

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

Statement of Decision: Housing (Scotland) Act 2006, Sections 26, 27 and 28

Chamber Ref: FTS/HPC/RT/16/1024

Property at South Culsh Farm, New Deer, Turriff, AB53 6TR

Land Register Title No. ABN90308

("the Property")

The Parties:-

ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51 3WT
("the Third Party Applicant")

MS MICHELLE CROWLEY, South Culsh Farm, New Deer, Turriff, AB53 6TR
("the Former Tenant")

MR ALASDAIR JAMES KINDNESS, Blackhouse, Methlick, Ellon, AB41 7DD
("the Landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, determined that (i) the Landlord had failed to comply with the RSEO in terms of Section 26 of the Housing (Scotland) Act 2006 ("the said Act"), (ii) a Notice of Failure to Comply with the RSEO should be served on the relevant local authority within which the Property is situated, and (iii) the matter should be reported to the Police for consideration for prosecution under Section 28 of the said Act.

Background

1. Reference is made to the determination of the tribunal dated 7 March 2017 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act in that he had failed to ensure that the Property met the repairing standard. The works required by the RSEO were: -
 - (a) To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation;
 - (b) To install a carbon monoxide detector in the living room to comply with the requirements of the relevant legislation;
 - (c) To repair or replace the bathroom window, east and west facing kitchen windows, pantry window, first floor windows in each of the bedrooms and the window in the loft over the kitchen to ensure that the windows are in a reasonable state of repair and in proper working order, are watertight and capable of being opened and closed properly;

- (d) To investigate the cause of the dampness in the wall linings and skirtings adjacent to the front hall timber replacement door and the kitchen PVC replacement door and to repair as necessary to ensure that all dampness is eradicated;
- (e) To repair or replace the gutters and downpipes to ensure that they are in a reasonable state of repair and in proper working order and to investigate and eradicate the dampness in the living room associated with water ingress therefrom and thereafter to redecorate the living room;
- (f) To instruct a suitably qualified electrician to inspect, test and thereafter repair, renew or upgrade the electrical installation to ensure that it is in satisfactory condition and safe to use. The landlord is to exhibit an Electrical Installation Condition Report to the tribunal in which the overall assessment of the installation is described as satisfactory.

The RSEO gave the Landlord 3 months to carry out the works.

2. On 26 July 2017 the Ordinary (Surveyor) Member of the tribunal, Mr Angus Anderson, re-inspected the Property on behalf of the tribunal. The Third Party was neither present nor represented. The Former Tenant had vacated the Property on 20 February 2017 and was neither present nor represented. The Landlord was neither present nor represented.

The Ordinary (Surveyor) Member could not obtain access into the Property. The inspection was therefore carried out externally only. It was apparent to the Ordinary (Surveyor) Member that some works had been carried out since the original inspection and issuing of the RSEO, namely:-

- (a) The bathroom, kitchen, pantry, first floor bedroom and loft windows had been replaced.
- (b) The gutter over the kitchen had been replaced.

The Surveyor (Ordinary) Member could not establish the extent of any other works carried out internally.

3. The tribunal, comprising Miss Gillian Buchanan, Legal Member and Chairperson and Mr Angus Anderson, Ordinary (Surveyor) Member, inspected the Property on the morning of 18 September 2017. The Third Party was neither present nor represented. The Landlord was present and gave access to the Property. A joiner was also present at the Property installing a new kitchen. The Property was again vacant and largely unfurnished with most floor coverings removed.
4. Following the inspection of the Property the tribunal held a hearing at Victoria Hall, Ellon, AB41 9AY heard from the Landlord. The Third Party and the Former Tenant were neither present nor represented.
5. The re-inspection revealed:
 - (a) The previous installation of mixed battery powered smoke alarms and partial mains powered alarms had been removed. The Property was in the course of being re-wired and it was seen that electric cables were present where smoke alarms would be required, but had not as yet been fitted.

- (b) The existing battery powered CO alarm remained in position within the lounge.
 - (c) The bathroom, kitchen, pantry, first floor bedroom and loft windows had been replaced and the linings and sills made good. Where tested, the windows opened and closed normally.
 - (d) The wall linings at the kitchen door had been replaced with new plasterboard evident. Moisture meter readings at the location were green and amber, with indicated moisture content below 20%. The area adjacent to the front timber entrance door appeared unchanged from the original inspection and moisture meter readings were amber or red, between 17% and 100% at the plaster linings and timber skirting.
 - (e) As found at the previous re-inspection, the gutter over the kitchen window had been replaced. Vegetation is growing in the rear gutter. Water was seen to be dripping from the gutter over the kitchen east door. The previously unclipped front downpipe has detached and was lying on the ground at the front of the building. Internally, the linings of the living room had been replaced with new plasterboard evident in the area that was previously found to be damp. Moisture meter readings at this location were green and amber, with indicated moisture content below 20%. The room had not been redecorated.
 - (f) The house was part way through being re-wired. Virtually all switches, sockets and other fittings had been removed and new pvc coated wiring was seen throughout. The consumer unit had been removed.
 - (g) The kitchen west door had been replaced. The kitchen had been re-lined and was in the course of a re-fit.
6. No damp specialist investigation report or the Electrical Installation Conditions Report were exhibited at the re-inspection or subsequent hearing.
 7. Having considered the Landlord's representations and submissions the Committee resolved to give the Landlord an extension of the period allowed to complete the works required by the RSEO and on 3 October 2017 issued a Notice of a Decision to Vary the RSEO by 6 weeks.
 8. On 12 January 2018 the Ordinary (Surveyor) Member of the Committee, Mr Angus Anderson, re-inspected the Property on behalf of the tribunal. The Landlord was present. Ms Stacy Adams and her two children were also present. It was intimated that, notwithstanding the RSEO previously issued, Ms Adams had been granted a lease of the Property from the Landlord around 5 November 2015 at a monthly rent of £360.
 9. The Ordinary (Surveyor) Member noted that the following works had been undertaken:-
 - a. New smoke alarms had been fitted to the living room, hall, and landing. A heat detector has been fitted in the kitchen. The lounge is now used as a ground floor bedroom and does not have a smoke alarm. Some holes to ceilings remain where the previous alarms have been removed.
 - b. A new carbon monoxide detector had been fitted to the living room ceiling.

- c. The bathroom window, east and west facing kitchen windows, pantry window, first floor windows in each of the bedrooms and the window in the loft over the kitchen had been replaced and are capable of being opened and closed properly. Internal linings have been made good but decorations are incomplete.
 - d. The wall linings at the kitchen door had been replaced with new plasterboard evident. Moisture meter readings at the location were green and amber, with indicated moisture content below 20%.
 - e. The gutter over the kitchen window had been replaced. The previously detached front downpipe has been reattached and made secure.
 - f. Internally, the linings of the living room had been replaced with new plasterboard evident in the area that was previously found to be damp. Moisture meter readings at this location were green and amber, with indicated moisture content below 20%. The room had been redecorated.
 - g. At the previous inspection, the house was in the course of being re-wired. The re-wiring had been completed and a new consumer unit is present in the boxroom. The Landlord exhibited a Domestic Electrical Installation Certificate for the new installation, dated 7/11/17, a copy of which is attached.
10. The Ordinary (Surveyor) Member noted that the following works remained outstanding:-
- a. The area adjacent to the front timber entrance door was unchanged from the original inspection and moisture meter readings were amber or red, between 17% and 100% at the plaster linings and timber skirting.
 - b. Vegetation remains growing in the rear gutter. A small wet area was seen below the end of the gutter over the kitchen east door.
11. At the re-inspection the Landlord made representations to the Ordinary (Surveyor) Member that the area adjacent to the front timber entrance door was not damp.
12. The tribunal then considered what steps to take. In terms of Section 26(1) of the Act it is for the tribunal to decide whether a landlord has complied with an RSEO. In terms of sub-section (2), where the tribunal determines that a landlord has failed to comply with an RSEO, the tribunal must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
13. The tribunal, after discussion and careful reflection, decided that it was clear that the Landlord had failed to fully comply with the RSEO. In particular the outstanding works to the area adjacent to the front timber entrance door are significant. The Landlord has offered no evidence that he has sought professional advice or otherwise taken steps to investigate the cause of the dampness in the wall linings and skirtings at that location and has not carried out any remedial work. He continues to deny the dampness to exist which is untenable. Accordingly the tribunal was obliged to serve notice of the failure on the local authority and resolved to do so.
14. The tribunal then decided whether or not to make an RRO. The tribunal determined that it had no jurisdiction to make a rent relief order relative to the new tenancy that had been created whilst the RSEO had been in place.

15. The tribunal also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord had offered no excuse as to his failure to complete the outstanding works nor any indication that he would complete the outstanding works. Furthermore the Landlord has re-let the Property whilst the RSEO has effect and has therefore committed a further offence in terms of Section 28(5) of the Act. Accordingly, in the circumstances, the tribunal was of the view that Sections 28(1) and 28(5) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

16. The tribunal determined that in terms of the Act the Landlord had failed to comply with the RSEO. The tribunal determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution.

17. The decision of the tribunal was unanimous.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding page(s) are executed by Gillian Buchanan, Solicitor, First Tier Tribunal for Scotland (Housing and Property Chamber), Scottish Courts and Tribunal Service, 4th Floor, 1 Atlantic Quay, 45 Robertson Street, Glasgow, G2 8JB, chairperson of the tribunal at Dundee on 27 February 2018 before this witness:-

____ witness

G Buchanan Legal Member
& Chairperson

Jennifer Lynch _____ name in full

c/o Thorntons Law LLP, _____ Address

Whitehall House, 33 Yeaman Shore

Dundee, DD1 4BJ

Dated 23 February 2018.
This is the Certificate referred to in the foregoing Decision.

G Buchanan

DOMESTIC ELECTRICAL INSTALLATION CERTIFICATE
[FOR A SINGLE DWELLING]

EIS48 - Master

amtech

Details of the Client		Address of the Installation	
Client and address	Mr J Knowles Backhouse Methick Elton	Installation address	South Cuth New Deer Turriff Aberdeenshire
	PostCode AB41 7DD		PostCode AB53 6TR
Details of the Installation		The Installation is	
Extent of the installation work covered by this Certificate		New <input checked="" type="checkbox"/> An Addition <input type="checkbox"/> An Alteration <input type="checkbox"/>	
Design, Construction, Inspection and Testing			
I, being the person responsible for the design, construction and testing of the electrical installation (as indicated by my signature adjacent), particulars of which are described above, having exercised reasonable skill and care when carrying out the design, construction, inspection and testing, hereby CERTIFY that the work for which I have been responsible is, to the best of my knowledge and belief, in accordance with BS7671: 2008 amended to July 2015 (date) except for the departures if any, detailed as follows: Details of departures from BS 7671, as amended (Regulations 120.3, 123.5) None			
Particulars of the Electrical Contractor		Next Inspection	
Trading Title	A Davidson Electrical Ltd	I RECOMMEND that this installation is further inspected and tested after an interval of not more than 9 10 or change of tenancy	
Address	Spire View Silverburn New Deer Turriff 01771 644392	Signature	Andrew Davidson
	PostCode AB53 6TX	Signature	A Davidson
	Branch No. (if Applicable)	Date 9/11/17	
	18496	Date 9/11/17	
NICEIC Enrolment Number		Comments on Existing Installation	
N/A		None	
		Note: Enter 'NONE' or, where appropriate, the page number(s) of additional page(s) of comments on the existing installation	
		Schedule of Additional Records	
		N/A	

Supply Characteristics

System Type(s)

TN-S N/A
 TN-C-S ✓
 TT N/A

Number and type of live conductors

1-Phase (2 Wire) ✓
 3-Phase (3 Wire) N/A
 3-Phase (4 Wire) N/A
 Other N/A

Number of sources

1

Normal Voltage(s) U_n (V)

230 V

Prospective fault current I_p (kA)

50 Hz

Prospective fault current I_p (kA)

0.8 kA

Prospective fault current I_p (kA)

0.38 V

Prospective fault current I_p (kA)

0.38 V

Prospective fault current I_p (kA)

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Prospective fault current I_p (kA)

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Prospective fault current I_p (kA)

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Prospective fault current I_p (kA)

0.38 V

Prospective fault current I_p (kA)

0.38 V

Particulars of Installation at the Origin

Means of Earthing

Distributor's facility ✓
 Installation earth electrode N/A
 Electrode resistance RA N/A
 Type N/A
 Location N/A
 Method of Measurement N/A

Tick boxes and enter details, as appropriate

Means of Earthing

Distributor's facility ✓
 Installation earth electrode N/A
 Electrode resistance RA N/A
 Type N/A
 Location N/A
 Method of Measurement N/A

Tick boxes and enter details, as appropriate

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Distributor's facility ✓
 Installation earth electrode N/A
 Electrode resistance RA N/A
 Type N/A
 Location N/A
 Method of Measurement N/A

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 Installation earth electrode N/A
 Electrode resistance RA N/A
 Type N/A
 Location N/A
 Method of Measurement N/A

Tick boxes and enter details, as appropriate

Means of Earthing

Distributor's facility ✓
 Installation earth electrode N/A
 Electrode resistance RA N/A
 Type N/A
 Location N/A
 Method of Measurement N/A

Schedule of Items Inspected

Item No.

1.0 CONDITION OF DISTRIBUTOR'S SUPPLY INTAKE EQUIPMENT (this Distributor should be notified of any unsatisfactory equipment)
 1.1 Service cable
 1.2 Service head
 1.3 Distributor's earthing arrangement
 1.4 Meter tails - Distributor/Consumer
 1.5 Metering equipment
 1.6 Means of main isolation (where present)

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
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Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

Parallel or Switched Alternative Sources of Supply

Item No.

2.0 PARALLEL OR SWITCHED ALTERNATIVE SOURCES OF SUPPLY
 2.1 Adequate arrangements where a generating set operates in parallel with the public supply
 2.2 Adequate arrangements where a generating set operates in parallel with the public supply

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
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 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

Automatic Disconnection of Supply

Item No.

3.0 AUTOMATIC DISCONNECTION OF SUPPLY
 3.1 Presence and adequacy of protective earthing bonding arrangements as follows
 a) Distributor's earthing arrangement or installation earth electrode arrangement
 b) Earthing conductor and connections
 c) Main protective bonding conductors and connections
 d) Earthing bonding labels at all appropriate locations
 3.2 Accessibility of:

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

Earthing Conductor Connections

Item No.

4.0 EARTHING CONDUCTOR CONNECTIONS
 4.1 Earthing conductor connections
 4.2 All protective bonding connections

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

Outcomes

Acceptable condition ✓
 Not applicable N/A

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Acceptable condition ✓
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 Not applicable N/A

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Acceptable condition ✓
 Not applicable N/A

Electrical Installation

No. of Items Inspected		Outcomes	Accompanying condition	✓	Not applicable	N/A	Item No	Description	Outcomes			
BASIC PROTECTION												
6.0								7.18	Selection of protective device(s) and base(s), correct type and rating	✓		
6.1	Presence and adequacy of protective measures to provide basic protection (protection of conductors with live parts) within the installation							7.19	Single-pole protective devices in line conductor only	✓		
a)	Insulation of live parts e.g. conductors completely covered with suitable insulating materials							7.20	Protection against mechanical damage where cables enter equipment	✓		
b)	Barriers or enclosures e.g. correct IP Rating							7.21	Protection against electromagnetic effects where cables enter ferromagnetic enclosures	✓		
							7.22	Confirmation that ALL conductor connections, including connections to busbars are correctly located in terminals and are tight and secure	✓			
ADDITIONAL PROTECTION												
6.0	The presence and effectiveness of additional protection methods							8.0	Identification of conductors	✓		
a)	RCD(s) not exceeding 30mA operating current							8.1	Cables adequately supported throughout their length	✓		
b)	Supplementary bonding							8.2	Examination of cables for signs of mechanical damage during installation	✓		
OTHER METHODS OF PROTECTION										8.3	Adequacy of cables for current-carrying capacity with regard to the type and nature of installation	✓
							8.4	Adequacy of protective devices type and rated current for fault protection	✓			
6.1	Basic and fault protection							8.5	Presence and adequacy of circuit protective conductors	✓		
a)	SELV							8.6	Coordination between conductors and overload protective devices	✓		
b)	PELV							8.7	Non-sheathed cables enclosed throughout (e.g. in conduit/trunking)	✓		
c)	Double insulation-Reinforced insulation							8.8	Cables installed under floors, above ceilings, in walls / partitions, adequately protected against damage	N/A		
d)	Electrical separation for one item of equipment							8.9	Installed in prescribed zones	✓		
CONSUMER UNIT(S)										8.10	Incorporating earthing armour or sheath, or installed within earthing systems, or otherwise protected against mechanical damage by nails, screws and the like	✓
7.1	Adequacy of working space/accessibility							8.11	Provision of additional protection by RCDs having rated residual operating current (I _{Δn}) not exceeding 30 mA	✓		
7.2	Security of fixing							8.12	For mobile equipment with a current rating not exceeding 32 A for use outdoors	✓		
7.3	Adequacy / security of barriers							8.13	For all socket-outlets of rating 20 A or less, unless exempt	✓		
7.4	Insulation of live parts not damaged during erection							8.14	For cables installed in walls/partitions at a depth of less than 50 mm	✓		
7.5	Enclosures not damaged during installation							8.15	For cables installed in walls/partitions containing metal parts regardless of depth	✓		
7.6	Suitability of enclosures for IP and fire ratings							8.16	Provision of fire barriers, sealing arrangements so as to minimize the spread of fire	✓		
7.7	Presence and operation of main switch(es), linked, where required							8.17	Band II cables segregated/separated from Band I cables	N/A		
7.8	Operation of circuit-breakers and RCDs to prove functionality							8.18	Cables segregated/separated from non-electrical services	✓		
7.9	Correct identification of circuit protective devices							8.19	Termination of cables at enclosures	✓		
7.10	RCD(s) provided for fault protection, where specified							8.20	Connections under no undue strain	✓		
7.11	RCD(s) provided for additional protection, where specified							8.21	No basic insulation of a conductor visible outside enclosure	✓		
7.12	Confirmation overvoltage protection (SPDs) provided and functional where specified							8.22	Circuit accessories not damaged during erection	✓		
7.13	Presence of RCD quarterly test notice at or near the origin							8.23	Single-pole devices for switching or protection in the line conductors only	✓		
7.14	Presence of diagrams, charts or schedules at or near each Consumer unit(s)							8.24	Adequacy of connections, including spcs, within accessories and at fixed and stationary equipment	✓		
7.15	Presence of non-standard (mixed) cable colour warning notice at or near the appropriate distribution board, where required							8.25	Presence of appropriate devices for isolation and switching correctly located	✓		
7.16	Presence of next inspection recommendation label							8.26	Accessible means of switching off for mechanical maintenance	✓		
7.17	Presence of other required labelling							8.27	Correct operation verified (functional check)	✓		

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Table of Items Inspected

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Item No	Description	Outcomes	Acceptable conditions	✓	Not applicable	N/A	Item No	Description	Outcome
9.0	CURRENT USING EQUIPMENT (PERMANENTLY CONNECTED)						10.0	LOCATION(S) CONTAINING A BATH OR SHOWER	Outcome
9.1	Adequacy of working space/accessibility						10.1	Additional protection by RCD not exceeding 30mA	
9.2	Suitability of equipment in terms of IP and fire ratings						a)	For low voltage circuits serving the location	
9.3	Enclosure not damaged/deteriorated during installation so as to impair safety						b)	For low voltage circuits passing through Zone 1 and Zone 2 not serving the location	
9.4	Cable entry holes in ceilings above luminaires, sized or sealed so as to restrict the spread of fire						10.2	Where used as a protective measure, requirements for SELV or PELV are met	N/A
9.5	Recessed luminaires (downlights)						10.3	Shaver sockets comply with BS EN 61558-2-5 or BS 3535	N/A
a)	Correct type of lamp fitted						10.4	Presence of supplementary bonding conductors unless not required by BS 7671:2008	N/A
b)	Installed to minimise build-up of heat						10.5	Low voltage (e.g. 230 volts) socket-outlets sited at least 3m from zone 1	✓
10.0							10.6	Suitability of equipment for external influences for installed location in terms of IP rating	N/A
							10.7	Suitability of electrical equipment for installation in a particular zone	✓

OTHER PART 7 SPECIAL INSTALLATIONS OR LOCATIONS

Inspected By

Name

Signature

Date

ELECTRICAL INSTALLATION CERTIFICATE GUIDANCE NOTES FOR RECIPIENTS

This safety certificate has been issued to confirm that the electrical installation work to which it relates has been designed, constructed and inspected in accordance with British Standard 7671:2008 (as amended) (The IEE Wiring Regulations).

You should have received an 'original' Certificate and the contractor should have retained a duplicate Certificate. If you were the person ordering the work, but not the owner of the installation, you should pass this Certificate, or a full copy of it including the schedules, immediately to the owner.

The "original" Certificate should be retained in a safe place and be shown to any person inspecting or undertaking further work on the electrical installation in the future. If you later vacate the property, this Certificate will demonstrate to the new owner that the electrical installation complied with the requirements of British Standard 7671 at the time the Certificate was issued. The Construction (Design and Management) Regulations require that for a project covered by those Regulations, a copy of this Certificate and any schedules are included in the project health and safety documentation.

For safety reasons, the electrical installation will need to be inspected at appropriate intervals by a competent person. The maximum time interval recommended before the next inspection is stated on page 1 under "Next Inspection".

This Certificate is intended to be issued only for a new electrical installation or for new work associated with an alteration or addition to an existing installation. It should not have been issued for the inspection of an existing electrical installation. An "Electrical Installation Conditioning Report" should be issued for such an inspection.

The certificate is only valid if a test result schedule including test results is appended.

These notes are based on those seen in Appendix 6 BS 7671:2008 (as amended)