Thanet District Council

Housing Regeneration

Private Sector Housing: Enforcement Policy and Guidance

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thanet
district council

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Preface

As the Local Housing Authority, Thanet District Council has a duty to ensure that all private sector homes in Thanet are maintained in a safe condition.

From a public health perspective, health and safety in the home environment is extremely important. As such, the council is committed to improving housing conditions in the private sector. It will use every available statutory power to achieve that aim, but only in a fair, transparent, and consistent way.

This document is intended to provide a comprehensive guide to the way in which the council approaches its regulatory responsibilities. It does this by explaining what legislative powers are available and how they are applied. It is both a guidance document and an enforcement policy.

Chapter summaries have been provided at the beginning of this document to serve as a quick reference guide to key information.

Chapter summaries

There are 15 chapters in this document. Each chapter is summarised below, highlighting key information and policy positions.

Chapter 1: Introduction

This chapter explains why this document has been published and provides a brief background to the private rented sector in Thanet. It outlines what the term "enforcement" means and sets out a number of overarching principles.

Key points

- This document applies to all forms of private sector housing, including homes that are rented from private landlords and registered social landlords (housing associations), and those that are owner-occupied.
- The council will always make it clear whether a request to take action is advisory in nature or a legal requirement that must be complied with.
- Visiting officers from the Housing Regeneration Team are authorised to enter premises and every officer carries a photographic identification card and a statement of authorisation.
- As far as is reasonably possible, everyone has equal access to all our services.
- The council will only share confidential information about a person if consent has been given or if it is required to do so by law.

Chapter 2: Legislative overview

This chapter provides a brief overview of the legislation that may be used by the council when dealing with private sector housing.

Key points

- Since April 2006, the primary legislative tool for dealing with private sector housing conditions has been the Housing Act 2004.
- The Housing Act 2004 introduced the Housing Health and Safety Rating System as the prescribed means of assessing housing conditions.

Chapter 3: Housing Health and Safety Rating System

This chapter describes the Housing Health and Safety Rating System and explains how it is used by council officers to evaluate the severity of hazards in the home environment.

Key points

- The system's underlying principle is that "*Any residential premises should provide a safe and healthy environment for any potential occupier or visitor*".
- There are 29 potential hazards.
- A hazard assessment will result in a hazard band ranging from A to J.
- Hazards with a banding of A, B or C are deemed to be Category 1 hazards; hazards with a banding of D to J are considered to be Category 2 hazards.
- Category 1 hazards are the most severe and the council has a mandatory duty to take enforcement action to deal with them.

- The council is empowered to take action in respect of Category 2 hazards, but is not duty bound to do so.

Chapter 4: Reactive interventions

This chapter describes how the council responds to complaints about housing conditions.

Key points

- Housing complaints are normally dealt with in one of four ways.
- A "Complaint Rota" system is used by the council to deal with most housing complaints. Complainants must complete a service request form to confirm their details, what their housing problems are, and that they have tried, without success, to persuade the person responsible (usually their landlord) to undertake remedial works. Before a visit takes place, both the owner and occupier of the dwelling concerned will be notified, in writing, of the date and time of the intended inspection. The council will endeavour to make a first visit within one to three weeks; however, this is not always possible in times of high demand. A first inspection is always guaranteed to take place within ten weeks of a service request being made.
- For complaints made by a person not residing in the dwelling concerned, the council operates an "Investigation Rota" system. On allocated days (at least one every month), two officers will attempt to visit the dwellings about which representations have been made, and attempt to identify whether advice, assistance or enforcement action is required.
- If a housing complaint is deemed to be a "High Priority" owing to there being an imminent and serious risk to the safety of any person, the council will make a first response as soon as possible, but in all cases within two working days.
- If a housing complaint is deemed to be a "Priority" owing to there being a serious risk to the safety of any person, the council will make a first response as soon as possible, but in all cases within ten working days.

Chapter 5: Proactive interventions

Many residents cope with poor housing conditions, to the detriment of their health and well-being, without knowing how to improve their situation. This chapter explains how the council proactively attempts to identify those in need of council assistance.

Key points

- Proactive initiatives are dependent on available resources and can change at any time.
- Led by the Housing Regeneration Team, the council's Your Home Your Health initiative is a multi-agency referral process based on informal housing inspections. Participation on the part of residents is voluntary and visits can lead to a range of referrals being made to the council and other organisations. The initiative is a holistic approach to tackling poor housing conditions with the added benefit of being able to offer residents help with their health and social care needs.
- The council's Operation Cleansweep initiative is a district-wide multi-agency initiative that delivers Environmental Action Days. Target areas vary and are dependent on identified need, but can include housing estates, high streets, and industrial estates. Actions that can be taken during an Environmental Action Day are wide-ranging and may include a general review of housing conditions.
- The Margate Task Force is a multi-agency initiative that was set up to tackle the multi-faceted problems faced in the two electoral wards of Margate Central and Cliftonville West. These wards contain the three most deprived areas in South-East England according to the

English Indices of Deprivation 2010. The Housing Regeneration Team is an integral part of the Task Force and is therefore involved in many of its proactive interventions.

- The council may proactively target a particular landlord or managing agent if they are repeatedly associated with poor quality housing.

Chapter 6: Enforcement

This chapter describes how the council uses relevant legislation to ensure that private sector housing is of an acceptable standard.

Key points

- The council is a signatory to the Enforcement Concordat, which is a voluntary code that sets out the principles of good enforcement.
- Unless the conditions set out in the bullet point immediately below apply, the council will normally give the owner or landlord of defective premises the opportunity to carry out repairs and/or improvements on an informal basis. Such opportunities are strictly time-limited.
- The council may take statutory enforcement action without resorting to informal measures in the following circumstances:
    - If, in the case of a Complaint Rota inspection, the pre-arranged inspection takes place and there is no attendance by the landlord (or his agent) and there is no record of any other response being made to the appointment letter.
    - When the council has a duty to take action.
    - When an emergency situation arises and there is an imminent risk of serious harm.
    - When the property concerned should be licensed as an HMO or under a selective licensing scheme, but is not so licensed.
    - When the property concerned is operated by a historically non-compliant landlord.
- When appropriate to do so, the council tends towards taking enforcement action in respect of Category 2 hazards.
- The enforcement of Improvement Notices served under the Housing Act 2004 will not normally be discontinued in the event of the tenant moving out.
- The council will make a charge for taking certain types of enforcement action, including:
    - The service of an Improvement Notice (subject to the bullet point below).
    - The making of a Prohibition Order.
    - The taking of Emergency Remedial Action.
    - The making of an Emergency Prohibition Order.
    - The making of a Demolition Order.
- While there is a policy of charging for Improvement Notices, the council has decided to recognise notice recipients who fully comply with the notices served upon them. Therefore, the charge will be waived if a notice recipient completes the remedial works and/or actions specified in an Improvement Notice to an acceptable standard within the timescales stated.
- Failing to comply with a statutory notice served, or order made, by the council's Housing Regeneration Team may lead to prosecution or the issuing of a simple caution. Fine levels are dependent on the type of offence committed.
- The council may use its discretionary power to carry out works-in-default when a statutory notice is not complied with.

- The council will seek to recover all debts owed as soon as possible, and where appropriate, may use its power to enforce the sale of a property as a means of recovering all monies owed.

Chapter 7: Houses in multiple occupation (HMOs)

This chapter sets out the legal definition of an HMO, as prescribed by section 234 of the Housing Act 2004.

Key points

- There are four types of HMO, each with its own test, including:
  - The standard test (bedsits, shared houses, etc.).
  - The self-contained flat test (similar to the standard test, but when the HMO is wholly contained within a flat).
  - The converted building test (converted buildings containing one or more non-self-contained flats).
  - Converted blocks of flats (older, usually pre-1991, self-contained flat conversions, in which less than two-thirds of the flats are owner-occupied).
- The council can declare, by notice, that a property is an HMO.
- Certain buildings are exempt from being classified as HMOs under the Housing Act 2004.
- Whether a property can, in principle, be used as an HMO is a matter for the planning regime and the Planning Department. Any property operating as an HMO could be subject to planning enforcement action if it does not have lawful use as an HMO.

Chapter 8: Licensing of HMOs and other residential accommodation

This chapter outlines the HMO and selective licensing regimes.

Key points

- The council enforces the mandatory HMO licensing scheme, which applies to all local authority areas in England. Certain HMOs comprised of three or more storeys and occupied by five or more persons must be licensed with the council.
- The council introduced a selective licensing scheme in certain parts of Cliftonville West and Margate Central in 2011. The scheme requires all types of privately rented accommodation within the designated area to be licensed (unless subject to exemption). The designation was made to improve housing conditions and management, tackle anti-social behaviour, increase housing demand and reduce overcrowding.
- The council charges a fee for all new and renewal licence applications. The fees payable are dependent on the type and size of the premises concerned. All licence fees are non-refundable.
- Licence applications will only be accepted if the appropriate application form has been fully completed, the required supporting documents provided, and the correct fee paid. Incomplete licence applications may be rejected if requests for further information or payment are not satisfied within 28 days.
- Only a fit and proper person may be a licence holder or named manager.
- A licence application may be refused if the council is not satisfied that suitable management arrangements are in place.
- Once the council is satisfied that a valid licence application has been made, it will issue a proposed licence to all relevant parties. Relevant persons may make representations to the

council about the terms of the licence within 21 days. All representations received will be carefully reviewed by the council.

- After having dealt with any representations, the council will issue a final licence. Licences may be granted for a period of up to five years.
- Once granted, licences are not transferrable between licence holders. Therefore, if a property is sold, the new owner will need to make arrangements for a new licence application to be made.
- The details of all licensed properties and licence holders are placed on a public register.
- All licensed properties will be subject to routine inspection by council officers.
- A person operating a licensable property may apply to the council for a three-month temporary exemption from licensing. The council will only agree to serve a Temporary Exemption Notice if the person proposes to take lawful and appropriate steps that will lead to the property no longer requiring a licence.
- A person who operates an unlicensed property without reasonable excuse is liable on summary conviction to a fine not exceeding £20,000. A person who breaches the conditions of their licence without reasonable excuse is liable on summary conviction to a fine not exceeding £5,000 per breach. This fine level is increased to £20,000 if the breach relates to the over-occupation of a mandatory licensable HMO. All fine levels will become unlimited in the near future (anticipated to be some time in 2014).
- A “notice to quit” under section 21 of the Housing Act 1988 cannot be given in respect of residential premises which should be licensed, but are not so licensed.
- The council may exercise their power to apply for a Rent Repayment Order (“RRO”) in respect of an unlicensed property. An RRO is an order made by the Residential Property Tribunal requiring the landlord to repay any housing benefit paid in respect of the property in the previous year.

Chapter 9: HMO amenity guidelines

This chapter describes how council officers assess amenity provision in HMOs.

Key points

- For licensable HMOs, the government has issued prescribed amenity standards which the council must enforce.
- The council also has its own HMO amenity guidelines that are applicable to all licensable HMOs. These, together with the governments prescribed amenity standards, are used by council officers to evaluate every HMO licence application.

Chapter 10: HMO management regulations

This chapter explains the additional legal duties imposed on managers of HMOs.

Key points

- The government has issued two sets of management regulations that apply to all HMOs defined by the Housing Act 2004.
- All managers of HMOs must comply with the regulations or face prosecution and fines of up to £5,000 for every breach of the regulations for which they have no reasonable excuse.
- The HMO management regulations apply to all licensable and non-licensable HMOs.

Chapter 11: Interim and final management orders

This chapter describes how the council can take over the management of residential premises in certain situations.

Key points

- In certain prescribed circumstances, the council can make an Interim Management Order ("IMO") in respect of a residential property.
- An IMO, which can last for up to a year, allows the council to step in and take control of a property that is causing severe problems for its residents and/or neighbours. While the council does not obtain any interest in the property concerned, it becomes responsible for its proper management and for ensuring that any immediate health, safety or welfare concerns are dealt with as soon as possible.
- If intervention is needed for a period longer than a year, the council can, in certain prescribed circumstances, make a Final Management Order ("FMO"). FMOs can last for up to five years.
- The council considers the making of an IMO or FMO to be a last resort and will always endeavour to use other means to secure necessary improvements before making such an order.

Chapter 12: Empty homes

This chapter explains the council's approach to prioritising enforcement action in respect of empty homes.

Key points

- The council is committed to tackling empty homes whenever possible.
- In the first instance, informal attempts will normally be made to encourage owners to bring their properties back into use.
- With limited resources, the council must decide which empty properties are the most problematic. As such, every empty property is subject to a priority assessment resulting in a High, Medium, Low or Minimal rating.
- Any empty residential property given a High rating will usually be recommended for enforcement action should informal intervention be unsuccessful. Properties given a Medium rating may also be considered for such action.
- Properties given a Low or Minimal rating are unlikely to be subject to enforcement action unless there are particular circumstances that render such action in the public interest.
- The council will consider using tough measures to bring empty homes back into use, including the making of Compulsory Purchase Orders.

Chapter 13: Prosecutions

This chapter outlines the council's approach to prosecutions.

Key points

- Whenever appropriate, the council will prosecute those who fail to comply with the law relating to private sector housing.
- If the council suspects that an offence has occurred, it may decide to offer the suspect an opportunity to attend an interview under caution in accordance with the Police and Criminal Evidence Act 1984. An interview is an opportunity for the suspect to provide an explanation of the facts.

- The council may not offer the opportunity to attend an interview under caution if it is of the opinion that the suspect cannot provide a reasonable excuse.
- Prosecutions will only be pursued if there is sufficient evidence of an offence and it is in public interest to prosecute.

Chapter 14: Publicity

This chapter describes the council's approach to publicity.

Key points

- The council believes that publicising successful enforcement actions, such as prosecutions, sends out a clear and strong message that discourages others from disregarding the law.
- Before issuing a press release or undertaking any other form of publicity, the council will carefully consider whether it is appropriate to do so.

Chapter 15: Engagement

This chapter outlines how the council complements its enforcement activities by engaging with landlords and managing agents.

Key points

- The council recognises that engaging with landlords and managing agents on an informal basis is an invaluable way of raising standards and promoting good quality private sector accommodation.
- The council facilitates the Thanet Landlords' Focus Group, which is a representative body comprised of 15 democratically elected landlords and managing agents. It meets three times a year with the purpose of increasing the level of understanding and communication between the council and local private sector landlords and managing agents.
- The council organises an annual Landlord Event in conjunction with the Thanet Landlords' Focus Group. Events usually include a number of presentations on topical subjects.
- The council is a partner authority which supports and promotes the Kent Landlord Accreditation Scheme.

Glossary

the Act	Housing Act 2004
the council	Thanet District Council
CPO	Compulsory Purchase Order
FMO	Final Management Order
Focus Group	Thanet Landlords' Focus Group
HHSRS	Housing Health and Safety Rating System
HMO	House in multiple occupation
IMO	Interim Management Order
KLAS	Kent Landlord Accreditation Scheme
LHA	Local Housing Authority
RSL	Registered Social Landlord
SI	Statutory Instrument
UKLAP	UK Landlord Accreditation Partnership
the 85 Act	Housing Act 1985

Throughout this document are references to the Residential Property Tribunal. While this tribunal is still commonly known as such, it has changed its proper title and is now the First-tier tribunal – Property Chamber (Residential Property).

Chapter 1: Introduction

Why this document?

1. Thanet District Council is a Local Housing Authority ("LHA"). As such, it has a statutory duty to ensure that all private sector homes in the Thanet area are maintained in a safe condition. The council's Housing Regeneration Team is responsible for delivering this statutory function.
2. Safety in the home environment is a key priority for the council. Everyone has the right to live in a home which does not have a detrimental effect on their health, safety or well-being. To this end, the council uses a wide range of statutory powers to ensure that those responsible for residential premises take the actions needed to prevent harm from occurring.
3. For fairness and transparency, it is important that the council is open about how it conducts itself. Therefore, this document provides an overview of the current law relating to private sector housing and sets out how the council approaches its regulatory duties. It also outlines how the council uses proactive initiatives to complement its statutory functions. Essentially, this document details how the council endeavours to keep private sector homes in an acceptable and safe condition. It is both a guidance document and an enforcement policy.

Scope

4. The council, as the LHA for Thanet, is responsible for ensuring the safety of residents in all forms of private sector housing, including those who are:
    - Owner-occupiers;
    - Tenants of Registered Social Landlords ("RSLs"); and
    - Tenants of private sector landlords.
5. However, the vast majority of the work undertaken by the Housing Regeneration Team relates to the private rented sector.
6. The scope of this document does not extend to council owned housing. The law relating to these properties is different. For more information about council homes, please contact East Kent Housing by telephone on (01843) 577262 or by email at thanet@eastkenthousing.org.uk. East Kent Housing was set up in 2011 by the four councils of Thanet, Canterbury, Dover and Shepway to provide a more efficient and effective housing service.

The private rented sector

7. The private rented sector is growing. Official figures from the 2011 Census suggest that the private rented sector now accounts for 15% of all homes in England and Wales, up from 9% in 2001.
8. In 2010, the council published the results of its own private sector house condition survey. It revealed that of the 64,020 homes in Thanet, more than a quarter were privately rented. Clearly, Thanet has a large private rented sector when compared against the national picture. In some severely deprived neighbourhoods, particularly in Margate, the percentage of homes in the private sector reaches 70-90% in many roads.
9. Having higher than average levels of private rented property presents a number of challenges for the council, as the housing conditions in this sector are generally worse than in other sectors.

10. The demand for assistance from the Housing Regeneration Team is high. It received 1698 service requests in the 2013-14 financial year. While not all housing complaints are justified, a significant number require enforcement action.

What do we mean by enforcement?

11. The term "enforcement" describes a wide range of activities carried out by the council's Housing Regeneration Team in order to secure compliance with legislation. These include:
    - Providing advice and guidance to help people comply with the law;
    - Investigations, whether proactively or in response to a complaint, with a view to establishing whether intervention is required;
    - Informal and formal inspections of land and premises;
    - Service of statutory notices and the making of orders;
    - Prosecutions and the issuing of simple cautions;
    - Carrying out works-in-default when a person has failed to take action; and
    - Licensing of houses in multiple occupation and other residential accommodation.
12. The council is committed to improving the private sector housing stock in Thanet and will encourage property owners to make improvements whenever possible. However, the council will always make it absolutely clear what is simply advice aimed at achieving better than minimum standards and what is a legal requirement.

Visiting officers

13. Visiting officers from the Housing Regeneration Team are authorised to enter premises by the proper officer of the council. Every officer carries a photographic identification card and a statement of authorisation which confirms under which legislative provisions he/she may enter premises. The photo ID will be shown at every visit and the statement of authorisation can be viewed on demand.
14. If there is any doubt as to the identity of any visitor claiming to be an officer of the council's Housing Regeneration Team, enquiries should be made directly with the team on 01843 577437 before allowing access to the premises.

Equality and diversity

15. The council is committed to supporting and promoting an inclusive and cohesive community able to celebrate its diversity. It endeavours to embed equality and diversity into everything it does and aims to provide the highest possible standards of service to the public at all times and in all areas.
16. Equal access to services, as far as reasonably possible, is standard practice. No person will be discriminated against or receive a lesser service on the basis of sex; disability; race, ethnic or national identity; marital status; sexuality or sexual identity; religious or political beliefs; or age.
17. This document describes a range of interventions aimed at safeguarding and improving the health, safety and well-being of people living in the private sector. In developing the policies and guidance contained herein, no adverse impacts associated with the Protected Characteristics or the aims of the Public Sector Equality Duty were identified. However, there are positive impacts in respect of some of the Protected Characteristics, notably age and disability. An Equality Impact Analysis has been completed and is available on request from the council.

Data protection

18. Under the Data Protection Act 1988, the council has a legal duty to protect any personal information it collects. The services provided by the Housing Regeneration Team require it to collect and use personal data on a regular basis. In normal circumstances, personal information about an individual will only be shared when the person concerned has given consent to the sharing of their information. However, there are some situations where the law requires the council to share information without consent. For example, the Housing Regeneration Team is required by law to maintain a number of public registers that include the names and addresses of relevant landlords and agents.

19. More information about data protection can be obtained from the council's website or from the Information Commissioner's Office at www.ico.org.uk.

Chapter 2: Legislative overview

20. The council can use a wide range of legislative powers to ensure that private sector housing is maintained in a safe condition. The most relevant legislation is outlined below. Please note: the descriptions provide only a brief overview. Reference should be made to the enactments themselves if more detailed information is required.

Housing Act 2004

21. Since April 2006, the Housing Act 2004 ("the Act") has been the primary legislative tool for dealing with private sector housing conditions. Regulations made under the Act also play a significant role. The Act is divided into a number of parts, of which the following are most relevant in this context:

Part 1: Housing conditions

22. This Part introduced a new methodology for the assessment of housing conditions and replaced the previous housing fitness standard. It introduced the concept of Category 1 and Category 2 hazards, and regulations made under section 2 prescribed the Housing Health and Safety Rating System ("HHSRS") as being the method for assessing the severity of hazards.

23. Category 1 hazards are the most serious and likely to cause harm to health and/or safety. Where the council has identified a Category 1 hazard it is under a mandatory duty to take the appropriate enforcement action. Where it has identified a Category 2 hazard it has a discretionary power to take such action.

24. This Part also sets out the available enforcement options for dealing with Category 1 and 2 hazards. They include:

- The service of an Improvement Notice requiring the taking of remedial action within a specified time period. Such notices can, on service, be suspended to come into effect at a later date or at a point in time when a specified event takes place.
- The making of a Prohibition Order prohibiting or restricting some or all uses of all or part of a residential premises. Such orders may also be suspended on service.
- The service of a Hazard Awareness Notice highlighting that there are hazards existing on a residential premises which should be considered for further action. Such a notice does not place a legal obligation on the recipient to carry out works.
- The taking of Emergency Remedial Action by the council where there is a hazard which involves an imminent risk of serious harm. This action can only be taken in respect of Category 1 hazards.
- The making of an Emergency Prohibition Order prohibiting or restricting some or all uses of all or part of a residential premises with immediate effect. Such an order can only be made in respect of Category 1 hazards involving an imminent risk of serious harm.
- The making of a Demolition Order under the Housing Act 1985 ("the 85 Act"). This option is only available for residential premises containing Category 1 hazards and is not available in respect of listed buildings.
- The declaring of a Clearance Area under the 85 Act requiring the clearing of all buildings in a specified area. This option is only available when all the residential premises in the area concerned contain Category 1 hazards.

Part 2: Licensing of houses in multiple occupation

25. This Part required the council to introduce a mandatory licensing regime for certain types of HMOs. The mandatory scheme, which came into force in April 2006, requires HMOs which are comprised of three or more storeys and occupied by five or more persons to be licensed. HMOs defined by section 257 of the Act, namely buildings converted entirely into self-contained flats which fulfill certain criteria relating to tenure and conversion standards, are excluded from the mandatory licensing regime. Mandatory licensing of HMOs was introduced to improve physical conditions and management standards in higher risk HMOs.

26. This Part also empowers local housing authorities ("LHAs") to introduce "additional HMO licensing" schemes to extend the scope of mandatory licensing. This allows LHAs to introduce the requirement to licence other types of HMOs in all or part of their area.

Part 3: Selective licensing of other residential accommodation

27. This Part empowers LHAs to introduce "selective licensing" schemes in all or part of their area requiring all private rented accommodation to be licensed, unless it is subject to exemption. An area may be designated if it is, or may become, an area of low housing demand and/or it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.

Part 4: Additional control provisions in relation to residential accommodation

28. This Part empowers the council to make Interim and Final Management Orders and take over the management of privately-rented residential premises. Such orders can be made when a residential premises is not licensed and there is no prospect of it being licensed, or when there is some other management problem requiring council intervention. Interim Management Orders can be in force for up to a year, whereas Final Management Orders can last up to five years.

29. This Part also provides for Interim and Final Empty Dwelling Management Orders ("EDMOs"). EDMOs are similar to Interim and Final Management Orders, but relate to empty properties and are designed to ensure that dwellings become and stay occupied.

30. This Part also provides for the service of overcrowding notices in respect of HMOs that are not required to be licensed.

Part 7: Supplementary and final provisions

31. This Part includes a number of provisions, such as the definition of an HMO. It also empowers the council to enforce the HMO management regulations, to authorise officers to enter premises, and to require documents to be produced.

Housing Act 1985

32. While many of the provisions in the 85 Act relating to private sector housing have been repealed, some still remain. As mentioned above, the 85 Act empowers the making of Demolition Orders and the declaring of Clearance Areas. The provisions of Part X concerning statutory overcrowding remain in force. A dwelling is statutorily overcrowded when the number of persons sleeping in it is such as to contravene the room or space standard. These standards are described in Part X of the 85 Act.

33. Section 17 of the 85 Act concerns the compulsory acquisition of land or property for housing purposes. This power may be used to acquire under-used or ineffectively used land or property by means of a compulsory purchase order ("CPO"). Before taking such action, the council must show that there is a general housing need in the area and that a quantitative or qualitative housing gain will be made by making the order. CPOs must be approved by the Secretary of State.

Environmental Protection Act 1990

34. Matters which may amount to a statutory nuisance are set out in section 79(1) of the Environmental Protection Act 1990. Statutory nuisances must be either "prejudicial to health or a nuisance". Prejudicial to health is defined as meaning "injurious, or likely to cause injury, to health". Nuisance is not defined by statute. If the council is satisfied that a statutory nuisance exists or is likely to occur or recur, it must serve an Abatement Notice.

Building Act 1984

35. Section 59 relates to the drainage of buildings. Where drainage serving any building is defective, insufficient, or prejudicial to health or a nuisance, the council may, by notice, require the owner of the building to remedy the situation.

36. If a water closet in a residential building is in such a state as to be prejudicial to health or a nuisance and cannot be adequately repaired, the council may, by notice under section 64, require the owner of the building to reconstruct the water closet.

37. Section 76 makes provision for defective premises which are in such a state as to be prejudicial to health or a nuisance. If, by following the procedures set out in section 80 of the Environmental Protection Act 1990, there would be an unreasonable delay in remedying the defective state, the council may, after having given nine days' warning to the relevant person, enter the premises to carry out the works required to remedy the defective condition.

38. Under section 77, the council can apply to the Magistrates' Court for an order requiring the owner of a dangerous building to either make the building safe or (if the owner chooses) demolish it. If the owner fails to comply with the order, the council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. In emergency situations, the council can (without obtaining a court order) take immediate steps to make safe a dangerous building under section 78. In such circumstances, the council must, if possible, attempt to give prior notice to the owner and occupier. Again, reasonable expenses can be recovered from the owner. Although such intervention may concern private sector housing, the council's Building Control section is responsible for action under sections 77 and 78.

39. Section 79 concerns ruinous and dilapidated buildings and neglected sites. If a building is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood, the council may serve a notice requiring the owner to carry out remedial works or (if the owner chooses) demolish the building. If the owner fails to comply with the notice, the council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. This section also makes provision for dealing with any debris resulting from the collapse or demolition of a building, which by its nature is seriously detrimental to the amenities of the neighbourhood. If this condition is met, the council may serve a notice on the owner requiring the clearance of the site. As above, if the owner fails to comply with the notice, the council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner.

Town and Country Planning Act 1990

40. Section 215 of the Town and Country Planning Act 1990 provides the council with the power to deal with land which adversely affects the amenity of an area. "Land" includes buildings. A notice may be served under this section requiring the owner or occupier of the land to take steps as is necessary to remedy the condition of the land. Such notices set out the steps that need to be taken, and the time within which they must be carried out. The council also has the power to undertake the works themselves and to recover the costs from the landowner.

41. Section 226 concerns the compulsory acquisition of land or property to allow development, redevelopment or improvement to take place. If compulsory acquisition will contribute to the promotion or improvement of economic and/or social and/or environmental wellbeing, the council may, in the public interest, make a CPO. CPOs must be approved by the Secretary of State.

Planning (Listed Buildings and Conservation Areas) Act 1990

42. Section 47 provides for the compulsory purchase of listed buildings in disrepair. CPOs under this section are made to ensure that listed buildings (buildings deemed to be of special architectural and historical interest) are properly preserved. CPOs must be approved by the Secretary of State. However, before the council can compulsorily purchase a listed building in disrepair it must first give the owner an opportunity to carry out the required works by serving a repairs notice. If an owner demolishes a listed building following receipt of a repairs notice, the site may still be compulsorily purchased by the council. Although such action may be relevant to the safety of residents in private sector housing, the council's Planning Department is responsible for intervention under this legislative provision.

Public Health Act 1936

43. If a water closet provided in residential premises is in such a state as to be prejudicial to health or a nuisance, and it can, without reconstruction, be put into a satisfactory condition, the council may serve notice under section 45 requiring the owner or occupier to repair or cleanse the water closet as necessary.

Public Health Act 1961

44. Section 17 concerns defective and blocked drainage. If it appears to the council that a drain, private sewer, water-closet, waste pipe or soil pipe is not sufficiently maintained and kept in good repair, and can be sufficiently repaired at a cost not exceeding £250, it may, after giving seven days' notice, carry out the necessary repairs and recover the expenses incurred from the person(s) concerned, namely the owner(s) or occupier.

45. In cases where the drain, private sewer, water-closet, waste pipe or soil pipe is stopped up, the council may, by notice, require the owner or occupier to remedy the problem within 48 hours. If such a notice is not complied with, the council may undertake the works-in-default and recover the costs incurred in doing so.

Law of Property Act 1925

46. In cases where the council is owed monies, as a result of the council undertaking works-in-default under relevant legislation, section 103 of the Law of Property Act 1925 may be used as a means by which to recover the debt. Under this legislation, the debt may, under certain circumstances, be registered as a first charge with HM Land Registry. Such a charge would take precedence over any mortgage. The council may then, should the owner fail to pay the debt within a specified timescale, enforce the sale of the property to recover the monies owed.

Local Government (Miscellaneous Provisions) Act 1976

47. When the council requires information relating to the ownership of land in connection with the discharge of its statutory duties, it may, by notice under section 16, require certain persons to provide information within a specified timescale. In connection with the land concerned, such information can be demanded from any one or more of the following: the occupier, freeholder, mortgagee, lessee, any person receiving the rent (either directly or indirectly), and any managing or letting agent.

48. If a water, gas or electricity supply to a dwelling has been cut off, or is likely to be cut off, owing to the non-payment of a bill by the owner, the council may, under section 33, step in and make arrangements with the supplier to ensure that the supply is reconnected and/or maintained.

Local Government (Miscellaneous Provisions) Act 1982

49. Sections 29 to 32 relate to the protection of buildings. If a building is unoccupied, or the occupier is temporarily absent, and it is insecure or likely to become a danger to public health, the council may take action to ensure that it is adequately secured to prevent unauthorised entry and made safe. The council can recover the costs from taking such action from the owner of the building.

Prevention of Damage by Pests Act 1949

50. The council is under a duty to ensure, as far as is practicable, that its district is kept free from rats and mice. If residential premises are in such a condition as to attract rats or mice, the council may, by notice, require appropriate treatment to be undertaken and/or require remedial works to ensure that harbourage is no longer provided. For example, such a notice may require the removal of rubbish and furniture that has been discarded in the external grounds of a privately-owned property which has or is likely to attract rats and mice.

Health Act 2006

51. On 01 July 2007, England became smoke-free. Under the Health Act 2006, it became an offence to smoke in public places or places of work which are enclosed or substantially enclosed. Furthermore it is an offence not to display no-smoking signs in smoke-free premises. It is also an offence to be a manager of smoke-free premises and allow persons to smoke in them.

52. For the purposes of private sector housing, the common parts of HMOs and the common parts of buildings containing flats are deemed to be smoke-free premises.

Other sections and acts

53. The above-mentioned provisions are those most used by the council; however, the list is not exhaustive. The council may use other legislative powers, where authorised to do so, if it ensures a more appropriate solution to any given situation.

Chapter 3: Housing Health and Safety Rating System

Principle

54. The Housing Health and Safety Rating System ("HHSRS") is the prescribed means of assessing housing conditions under the Act. It allows an inspector to evaluate the potential risks to health and safety from any deficiency found within a dwelling.

55. The HHSRS is not a standard; it is a risk-based assessment procedure. Regulations made under the Act, namely *The Housing Health and Safety Rating System (England) Regulations 2005* (SI 2005/3208), set out the principles of the system. However, statutory guidance issued under section 9 of the Act provides a more detailed explanation. The guidance, entitled: *Housing Health and Safety Rating System – Operating Guidance*, is the main document used by inspectors. It can be downloaded from the GOV.UK website for free.

56. The underlying principle of the HHSRS is that:

    "Any residential premises should provide a safe and healthy environment for any potential occupier or visitor."

57. To satisfy this principle, a dwelling should be designed, constructed and maintained with non-hazardous materials and should be free from both unnecessary and avoidable hazards.

Inspections

58. Every HHSRS assessment must be made on the basis of a whole dwelling inspection. If the dwelling concerned is a flat or bedsit, the common areas leading to the unit of accommodation must also be taken into account during the risk assessment.

Hazard profiles

59. There are 29 hazards that must be considered during an HHSRS inspection. These are:

A Physiological Requirements

Hygrothermal Conditions

1. Damp and mould growth
2. Excess cold
3. Excess heat

Pollutants (non-microbial)

4. Asbestos (and MMF)
5. Biocides
6. Carbon monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile organic compounds

B Psychological Requirements

Space, Security, Light and Noise

11. Crowding and space
12. Entry by intruders
13. Lighting
14. Noise

C Protection Against Infection

Hygiene, Sanitation and Water Supply

15. Domestic hygiene, pests and refuse
16. Food safety
17. Personal hygiene, sanitation and drainage
18. Water supply

D Protection Against Accidents

Falls

19. Falls associated with baths, etc
20. Falling on level surfaces, etc
21. Falling on stairs, etc
22. Falling between levels

Electric shocks, Fires, Burns and Scalds

23. Electrical hazards
24. Fire
25. Flames, hot surfaces, etc

Collisions, Cuts and Strains

26. Collision and entrapment
27. Explosions
28. Position and operability of amenities, etc
29. Structural collapse and falling elements

Hazard assessment

60. If an inspector identifies one of the prescribed hazards during any inspection, he/she must make a two-stage assessment.

61. In the first instance, he/she must consider the likelihood of something happening in the next 12 months, as a consequence of the hazard, which could cause harm. The harmful occurrence could, for example, be a period of exposure to a harmful substance or an accident. After this assessment, the inspector must then decide on the potential severity of outcomes should the harm occur.

62. This process can be further explained using an example for “Falls between levels”. The likelihood of a fall from a window will vary depending on the design, size, and condition of the window concerned. A sash window with a low sill height and no fastener will present more of a risk than say a casement window with a high sill height and only a top opener. The second part of the assessment, that being the severity of harm outcomes, will depend on the height of the window. Consider again the sash window with a low sill height. The consequences of a fall from such a window at ground floor level onto grass are likely to be very different to a fall from a window on a sixth floor onto a concrete path.

63. An HHSRS assessment will result in a numerical hazard score. This score determines the band in which the hazard sits. Hazard bands have been devised to avoid emphasis being placed on what may appear to be a precise numerical score and a precise statement of risk. A risk assessment can only be a representation of the inspector’s

judgement. There are ten hazard bands, with Band J being the least hazardous and Band A being the most dangerous.

64. Any hazard with a banding of A, B or C is deemed to be a Category 1 hazard. Hazards with a banding of D to J are considered to be Category 2 hazards. Category 1 hazards are the most severe and have been prioritised by the Act. The council is therefore duty bound, as the LHA, to take one of the prescribed forms of enforcement action in respect of any Category 1 hazard identified. Where Category 2 hazards have been identified, the council has a discretionary power to take action.

65. An HHSRS assessment does not imply what type of enforcement action should be taken. That is a matter for the individual circumstances of each case. The HHSRS is simply a way of assessing the seriousness of the hazard(s) identified.

Chapter 4: Reactive interventions

66. Every year, the council receives a large volume of complaints about private sector housing conditions. These are primarily from private sector tenants who are concerned about the safety of their home environment. In response to the high level of demand, the council has adopted a pragmatic approach to managing its service provision. This approach recognises that not all customers will receive immediate assistance; however, it ensures that all service requests are dealt with fairly and consistently, and that response times are proportionate to the health and safety risks alleged.

67. As previously stated, the council assesses housing conditions using the procedure prescribed by national legislation, namely the HHSRS. However, before an inspection can take place, the council must give the owner and occupier of the premises concerned at least 24 hours' notice of its intention to inspect. This legal requirement has been factored into the service provision offered.

68. Upon receipt of a service request, the council will make an initial assessment of the potential health and safety risks based on the information provided by the person making the request. This will result in one of the service responses outlined below.

No assistance offered

69. Unfortunately, the council cannot intervene in every housing related concern or dispute brought to its attention. The council's Housing Regeneration Team primary role is to ensure that every resident is provided with accommodation that is free from unacceptable hazards. Therefore, in some cases, the council may advise a customer to seek their own legal advice and/or contact the Citizens Advice Bureau.

Complaint Rota

70. The vast majority of service requests are dealt with in this way. The customer will be asked to complete a short form which requires basic information about the service request, including details relating to occupation, the landlord (and agent if applicable), and the nature of the alleged concerns. It is important to note that the council recognises there are many good landlords who will respond quickly and appropriately to any tenant concerns. As such, the form requires the customer to confirm they have contacted their landlord or agent about their problems, when they made contact, and outline the response(s) obtained. In general terms, the council would not want to intervene if the landlord is doing everything reasonably possible to deal with the issues brought to their attention.

71. Upon receipt of a completed service request form, the council will send appointment letters to the occupier and the landlord (owner), and where applicable any known agent, confirming a date and time for the intended inspection. In all cases, and allowing for postal delivery times, at least 24 hours' notice will be given. The landlord and/or their agent are more than welcome to attend during the inspection; however, an appointment will not be postponed if the landlord is unable to make the date and time allocated. An appropriately authorised and qualified officer will undertake the inspection at the specified time and carry out a complete HHSRS inspection of the dwelling, and any common parts (if applicable) leading to it within the curtilage of the building.

72. Waiting times for a Complaint Rota inspection vary and very much depend on the time of the year. Waiting times are usually longer in the winter months owing to the higher number of service requests received. The council will endeavour to make a first visit within one to three weeks; however, this is not always possible in times of high demand. A first inspection is always guaranteed to take place within ten weeks of a service request being made.

Investigation Rota

73. In some cases, the nature of the service request does not allow the Complaint Rota procedure to be followed. For example, it would be inappropriate to make an appointment to visit a property which is alleged to be overcrowded. In such cases, the person making the service request would not normally be resident at the subject address. Another example could be when a concerned member of the public contacts the council about a resident in their road who appears to be living in unsafe conditions.

74. When occupation of the premises concerned is unknown and/or the occupier(s) are unaware of the service request, the council will first review available records and determine whether a case history already exists. If further investigation is required and a visit to the premises needed, the case will be added to the Investigation Rota. Certain days (at least one every month) are put aside for undertaking this rota, and two appropriately authorised and qualified officers will visit the premises concerned in a sensitive manner and attempt to establish whether informal assistance can be provided or whether formal enforcement action is necessary.

75. Where a service request has been made about a property not occupied or owned by the customer, and that person has provided their name and address, the council will normally update the customer as to the outcome of any investigation. However, much of the information obtained during such an investigation is usually confidential and so will be unavailable. Details of the customer making the service request will be kept confidential, and not divulged to any third parties unless authority to do so has been given. Service requests made by persons who wish to remain anonymous to the council will not be accepted unless there is good cause for further investigation. Complaints which are clearly vexatious in nature and cannot be evidenced will not be investigated.

High Priority

76. When a manager or senior officer is of the opinion that a service request has highlighted an issue that is deemed to constitute an imminent and serious risk to the health or safety of any person, the request will be classified as High Priority. The council's first response to a High Priority request will be made as soon as possible, but in all cases within two working days.

Priority

77. When a manager or senior officer is of the opinion that a service request has highlighted an issue that is particularly serious in nature, the request may be classified as a Priority. The council's first response to a Priority request will be made as soon as possible, but in all cases within ten working days. Whether a case is determined to be a Priority case or not will depend on current service demands. If the waiting time for an appointment on the Complaint Rota is short, i.e. less than ten working days, the cases that could be classified as Priority will be added to the Complaint Rota. However, during busy periods, the wait for such an appointment may run into a number of weeks. Therefore, when a service request meets the criteria for a Priority case during periods of high demand, there will be an assurance that the customer receives a first response within ten working days.

Information gathering inspections

78. Investigation Rota, High Priority or Priority cases may be subject to initial information gathering inspections which are deemed to be informal. Informal inspections are not HHSRS inspections. Whenever formal action is required under the Act, the requirement to give 24 hours' notice to the landlord (owner) and occupier will be necessary before an HHSRS inspection can take place.

Chapter 5: Proactive interventions

79. Many residents cope with poor housing conditions, to the detriment of their health and well-being, without knowing how to improve their situation. The council receives and encourages referrals from other agencies, such as the Police and Social Services, and offers help whenever possible. However, it is also important to reach out to those residents who may be in need of our assistance, but who are unknown to other public services or charitable groups.

80. Therefore, the council endeavours to take a proactive approach to identifying residents in need of help with their housing conditions. The approaches taken vary and depend on the available resources at the time. Interventions may be specific, based on an identified need, and last only for a short time. Others are more established, and are delivered in partnership with other agencies and council departments.

81. The following proactive interventions are current as of January 2014, but are subject to change at any time.

Your Home Your Health

82. A multi-agency referral process based on housing inspections, and known as Your Home Your Health, is led by the council's Housing Regeneration Team. The team has made links with a wide range of services and agencies, internally and externally, both public sector and voluntary. The council's Housing Regeneration Team can now directly refer residents to other services and provide advice about many more. The services included within the scheme are reviewed and updated regularly. As of January 2014, there are 26 direct referrals available. These are:

Your Home Your Health – Available Referrals		
Housing enforcement	Social Services	NHS Health Trainer
Kent Fire & Rescue	NHS Dentist	Children's Centres (0-5)
Police	NHS Doctors	Adult education
Housing Options	Quit smoking service	Job Centre Plus
Council housing repairs	Kent Drug and Alcohol Team	Waste and rubbish services
CAB including benefit advice	Immigration issues	Community Safety Team
Gardening services	Mental health service	Pest control service
Energy Savings Trust Advice Centre	Occupational Therapy (major adaptations)	HIA/Handyperson (minor adaptations)
Loan shark advice	Home library service	

83. The Your Home Your Health initiative is a holistic approach to tackling poor housing conditions, with the added benefit of being able to offer residents help with their health and social care needs. Participation on the part of residents is voluntary.

84. From time to time, certain areas are identified by the council as needing proactive intervention. This may be a block of flats, a street or a specific area containing a number of roads. The residential dwellings to be targeted will receive a letter about a forthcoming visit from the council's Housing Regeneration Team. The letter will explain the purpose of the visit and provide an opportunity to make an appointment.

85. On the programmed inspection days, officers will make unannounced visits and offer a free home check to all residents. If a resident chooses not to participate in the scheme, no further action will usually be taken, except to record that no assistance is required. If a resident wishes to participate, the visiting officers will carry out an informal housing

inspection and complete a multi-agency referral form. The form collects data about the property and the resident. If the resident wishes to be referred to one or more other services that may be of benefit to them, the council will make those referrals.

86. If during the inspection, housing problems are identified and the property is privately rented, the council will usually seek to revisit the premises on a formal basis, and undertake an HHSRS inspection. In accordance with section 239 of the Act, the council will give the owner (landlord) and resident at least 24 hours' notice of this inspection.

87. If, however, an emergency situation arises (see the "Enforcement" chapter below), further action may be taken without recourse to a formal inspection if the health and safety of any person is at imminent risk of serious harm.

88. As previously stated, the Your Home Your Health scheme is voluntary, and residents may refuse a free home check. This is a fundamental concept of the scheme; however, there may be times when the council has a duty to take action, even if a resident refuses help. The council will intervene in cases where a resident appears not to be able to make reasonable judgements about their own or other people's safety, and there is a clear risk of harm to either themselves, or any other person, including visitors and members of the public. In such cases, the council will normally seek assistance from other support agencies such as Social Services and the NHS.

89. Access is often gained to the common parts of a building containing flats during Your Home Your Health visits. While each flat resident may choose to accept or refuse a free home check, any communal area that is found to be unsafe will be subject to further investigation and, if necessary, enforcement action to ensure resident safety.

90. Residents who are not at home during the programmed inspection days will receive a letter. The letter will again outline the purpose of the scheme and provide a further opportunity to contact us to arrange a visit.

91. The Your Home Your Health initiative is not tenure specific, and attempts will be made to visit all residential dwellings within a targeted area.

Operation Cleansweep

92. Operation Cleansweep was established in 2007 as a district-wide multi-agency initiative that delivers Environmental Action Days. The programme is led by the council's Environmental Health team, supported by a range of other council departments and outside agencies, both public sector and voluntary. Target areas vary and can include housing estates, high streets, or industrial estates. Actions that can be taken during an Environmental Action Day are wide-ranging and may include reviewing housing conditions, clearance of alleyways, removal of illegally parked cars, identification of illegal immigrants, graffiti removal and food safety inspections.

93. The frequency of Environmental Action Days is at the discretion of the Environmental Health team, but as of January 2014, these take place on two consecutive days, once every month. Visits are undertaken without any prior notice.

94. The council's Housing Regeneration Team participates in many of the Environmental Action Days, and is able to offer proactive housing interventions when appropriate. In general terms, officers approach Environmental Action Days as they would a Your Home Your Health visit as described above.

Margate Task Force

95. The Margate Task Force is a multi-agency initiative that was set up to tackle the multi-faceted problems faced in the two electoral wards of Margate Central and Cliftonville West. These wards contain the three most deprived areas in South-East England according to the English Indices of Deprivation 2010.

96. Fourteen agencies and groups are co-located in the council offices, including the Police, Kent Fire & Rescue, Social Services and the NHS. The team is operational, in that it has officers on the ground on a daily basis, and responds to a whole range of issues to deliver a joined up response to the needs of the community.

97. The private rented sector is recognised as being at the heart of many of the problems experienced in the two wards and is therefore key to many of the activities undertaken by the Task Force. The council's Housing Regeneration Team has therefore committed staffing resources to support this work.

98. The Task Force operates a proactive street week programme, which is broadly based on the principles of the Your Home Your Health initiative outlined above.

Historically non-compliant landlords

99. Unfortunately, a minority of landlords and managing agents routinely provide unsafe accommodation. When a landlord or managing agent has been repeatedly associated with poor quality housing, the council believe it is reasonable to assume that other properties within their portfolio may be of similar quality. As such, the council may determine that it is necessary to proactively investigate a particular landlord or managing agent, with a view to identifying properties owned or managed by them to establish whether they are safe for occupation.

100. Any such investigation must be approved by a manager or senior officer, and they must deem such an investigation to be in the public interest.

Chapter 6: Enforcement

101. Once the council has established that there are residential premises which fail to meet minimum requirements, it will seek to secure compliance with relevant legislation. How the council approaches each case will depend on a range of factors; however, it will always respond in a fair and transparent way.

Enforcement Concordat

102. The council is a signatory to the Enforcement Concordat which was first published in 1998 and sets out six principles of good enforcement. This is a voluntary code, which around 96% of central and local government enforcement bodies have adopted. The principles relate to standards, openness, helpfulness, complaints about service, proportionality, and consistency.

103. The concordat applies to strategic decisions and to individual enforcement decisions, and commits the council to adopting good enforcement policies and procedures. The council therefore takes care to help businesses and others meet their legal obligations without unnecessary expense or burden, while taking firm action, including prosecution where appropriate, against those who disregard the law or act irresponsibly.

The Regulators' Code

104. The Regulators' Code, which was issued in April 2014 under the Legislative and Regulatory Reform Act 2006, seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.

105. The Code does not apply to every regulatory function delivered by the Housing Regeneration Team. In particular, Part 1 of the Act, namely the enforcement of housing conditions, is specifically excluded. It does, however, apply to sections 2 to 5 of the Act and to many of the other legislative provisions outlined above. Where it does apply, the council has a statutory duty to have regard to the Code when developing its policies and principles, in setting its standards, and in providing guidance. It does not, however, apply to officers dealing with individual cases. Insofar as it applies, the council has had due regard to the Code in drafting this policy.

Statutory guidance

106. When considering any formal action the council will have regard to any published statutory guidance currently in force. In respect of housing conditions under Part 1 of the Act, guidance was published under section 9 in February 2006. This document, namely *Housing Health and Safety Rating System – Enforcement Guidance*, is of particular importance. The council always has regard to this guidance when considering enforcement action under Part 1 of the Act.

Approach to enforcement action

107. The following paragraphs set out how, in general, the council will usually take enforcement action in the circumstances described.

Enforcement action following a Complaint Rota inspection

108. When responding to complaints under the "Complaint Rota" system described above, the council will notify the landlord of the intended inspection by letter, or sometimes by other appropriate means. The council would expect any responsible landlord (or his agent) to make contact upon receipt of the notification to discuss the complaint. If the

pre-arranged inspection takes place and there is no attendance by the landlord (or his agent) and there is no record of any other response being made, the council will take the appropriate enforcement action.

109. However, if communication has been made and there is a genuine commitment to remedy any housing deficiencies within reasonable timescales, the landlord will be given the opportunity to resolve any problems on an informal basis (unless paragraphs 115-118 apply).

110. The opportunity to resolve problems on an informal basis is strictly time-limited. If the council is of the opinion that the landlord is not making reasonable progress towards a suitable resolution, the council will take the appropriate enforcement action.

Enforcement action following an Investigation Rota, Priority or High Priority, or proactive inspection

111. When responding to these types of complaints (or engaging in proactive inspections), the first visit will usually be carried out on an informal basis, without any notification being given to the landlord. Following such an inspection, the council will usually make an informal approach to the landlord if any problems have been identified. If there is a genuine commitment to remedy any housing deficiencies within reasonable timescales, the landlord will be given the opportunity to resolve any problems on an informal basis (unless paragraphs 115-118 apply).

112. However, in cases where significant problems have been highlighted, the council will usually return to the premises at a later date to undertake a fully notified inspection to ascertain whether any Category 1 hazards exist on those premises.

113. If circumstances permit and a formal notification can been made before the initial inspection, the provisions set out above for the Complaint Rota system shall apply. (This paragraph does not apply to proactive inspections.)

114. The opportunity to resolve problems on an informal basis is strictly time-limited. If the council is of the opinion that the landlord is not making reasonable progress towards a suitable resolution, the council will take the appropriate enforcement action.

Duty to take action (including Category 1 hazards)

115. While the council prefers to resolve housing problems on an informal basis, there are circumstances in which it has a mandatory duty to take action. Therefore, in some situations, the council will have no option but to proceed with the required remedy in order to comply with relevant legislation. Examples include the requirement to take the appropriate enforcement action in respect of Category 1 hazards and the duty to serve an Abatement Notice in respect of statutory nuisances.

Emergency situations

116. On occasion, the council is faced with a dangerous situation. In cases where there is an imminent risk of serious harm to any person, the council will attempt to make contact with the landlord or owner and, if contact is made, request that immediate action is taken. If contact cannot be made, or an unacceptable response is forthcoming, the council will take the action necessary to protect public health.

Enforcement action in respect of unlicensed premises

117. This paragraph applies when a residential property contains housing deficiencies requiring intervention and the premises should be licensed by the council, and are not, owing to the failure of the landlord to make a full and valid licence application. In such circumstances, the council will normally proceed with formal enforcement action following inspection of the premises. The consequences of operating unlicensed premises without reasonable excuse are set out in the Licensing chapter of this document.

Enforcement action in respect of historically non-compliant landlords

118. The council recognises that most private sector landlords operate compliant businesses and take pride in delivering a valuable resource to society. However, this is not always the case, and a minority of landlords and managing agents routinely provide poor quality accommodation and/or fail to manage their properties satisfactorily. The council is of the opinion that knowledge of a landlord's compliance history is a relevant factor in considering whether to take formal enforcement action. Therefore, where a landlord or managing agent is associated with poor quality housing and management, and an inspection of one of their properties reveals poor housing conditions requiring intervention, the council will normally proceed with formal enforcement action without recourse to informal remedies.

Category 2 hazards

119. Whereas the council must take the appropriate enforcement action in respect of Category 1 hazards (hazard bands A-C), the taking of action in respect of Category 2 hazards (hazard bands D-J) is discretionary. In general terms, the council is of the opinion that its discretionary powers should be exercised whenever it is appropriate to do so.

120. Every case is carefully considered on an individual basis. Any Category 2 hazard (irrespective of hazard banding) may be subject to enforcement action if the council determines that there is a risk to health and safety that should be mitigated. However, it is more likely that action will be taken in respect of hazards that fall between hazard bands D and G. While hazards with a hazard banding of H, I or J are less likely to be subject to enforcement action, the council reserves the right to use its discretionary enforcement powers in respect of such hazards.

121. Although the council will usually tend towards enforcement action in respect of higher rated Category 2 hazards, after careful consideration of the individual circumstances of a case, the council may decide not to exercise its discretionary powers and take no form of enforcement action whatsoever.

When a tenant moves out (Improvement Notices)

122. If a tenant vacates a property that is subject to an Improvement Notice served under the Act, the council will usually continue to enforce the original requirements and timescales of the notice. The council believes that this approach deters landlords and agents from engaging in retaliatory evictions and safeguards the health and safety of future tenants.

123. However, each case is determined on its own merits, and in some situations the council may agree to the suspension or variation of the requirements of an Improvement Notice once a property becomes empty. Applications for a suspension or variation must be made to the council, in writing, as soon as possible after vacation.

Charging for enforcement action

124. Under section 49 of the Act, the council may make such reasonable charges as considered appropriate as a means of recovering the administrative and other expenses incurred in taking enforcement action. The council has determined that charges will be made in respect of the following types of enforcement actions:

    - The service of an Improvement Notice (see notes below);
    - The making of a Prohibition Order;
    - The taking of Emergency Remedial Action;
    - The making of an Emergency Prohibition Order;

- The making of a Demolition Order (under the 85 Act).

125. The council does not charge for the service of Hazard Awareness Notices.

126. While there is a policy of charging for Improvement Notices, the council has decided to recognise notice recipients who fully comply with the notices served upon them. Therefore, the charge will be waived if a notice recipient completes the remedial works and/or actions specified in an Improvement Notice to an acceptable standard within the timescales stated.

127. When a Residential Property Tribunal allows an appeal against an underlying notice or order, it may decide to reduce, quash, or require the repayment of any associated demand served under section 49 of the Act. However, it is important to note that there are no separate appeal provisions relating to the service of a demand. Therefore, if a notice recipient does not appeal against the underlying notice or order, he/she may not appeal against the council's decision to make a charge for the enforcement action.

128. The scope of the expenses that may be charged by the council are set out in section 49 of the Act.

129. For Improvement Notices, these are:
    - Determining whether to serve the notice;
    - Identifying the action to be specified in the notice;
    - Serving the notice.

130. For Emergency Remedial Action, these are:
    - Determining whether to take such action;
    - Serving the relevant notice.

131. For Prohibition, Emergency Prohibition and Demolition Orders, these are:
    - Determining whether to make the order;
    - Serving copies of the order on the owners of the premises.

132. The expenses incurred in respect of each intervention are calculated having regard to officer time and other incidental costs, such as photocopying and postage. The council may also employ the services of an outside company or agency to help assist with the enforcement action. These costs will also form part of the charge made under section 49. Examples include the provision of laboratory asbestos testing, structural engineer's reports, and other similar specialist services.

133. The council may, from time to time, calculate the average cost of enforcement action and set a fixed charge for the expenses incurred by the council. Where possible, and in all cases where the enforcement action involves the service of an Improvement Notice, the total charge will be specified in the covering letter to the notice or order.

Penalties for non-compliance

Offences

134. It is generally an offence not to comply with a statutory notice served, or order made, by the council's Housing Regeneration Team. There are some minor exceptions, where works-in-default (see below) is the potential consequence for non-compliance.

135. Every notice served, or order made, will specify the maximum fine level for non-compliance. For certain offences, there are also ongoing daily fines that are incurred after conviction for continued non-compliance. For the most part, the penalties specified refer to the standard scale of fines for summary offences set out in the *Criminal Justice Act 1982*. The maximum fines for the standard scale are:

- Level 5: £5,000
- Level 4: £2,500
- Level 3: £1,000
- Level 2: £500
- Level 1: £200

136. The most common type of notice served by the council (which requires action on the part of the recipient) is the Improvement Notice. Currently, as of January 2014, non-compliance with such a notice will, upon conviction, incur a Level 5 fine, which may be up to £5,000.

137. However, the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* will remove the £5,000 fine limit and introduce unlimited fines from a designated date. As at January 2014, the date is unknown, but it is anticipated to be in the near future. Various other housing-related offences that have fine levels capped at £5,000 will also be affected and will be subject to unlimited fines.

138. For some offences, there is a defence of "reasonable excuse". If this defence is available, it will be made clear in the notes attached to the notice or order.

Prosecution

139. When a person fails to comply with a notice served, or order made, the council will begin an investigation to consider whether or not an offence has been committed.

140. If the council forms the opinion that an offence has been committed, it will initiate prosecution proceedings in the Magistrates' Court (unless there are good reasons not to do so). Reference should be made to the chapter on Prosecutions.

Simple cautions

141. In certain circumstances, the council may decide to issue a simple caution, rather than initiating prosecution proceedings in the Magistrates' Court. Simple cautions can quickly and simply deal with less serious offences. A simple caution is not a criminal conviction.

142. Simple cautions may only be issued when:

- The evidence is such that there would have been a realistic prospect of conviction, had the case gone to court; and
- The suspect admits the offence; and
- The suspect consents to being cautioned and understands the significance of admitting guilt and being subject to a simple caution.

143. Simple cautions are recorded on a secure register held by the council and may be referred to in future criminal proceedings. The issuing of a simple caution is intended to discourage reoffending.

144. Further information regarding simple cautions can be obtained from the Ministry of Justice document: *Simple Cautions for Adult Offenders*, which is available online from www.cps.gov.uk.

Works-in-default

145. In respect of much of the legislation mentioned above, the council has the discretionary power to carry out works-in-default when a statutory notice has not been complied with. It will be made clear within the original notice if this power is available to the council following non-compliance.

146. The power is an entirely separate matter to prosecution. The council may, in one case, carry out works-in-default and decide not to prosecute. It may, however, in another

case, decide to prosecute and choose not to carry out works-in-default. In some cases, the council will do both. Each case is considered on its own merits.

147. The decision to carry out works-in-default is always made by a senior officer, as the action requires the expenditure of public monies. The senior officer will also determine the scope and nature of the works-in-default, as not all the works required by the underlying notice may be undertaken.

148. In taking such action, the council will strictly adhere to its own Contract Standing Orders for the procurement of goods and services. It will also ensure that the cost of remedial action is reasonable.

149. All expenses incurred in carrying out works-in-default will be recharged to the relevant person by way of statutory demand notice. The expenses usually include:

    - The cost of external contractors and consultants; and
    - The cost of council officers' time, including travelling expenses; and
    - The cost of sundries, such as photocopying and postage of documents; and
    - An accountancy charge (charged as a percentage of the total cost).

150. Interest, at a rate determined by the council, may also be levied from the date of the service of the demand notice. Any provision for appealing against the level of the expenses charged will be detailed in the demand notice.

151. The expenses will remain as a local land charge on the property concerned until the debt has been paid in full.

Debt recovery

152. The council will seek to recover all debts owed as soon as possible. The council's Housing Regeneration Team will instruct the council's Debt Recovery Team to initiate recovery proceedings when the following debts have not been paid:

    - Charges relating to the service of a statutory notice or order (section 49 of the Act);
    - Expenses incurred with the taking of Emergency Remedial Action;
    - Expenses incurred with the carrying out of works-in-default.

153. Where appropriate, the council will use the enforced sale procedure under the Law of Property Act 1925 as a means of recovering any monies owed.

Chapter 7: Houses in multiple occupation (HMOs)

154. The term HMO often means different things to different people. Indeed, the definition used by housing practitioners changed substantially in April 2006 owing to the implementation of the Act. Fundamentally, the term "HMO" when used in this document, refers to the legal definition prescribed by section 254 of the Act. Professionals in other fields, in consideration of alternative legislation, may view the term differently.

155. A building, or a part of a building, is an HMO if:

- It meets "the standard test"; or
- It meets "the self-contained flat test"; or
- It meets "the converted building test"; or
- It is a "converted block of flats" to which section 257 of the Act applies.

The standard test

156. There are six parts to the standard test. A building (or any part of a building) will meet the test if:

a) It consists of one or more units of accommodation that are not self-contained; and

b) It is occupied by more than one household; and

c) It is occupied by persons who use the accommodation as their only or main residence; and

d) The accommodation is not used for purposes other than living accommodation; and

e) At least one person is paying rent (or providing other consideration) for their use of the accommodation; and

f) Two or more households share one or more basic amenity, or the accommodation is lacking in one or more basic amenity.

157. A household is generally considered to be a single family unit, comprised of members of the same family. Couples whether married or not are deemed to be of the same family. Relatives that may form part of a single household include: parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and cousins.

158. Toilets, personal washing facilities (e.g. showers, baths and washbasins) and cooking facilities (e.g. kitchens) are considered to be basic facilities.

The self-contained flat test

159. A self-contained flat will be an HMO if it meets tests b) to f) of "the standard test" above.

The converted building test

160. There are six parts to the converted building test. A building (or any part of a building) will meet the test if:

a) It is a converted building; and

b) It consists of one or more units of accommodation that are not self-contained (whether or not there are self-contained flats in the building); and

c) It is occupied by more than one household; and

d) It is occupied by persons who use the accommodation as their only or main residence; and

e) The accommodation is not used for purposes other than living accommodation; and

f) At least one person is paying rent (or providing other consideration) for their use of the accommodation.

Certain converted block of flats

161. This HMO definition applies to certain buildings (or parts thereof) that have been converted entirely into self-contained flats. As such, there is no sharing of basic facilities in this type of HMO. However, not all buildings converted into self-contained flats are HMOs. For a building of this type to be an HMO, it must meet both of the following tests:

    a) The building was not converted in accordance with the "appropriate building standards" (they being the Building Regulations 1991 or later versions of these Regulations); and

    b) Less than two-thirds of the self-contained flats are owner-occupied.

HMO declarations

162. Sometimes, a building (or part of a building) is not solely used as living accommodation. In this situation, the HMO tests set out above (concerning sole use as living accommodation) cannot be met. However, if the building concerned is primarily used as living accommodation, and meets all the other relevant HMO tests, it may be appropriate for the council, in the public interest, to declare the building as an HMO.

163. HMO declarations can be made by the council in respect of buildings that would otherwise meet the "the standard test", "the self-contained flat test", and "the converted building test". An HMO declaration cannot be made in respect of "converted block of flats".

164. A relevant person can appeal to the Residential Property Tribunal against any decision of the council to declare a building as an HMO.

Exemptions

165. Schedule 14 of the Act specifies buildings which are not HMOs for the purposes of the Act. However, when considering action under Part 1 of the Act (HHSRS and enforcement of housing conditions), the specified exemptions do not apply. This allows for risk assessment to reflect the true nature of occupation. The exemptions are:

    - Buildings managed or controlled by LHAs, registered social landlords ("RSLs") and certain other public sector bodies, such as the Police.
    - Buildings that are otherwise regulated under prescribed legislation, such as care homes (see Schedule 1 of *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006* (SI 2006/373) for the full list of enactments).
    - Buildings that are managed and controlled by certain educational establishments and are occupied by students. As of January 2014, only those establishments

specified in *The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2013* (SI 2013/1601) are exempt. These regulations are regularly updated, usually on an annual basis.

- Certain buildings occupied by religious communities.
- Any building occupied by its owner and his/her family, and in which no more than two lodgers or tenants reside. HMOs defined by section 257 of the Act are excluded from this exemption.
- Buildings occupied by only two persons forming two households.

166. Exempt buildings are not subject to HMO licensing under Part 2 of the Act, or either of the two sets of HMO management regulations (see below). Furthermore, the provisions of Chapter 3 of Part 4 of the Act, which relate to the service of overcrowding notices in respect of HMOs not subject to licensing, do not apply to exempt buildings.

Planning use (including Article 4 Direction)

167. The Housing Regeneration Team is concerned with safety and management standards in HMOs. In this respect, the following chapters describe how licensing and management regulations provide additional protection for HMO residents. However, whether a property can, in principle, be used as an HMO is a matter for the planning regime and the Planning Department. Any property operating as an HMO could be subject to planning enforcement action if it does not have lawful use as an HMO.

168. To ensure that the impact of HMOs can be properly considered through the planning process, on 04 February 2012 the council made an Article 4 Direction removing the permitted development right to change the use of a dwelling house (use class C3) to a small HMO (use class C4). Use class C4 relates to certain HMOs occupied by three to six persons. Any person wishing to make this change must make a planning application.

169. More information about the planning regime and the Article 4 Direction can be obtained from the Planning Department on 01843 577150 or planning.services@thanet.gov.uk.

Chapter 8: Licensing of HMOs and other residential accommodation

Overview

170. In April 2006, the Act introduced three licensing regimes for residential accommodation in the private sector. These are:
    - Mandatory HMO licensing (Part 2 of the Act);
    - Additional HMO licensing (Part 2 of the Act);
    - Selective licensing (Part 3 of the Act).
171. The mandatory HMO licensing scheme applies to all local authority areas in England. Accordingly, the council, as the LHA, has a mandatory duty to implement, operate, and enforce the scheme. Additional HMO licensing and selective licensing schemes are discretionary, and it is for each LHA to determine, at a local level, whether there are particular problems in their area that could be tackled by the introduction of a discretionary licensing scheme. Any LHA that proposes to implement a discretionary licensing scheme must provide sufficient evidence to demonstrate why such a scheme is needed and carry out a public consultation.

Mandatory HMO licensing

172. Chapter 7 describes the types of premises that are deemed to be HMOs for the purposes of the Act. However, the mandatory licensing scheme only applies to certain types of HMO. The prescribed types have been set out in *The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006* (SI 2006/371).
173. In the first instance, all HMOs as defined by section 257 of the Act (certain converted blocks of flats) are excluded from the mandatory scheme. All other types of HMO are licensable if:
    - The HMO, or any part of it, comprises three or more storeys; and
    - It is occupied by five or more persons; and
    - It is occupied by persons living in two or more single households.
174. Mandatory HMO licensing was introduced to improve physical conditions and management standards in higher risk HMOs.

Exemptions from mandatory HMO licensing

175. Certain buildings, as specified in Schedule 14 of the Act, are not deemed to be HMOs, and are therefore not licensable. The exemptions are summarised in the HMO chapter above.
176. Two further exemptions are specified in the Act. These are:
    - HMOs subject to a temporary exemption notice (see below); and
    - HMOs subject to a management order (see Chapter 11).

Additional HMO licensing

177. This form of discretionary licensing empowers LHAs to introduce the requirement to license other types of HMOs in all or part of their area.

178. Before implementing such a scheme, the LHA must consider that a significant proportion of the HMOs (of the type it is considering to license) are being managed sufficiently ineffectively so as to cause problems for those occupying the HMOs or for members of the public.

179. As of January 2014, the council has not implemented an additional HMO licensing scheme, and does not, for the time being, propose to consult on the implementation of such a scheme. However, the case for additional licensing will be reviewed regularly. If the council, at some time in the future, forms the opinion that there are particular problems with other types of HMO, it may decide to consult on a proposed additional HMO licensing scheme.

Selective licensing

180. LHAs are empowered to introduce selective licensing schemes in all or part of their area, which require all types of private rented accommodation to be licensed (unless subject to exemption). An area may be designated if it is, or may become, an area of low housing demand and/or it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.

181. The council currently operates a selective licensing scheme in certain parts of the electoral wards of Cliftonville West and Margate Central. Suffering with high levels of deprivation, significant health inequalities, and a disproportionate number of poorly managed privately rented homes, the area concerned presents a particular challenge to the council. To help tackle some of the area's difficulties, the scheme was introduced to:

    - Increase housing demand, in a sustainable way, which encourages a mixed and vibrant community;
    - Reduce the level of anti-social behaviour;
    - Improve housing conditions;
    - Improve the management of housing in the private rented sector; and
    - Reduce overcrowding.

182. A comprehensive analysis of the area and the detailed reasons for the scheme's introduction can be found in the council's *Proposal to Declare a Selective Licensing Designation.* This and more information about selective licensing can be found on the council's website. Key dates relating to the scheme are shown below:

    - Public consultation carried out between 06 September 2010 and 15 November 2010;
    - Decision taken by the council's Cabinet on 12 January 2011 to implement a selective licensing scheme following a comprehensive review of the consultation responses.
    - Judicial Review lodged in the High Court on 11 April 2011 by the Southern Landlords Association ("SLA") alleging that the agreed scheme was unlawful.
    - Scheme became operative on 21 April 2011. From that date, every residential property which is privately let to one or more tenants within the designated area must be licensed.
    - Judicial Review heard in the High Court between 30 and 31 October 2012.
    - High Court finds in favour of Thanet District Council on 13 November 2012. The scheme is lawful and may continue to be enforced.
    - Scheme due to end, unless subject to further consultation, on 20 April 2016 (five years after coming into force).

183. Mandatory HMO licensing always takes precedence over selective licensing. HMOs which are already subject to the mandatory scheme do not require a selective licence.

Exemptions from selective licensing

184. There are exemptions from selective licensing. Some are set out in the Act and some in regulations. The relevant regulations are *The Selective Licensing of Houses (Specified Exemptions) (England) Order 2006* (SI 2006/370).

185. The exemptions specified in the Act (sections 79 and 85) are:

- Dwellings let by a registered social landlord;
- HMOs required to be licensed under Part 2 of the Act (HMO licensing);
- Dwellings subject to a temporary exemption notice (see below);
- Dwellings subject to a management order (see Chapter 11);

186. The regulations exempt dwellings that are subject to certain types of tenancies and licences. These relate to dwellings (units of accommodation) that:

- Cannot lawfully be occupied because they are subject to a Prohibition Order;
- Are let under specified types of tenancies (which are not assured tenancies), namely:
  - Business tenancies (Landlord and Tenant Act 1954);
  - Tenancies where the premises are licensed for the sale of alcohol;
  - Tenancies relating to agricultural land where more than two acres is let with the dwelling;
  - Specified tenancies relating to agricultural holdings, etc.
- Are let by a LHA, a police authority, a fire and rescue authority, or a health service body;
- Are regulated by other forms of legislation, such as the Children Act 1989 and the Prison Act 1952 (see Schedule 1 of *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006* (SI 2006/373) for the full list of enactments);
- Are let to students where the dwelling is managed or controlled by an approved educational establishment;
- Are occupied by long leaseholders, where the lease has been granted for a period longer than 21 years and where the landlord has no right to end the lease early (other than by forfeiture);
- Are let to members of the landlord's family, who use the dwelling as their only or main residence;
- Are let as a holiday home;
- Are occupied by persons (lodgers) who share their amenities (WCs, bathrooms, kitchens and living rooms) with their permanently resident landlord.

187. The above list of exemptions has been simplified for ease of explanation. More detailed information can be obtained from the Housing Regeneration Team.

HMO and selective licensing fees

188. Licensing schemes should be self-financing and are not intended to be a burden to the public purse. The council therefore charges fees to cover the costs of implementation and administration.

189. A fee, usually revised every financial year, is payable in respect of:
    - Making a new licence application;
    - Making an application to renew a licence.
190. In each case, the fee payable normally depends on the type and size of the premises concerned. Licensing fees are published every year and are set out in a licensing fee document that is available on request or via the council's website.

Who can apply for a licence?

191. The council has a duty to grant a licence to the most appropriate person, and in normal circumstances, this would be the owner of the property concerned. Therefore, the council's preference is that the licence application is made by the owner.
192. However, for every licence, there must be a named "Licence Holder" and a named "Manager". This does not mean a separate manager must be appointed. Any owner who manages their own property would be named as both the licence holder and the manager on the licence. If a managing agent has been appointed, they would normally be named on the licence as the manager. In this situation, the council will accept applications made on behalf of the proposed licence holder by the proposed manager. When an application is made by a manager, the application must be accompanied by a letter of authorisation from the proposed licence holder.
193. Licence holders and managers cannot live abroad. Property owners that live outside England will need to appoint a person or company who is prepared to be the licence holder on their behalf. Usually, this would be a local managing agent, but can be any suitably competent person. However, not all managing agents may want this responsibility. Ultimately, if an owner lives abroad and no-one resident in England agrees to be the licence holder, the property cannot be licensed.
194. Licence applications will only be valid if they have been made by the proposed licence holder or the proposed manager.

Licence applications

195. All licence applications must be made to the council as the licensing authority.
196. The council prefers all HMO and selective licence applications to be made online via the GOV.UK website. A weblink to the GOV.UK licence application form can be found on the council's website.
197. A hard copy version of the application form is available for applicants without access to the internet.
198. The licence application form on the GOV.UK website is generic and intended to be used for both HMO and selective licence applications. However, the primary references and page headings relate to HMOs. Unfortunately, this is misleading for selective licensing applicants. On the correct webpage, there is a reference to selective licensing in the text below the title. The council is unable to change the wording of this website as it is a national facility, primarily used for making HMO licence applications.
199. Application forms must be downloaded and saved onto a computer, before being completed. When the form has been filled in and saved, the applicant must return to the GOV.UK website and upload the document. At the same time, supporting documents may be uploaded. These include:
    - A copy of a fire safety risk assessment. (This is required if the proposed licence holder is responsible for any common areas within the property. If a report is not available at the time of application, the provision of such a report will be required, by a certain date, under the terms of the licence.)

- Property plans. (Well proportioned, preferably scaled, plans are required for the property, with all rooms identified by their use and number if applicable. Room sizes in m^2 are required for all bedsitting rooms, bedrooms and living rooms.)
- A landlord's gas safety record. (Required where there is a gas supply to the property.)
- A copy of the tenancy agreement. (A copy of the existing tenancy agreement can be provided, or a copy of the standard used for the property.)
- Electrical Condition Report. (If a copy is not provided at the time of application, one will be required, by a certain date, under the terms of the licence.)
- Letter of consent. (If a proposed licence holder makes an application and details a proposed manager in the application, a letter of consent from the proposed manager will be required to demonstrate that they consent to being named on the licence.)
- Letter of authorisation. (If a proposed manager makes an application on behalf of the proposed licence holder, they will need to provide a letter from the proposed licence holder which authorises the making of the application. The letter must specify the proposed licence holder's name, address and contact details, the manager's name, address and contact details, the property to be licensed, and be signed and dated.)
- Other documents. (The website has a facility that allows other types of supporting documents to be uploaded.)

200. If these supporting documents cannot be scanned and uploaded, there is an option on the website to confirm that they will be sent by post.

201. Once the form and supporting documents have been successfully uploaded, the appropriate payment must be made by credit or debit card. The applicant will receive an email to confirm receipt of the application, which will include an application reference number.

202. Applicants completing a paper version of the application form should make payment by including a cheque made out to "Thanet District Council" with their application.

Validation of licence applications

203. Upon receipt, the council will make initial checks before validating an application. If the application form is incomplete or one or more supporting documents are missing, it will not be accepted.

204. A valid application will only be made if (as a minimum):
    - The application form has been satisfactorily completed; and
    - The correct fee has been paid; and
    - Satisfactorily annotated property plans have been provided; and
    - A copy of a tenancy agreement has been provided; and
    - A copy of the landlord's gas safety record has been provided (if there is a gas supply to the property); and
    - A letter of consent has been provided (if the proposed licence holder is naming a proposed manager) or a letter of authorisation has been provided (if the proposed manager is making the licence application on behalf of the proposed licence holder).

205. Where an incomplete application has been made, the council will notify the applicant and request the outstanding documents and/or require the proper completion of the application form. Applicants will be given 28 days in which to complete their application.

If after 28 days the applicant has failed to complete the application satisfactorily, the council may reject the application. Any person responsible for a property that has been subject to a rejected application is at risk of being prosecuted.

206. Experience has shown that the following defects are most common:
    - The application form has not been signed by the proposed licence holder or manager;
    - A letter of consent has not been provided (where applicable);
    - A letter of authorisation has not been provided (where applicable);
    - The correct fee has not been paid;
    - Property plans are insufficient, owing to the use of outdated drawings that bear no relation to the current layout, and/or to omissions relating to the provision of room sizes.

Assessment of licence applications

207. Once an application has been validated, it will be passed to an officer for processing. In most cases, the officer will process the application without needing to visit the premises. Before proposing to grant a licence, the council must be satisfied that:
    - The proposed licence holder is a fit and proper person, and is, out of all the persons reasonably available to be the licence holder in respect of the property, the most appropriate person to be the licence holder; and
    - The proposed manager is either the person having control of the property, or a person who is an agent or employee of the person having control of the property; and
    - The proposed manager is a fit and proper person to be the manager of the property; and
    - The proposed management arrangements for the property are otherwise satisfactory.
208. For HMOs, the council must also be satisfied that:
    - The property is reasonably suitable for occupation by the maximum number of households and persons specified in the application (or some other maximum number decided by the council) or that it can be made so suitable by the imposition of licence conditions.
209. Furthermore, in respect of HMOs licensable under the mandatory regime, there are prescribed standards set out in Schedule 3 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) as amended by The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903). These standards specify minimum requirements for heating, washing and kitchen facilities, and fire precautions. More information is provided in the chapter entitled “HMO amenity standards”.
210. In deciding whether a person is a fit and proper person, the council must (among other things) take into account any conviction involving fraud or other dishonesty; any conviction involving violence or drugs; any conviction relating to an offence listed in Schedule 3 to the Sexual Offences Act 2003; any finding of unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; and any contravention of the law relating to housing or landlord and tenant law.
211. The council is also required to take into account any evidence (such as the type of evidence described in the paragraph above) which concerns persons associated with a

proposed licence holder or manager, whether on a personal, work or other basis. In other words, if a proposed licence holder or manager is closely associated with someone who is clearly not a fit and proper person, then they themselves may not be deemed to be fit and proper.

212. Proposed licence holders and managers are expected to confirm that they are fit and proper persons in their licence applications. The council will usually accept such self-certification; however, further additional checks are sometimes undertaken before a decision is made as to whether a person is fit and proper.

Refusal to grant a licence

213. If, after having carefully considered a licence application, the council is not satisfied that the prescribed tests have been met, it must refuse the application. In such cases, the council will write to the licence applicant and all relevant persons, and enclose a statutory notice explaining that the council is proposing to refuse the application. The notice will provide for a 21-day consultation period, during which representations can be made to the council. If any representations are received, the council will carefully consider them before taking further action. Whenever possible, the council will try to help the applicant overcome any problems.

214. However, if no representations are made, or if the representations received do not change the council's opinion, the application will be refused. Once the council has decided to refuse the application, it will write again to the licence applicant and all relevant persons, and enclose a statutory notice stating that the application has been refused. The notice will explain the reasons for refusal.

215. The applicant or any relevant person may appeal against such a decision to the Residential Property Tribunal within 28 days. A relevant person is a person who has an estate or interest in the property, or who manages or has control of the property, or on whom any restriction or obligation was to be imposed by the licence (had it been granted).

Proposal to grant a licence

216. If, after having carefully considered a licence application, the council is satisfied that the prescribed tests have been met, it must propose to grant a licence. The council will write to the proposed licence holder and all relevant persons, and enclose a proposed licence and a statutory notice explaining that the council is proposing to grant a licence. Recipients of the notice are given 21 days in which to make representations about the proposed licence. Recipients should have particular regard to the proposed licence conditions.

217. Conditions are attached to all licences. Some are mandatory and must be included in all licences in accordance with Schedule 4 of the Act. The mandatory conditions require the licence holder to:

    - Produce gas safety certificates to the council every year (if gas is supplied to the property);
    - Maintain all electrical appliances and furniture in a safe condition (applies only to items supplied by the licence holder or his manager);
    - Supply to the council, when requested, a declaration as to the safety of all electrical appliances and furniture supplied by the licence holder or his manager;
    - Ensure that smoke alarms are installed and kept in proper working order;
    - Supply to the council, when requested, a declaration as to the condition and positioning of all smoke alarms provided in the property;
    - Supply all tenants with a written statement of the terms of occupation.

218. A further mandatory condition applies to selective licences only. For such licences, the licence holder must also:
    - Require references from all prospective tenants.
219. As permitted under Parts 2 and 3 of the Act, the council includes further conditions in all licences. The nature of these conditions depends on the type of licence and premises concerned; but in general terms, the additional conditions will relate to the management, use and occupation of the premises. For HMOs subject to the mandatory HMO licensing scheme, conditions may be included that require the installation of additional amenities, such as kitchens, WCs and bathrooms, within a certain timescale.
220. Any representations received by the council will be carefully considered before further action is taken. In some cases, in response to representations received, the council may decide to propose the licence again, with modifications. If no representations are received during the consultation period, the council will assume that the interested parties are satisfied as to the nature of the proposed licence and its conditions.

Granting of a licence

221. Assuming that the particulars of the licence application have not changed, the council will grant a licence once the proposal process has been completed. The council will write again to the proposed licence holder and all relevant persons within seven days of the date of the council's decision to grant a licence. Enclosed with the letter will be a copy of the licence and a statutory notice stating that the licence has been granted. The notice will also provide details of the right of appeal to the Residential Property Tribunal. Any appeal must be made within 28 days of the date of the council's decision to grant a licence (this date is always stated on the accompanying notice).
222. Once granted, licences are not transferrable between licence holders. Therefore, if a property is sold, the new owner will need to make arrangements for a new licence application to be made.

Duration of a licence

223. Licences may be granted for a period of up to five years.
224. The council will usually grant a licence for the maximum five year period. However, the council reserves the right to grant a licence for a shorter period, if appropriate to do so, having regard to the particular circumstances of an individual case. No pro-rata licence fee rebate will be paid when a licence is issued for a period less than five years.
225. If a licence holder decides to relinquish his/her licence early, there will be no pro-rata rebate of the licence application fee.

Public registers of licences

226. The council is required to maintain a public register of all licences issued. The information required to be contained within a public register is prescribed by legislation.
227. The council maintains two public registers, one for mandatory HMO licensing and one for selective licensing. Both can be viewed at the council's main offices during working hours, by appointment. Paper copies of the registers are available; for which a small fee may be charged to cover the cost of photocopying.
228. The public registers include the names and addresses of all licence holders and named managers.

Property inspections

229. The council will inspect all properties subject to licensing and make an assessment under the HHSRS. The inspection will be carried out before, or as soon as possible after, the granting of a licence; however, the timing will depend on the priorities of the council's inspection programme. The inspection will always take place during the initial licence period.

230. The HHSRS inspection will be fully notified and at least 24 hours' notice will be given to the occupier, licence holder, and manager (if applicable). Any hazards identified during the inspection will need to be rectified within a reasonable timescale.

231. The council also makes unannounced inspections of licensed premises to ensure compliance with licence conditions.

Variation of a licence

232. The council may vary a licence, with the agreement of the licence holder, or on its own initiative if it considers there has been a change of circumstances since the licence was granted.

233. To vary a licence, the council must follow the procedures set out in Schedule 5 of the Act. In the first instance, the council will write to the licence holder and all relevant persons, and enclose a proposed varied licence and a statutory notice explaining that the council is proposing to vary the licence. Recipients of the notice are given 21 days in which to make representations about the proposed variations. Any representations received by the council during the consultation period will be carefully considered before further action is taken.

234. The proposal stage may be omitted by the council if the licence holder is in full agreement with the proposed changes, or if the changes are not material in any respect.

235. If no representations are made during the consultation period, or if the representations received do not change the council's opinion, the licence will be varied as proposed. Once the council has decided to vary the licence, it will write to the licence holder and all relevant persons, and enclose:
    - A copy of the varied licence;
    - A copy of the council's decision to vary the licence;
    - A statutory notice confirming that the licence has been varied, and setting out the reasons for the variation and the right of appeal.

236. The licence holder or any relevant person may appeal against the decision to vary the licence within 28 days. Appeals must be made to the Residential Property Tribunal.

237. The council may not agree to a variation proposed by a licence holder. In such circumstances, a two stage process, similar to that described above, will be followed. There is a right of appeal against the decision not to vary a licence.

Revocation of a licence

238. The council may revoke a licence in the following circumstances:
    - When there has been agreement with the licence holder;
    - Following a serious breach of one or more licence conditions;
    - Following repeated breaches of one or more licence conditions;
    - When the council is of the opinion that the licence holder is no longer a fit and proper person;

- When the council is of the opinion that the manager is no longer a fit and proper person;
- In the case of premises subject to an HMO licence under Part 2 of the Act, when the HMO ceases to be an HMO that is required to be licensed;
- In the case of premises subject to an HMO licence under Part 2 of the Act, when the structure is no longer suitable for use as an HMO;
- In the case of premises subject to a selective licence under Part 3 of the Act, when the property ceases to be a property that is required to be licensed;
- In the case of premises subject to a selective licence under Part 3 of the Act, when a mandatory HMO licence has been granted in respect of the premises under Part 2 of the Act;
- In the case of premises subject to a selective licence under Part 3 of the Act, when the structure is no longer adequate for the purposes of selective licensing.

239. To revoke a licence, the council must follow the procedures set out in Schedule 5 of the Act. In the first instance, the council will write to the licence holder and all relevant persons, and enclose a statutory notice explaining that the council is proposing to revoke the licence. Recipients of the notice are given 21 days in which to make representations about the proposed revocation. Any representations received by the council during the consultation period will be carefully considered before further action is taken.

240. The proposal stage may be omitted by the council if the licence holder is in full agreement with the proposed revocation.

241. If no representations are made during the consultation period, or if the representations received do not change the council's opinion, the licence will be revoked. Once the council has decided to revoke the licence, it will write to the licence holder and all relevant persons, and enclose:
    - A copy of the council's decision to revoke the licence;
    - A statutory notice setting out the reasons for the revocation, the date on which the decision to revoke the licence was made, and the right of appeal.

242. The licence holder or any relevant person may appeal against the decision to revoke the licence within 28 days. Appeals must be made to the Residential Property Tribunal.

243. The council may, following an application from the licence holder, refuse to revoke a licence. In such circumstances, a two stage process, similar to that described above, will be followed. There is a right of appeal against the decision to refuse to revoke a licence.

Temporary exemption from licensing

244. A person having control of or managing a premises that is in need of a licence may decide, for whatever reason, that they do not want to licence the premises. In such circumstances, the person (usually the owner) will need to apply to the council for a Temporary Exemption Notice.

245. The council may decide to approve or refuse an application for a Temporary Exemption Notice.

246. If the council agrees to serve a Temporary Exemption Notice, the person concerned will be given three months in which to take lawful and appropriate steps to change the nature of occupation. The council will expect the person to take positive and timely action, such that the premises concerned no longer needs a licence by the end of the three month period.

247. If after three months, the premises remain licensable, the council has the discretion to serve a second and final Temporary Exemption Notice. However, there has to be good reason to serve a second notice as the Act only permits this course of action in exceptional circumstances. A second and final notice will provide for an additional three months' exemption. A premises cannot be exempted for a period longer than six months in total.

248. If the council decides to refuse an application for a Temporary Exemption Notice, the applicant will be sent a notice which confirms the decision, the reason why the decision was taken, and the right of appeal. Appeals must be made to the Residential Property Tribunal within 28 days.

Penalties for non-compliance

Offences

249. There are two offences associated with both HMO and selective licensing.

250. Failing to obtain a licence for a property which is required to be licensed is an offence. The offence is committed by the person having control of and/or the person managing the premises. A person committing such an offence is liable on summary conviction to a fine not exceeding £20,000.

251. Once a licence has been issued, the licence holder and any named manager (if applicable) must adhere to the licence conditions. The licence holder and/or the licence manager will commit an offence if they breach any of the licence conditions. A person committing such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000) for each breach, unless the breach concerns the over-occupation of a mandatory licensable HMO. A person who knowingly permits the over-occupation of an HMO which is subject to a licence under Part 2 of the Act is liable on summary conviction to a fine not exceeding £20,000.

252. However, the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* will remove the £5,000 and £20,000 fine limits and introduce unlimited fines from a designated date. As at January 2014, the date is unknown, but it is anticipated to be in the near future.

253. In respect of licensing offences there is a defence of "reasonable excuse".

Prosecution

254. When a person fails to licence a property, or breaches a licence condition, the council will begin an investigation to consider whether or not an offence has been committed.

255. If the council forms the opinion that an offence has been committed, it will initiate prosecution proceedings in the Magistrates' Court (unless there are good reasons not to do so). Reference should be made to *Chapter 13: Prosecutions*.

Restriction on terminating tenancies

256. No section 21 notice may be given in respect of unlicensed premises.

257. In this context, a "section 21 notice" is a notice served under section 21(1)(b) or (4)(a) of the Housing Act 1988 in order to regain possession of a property subject to a shorthold tenancy.

258. The following are not "unlicensed premises":

- A property subject to a valid temporary exemption notice;
- A property subject to a valid licence application that is being determined by the council.

Rent Repayment Orders

259. In certain situations, the council or a resident may make an application to the Residential Property Tribunal for a Rent Repayment Order ("RRO").

260. If a property is licensable under the mandatory HMO or selective licensing regimes and the council is of the opinion that an offence has been committed owing to the failure of the person having control of or managing the premises to make a valid licence application, the council may make an RRO application. An application can be made irrespective of whether the council decides to prosecute for the offence.

261. Council applications will concern the repayment of housing benefit monies paid in respect of an unlicensed property. Applications may only relate to periods of up to 12 months.

262. However, before an RRO application can be made, the council must serve a Notice of Intended Proceedings on the appropriate person. The notice will set out the reasons why the council intends to make an application and state the amount it wishes to recover. The notice will give the recipient 28 days in which to make representations. Any representations received by the council must be carefully considered before any further action is taken.

263. A resident may make an RRO application, but only if the council has successfully prosecuted the appropriate person for failing to licence the premises, or the council has been successful in making its own RRO. Resident applications may only be made in respect of rents they have paid over a period of up to 12 months.

264. RROs made in favour of the council are a local land charge and the council may use the enforced sale procedure under the *Law of Property Act 1925* to recover its debt.

265. The council is of the opinion that RROs are a significant deterrent to operating unlicensed premises. As such, the council will consider applying for an RRO at every available opportunity. If, after careful consideration, it is deemed to be in the public interest to make an application for an RRO, an application will be made.

266. The council will also ensure, insofar as is reasonably practicable, that any resident who is entitled to apply for a RRO is made aware of their right to do so.

Interim and Final Management Orders

267. Please refer to *Chapter 11: Interim and Final Management Orders*. This chapter provides information on how such orders are relevant to licensing.

Chapter 9: HMO amenity guidelines

268. HMOs vary widely in size, provision and layout, and are often occupied by those who have the most limited housing choices. While some HMOs may be of a high specification catering for certain markets, such as young professionals, many HMOs are occupied by vulnerable persons who have complex health and social care needs. Whatever the case, it is important that HMO residents are provided with safe and suitably-sized accommodation with adequate provision for amenities.

HMO licensing

269. When assessing the adequacy of the amenities provided in an HMO subject to a licence application (under Part 2 of the Act), the council must have regard to sections 64 and 65 of the Act.

270. Before granting a licence under section 64, the council must be satisfied that the HMO is reasonably suitable for occupation by the number of households and persons intended to live there, or if it is not, that the imposition of licence conditions will make it so suitable. The council may take into account a wide-range of factors when making this assessment; however, it must have regard to section 65, which concerns prescribed amenity standards.

Prescribed amenity standards

271. The prescribed amenity standards for licensable HMOs are contained in regulations made under section 65, namely: *The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006* (SI 2006/373) as amended by *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007* (SI 2007/1903). The prescribed amenity standards are contained in Schedule 3 of the regulations. While licensable HMOs must be able to comply with them, simply meeting these standards does not necessarily mean that the council will be satisfied as to the suitability test set out in section 64.

272. The prescribed amenity standards provide for the following:

Heating

273. Each unit of accommodation must be equipped with adequate means of space heating.

Washing facilities

274. Where shared washing and toilet facilities are provided (that being bathrooms, WCs and wash-basins), there must be an adequate number of such facilities having regard to the number of persons using them. All facilities must be suitably located.

275. Furthermore, where reasonably practicable, there must be a wash-basin in each unit of accommodation.

Shared kitchens

276. Where private kitchen facilities are not provided, the HMO must contain at least one shared kitchen that is suitably located and adequately equipped having regard to the number of people sharing the kitchen.

Private washing and kitchen facilities

277. Adequate kitchen facilities must be provided within a unit of accommodation if a suitably located and equipped shared kitchen is unavailable to the occupier.

278. Adequate private washing and toilet facilities must be provided within a unit of accommodation (or within reasonable proximity to the accommodation) if suitably located and equipped shared facilities are unavailable to the occupier.

Fire precautions

279. Appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary.

Local HMO amenity guidelines

280. The prescribed amenity standards provide principles, but not much detail. They are open to interpretation. As such, the council provides further guidance on how it determines licence applications in the form of local HMO amenity guidelines. These are set out in a separate document entitled *Thanet District Council: Amenity Guidelines for Houses in Multiple Occupation (HMOs)*. The document provides clear advice on what is expected in licensable HMOs and is available from the council in hard copy or electronic format, and can be accessed at www.thanet.gov.uk.

281. The local guidelines are not strict standards, but they should be complied with where it is reasonably practicable to do so. As every HMO is different, each application is determined on its own merits.

282. The local guidelines provide detailed advice on matters such as:

- Minimum room sizes;
- Personal washing facilities, including the required ratio of facilities to persons sharing;
- Toilets, including the required ratio of WCs to persons sharing;
- Private kitchen facilities, including minimum equipment requirements;
- Shared kitchens, including minimum equipment requirements and the required ratio of kitchens to persons sharing;
- Acceptable forms of space heating; and
- Required fire precautions, including fire detection, emergency lighting, fire doors, fire extinguishers and fire blankets.

Non-licensable HMOs

283. Amenities in non-licensable HMOs are assessed under the Housing Health and Safety Rating System. While the prescribed amenity standards and local guidelines do not apply to non-licensable HMOs, they provide sound advice for what would be expected. Officers assessing such HMOs will refer to the council's local guidelines to inform their HHSRS hazard assessments.

Chapter 10: HMO management regulations

Overview

284. Section 234 of the Act provides for the making of HMO management regulations by the Secretary of State.

285. If a person managing an HMO does not comply with the HMO management regulations issued by the Secretary of State, they are guilty of an offence (unless they have a reasonable excuse). The maximum fine is £5,000 per breach of a regulation.

286. The Secretary of State has issued two sets of regulations:

    - *The Management of Houses in Multiple Occupation (England) Regulations 2006* (SI 2006/372). These regulations apply to all HMOs, except those defined as converted blocks of flats under section 257 of the Act.
    - *The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007* (SI 2007/1903). These regulations apply only to HMOs defined as converted blocks of flats under section 257 of the Act.

287. Both sets of regulations impose duties on the persons managing HMOs in respect of:

    - Providing information to occupiers;
    - Taking safety measures, including fire safety measures;
    - Maintaining the water supply and drainage;
    - Supplying and maintaining gas and electricity, including having it regularly inspected;
    - Maintaining common parts;
    - Maintaining living accommodation; and
    - Providing waste disposal facilities.

288. The regulations also impose duties on occupiers to ensure that they do not hinder the effective management of HMOs.

289. HMO licensing is an entirely separate legislative regime. The regulations apply to all types of HMOs, both licensable and non-licensable.

Enforcement

290. It is the responsibility of persons managing HMOs to understand and comply with the regulations at all times. Copies of the regulations are available from the council and can be downloaded from or viewed at www.legislation.co.uk.

291. In general terms, the council will seek to ensure compliance with the regulations by means of an educative and informal approach. Initiating prosecution as a first response will not normally be the council's approach. Therefore, where contraventions have been identified, the council will usually send an informal notice to the person(s) managing the HMO, setting out the nature of the failings and requiring the taking of remedial action within prescribed timescales. Further legal action would not be taken if such a notice is complied with satisfactorily. However, failing to comply with the timescales set out in an informal notice without reasonable excuse may lead to prosecution proceedings being initiated by the council.

292. In some situations, the council may decide to initiate a prosecution without recourse to informal procedures. Immediate prosecution may be considered for contraventions that:
    - Are so serious that the failings have exposed occupiers to significant risk or caused actual harm;
    - Are related to other forms of enforcement action being taken by the council; or
    - Have been repeated and the manager has already been subject to informal intervention under the HMO regulations.
293. Reference should be made to *Chapter 13: Prosecutions*.

Chapter 11: Interim and final management orders

Interim management orders

294. In certain prescribed circumstances (as set out in Chapter 1 of Part 4 of the Act), the council is empowered to make Interim Management Orders ("IMOs") in respect of privately rented properties, including HMOs. An IMO authorises the council to take control of the residential premises to which the order relates. This power is reserved for the most problematic properties and is only considered as a last resort.

295. Once an IMO has been made, the council effectively becomes the temporary landlord of the premises concerned. While it does not obtain any interest in the property, it becomes responsible for its proper management and for ensuring that any immediate health, safety or welfare concerns are dealt with as soon as possible. Once an IMO has been made, the landlord may not become involved in the management of the property or create tenancies or licences. However, the council may only issue new tenancies and licences with the approval of the landlord.

296. Rents usually payable to the landlord would instead be paid to the council and used to ensure that the property is made safe and properly managed. The reasonable expenses incurred by the council in taking such action are recoverable from the rents collected. Once the council's reasonable expenses have been deducted, the remaining rental income is returned to the landlord at intervals determined by the council. The council must keep full financial accounts when in control of the premises and make these available for inspection by the landlord and anyone else with an estate or interest in the property.

297. An IMO cannot be in force for a period longer than 12 months.

Mandatory duty to make an IMO

298. There are prescribed circumstances in which the council has a mandatory duty to make an IMO. These relate only to HMOs subject to mandatory or discretionary licensing under Part 2 of the Act and residential dwellings required to be licensed under a selective licensing designation (Part 3 of the Act). The circumstances are:

- When, in respect of a property that should be licensed but is not so licensed, there is no reasonable prospect of it becoming licensed in the near future;
- When, in respect of a property that should be licensed but is not so licensed, there are serious health, safety or welfare concerns that cannot be dealt with adequately by using the statutory powers available under Part 1 of the Act (e.g. Improvement Notices);
- When, in respect of a licensed property, the council has revoked the licence and there will be (on the revocation date) no reasonable prospect of it becoming licensed again in the near future;
- When, in respect of a licensed property, the council has revoked the licence and there will be (on the revocation date) serious health, safety or welfare concerns that cannot be dealt with adequately by using the statutory powers available under Part 1 of the Act (e.g. Improvement Notices).

Discretionary power to make an IMO

299. There are prescribed circumstances in which the council has the discretionary power to make an IMO. However, this discretionary power is only exercisable with approval from the Residential Property Tribunal. The circumstances are:

- When, in respect of an HMO that is not required to be licensed, there are serious health, safety or welfare concerns;
- When, in respect of a privately rented dwelling or a building containing such dwellings (unless subject to a statutory exemption), there are serious health, safety or welfare concerns and the further conditions set out within *The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006* (SI 2006/369) have been satisfied. These further conditions are that the area in which the property is situated is experiencing a significant and persistent problem caused by anti-social behaviour, that the problem is attributable, in whole or in part to an occupier of the property, that the landlord is a private sector landlord and that he is failing to take action that it would be appropriate for him to take to combat the problem.

Final management orders

300. Final management orders ("FMOs") are orders which may only be made after the making of an IMO. FMOs are similar to IMOs, but provide for a longer-term solution and can be in place for up to five years.

301. An FMO must include a "management scheme" that sets out how the council would manage the property while the FMO is in place. A management scheme must be in two parts. Part 1 of the scheme must contain a plan giving details of the way in which the council proposes to manage the house. Part 2 must describe, in general terms, how the council intends to address the matters which caused them to make the FMO.

302. Under an FMO, the council has the power to issue assured shorthold tenancies without obtaining permission from the landlord.

Mandatory duty to make an FMO

303. If the council has made an IMO in respect of a property that is required to be licensed under Parts 2 or 3 of the Act (HMO and selective licensing) and it is of the opinion that on the expiry of the IMO there would be no prospect of it being able to grant a licence, it must make an FMO to replace the IMO upon its expiry.

304. If the above conditions were to apply again upon the expiry of the first FMO, the council would be obliged to make a further FMO.

Discretionary power to make an FMO

305. If the council has made an IMO in respect of a property that is not required to be licensed under Parts 2 or 3 of the Act (HMO and selective licensing), but it is of the opinion that there is a longer-term need to protect the health, safety and welfare of residents and neighbours, it may make an FMO to replace the IMO upon its expiry.

306. If the above conditions were to apply again upon the expiry of the first FMO, the council would have the discretionary power to make a further FMO.

General approach to IMOs and FMOs

307. Notwithstanding the council's duty to take action in certain circumstances, it is clear that the making of an IMO or FMO is a significant step in relation to privately-owned property. Furthermore, such action is without doubt an onerous task for the council. As such, the council considers the making of an IMO or FMO to be a last resort and will always endeavour to use other means to secure necessary improvements before making such an order. This statement of intent does not, however, preclude the council from using its discretionary powers if, in the public interest, it is clearly necessary to do so.

Chapter 12: Empty homes

308. Empty and derelict properties have an adverse effect on neighbourhoods. They are unsightly and can attract crime and anti-social behaviour such as squatting, arson, graffiti and fly-tipping. They may also affect the value of neighbouring properties by creating an impression of neglect and decline within the community. Communities are less likely to flourish and prosper in areas where multiple empty properties are in close proximity.

309. Such properties are not only eyesores and a source of neighbourhood distress, they are a wasted resource in a time of ever growing housing demand. Many people cannot access good housing, yet many homes stand vacant.

310. Properties can remain empty for a number of reasons, including inheritance complications, high repair costs combined with low values, limited or negative equity, adverse lending policies, and owners going into residential care. A lack of awareness of available options and sentimentality are common reasons.

311. With a high number of empty homes in Thanet, the council is committed to taking action whenever possible to bring them back into use. Council intervention helps increase overall housing supply and reduces the negative environmental and economic effects that empty properties have on neighbourhoods.

Empty property complaints

312. Anyone may report an empty property to the council's Housing Regeneration Team.

313. Upon receipt of an empty property complaint, an officer will make preliminary enquiries. Existing council records will be reviewed and an initial visit will usually take place within 28 days. A visit may not be necessary if a previous complaint is already being investigated.

314. If, following inspection, a property is confirmed to be vacant, the council will normally attempt to engage with the owner on an informal basis. Usually, this will involve sending a letter with an offer of help and advice. If a response is made, the council will attempt to help in whatever way it can. If no response is made, a further attempt to contact the owner will be made. Again, this will usually be by way of an informal letter.

315. Whereas the council will attempt to keep a complainant updated as much as possible during the course of an empty property investigation, only limited information is likely to be available. Any communications between the owner of the empty property and the council will usually be confidential and subject to data protection requirements.

316. The council will always endeavour to bring an empty property back into use by informal means. Unfortunately, this is not always possible.

Prioritising action

317. If the informal approach proves to be unsuccessful, the council has to determine what action, if any, to take.

318. Owing to the high number of empty homes, not all of which are long-term empty or in poor repair, the council cannot, and has no desire to, intervene in every case. The resources available to the council must be used to good effect and be directed at those properties causing the most problems. As empty property enforcement action is onerous and time-consuming, the council has adopted a priority rating system.

319. When a property is confirmed to be vacant, it will be subject to a priority assessment based on a number of factors. These include:
    - Crime and anti-social behaviour (historic and future risk; including arson, trespass, squatting, fly-tipping and graffiti);
    - Appearance (the degree to which the premises are unsightly and detrimental to the area, including matters such as decorative repair, rubbish accumulations and overgrown vegetation);
    - Prominence (property size and location; for example, whether the property is in a high profile location seen by many, or down a side street only ever seen by very few if any people);
    - General condition (physical condition of the premises, both internal and external; for example, whether the building is in an uninhabitable condition);
    - Physical effect (whether the condition of the property is causing damage to other residential buildings; for example, whether the roof is leaking to such an extent that water penetration has begun to affect neighbouring homes);
    - Time vacant (the length of time the property has been empty).
320. For each category, the property will be assessed as having a Minimal, Low, Medium or High rating. Based on the assessment, points are awarded for each category. The scores given for each assessment are set out in the following table:

	Minimal	Low	Medium	High
Crime and anti-social behaviour	0	5	10	15
Appearance	0	10	15	25
Prominence	0	5	10	15
General condition	0	5	10	15
Physical effect	0	10	20	30
Time vacant	0	5	10	15

321. The points awarded are totalled and each property is given an overall score, with the maximum score being 115. The overall score is then placed into one of four bandings, namely:
    - A = 90 and over (HIGH);
    - B = 75-89 (MEDIUM);
    - C = 40-74 (LOW);
    - D = 39 and below (MINIMAL).
322. Any empty residential property given a High rating will usually be recommended for enforcement action should informal intervention be unsuccessful. Properties given a Medium rating may also be considered for such action.
323. Properties given a Low or Minimal rating are unlikely to be subject to enforcement action unless there are particular circumstances that render such action in the public interest.
324. Irrespective of the rating awarded, the council will always attempt to assist and advise any empty property owner should they ask for help.
325. The council is committed to constantly reviewing the priority rating system to ensure that it remains fit for purpose and provides a meaningful and fair way of assessing the need for statutory intervention. As such, the scoring matrix may be subject to change at any time.

Enforcement

326. A range of statutory powers can be used to help bring empty homes back into use. The "Legislative overview" chapter highlights the main statutory provisions available to the council. However, the legislative tools that are reasonably available are very much dependent on the individual circumstances of each case.

327. Subject to available resources, the council will adopt a firm approach to the most problematic of empty properties. The more significant forms of intervention include:

    - The compulsory purchase of the land or building concerned to ensure that the site is brought back into use;
    - Following the service of a statutory notice, the carrying out of works-in-default to improve property conditions (and the placing of a charge on the property to secure the repair costs as a debt);
    - The enforced sale of a property, as a means of recovering any debt owed to the council (such as a debt resulting from works-in-default).

328. While enforcement action in respect of empty homes is a priority for the council, it does not have a mandatory duty to bring them back into use.

Chapter 13: Prosecutions

329. Whenever appropriate, the council will prosecute those who fail to comply with the law relating to private sector housing.

Interviews under caution

330. If the council has good reason to believe that an offence has been committed, it may invite the relevant person to attend an interview under caution at the main council offices in Cecil Street, Margate. Such interviews are recorded and take place in accordance with the *Police and Criminal Evidence Act 1984*. Any person invited to attend such an interview is entitled to be accompanied by legal representation. However, where there is clear evidence of an offence and the council is of the opinion that an interview under caution would be of little or no value to an investigation, it may decide to prosecute without recourse to such an interview.

331. An interview under caution is an opportunity for the suspect to explain why they have failed to comply with the legislative provision giving rise to the suspected offence. Any person invited to an interview under caution is strongly advised to attend. Failing to respond to such an invitation is likely to be detrimental should a defence be offered in any future prosecution proceedings.

Code for Crown Prosecutors

332. During all investigations into possible offences, the council will have regard to the latest edition of the *Code for Crown Prosecutors* issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.

333. The council will only initiate prosecution proceedings if the requirements of both stages of the Full Code Test ("the code") have been met. The code is set out in the *Code for Crown Prosecutors,* which is available online at www.cps.gov.uk.

The Evidential Test

334. Stage one of the code is the Evidential Test. To pass this stage, the council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. It must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage will not proceed, no matter how serious or sensitive it may be.

The Public Interest Test

335. Stage two of the code is the Public Interest Test. A case passing the Evidential Test is not automatically prosecuted. However, a prosecution will usually take place unless the council is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

General approach to prosecutions

336. The council is committed to taking firm action against those who disregard the law and put the health, safety and welfare of Thanet's residents at risk. Every case is considered on its own facts and on its own merits, but in principle, any case which passes both stages of the code will be prosecuted.

Chapter 14: Publicity

Prosecutions

337. Following each successful prosecution, the council will assess the merits of publicising details of the case.

338. The council strongly believes that publicising prosecutions sends out a clear and strong message that discourages others from disregarding the law. Such messages are considered to be effective in encouraging the provision of safer housing for the residents of Thanet.

339. Therefore, where publicity is clearly in the public interest, the council will issue a press release and may, in addition, request relevant publications to feature the prosecution in more detail. Press releases will include the name of the convicted party (whether it be an individual or business) and their street address (but not property number), and the full address of the property at which the offence took place.

340. Most prosecutions are likely to be subject to publicity. However, the council will not publicise a case if it is clearly not in the public interest to do so.

Rent Repayment Orders

341. Following each successful application for a RRO, the council will assess the merits of publicising details of the case. The principles set out above for publicising prosecutions also apply to RROs.

Other newsworthy interventions

342. The council may also publicise other newsworthy stories related to private sector housing. Examples include when a well-known eyesore empty property has been brought back to use, or where the council has stepped in and undertaken works-in-default to safeguard resident safety.

343. Before issuing a press release or undertaking any other form of publicity, the council will carefully consider whether it is appropriate to do so.

Chapter 15: Engagement

344. The council recognises that engaging with landlords and managing agents on an informal basis is an invaluable way of raising standards and promoting good quality private sector accommodation. Most landlords comply with the law, and some of those who do not can easily be persuaded with just a little help and advice. The council therefore believes in a proactive approach towards landlord engagement. Through constructive dialogue and landlord accreditation the council can increase the number of safe and healthy homes, and businesses can prosper.

Thanet Landlords' Focus Group

345. The council formed the Thanet Landlords' Focus Group ("the Focus Group") in collaboration with landlord representatives in 2008. Currently, the Focus Group meets three times a year and is made up of 15 landlords and managing agents who own or manage residential properties in the Thanet area.

346. The primary aim of the Focus Group is to increase the level of understanding and communication between the council and local private sector landlords and managing agents.

347. The four primary objectives of the Focus Group are:

    - To bring to the attention of the council matters which are of importance to local private sector landlords and managing agents;
    - To be a route through which all local private sector landlords and managing agents can raise relevant issues for discussion;
    - To be a consultative body for policy changes proposed by the council that could affect the private rented sector; and
    - To take the lead in determining the nature and content of the council's Landlord Events.

348. The Focus Group is democratically elected every three years. Anyone interested in becoming a member of the Focus Group should contact the council using the dedicated email address: landlordsfocusgroup@thanet.gov.uk.

349. Anyone wanting to bring a particular matter to the Focus Group's attention can do so by using this email address. All communications will be made available to the Focus Group. However, meetings are time limited and the Chair (not a council officer) will determine which matters can be raised at the next meeting.

350. Wherever possible, the council will consult the Focus Group before implementing any new or substantially revised policy that could affect landlords and managing agents who own or manage residential properties in the Thanet area.

Annual Landlord Event

351. The council organises a Landlord Event in conjunction with the Focus Group. The event, which is currently free to attend, is open to all interested landlords and managing agents. The format of the event is flexible and is determined by the Focus Group.

352. At recent events, presentations have been made on subjects believed to be of most interest, such as housing benefit/welfare reform, anti-social behaviour, landlord accreditation and property licensing. The National Landlords Association, Residential Landlords Association and Southern Landlords Association have been previous contributors. There is normally time before and after the presentations for networking, and public agency and trade stands are usually on hand to offer help and advice.

353. The elections to the Focus Group are held at the Landlord Event.

354. Anyone interested in attending (or exhibiting or speaking at) the annual event can obtain more information by emailing landlordsfocusgroup@thanet.gov.uk. Places are limited, so pre-booking is recommended. Continuing Professional Development ("CPD") certificates are available for pre-booked attendees.

Kent Landlord Accreditation Scheme

355. The council is a partner authority which supports and promotes the Kent Landlord Accreditation Scheme ("KLAS"). The scheme aims to recognise good landlords and agents who have the skills needed to run a successful rental business and provide good quality and safe accommodation. An individual, partnership or company can become accredited. Since the scheme was launched over 150 landlords who manage properties in the district have become members.

356. To become accredited, an applicant must:

    - Complete a one day development course (and pay the appropriate fee for attendance); and
    - Agree to comply with a code of conduct; and
    - Be considered a fit and proper person.

357. For more information about the scheme and how to join, visit www.kentlas.org.uk. Please note, KLAS is a part of the UK Landlord Accreditation Partnership ("UKLAP").

358. Official accreditation training courses are available throughout London and the South-East. Courses in Thanet are usually held at the Kent Innovation Centre, Thanet Reach Business Park, Millennium Way (off Northwood Road), Broadstairs, Kent, CT10 2QQ. For the dates of upcoming courses, please contact the Housing Regeneration Team.

359. Whenever possible, the council will offer incentives to encourage accreditation. For example, accredited landlords and agents are currently eligible for discounts on HMO and selective licensing fees. The council reserves the right to withdraw any incentive offered without notice.

Help and advice

360. If you would like further advice or clarification, the Housing Regeneration Team can help. Please ring us on 01843 577437 and speak to one of our officers. We can also be contacted by email on: housing.conditions@thanet.gov.uk.

361. Alternatively, you can write to us at:

Housing Regeneration
Community Services
Thanet District Council
PO Box 9
Cecil Street
Margate
Kent CT9 1XZ

Making a complaint

362. The Housing Regeneration Team wants to provide the best possible service. If you have a concern, our staff are here to help and will always try to resolve any problem you have quickly and efficiently. However, if you are not happy with the service you receive you can make a formal complaint to the council.

363. More information about how to make a formal complaint can be found on the council's website at: www.thanet.gov.uk. Alternatively, you can call, email or write to us:

Telephone: 01843 577000 | Email: customer.services@thanet.gov.uk

Address: Complaints, Thanet District Council, PO Box 9, Cecil Street, Margate, Kent, CT9 1XZ.

364. If, after having gone through the council's formal complaints process, you believe that the council has not handled your complaint properly, you have the right to request an independent investigation by the Local Government Ombudsman Service. The Ombudsman Service will review your complaint and decide if it is appropriate to carry out an investigation. The service is free of charge.

365. You can contact the Ombudsman Service at:

The Local Government Ombudsman
PO Box 4771
Coventry CV4 0EH

Telephone: 0300 061 0614 | Website: www.lgo.org.uk

Document history

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