ▶ Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

REMEDIAL NOTICE – PART 3 (A3)

A notice of intended remedial notice *must* be served where the LHA has reasonable grounds to believe the landlord has failed in his duty to comply with the requirements of the legislation.

The remedial notice must be served within 21 days from the date the LHA is satisfied that the landlord has not complied with one of his duties. The Notice must specify:

- ▶ The premises to which the Notice relates
- ▶ The duty(s) the LHA considers breached
- ▶ The required remedial action
- ▶ The date by which the action is to be completed; this must be within 28 days of the *service* of the Notice
- ▶ Allow for written representations to the Notice within 21 days of the *service* of the Notice
- ▶ The name & address to whom any representation may be submitted.
- ▶ Explain the penalty of non- compliance including maximum penalty as per CPN policy

Reasonable Steps

A landlord has a duty to comply with a remedial notice 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.

Right of make representation

The landlord has 21 days from the date of service to challenge the Remedial Notice and make representations to the LHA.

On receipt of any appeal the notice is automatically suspended pending the outcome of the appeal.

The LHA must consider the representation and respond in writing with its decision to the appellant within 7 days of receipt of the appeal.

Outcome of representation

- ▶ Representation accepted – notice withdrawn – no further action – compliant closed.
- ▶ Representation declined – notice confirmed or varied - suspension lifted – landlord must comply with the notice within 21 days of receipt of confirmation.

Enforcement

- ▶ Carry out urgent remedial action where a report indicates it is required;
- ▶ Carry out remedial action where a landlord is in breach of a remedial notice;
- ▶ Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- ▶ Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12-month period.
- ▶ Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

REMEDIAL ACTION BY LHA – PART 3 – (A4)

Notice of intention to take remedial action (NIRA)

If the LHA is satisfied on a balance of probabilities the landlord has failed to comply with the requirements of a remedial notice the LHA *may*, with the consent of the tenant, arrange for an authorised person to carry out remedial action.

If the tenant fails to give permission for the remedial works, the LHA may consider issuing a civil penalty notice in accordance with its Civil Penalty Policy.

Prior to any remedial action being taken by the LHA must serve a notice of intention to take remedial action (NIRA) on the landlord. The NIRA must include:

- ▶ The address to which the Notice of Intention relates
- ▶ Describe the nature of the proposed remedial work
- ▶ Detail the legal power that is being used to pursue the work
- ▶ The date when the work will be undertaken – at least 28 days from the date of the notice
- ▶ Details of the right of appeal against the decision to take remedial action.
- ▶ Copies must be served on any interested parties

If an appeal has not been received and at the end of the 28-day period, works may be undertaken by an authorised person.

The authorised person must give the tenants at least 48 hours' notice of the remedial works. If asked to do so by the landlord or tenant the authorised person carrying out the works must produce proof of authority and identity.

Right of appeal – Landlord representations

The landlord has 28 days from the date of service of the NIRA to appeal against the decision of the LHA to take action, to the First Tier Tribunal (property chamber).

A landlord may submit an out of time appeal if he can demonstrate good reason for failing to appeal within the statutory timeframe.

Reasonable steps

A landlord has a duty to comply with a notice of intended remedial action unless they are able to claim that they have taken all reasonable steps. An appeal maybe brought on the grounds on “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 or where reasonable progress has been made towards compliance.

NIRA is suspended pending appeal.

Appeal outcome

- ▶ Appeal allowed - Notice quashed – cease works, costs cannot be reclaimed
- ▶ Appeal declined – Notice confirmed or varied – suspension lifted, works can recommence and costs can be recovered.

Enforcement

- ▶ Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- ▶ Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12 month period.

- Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

URGENT REMEDIAL ACTION – PART 4 (A5)

Where an electrical report indicates that urgent action is required and the LHA is satisfied on the balance of probabilities that the landlord has failed to undertake the works the LHA may, with the consent of the tenant, arrange for an authorised person to carry out urgent remedial work.

If the tenant fails to give permission for the urgent remedial works the LHA may consider issuing a civil penalty notice in accordance with its Civil Penalty Policy.

Subject to 48 hours' notice to be given as referenced below the LHA may exercise its right to arrange remedial works at any time.

The LHA must issue and serve an Urgent Remedial Action Notice (URAN) on the landlord and all known occupiers, or affix the notice in a conspicuous position at the premises, prior to or up to 7 days of the work commencing.

The Notice must include:

- ▶ The nature of the urgent remedial action required
- ▶ The address to which the Notice relates
- ▶ The power being used to justify the urgent work
- ▶ The date when the urgent work is or has been started
- ▶ The right of appeal and the period of appeal
- ▶ The provisions relating to the issue of financial penalties.

The authorised person must give the tenants at least 48 hours' notice of the remedial works. If asked to do so by the landlord or tenant the authorised person carrying out the works must produce proof of authority and identity.

Right of appeal – landlord representations

The landlord has 28 days from the date the urgent remedial work started or was due to start (whichever was first) to appeal against the Notice to the First Tier Tribunal (property chamber).

A landlord may submit an out of time appeal if he can demonstrate good reason for failing to appeal within the statutory timeframe.

Right of appeal – Landlord representations

The landlord has 28 days from the date the remedial work started or was due to start to appeal against the decision of the LHA to take action, to the First Tier Tribunal (property chamber).

A landlord may submit an out of time appeal if he can demonstrate good reason for failing to appeal within the statutory timeframe.

Reasonable steps

A landlord has a duty to comply with a notice of intended remedial action unless they are able to claim that they have taken all reasonable steps. An appeal may be brought on the grounds on "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 or where reasonable progress has been made towards compliance.

The URAN is not suspended on appeal.

Appeal outcome

- ▶ Appeal allowed - Notice quashed – cease works, costs cannot be reclaimed

- ▶ Appeal declined – Notice confirmed or varied – suspension lifted, works can recommence and costs can be recovered.

Enforcement

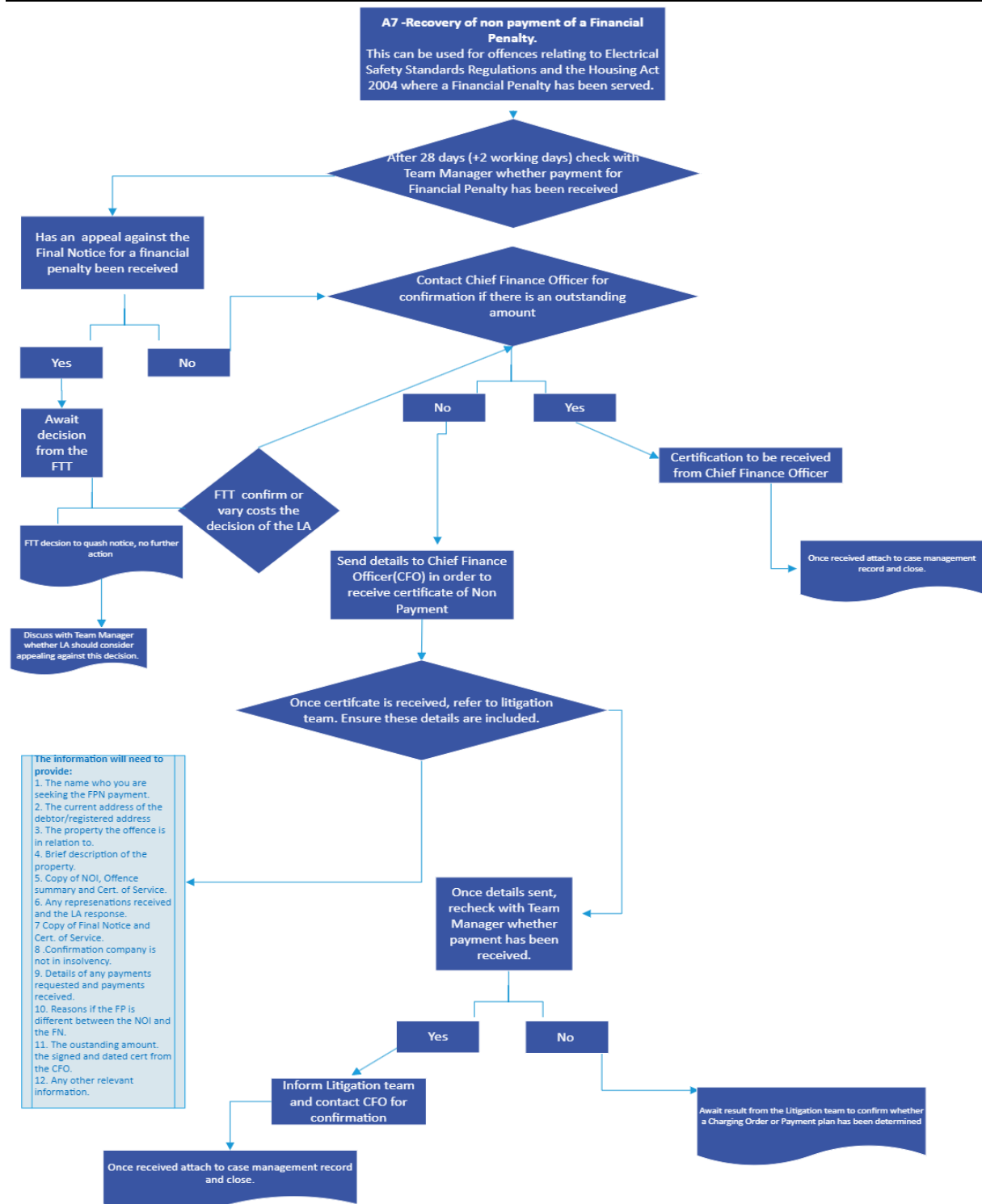
- ▶ Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- ▶ Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12 month period.
- ▶ Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

Power of Entry

Powers provided under section 239 of the Housing Act 2004.

8. NWL/ESS – A7 – Flow chart – Recovery of non-payment financial penalty

Purpose of process	Version	Last reviewed	By
To provide an overview of the process to recover non-payment of Financial Penalties	0.1		



NWL/ESS – A8 – Accompanying Notes - Recovery of non-payment of financial penalty process

Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowchart A7	0.1		

Prior to undertaking this process, determine whether an appeal against the financial penalty has been received. An appeal made against the Financial Penalty can be made pursuant to the Electrical Safety Standards Regulations 2020 Schedule 2 (5, (1)). If an appeal has been made to the First Tier Tribunal (FTT), await the outcome of the hearing as the value of the financial penalty may change or the financial penalty quashed.

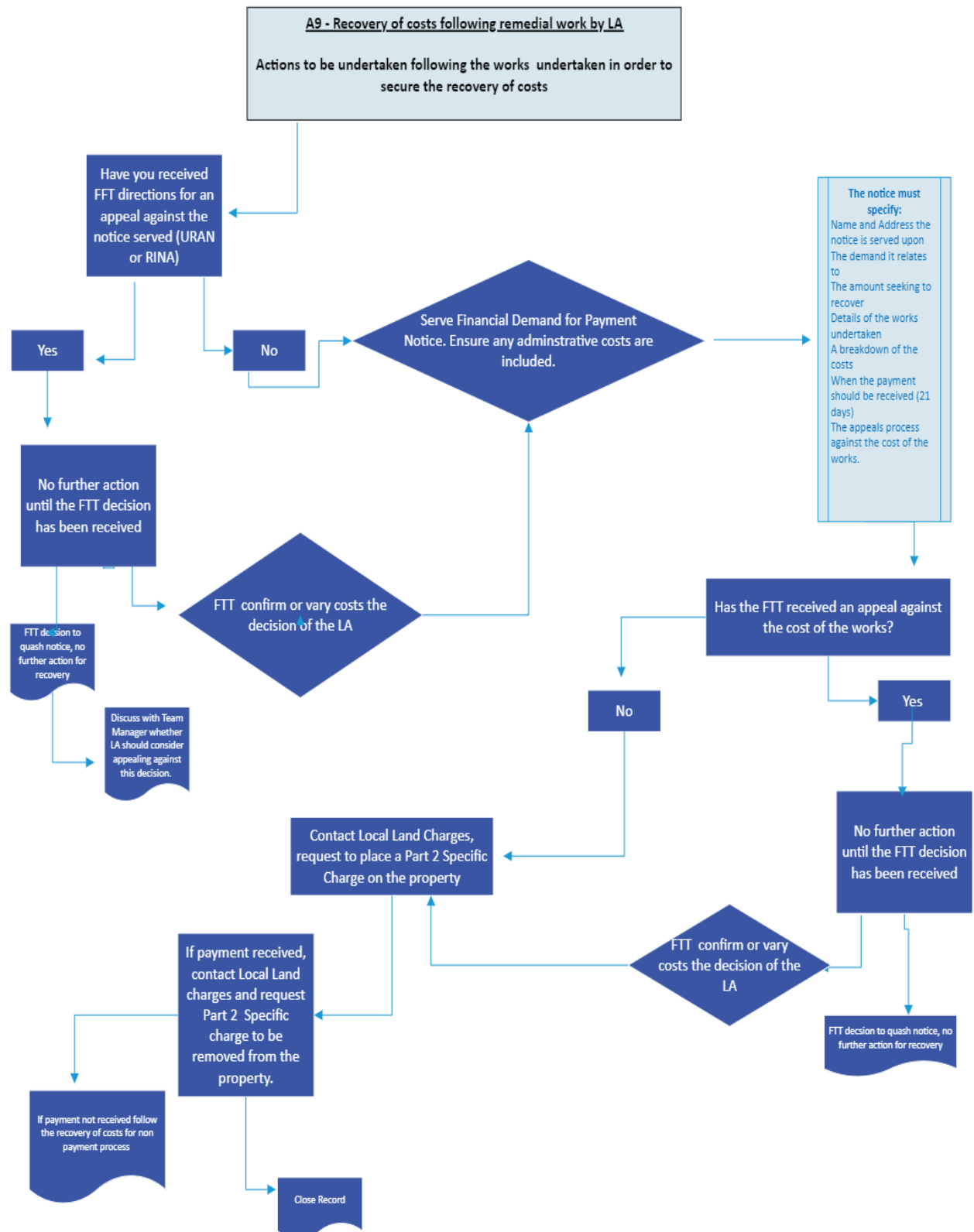
- 1 28 days (+2 working days) after the date the financial penalty notice has been served, check with the team manager whether payment has been received. If the financial penalty has been paid in full, no further action is required.
- 2 Once satisfied payment is outstanding, contact the councils Finance Team Manager for confirmation of this. A certificate from the Finance Team Manager should be received.
 1. The Finance Team Manager will review the case and provide a certificate confirming the outstanding amount.
 2. Refer the certificate of non-payment to the litigation team. The following details are required to be provided:
 - The name of whom you are seeking the financial penalty payment.
 - The current address of the debtor/ registered address.
 - The property the offence is in relation to.
 - Brief description of the offence.
 - Copy of the Notice of Intent, offence summary and certificate of service.
 - Attach a copy of any representations received (if applicable).
 - Attach a copy of the councils' response to any representations (if applicable).
 - Copy of the Final notice and certificate of service, highlighting the date it was served.
 - Confirm check made on company's house for insolvency details if you are seeking to recover the debt against the company.
 - Details of any requests for payments by instalments including date of the first payment and agreed date and amount per month to be received after the first payment.
 - If the amount has changed from the notice of intent and the final notice, the reasons why.
 - The date and amount of any payments received.
 - The outstanding amount.
 - The signed and dated certificate from the Finance Team Manager.
 - Any other information you think may be relevant.
 3. Recheck with both the team manager and the Finance Team Manager whether payment has been made. If so, inform the litigation team and await a further certificate of payment demonstrating a new outstanding amount.
 4. The litigation team will arrange for either a County Court or High Court hearing (depending on the outstanding amount). Await from the litigation team the results of the hearing and whether a charging order or payment plan has been ruled.
 5. If a payment plan is made, undertake the usual process. If there is a charging order made, an interim charging order following this a final charging order will be determined by the courts. For

confirmation of this, you should receive a copy of the final charging order and an up to date land registry document detailing the charge on the property for the Final notice amount plus any additional costs that have been incurred chasing the debt.

6. Once all payments received, email the finance team to confirm. Once confirmed the full amount of the finically penalty has been received, update the case management file and close the record.

9. NWL/ESS – A9 – Flowchart – Recovery of costs following remedial work by LA

Purpose of process	Version	Last reviewed	By
Process of actions to be undertaken following Works in default	0.1		



10. NWL/ESS – A10 – Accompanying Notes - Recovery of costs following remedial work by LA

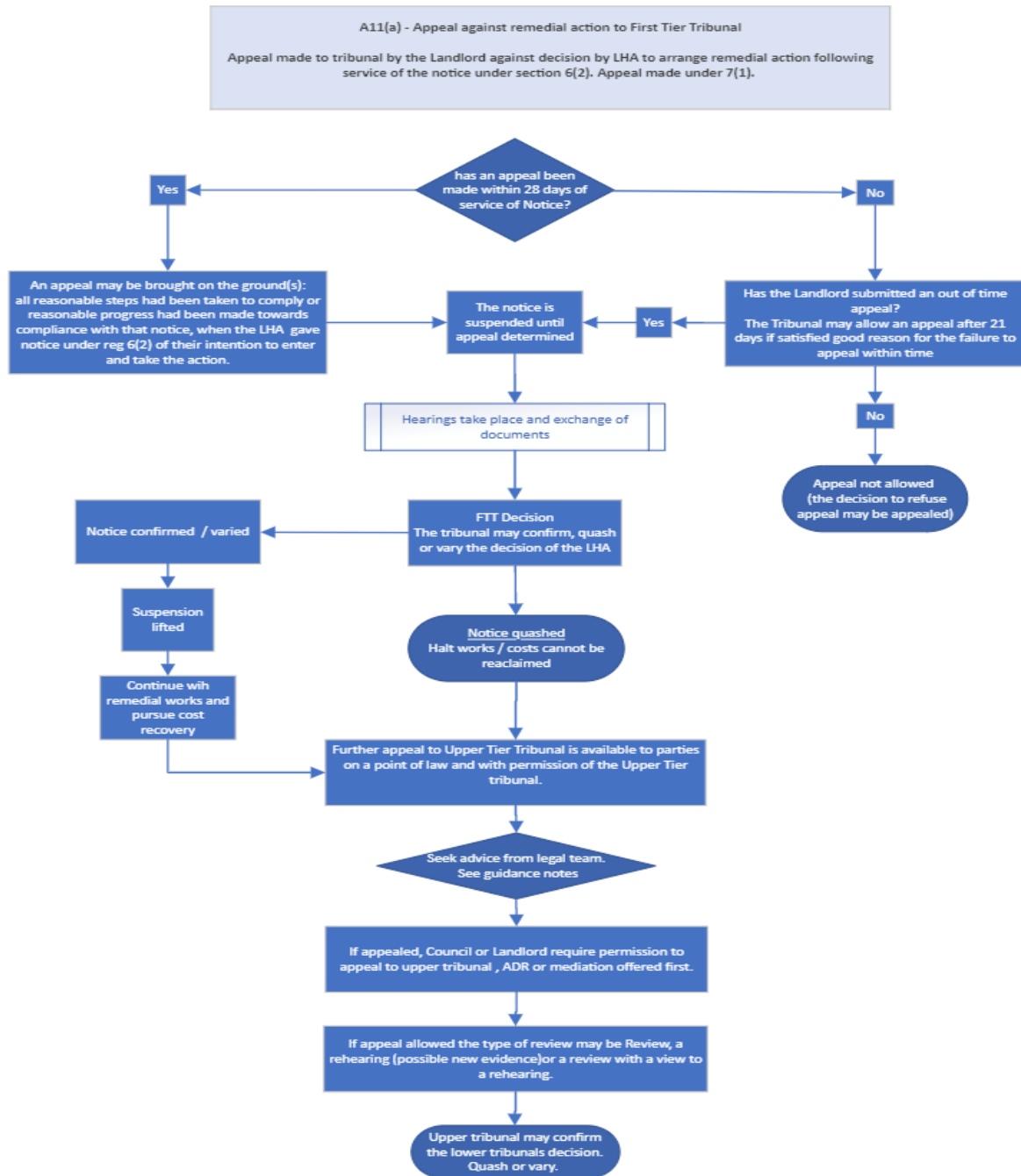
Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowchart A9	0.1		

1. Once works in default have been undertaken regarding either the Urgent Remedial Action Notice (URAN) or Notice of Intended Remedial Action (NIRA), a Financial Demand for payment under Regulation 8 (2) of the Electrical Safety Standards (ESS) must be served on the person whom you are seeking payment from. This will be the landlord.
2. Once the appeal period for either notice has passed and you are satisfied no directions have been received from the FTT you can arrange for a competent person to undertake the remedial action on behalf of the local authority and arrange to recover reasonable costs.
3. The appeal period is 28 days for either the URAN or the NIRA.
4. Once the remedial works have been undertaken, serve a Financial Demand Notice under Regulation 8(2). This Financial Demand will be used for costs incurred for either urgent remedial action or the remedial action that has been undertaken and the property.
5. The Financial Demand has an appeals process to the FTT and the landlord can make this appeal under Regulation 9 of the Electrical Safety Standards Regulations 2020. The appeal period is 21 days.
6. Check the total amount on the invoice received from the trusted/approved contractor regarding the electrical works that have been undertaken at the property. Ensure these match what works were instructed.
7. If the amount is correct and the invoice details the works included in the URAN or RAN serve the notice for the Financial Demand. As the local authority are undertaking works in default by implementing public law, it is widely viewed that generally VAT should be deducted from the amount the local authority are seeking from the individual or company (sundry debtor). Within the Electrical Safety Standard Regulations (ESSR) it states that a demand for recovery of costs must be served on the private landlord whom the local authority is seeking recovery.
8. The Financial Demand must include the following:
 - Name and address of whom the notice is served upon. This must be the person NWL are seeking recovery of payment.
 - The demand the property relates to.
 - The amount NLW are seeking to recover.
 - Detail of the works undertaken at the property.
 - A breakdown of the costs -This will usually consist of the cost of the works undertaken and any administrative charges that have occurred as a result of the North West Leicester having to oversee the works. The costs must equate to the total amount you are seeking to recover.
 - When the payment should be received – 21 days from the date of service of the notice.
 - How the landlord can appeal against the costs and the timescale the landlord has to make an appeal to the First Tier Tribunal (FTT) (21 days).
 - Officers' signature and date.
9. After 21 days (+2 working days) from the date of the demand of the Financial Payment notice was served, the demand becomes payable if no appeal has been received. Contact local finance services to establish whether payment has been received.

10. If payment has not been received contact local land charges and request that a part two specific land charge registered on the property. Ensure you receive confirmation of this (usually through email) so the debt can be recovered should the property be sold.
11. Once payment has been received, contact local land charges and ask for the part two specific land charge to be removed and receive confirmation of this.

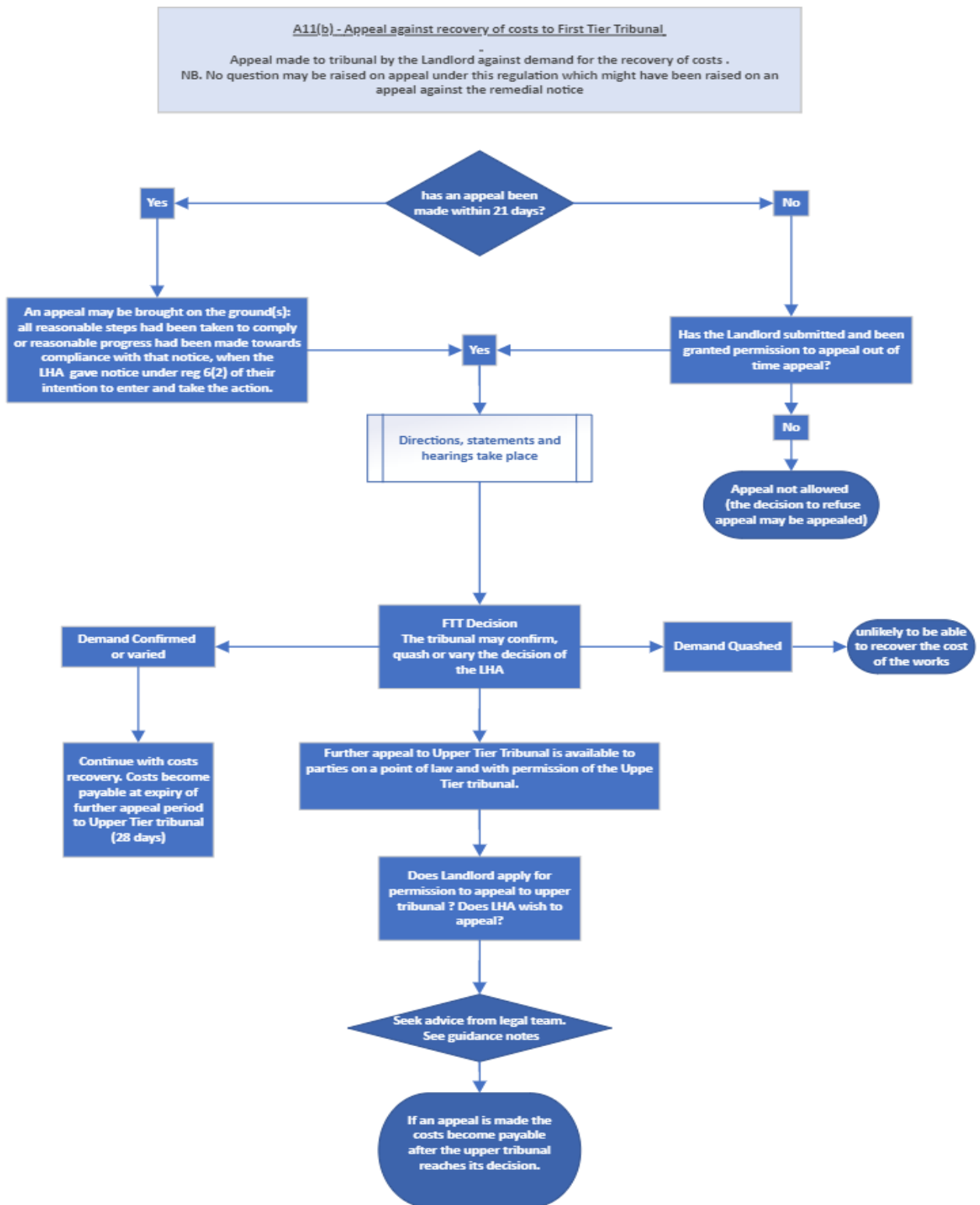
11. NWL/ESS – A11a – Flow chart – Appeal against remedial action to First Tier Tribunal

Purpose of process	Version	Last reviewed	By
Appeal made to the FTT following URAN or NIRA	0.1		



12. NWL/ESS – A11b – Flow chart – Appeal against recovery of costs to First Tier Tribunal

Purpose of process	Version	Last reviewed	By
Appeal made to the FTT following URAN or NIRA	0.1		



13. NWL/ESS – A12 – Accompanying Notes – Appeal to First Tier Tribunal

Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowchart A11a and A11b	0.1		

The Process flow diagrams show the two different appeal processes including timescales that can be made to the tribunal.

Process A11a - Appeal against Notice to the First Tier Tribunal (Land Chamber)

- This details the Landlords (the appellants) appeal under regulation 7 against decision by Local Authority to take remedial action or urgent remedial action, following service of the notice under 6(2) or 10 (3) (URAN).
- The appeal must have been received by the tribunal within 28 days of the service of the notice or under URAN within 28 days of the start of taking of the urgent action.
- The notice is suspended as and when the appeal is received by the tribunal. However the URAN notice is not suspended when appealed (as in all likelihood it has already started or been completed and may put tenants at immediate risk if not undertaken).
- The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) must be followed and can be found at the following link. It is advised the respondent both read and understand the rules, though the case worker for the tribunal will effectively lead the respondent through the process using directions that will be produced at the start of the process.
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/357067/property-chamber-tribunal-procedure-rules.pdf
- The tribunal is likely to require the production of a statement of case as part of the directions made by firstly the Landlord as to why they are appealing. This is the opportunity for the Landlord to state why they are appealing. These are known as the grounds of the appeal. The timescales given must be strictly adhered to.
- If the timescales cannot be adhered to the Landlord must apply for an extension of time via the tribunal case worker. They will contact the respondent for consent (Council). If they agree a joint application from both parties may be submitted. If the Council objects they must give a reasoned explanation as to why the object.
- If there is a possibility that the appeal can be resolved using alternative dispute resolution a stay in proceedings of up to six weeks may be allowed. If mediation is considered by both parties then the two parties are encouraged to attend to resolve their differences in this way. It is often cheaper in terms of time and legal fees and expert reports.
- Fees must be paid as directed by the tribunal. Non-payment may mean the tribunal must not proceed further until paid.
- The tribunal may require the exchange of documents between the two parties of relevant documents. This may include (but not limited to)
 - a. Evidence that the work is required (from Council and Landlord).
 - b. Statements from electricians who have attended, certificates or periodic inspection reports refuting oppositions evidence, purchase orders, email conversations, records of telephone calls. Etc.
 - c. Statements of agreed matters
 - d. Expert evidence.
- There may be a hearing if it cannot be concluded by written submissions. This may involve a visit to the property involved.
- A hearing would normally follow the property inspection by the tribunal either in a court room or in a community centre etc.
- If the appellant withdraws the effect is that the notice is confirmed.

- If the tribunal in its decision confirm the notice the Landlord may appeal to the upper tribunal.
- The Council or landlord may choose to appeal if it quashes the notice and disagrees with the findings of the tribunal.
- If the notice is quashed the notice ceases to exist and the Council may need to consider what (if any) further action to take. It can reserve a notice. Care needs to be taken that the subsequent notice is taking into account the findings of the tribunal. If for example the initial notice was served on the wrong person.
- If the notice is varied the landlord is still required to address the varied works/notice.
- If an appeal is made against the decision of the first tier tribunal the upper tribunal will consider if the case has merit. An explanatory leaflet detailing the process is found at the following link.³

Process A11b – Appeal to the Upper Tier Tribunal (Land Chamber)

- This details an appeal against recovery of costs following service of a demand by the Local Authority following either works undertaken by the LA, following a remedial action notice under section 6 or secondly following urgent remedial action following a notice served under section 10.
- Note that the appeal must not consider those issues which could be dealt with by process A11a. Two separate appeals should be made if both the reason for the service of the notice is being appealed as well as the recovery of costs.
- Appeal in this case must be made within 21 days of the demand for payment from the Council for the recovery of their costs.
- An out of time appeal may still be heard if special circumstances exist that would convince the tribunal to allow the appeal.
- An appeal may be heard if the grounds for appeal include that the landlord had made reasonable progress to comply with the notice when the Council gave notice of their intention to enter and take the action.
- The tribunal is likely to require a statement of case from the Landlord as to why they are appealing.
- The tribunal is likely to require evidence of the reasonable steps that the appellant (Landlord) had made.
- The tribunal will provide directions for the Local Authority including timescales and deadlines for when it must be provide certain information.
- It is likely in this case to require evidence from the officer involved of their involvement and communications with the landlord.
- It is likely that quotations may be examined and possibly the authorities procurement policy has been complied with.
- The tribunal in its decision may quash the demand, vary the demand (increase or decrease the demand), or confirm the demand.
- If the demand is quashed the Council is unlikely to be able to recover the cost of the works.
- If the demand is confirmed the costs become payable at the end of the period during which the appeal to could be made. So if the Tribunal gives the appellant 28 days to appeal, then the costs become payable at the end of 28 days.
- If an appeal is made the costs become payable after the upper tribunal at the time of its decision.

³ [T605 - Explanatory leaflet for appeals against decisions of the First-tier Tribunal \(Property Chamber\), and the Leasehold Valuation and Residential Property Tribunals \(publishing.service.gov.uk\)](#)

14. NWL/ESS – A13 – Worked examples

Purpose of process	Version	Last reviewed	By
Problem statements and explanation relating to the above	0.1		

Worked example 1

EHO receives a complaint from a tenant that they hadn't received an electrical safety certificate from their landlord when they moved in three weeks ago. It is a standard assured short hold tenancy. They have noticed there are a few concerning items around the house that need addressing. They have sent in two photos of switched sockets that have cracked with exposed live contact points behind.

EHO starts initial investigation process (A2)

They assess the evidence and judge that they should send a notice requesting the electrical inspection and test certificate.

They send this to the landlord Mr Smyth. The Council have no prior knowledge of the Landlord.

5 days later the EHO receive a copy of the test certificate and it identifies that the supplementary bonding is inadequate to the radiator pipe works which is stated to be a C2. It also says that 2x C1s (damaged switched sockets) were found and have since been addressed. The Landlord included photographs of the repaired switched sockets showing the front plates have been replaced. He included a report from the electrician stating he had repaired the urgent C1s.

The EHO calls the Landlord asking for evidence that the bonding has been addressed also. He says he hasn't done it as he hasn't been paid any rent for some weeks and he will address this when the tenant pays his missing rent or when they move out. The landlord says he has never needed a periodic inspection report to date and he has had the property for ten years.

The EHO then considers the necessity to address the C2 identified and seeing as the Landlord will not do it of his free will decides to serve a Remedial Action Notice.

The EHO is satisfied that there is a breach of duty under section 3(1) (a) so within 21 days they send a remedial notice to the Landlord. They follow Remedial Notice process (A3)

On the notice it states

- 1 The address the notice refers to. Flat 2B main road, Ashby
- 2 The duty the landlord has been judged to have breached. 3(1)(a)
- 3 The required remedial action. Provide supplementary bonding/earthing to the wet central heating system in the house in line with current wiring regulations.
- 4 The date by which the action is to be completed- within 28 days.

The landlord responds in writing to the EHOs manager (within 5 days) stating that he would address the works within 2 months if the Tenant pays their rent. *The notice is suspended at this point.*

The senior officer receiving the response, reviews the response and decides this is not an adequate response or timescale and within 7 days provides a written response back to Mr Smyth saying that the Notice is confirmed and that the notice is no longer suspended.

14 days later (within the total of 28 days allowed) the EHO is contacted by the tenant who says the landlord's electrician has come back and done some work to the pipes. So, the EHO re-inspects the house, and the supplementary bonding has been completed and the tenant has been left with

a certificate stating that the electrical installation is now compliant. A copy is received from the landlord within 3 days via the post.

The Council must then decide if they will take further action using the civil penalty process. They decide based on the facts of the case that they will not on this occasion serve a notice of intent to serve financial penalty. But instead write formally to him warning him that any future failures in his duty to comply with the regulations will likely result in a civil penalty. The case is then concluded and closed.

Worked example 2

Background

Mrs Jones is Landlord and has a number of properties (10) in the Local authority area. She is well aware of the electrical safety standards regulations having been found previously to be operating without a periodic inspection report and certificate at a previous house. She was not served with a civil penalty for this previous failure as it was her first offence.

She has since rented a property to a family with young children on a 6-month assured short-hold tenancy. It's a relevant tenancy.

The Tenants have not received a periodic inspection report nor certificate despite moving in two months ago.

The Tenant's house has been in partial darkness upstairs for a week. The upstairs wiring circuit has been effectively condemned due to squirrels biting through the insulation/ cables in numerous places to the loft. It's classified as a C1 on the report.

Her electrician who attended made it safe, but has left upstairs without a working lighting circuit and was awaiting an order number from the landlord before he could start work to rewire the upstairs lighting circuit and repair the socket.

Mrs Jones has provided a few lamps (to be plugged into the ring main) to deal with the lack of lighting.

Also present upstairs were one cracked socket. This was not addressed/made safe. The tenants have complained to the Council.

The EHO sent a notice to the landlord requesting the Electrical inspection and test certificate. This was received promptly by return of email.

The report dated two weeks previously, showed two C1 issues. It stated that the works to address the C1's should have been completed in 7 days.

No remedial action had been taken within the time specified on the inspection report (apart from making the lighting circuit safe) but the electrician hadn't repaired it nor the cracked electrical socket. The Landlord is (or is potentially) in breach of their duty to undertake remedial work within the period specified in the report as stated in 3(4) (b).

The EHO cannot get in touch with the landlord following the email and answer phone messages are not being answered.

URAN

As there are 2 C1s (urgent) the EHO therefore goes through the urgent remedial action process (URAN- process A5).

The family want this work completing urgently and the landlord is not contacting them back, they therefore give permission for the works to be carried out by the Council. The EHO uses a suitably qualified electrician using their trusted contractor list to provide a quotation for

- Replacing the lighting circuit to current wiring regulations.
- Replace the damaged socket.

While on site the contractor quoting for the works also notices that there is some

- Thermal damage to a socket above the cooker.

- An MCB fitted to the distribution board has an incorrect breaking current.

Both of which issues are stated to be C2s. This additional information and report is relayed to the landlord by email who is instructed to address it.

Therefore the process is split into two. Firstly, a URAN is served to address the C1's which is to replace the wiring to the lighting circuit upstairs and to replace the damaged socket. The second part of the works required to address the C2s (not being urgent) will revert to the remedial notice process A3 if the Landlord doesn't address it.

The EHO therefore follows the URAN process contained in flow diagram A5. The notice served includes the following.

- 1 Name of the premises. 12 Acacia walk, Coalville.
- 2 The power under which the action is taken. Regulation 6.
- 3 The date (three days' time) when the work will commence by the authorised person.
- 4 The right of appeal to the notice. Which must be made 28 days from the service of the works.
- 5 The notice is served on the occupiers (family at the rented house) and on the landlord at her home address.

The works are then undertaken 3 days later by the Councils contractor having been procured in line with the Council procurement procedures. Adequate notice has been given to the Tenants that the works start after 48 hours.

The landlord doesn't appeal against the URAN to the FTT in 28 days.

Cost recovery process

The Council then go through the Cost recovery process for the works undertaken.

- 1 Firstly the EHO contacts the local land charges team by email and asks them to place a part 2 financial charge on the property including the cost of works and additional admin charge for arranging the works inline with our current charging policy.
- 2 The officer raises an order number for the works and adds a 20% fee for the Council's costs in arranging the works.
- 3 After the order number is raised, then an invoice is raised and sent to the Landlord through the Councils own internal system.

The Landlord then pays the invoice for the works, within 7 days.

Civil Penalty

The EHO then decides that a civil penalty will be considered. The Landlord is noted to be a repeat offender having failed in her duties previously. So to calculate the CPN the EHO uses the civil penalty policy and calculator, the tables of which are included below to assist calculation.

Table 1: Civil Penalty level for relevant offences

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total

Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	
		180-230	£10,000	
		240	£20,000	

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards ¹	£1,000
	Section 72	Failure to obtain property licence	£2,500				
		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management	£500				

		regulations (per breach)					
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3	Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. ²	£3,500	There is one or more identified relevant defect (s)	£2,500	

¹ A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in a Unsatisfactory grading on an Electrical Installation Condition report (EICR) Namely a defect given a C1, C2 or F1 observation code.

Table 3: Impacts scoring matrix

Answer each of the questions 1-5 below and apply the score shown in the column header.

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk Previous /current occupant not in vulnerable category. No impact assessed	MODERATE Moderate level of risk to relevant persons, Previous/current occupant not in vulnerable category. Low impact assessed.	HIGH High level risk(s) to relevant persons. Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional	SEVERE High level of risk(s) to relevant persons. Previous/current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely

				high impact occurrences.	and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

Looking at Table 2 above of the civil penalty policy to calculate the offence specific penalty, there is a £1000 per breach of duty, which in this case Regulation 3 (1) (a) states that a Landlord who grants a relevant tenancy has a duty to...

“ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;”

The Electrical Safety Standards have not been met. As there are two unrepaired C1's this is the first failure of duty under 3(1) (a).

The Officer notes that the test report and certificate is dated some weeks after the tenant has moved in. Therefore a duty under 3 (1) (c) (i) (which is to ensure the test was carried out before they moved in) has also been breached.

The EHO asks the landlord if a previous report has been completed in the previous 5 years, but none could be produced. Therefore, the Landlord has failed in their duty to regulation 3 (1) (b) also (as the electrical installation was not inspected and tested at regular intervals of 5 years).

Also the officer notes that Regulation 3(4) which states that:

(4) 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 within—

(a) 28 days; or

(b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.

The Officer notes that the electricians report says the C1's should be repaired within 7 days from the day of the testing- being urgent. Therefore 4(b) hasn't been complied with.

The breached duties are therefore 3(1) and 3(4) (b).

The Officer then considers if there are any identified Code 1 defects present on the inspection report and we have two, so in column two we calculate an additional £3,500 to be added to the £2000.

The officer then considers the questions in table 3 of the Civil Penalty Policy (CPP).

Question 1= Score of 30- High risk. If someone touches the live contact points which are at a low level in switched sockets, the score for this is doubled as per the policy to 60.

Question 2= The landlord owns 10 properties, so the score= 40.

Question 3= The Landlord has some previous enforcement action against them and should have known what they were doing was wrong. So score= 30.

Question 4= Apart from the cost of the works little or no income was received as a result of their action. So scores 0

Question 5= Medium confidence that this will deter from repeat offending. So scores 20.

Total for table 3 the score = 150, which when we look at Table 1 of the CPP is £5,000.

So looking at table 1 of the CPP,

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
£2000	£3,500	150	£5,000	£10,500

The process for the service of civil penalties for the ESS regulations is contained in Schedule 2 of the Regulations.

Following the process contained in schedule 2, the Notice of intention to serve a Civil Penalty is served within 6 months of the Council being made aware of the breach.

The notice of intention sets out

- 1 the amount of the proposed financial penalty; £10,500
- 2 the reasons for proposing to impose the penalty; The Landlord has failed in their duty to maintain the electrical installation for a relevant tenancy leaving the Tenant in a potentially dangerous situation.
- 3 information about the right to make representations under paragraph 2. The Landlord may make representations against the proposal to serve a notice within 28 days.

Following receipt of the notice of intention to serve a civil penalty, the Landlord then supplies a representation to the Council. It states:

"I was in the process of undertaking the works. I had provided the Tenant with alternative lighting upstairs until a full repair was made. The lighting circuit was made safe and a series of pest control treatments were being undertaken to address the squirrel problem in the loft. I didn't see much point reinstalling the wiring until the squirrels were dead or stopped from getting into the loft as they may have done it again. I had gone away on business when the URAN was received. I would have actioned it immediately if I had received it in time before the urgent works commenced. I have already paid the invoice for the works as I accept it is my responsibility. I inspected the property between tenancies (before the tenant moved in) and there was no cracked socket in that location and it is likely the tenant may have done this, possibly when moving furniture in, as it's located behind some furniture. I provide a dated photograph showing the socket in good working order dated 1 month ago, I have looked at the socket in question and although cracked there doesn't appear to be any exposed contact points. I provide a photo and it appears to be only a hairline crack. May I also add that I had instructed the electrician to start the rewiring and repairs the following week, it was in a safe condition and risk was in my opinion low despite it being stated to be a C1". Appended to the response were 3 inspection reports from the pest control company for the squirrel trapping, evidence she was away on business (flight receipts), photographs of the electrics between tenancies and a current photo of the damaged socket.

The Council decides that this representation has raised some issues that would make the service of a civil penalty at its current level appealable and perhaps unfair.

Therefore the Council decides to reduce the level of civil penalty on this occasion.

The reason for this is as follows, the Landlord's electrician had made the C1 safe in the loft however they hadn't addressed the cracked socket. The socket may have been damaged by the tenant or their children. There doesn't appear to be any exposed contact points and therefore questionable if it was urgent (C1) to begin with. The senior officer considering the evidence presented decides it is possibly unfair to serve her with a civil penalty for £10,500.

However the Landlord has made no representation about the lack of testing of the electrical standards for the dwelling in the past 5 years. Therefore, the calculation is adjusted as follows.
 Column 1+Column 2+Column 3, =Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
£1000	0	150	£5,000	£6,000

Column 1 is reduced to £1000 for failing in her duty to test the electrical standards in the past 5 years. The Landlord has reasonable excuse not to have complied with duty 4(b) due to the ongoing squirrel problem. The penalty for breach of duty under 3 (1) remains.

The further penalties (column 2) are reduced to 0, as they had reasonable excuse for not having completed the work in 7 days and had in any case removed that wiring until the squirrels were dealt with.

The offence specific penalty for the cracked socket is decided to be removed due to questionable accuracy regarding exposed contact points.

Column 3 remains the same at £5000 as the Landlord knew about the regulations and the remaining facts remained the same. Which gives column 4 (the CPN to be served) as £6,000. The CPN is therefore reduced by £4,500. The Landlord doesn't make any further representations to the amended notice of intention to serve a civil penalty. A final civil penalty is served for £6,000 and no appeal is made to the tribunal. The Landlord pays it.

Remedial Notice process A3.

The EHO notes after 28 days that the C2s picked up by the Council electrician still haven't been addressed by the landlord and must consider addressing the C2s noted on the Council's electricians report and decides to serve a remedial action notice. This notice must include...

The premises to which the Notice relates ... 12 Acacia Walk Coalville.

The duty(s) the LHA considers breached; Regulation 3(4)

The required remedial action;

- 1 Replace the thermally damaged socket near cooker, moving it to a more appropriate location
- 2 Replace MCB for correctly specified new MCB as per current wiring regulations.

The date by which the action is to be completed; this must be within 28 days of the service of the Notice.

Allow for written representations to the Notice within 21 days of the service of the Notice

The name & address to whom any representation may be submitted.

Explain the penalty of non- compliance including maximum penalty as per CPN policy.

The Landlord decides they will address the works using their own electrician having received the proposed civil penalty prior to receiving the remedial action notice.

The inspection report and certificate and evidence the works have been completed are sent in and checked by the Council.

The case is closed.

