

Enforcement Policy

Private Sector Housing

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Foreword

This document sets out a new Private Sector Housing (PSH) Enforcement policy brought about by the introduction of the Housing Act 2004. It explains how Thanet District Council as a Local Housing Authority (LHA) aims to tackle the many problems and issues present within the district, as outlined in the linked document 'Private Sector Housing Strategy'.*

Together with a new set of procedures these documents contain information on how the enforcement tools, provided by the new legislation, can be used fairly and consistently to achieve improvement to housing in Thanet.

* not yet published

Part one– Housing Conditions

1.0 Introduction

- 1.1 There are a number of challenges that face the PSH team as a result of the profile of the district and obligations placed upon it by Central Government. The main challenge is the number of properties that fall within the private sector that are considered to be in poor repair, non-decent and have serious hazards. It is the responsibility of the PSH team to respond to these issues and facilitate improvements in the sector by use of education, enforcement and where possible, financial assistance.
- 1.2 The following details give an indication of the magnitude of the task of improving the quality of housing in the area.
- **There are 57,330 dwellings in the private sector.** These include owner-occupied and rented accommodation.
 - **Over 9000 of these properties are in the private rented sector.** These constitute some of the poorest housing conditions in the district.
 - **20,638 properties in the whole of the private sector have at least one serious hazard.** Intervention by the PSH team may be necessary.
 - **Currently the PSH team receives on average 400 complaints about poor housing conditions per year.** These must be investigated. This is predicted to increase as a result of the change in legislation.
 - **There are 2032 houses in multiple occupation (HMOs) in the district. It is estimated that 220 will need a mandatory licence.** This information has been gathered from data collected using the HMO definition prior to the Housing Act 2004.
 - **23,619 properties are considered to fail the decent home standard.** The Government has introduced a target requiring that 70% of homes occupied by identified vulnerable groups, in the private sector, must be decent by the year 2010. In Thanet, around 12,146 of these properties are occupied by a member of the vulnerable group. This means that approximately 3000 homes, mainly in the owner-occupied sector, need to be improved by 2010.

[2002 Private Sector stock condition survey]

2.0 Legislation

- 2.1 The principle piece of legislation to be used by the PSH team is the **Housing Act 2004** (referred to as “the Act”). However, there are circumstances where other pieces of legislation may be more appropriate in dealing with the identified problem. Officers will be expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases it may be appropriate to use a range of enforcement tools.

Housing Act 2004 & The Housing Health and Safety Rating System (England) Regulations 2005

- 2.2 Where the PSH team has reason to enter a property we will inspect the whole property using the housing health and safety rating system (HHSRS). This system has been adopted by regulations as the prescribed methodology for assessing housing conditions. The aim is to identify deficiencies within dwellings that may lead to a hazard. Each hazard is assessed and assigned a band. These bands are translated into either a category one or a category two hazard.
- 2.3 The 2004 Act places a mandatory duty on the Council to take action where a category 1 hazard has been identified. There is a discretionary power to deal with category 2 hazards. The Act also provides a range of enforcement tools:-
- 2.4 **Improvement Notices** – section 11 is used for category 1 hazards, section 12 is used for category 2 hazards. An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.
- 2.5 **Prohibition Orders** – section 20 for category 1 hazards and section 21 for category 2 hazards. This order may prohibit the use of part or all of a premises for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.
- 2.6 **Hazard Awareness Notices** – section 28 for category 1 hazards and section 29 for category 2. This is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.
- 2.7 **Emergency Remedial Action** - section 40 – this is only acceptable for use where there is an **imminent** risk of serious harm and the hazard must rate as a category 1. The authority must enter the premises and undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a justice of the peace where he/she is satisfied that the authority would not be granted admission.
- 2.8 **Emergency Prohibition Order** – section 43 – this is only acceptable for use where there is an **imminent** risk of serious harm, the hazard rates as a category one and where it is not practical to carry out the remedial works as in section 40. It can prohibit the use of all or any part of the premises with immediate effect.
- 2.9 **Demolition Order** – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.
- 2.10 **Clearance Area** – All residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

- 2.11 **Suspend Improvement Notices or Prohibition Orders** – these notices may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes must be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at the very least every 12 months. The advantage of suspending a notice is that there is a record of the LHA's involvement and the situation must then be reviewed. It is also recorded as a land charge.
- 2.12 The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

Environmental Protection Act 1990 section 80

- 2.13 Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.

Building Act 1984 section 59/60

- 2.14 Used to deal with defective drainage issues in existing buildings.

Building Act 1984 section 64/65

- 2.15 Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance.

Building Act 1984 section 76

- 2.16 Used where the property is so defective so as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default).

Public Health Act 1936 section 45

- 2.17 Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance.

Public Health Act 1961 section 17

- 2.18 Where any drain, private sewer, water closet, waste pipe or soil pipe has not been maintained and can be repaired for less than £250.

Local Government (Miscellaneous Provisions) Act 1976 section 33

- 2.19 Used where services such as the water supply are due to be, or have been, cut off to a domestic property.

Prevention of Damage by Pests Act 1949 section 4

- 2.20 Used where there is evidence of or harbourage of pests at a property.

Housing Act 1985 (as amended)

- 2.21 Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the [Housing \(Management of Houses in Multiple Occupation\) Regulations 1990](#). These have been revoked with regards to all types of HMO as described in section 15.0 of this policy, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

The Management of Houses in Multiple Occupation (England) Regulations 2006

- 2.22 These regulations have been introduced to deal with all other types of HMO other than those mentioned in 2.21 above. Therefore, all licensable HMOs, smaller HMOs and flats in multiple occupation are covered by these regulations. Only self-contained flats are exempt as they fall under the regulations mentioned above.
- 2.23 The regulations cover the management and repair of the HMO. There are no notice provisions with these regulations therefore if a decision is made to take action under these regulations, the officer must go straight to prosecution.

Other Legislation

- 2.24 The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence.
- 2.25 Local Government (Miscellaneous Provisions) Act 1976 section 16 - Used to formally request information about a premises or a person.
- 2.26 Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000 – used in relation to interviews under caution, prosecution and gathering evidence.

3.0 Enforcement Procedure

3.1 Informal Action

- 3.1.1 The aim of the PSH team is to improve the housing conditions in the private sector by use of advice and education and where possible financial assistance. However, there are occasions where these methods are not successful in improving conditions and therefore, it is necessary to consider enforcement action.
- 3.1.2 In doing so, officers will be expected to follow the principles of the Enforcement Concordat, which encourages openness, proportionality and consistency. In order to achieve this, Officers will be expected to be transparent in the way they have made decisions by keeping clear records and file notes. All remedial work that is required must be sufficient to remove any risks but not so excessive as to be burdensome. Officers must ensure they follow procedures set out by this policy and any associated procedure documents and guidance.

- 3.1.3 In order to satisfy these principles it is expected that officers in the first instance will make informal contact with the person responsible for the property containing the hazard. It is anticipated that in many cases an informal approach will achieve the desired outcomes.
- 3.1.4 However, informal action cannot be allowed to continue indefinitely and there must be a limit attached to the informal action. This is to ensure that there is not scope for further delays to works that are likely to be time intensive. Therefore, a response should be required within 28 days of the date of the first letter. If a response is received and a timescale for completion of the works is agreed then it may not be necessary to serve a legal notice.
- 3.1.5 If remedial works have not been completed in the agreed time, then a notice must be served with reasonable timescales.
- 3.1.6 The delays incorporated within the informal approach are satisfactory where there is not a high risk or the agreed times are short, but where there is a serious hazard or this procedure provides for unacceptable delay, a notice should be served as soon as possible.
- 3.1.7 The officer will be required to use discretion on this matter but will be expected to be fully accountable for the decision and make detailed file notes justifying any time delays.

3.2 Decision to take enforcement action.

- 3.2.1 An inspection of a property must be carried out and the deficiencies noted. As the principal piece of legislation, the Housing Act 2004 will be considered to assess whether there are category 1 or category 2 hazards within the property. Having made this assessment and dependent on the problems within the property consideration will be given to the most appropriate course of action to reduce the hazards to an acceptable level.
- 3.2.2 The most appropriate legislation must be identified for dealing with the hazard. Only where the Housing Act 2004 is not appropriate should other legislation be considered.
- 3.2.3 Consideration must also be given to whether consultation is required with other enforcing bodies. In particular where the hazard of fire is identified there is a duty to consult with the fire authority as prescribed under section 10 of the 2004 Act. Other bodies such as the Police and HSE may need to be contacted or other departments within the Council such as Environmental Health, Planning, and Building Control etc.
- 3.2.4 Regard must also be had to other schemes that are available to assist with housing repairs. Tenants, homeowners and landlords may be able to access a number of grants and loan schemes, which may negate the need for formal action to be taken.
- 3.2.5 However, where the offer of grant has been made through any schemes including Warmfront, and the landlord or owner subsequently refuses any offers of assistance, it may be necessary to pursue enforcement action.

3.3 Section 8 Statement of reasons

3.3.1 Under section 8 of the Housing Act 2004, a statement must be prepared detailing which notice provisions are being considered. The statement must also include why the other options have been discounted at this stage. In making these decisions regard must be had to:

- the seriousness of the situation and the imminent risk to health and safety,
- the type of hazard and whether it is a priority or target hazard (see paragraph 5.0)
- the current occupation and the impact the decision may have on the social exclusion of certain groups of people,
- the turnover of tenants or occupants to the property,
- the management of the property,
- the occupants views,
- the owners views,
- the number of hazards within the property and whether they are category 1 or category 2.
- the enforcement policy and procedures, the private sector housing strategy and housing strategy.
- the decent homes standard

3.3.2 Where there are only category 2 hazards consideration must be given to the overall effect of the multiple hazards and whether they are indicative of a rundown property.

3.3.3 Once a decision has been made the appropriate notice procedure must be followed. When taking any form of action a covering letter and the statement of reasons under section 8 must also accompany the notice and the schedule of works.

4.0 Priorities

4.1 The Housing Act 2004 and subsequent HHSRS regulations 2005 have identified a number of hazard categories that have been found within the home. There are 29 hazards that arise from disrepair, lack of maintenance or poor design. The health effect from these hazards range from death to mental stress and the HHSRS provides the opportunity to compare unrelated hazards such as fire with other hazards such as damp and mould growth. This is done through the calculation of a hazard score. The higher the score the higher the risk posed by the hazard.

4.2 This enforcement policy sets the following prioritisation scheme for dealing with hazards (see table one). This will be subject to regular review. The principal behind this is detailed below.

- All category 1 hazards will be dealt with as a priority over category 2 hazards.

- Where there are multiple category 1 hazards, those with the highest scores will be a priority over the lower scores.
 - Where there are category 2 hazards, the higher scored category 2 hazards will be dealt with first, unless target hazards have been identified in the property.
 - Where an officer has identified deficiencies and felt it necessary to hazard-rate them, even if the result is a low category 2 hazard, the officer must consider at the very least offering advice, or serving a hazard awareness notice. Where the hazard is a target hazard, any necessary remedial works should be considered.
- 4.3 When a complaint is received the senior area officer will prioritise the complaint based on the information provided by the complainant. Where insufficient information has been provided the complainant should be contacted within 5 working days in order to gain the appropriate information to prioritise the complaint.
- 4.4 Using professional judgment and knowledge of the HHSRS the senior officer will prioritise the complaint as a P1, P2, P3 or P4. Complaints classed as P1 require an immediate response as these are considered an emergency. P1 classifications are likely to be very rare. P2 complaints are those that are suspected to be category 1 hazards. These should be responded to within 10 working days. P3 complaints should be responded to within 1 month and P4 complaints within 3 months.
- 4.5 On occasion requests for site visits to ascertain the condition of a dwelling occupied by potentially homeless persons are received from the Housing Needs Team. These will be classified as a P2 enquiry. Following the site visit the enquiry may be re-prioritised for action accordingly. This system will remain under review.
- 4.6 In times of high service demand it may not be possible to adhere to these timescales. The complainant should be kept informed as to the potential waiting time and it may be necessary for the senior officer to implement the measure in paragraph 4.7.
- 4.7 In all circumstances consideration should be given to whether there are other schemes or assistance that may be available that are more appropriate than formal action.
- 4.8 Where high volumes of work are experienced it is likely that P3 and P4 cases will be kept on a waiting list. In some cases the senior officer may make the decision that certain cases will not be dealt with by PSH. Where possible these cases will be forwarded to alternative schemes for assistance or encouraged to take their own action using provisions under the Environmental Protection Act 1990 or the Landlord and Tenant Act 1985.

Table one **Prioritisation of Hazards and Options for Action**

	Priority (P)	Main options for Action	Other options available for consideration
<i>Category one</i>			
Immediate action	P1 - Highest band A+ Imminent risk to health and safety.	<ul style="list-style-type: none"> • Emergency Action • Prohibition Order • Improvement Notice • Demolition Order 	<ul style="list-style-type: none"> • Clearance • Suspended action • Hazard awareness Notice
High Priority	P2 – Hazard Bands A – C Including target hazards	<ul style="list-style-type: none"> • Improvement notice • Prohibition Order 	<ul style="list-style-type: none"> • Clearance • Demolition • Suspended action • Hazard awareness Notice
<i>Category two</i>			
Medium Priority	P3 - Target Hazards Bands D – J High bands D - F	<ul style="list-style-type: none"> • Improvement notice • Suspended action • Hazard awareness Notice 	<ul style="list-style-type: none"> • Prohibition Order
Low Priority	P4 - Low bands G - J	<ul style="list-style-type: none"> • Hazard Awareness Notice • Suspended action 	<ul style="list-style-type: none"> • Improvement notice • Prohibition Order

5.0 Target hazards

- 5.1 Local research and partnership working with East Kent Primary Care Trust, Kent Fire and Rescue, Creative Environmental Networks and the police and community safety team has identified a number of issues that require targeting in the area. The Private Sector Housing Strategy details how this information has been collected and its relationship to private sector housing and HHSRS. The Private Sector Housing Strategy identifies a number of hazards, which will be targeted where they fall within a category two hazard. These are;

Damp and Mould growth

Excess cold

Entry by intruders

Food safety

Personal hygiene, sanitation and drainage

Falling on level surfaces

Falls on stairs

Fire

- 5.2 In establishing these target hazards regard has also been had to the decent homes standard.

6.0 Decent Homes Standard

- 6.1 The government has identified a minimum standard that homes must achieve in order to be considered decent. As part of the standard a home must not contain category 1 hazards; must be in a reasonable state of repair; must have reasonably modern facilities and services; must provide a reasonable degree of thermal comfort. Each of these aspects can be covered by hazard categories within the HHSRS and therefore it is expected that officers will have regard to this standard when considering any action.
- 6.2 **Free from category 1 hazards** – following an assessment under the HHSRS the property is only decent where there are no category 1 hazards.
- 6.3 **Reasonable state of repair** - where one or more key building components (structural elements) are old and in such a condition they need replacement or repair then the property is not decent. Alternatively, if two or more components (not key components) are old and in such a condition as to need replacement or repair and together are indicative of disrepair then the property is not decent. [A key component is defined in: A Decent Home: Definition and guidance for implementation June 2006]
- 6.4 **Reasonably modern facilities** – to be considered non-decent the property must lack at least **three** of the following amenities: a kitchen which is less than 20 years old; a kitchen with adequate space and layout; a bathroom which is less than 30 years old; a suitably

located bathroom and toilet; adequate external noise insulation; adequate size and layout of the entrance to blocks of flats

- 6.5 **Reasonable degree of thermal comfort** – the property must have an efficient heating system such as gas or oil, electric storage heaters where other options are not possible, under floor/warm air systems and effective insulation in order to be considered decent. Where there is a SAP rating of less than 35 this is indicative of a category one hazards and would automatically make the property non-decent. SAP (standard assessment procedure) is the Government recommended system for the energy rating of dwellings.

7.0 Level of remedial works required

- 7.1 As a minimum, category 1 hazards must be reduced to a low category 2.
- 7.2 Where this is not possible all reasonable steps must be taken to reduce the hazards as far as reasonably practicable. In some cases, such as listed buildings, category 1 hazards may remain. This scenario should have been considered when deciding which course of action is most appropriate and may influence the officer's decision as to which type of enforcement action to take.
- 7.3 Target hazards should be improved to the ideal where this is possible and reasonable to do so.
- 7.4 When deciding on the remedial works, regard must be had to the seriousness of the hazard, the ideal that the property should achieve, and the level of work required that is reasonable to reduce the hazard significantly without incurring excessive cost.
- 7.5 For the hazard of fire, where the property is an HMO, section 10 of the Housing Act 2004 states that the LHA must consult with the Fire Authority before taking any action and deciding on the remedial works. A working protocol is to be developed to ensure that this process does not become burdensome to both parties.
- 7.6 **It is expected that all properties will meet the decent homes standard as a minimum.**

8.0 Appeals

- 8.1 Once the officer has made the decision to serve a notice and has followed the correct procedure the notice should be served with a copy of the s8 statement of reasons.
- 8.2 All correspondence must detail the appeal procedure for the action being taken. This is slightly different for each notice/order and care should be taken to ensure the correct information is included.
- 8.2 The person served with the notice/order has the right to appeal against the notice/order on any grounds. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate.
- 8.4 Appeals are made to the Residential Property Tribunal (RPT). The intention is that the tribunal will be able to make a decision based on paperwork and statements supplied by both parties. On occasion a hearing will be held where both parties must present their

cases. There is no requirement for legal representation. The RPT may request to visit the property in question.

9.0 Offences

9.1 Housing Act 2004

9.1.1 Failure to comply with an improvement notice without reasonable excuse – the notice recipient commits an offence and is liable to prosecution. On summary conviction they can be fined up to level 5 on the standard scale. The obligation to carry out the remedial works continues despite the fact that the period for completion has expired.

9.1.2 Failure to comply with a Prohibition Order – an offence is committed if the premises is used in contravention to the order, or permission is given for the premises to be used in contravention to the order. On summary conviction fines up to level 5 on the standard scale may be levied. In addition there is a further fine of up to £20 per day for every day or part day after conviction that the property is used in contravention.

9.2 Environmental Protection Act 1990

Failure to comply with a notice – the notice recipient commits an offence and is liable to prosecution. On summary conviction the fine can be up to level 5.

9.3 Building Act 1984

Failure to comply with any notice - the notice recipient commits an offence and is liable to prosecution. On summary conviction fine can be up to level 4 with a daily charge of £2 until works are complete.

9.4 Public Health Act 1936

Failure to comply with any notice - the notice recipient commits an offence and is liable to prosecution. On summary conviction fine can be up to level 4.

9.5 Public Health Act 1961

No prosecution procedure – the Council carries out works and the person responsible is charged.

9.6 On the standard scale, the fines currently stand at

Level 4 is currently up to £2,500.

Level 5 is currently up to £5,000

10.0 Prosecution

10.1 Where there is a breach of a notice or an order the officer must investigate the offence and prepare the case for prosecution. This may involve interviewing relevant people under caution, following the relevant parts of the Police and Criminal Evidence Act 1984.

- 10.2 Where prosecution is likely, the person or company committing the offence will be invited to attend a taped interview in order to have the opportunity to express their reasons for the offence. (Refer to interview under caution procedure).
- 10.3 Where the responsible person does not turn up to the interview or is unable to attend, a maximum of 2 further attempts should be made to accommodate the interviewee.
- 10.4 It is not essential to carry out an interview, however, it is considered good practice to establish 'reasonable excuse' under caution before prosecution is pursued further.
- 10.5 The case will be presented to the Council's legal department who will decide if the prosecution should be pursued.
- 10.6 In making this decision the legal department will have regard to the Code for Crown Prosecutors (Prosecutors employed by the Crown Prosecution Service). This is to ensure that fair and consistent decisions about prosecutions are made. Officers must also refer to this code when considering the merits of pursuing a prosecution.
- 10.7 The code of practice details two tests, which govern the decision-making process. A case must pass both tests to show that prosecution is appropriate. The two tests are described below.

The Evidential Test

- 10.8 The Prosecutor must be satisfied that there is enough evidence to provide a realistic prospect of conviction against each defendant on each charge. The defence case must be considered and how this is likely to affect the prosecution case.
- 10.9 The Prosecutor must consider whether the evidence is reliable and can be used.

The Public Interest Test

- 10.10 Once the evidential test has been passed, the prosecution will usually proceed. However, there may be factors relating to public interest which are against prosecution and that clearly outweigh those in favour.
- 10.11 Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be more appropriate.
- 10.11 In considering the public interest to prosecute, the officer must decide how important each factor is and its relationship to the prosecution. They must then make an overall assessment based on the merits of each individual case.

11.0 Works in Default

- 11.1 The Housing Act 2004 makes provisions for the Council to carry out the works to a property where the person responsible has failed to comply with a notice.
- 11.2 Works in default can be carried out either instead of a prosecution or in addition to a prosecution. The works in default procedure should be followed (RJH(24.01.2006)).

- 11.3 This is a discretionary power. Discussions will be required with the PSH manager due to the cost implications of this procedure. Although it is anticipated that the cost of the works will be recovered, it is not guaranteed that this money will be paid back promptly.
- 11.4 It is proposed that works in default should be used where there is an imminent risk to health and safety and where the remedy is relatively easy to achieve. If it is to be used in other circumstances, full justification based on the merits of the case will be required.
- 11.5 It is also proposed that it should be used in conjunction with prosecution where it is appropriate to do so. This would be dependant on the nature of the hazard but should be considered due to the delays often experienced during the prosecution procedure. The delays often result in the remedial action being postponed leaving the occupier living in unacceptable conditions.
- 11.6 In deciding whether works in default is an option, the officer must consider: the imminent risk to health and safety and whether undue delay would put the occupier, visitors or the public at increased risk. They must also consider whether there are finances in place to carry out the work and what the minimum works required would be to remove the risk. Works in default cannot be carried out if, as a result of the action a second, different hazard will result. Any remedial works must be extensive enough to remove the hazard and leave the property in a safe condition.

12.0 Action by Agreement

- 12.1 The Act also makes provision for remedial works to be carried out by agreement. This is where the local authority arranges for the works to be carried out at the request of the person responsible and they are then charged for the full cost. When it is carried out in default without agreement the local authority can recover expenses reasonably incurred plus interest.
- 12.2 In order to use this provision the officer must be confident that the cost of the works will be repaid in full once the work is complete.
- 12.3 The budget must be in place for this procedure. If the costs incurred cannot be paid they must be placed as a charge against the property. The Enforced Sale Procedure may then be used if considered appropriate.

Part two– Mandatory HMO Licensing

13.0 Introduction

- 13.1 Part 2 of the Act introduces mandatory licensing of certain types of HMO (house in multiple occupation). This enforcement policy provides detail on how to administer the mandatory licensing scheme and how the various requirements and provisions provided by the Act are to be used in executing the LHAs duties.
- 13.2 Nearly 10% of the housing stock in England is rented, and some of the poorest housing conditions are found in this sector; in Thanet **16%** of the housing stock is rented.
- 13.3 HMOs in the private rented sector provide valuable housing to many people who would otherwise be homeless. However, the sector is perceived to be associated with anti-social behaviour, poor living conditions and some of the most vulnerable members of society.
- 13.4 Many landlords are responsible and provide adequate housing with good management, but there are some that lack the skills, knowledge and/or willingness to manage their properties professionally. It is these types of property that often cause the problems.
- 13.5 Mandatory licensing has been introduced to tackle the worst properties in this sector. Local Authorities may also introduce Additional and Selective licensing schemes within their area. These schemes are discretionary and the Local Authority will be expected to undertake research and prepare a report for the Secretary of State advising why such schemes are necessary in their area, to deal with specific issues.
- 13.6 Thanet may consider these schemes following the implementation of the mandatory scheme. A review of the success of this scheme and other initiatives will be undertaken before a decision is made on whether to pursue these schemes further.
- 13.7 Mandatory licensing is aimed at certain types of HMO with 3 or more storeys. They must be occupied by 5 or more people who constitute more than one household.
- 13.8 The licensing function has been introduced in order to:
- Ensure landlords are fit and proper persons or employ agents who are.
 - Ensure adequate management is in place
 - Ensure authorities have measures available to encourage landlords to co-operate with licensing
 - Where landlords are unwilling or unable to co-operate the local authority can step in to manage the property.
 - Ensure tenants are protected
 - Ensure high risk HMOs and their landlords are identified, so that health and safety measures can be dealt with under part 1 of the 2004 Act.

14.0 Duty to Licence HMOs

- 14.1 Section 61 of the Housing Act 2004 places a duty on the Local Housing Authority to licence certain types of HMO. The Council must take all reasonable steps to ensure applications are made.
- 14.2 In trying to ensure that landlords are aware of this duty, extensive local advertising in tandem with national advertising has taken place. Literature has been published for both landlords and tenants, and the private sector housing team are consistently on hand at landlord forums to offer advice and support. Where resources allow, update campaigns will be run at agreed intervals.

15.0 Definition of an HMO

- 15.1 The 2004 Act also introduces a new definition of an HMO. There are four categories or tests for an HMO:
- the standard test,
 - the self-contained flat test,
 - the converted building test and,
 - certain converted blocks of flats.

A - *The Standard test:*

Any building which consists of one or more units of accommodation which are not self-contained and where two or more households share one or more basic amenities, or where the accommodation is lacking basic amenities.

B - *The self-contained flat test:*

Any part of a building which is a self-contained flat, which consists of one or more units of accommodation, in which two or more households share one or more basic amenities or where the accommodation is lacking basic amenities.

C - *The converted building test:*

Any building, which has been converted and contains one or more units of accommodation, which are not self-contained (whether or not the building also consists of some self-contained units).

D - *Certain converted blocks of flats:*

Any building which has been converted into and consists of self-contained flats only, and it does not comply with appropriate building standards (e.g. the 1991 Building Regulations) and less than two thirds of the flats are owner occupied, (more than one third on short tenancies).

16.0 Properties requiring a Mandatory Licence

- 16.1 All types of HMO except 'D – certain converted blocks of flats' are included in licensing.
- 16.2 However, it only applies to those properties that are three storeys or more high (basements are included as a storey), with 5 or more persons living there, who make up more than one household. There are some exceptions to this.
- 16.3 Exemptions:
- Any building that consists entirely of self-contained flats will not need a licence.
 - Properties managed by a public sector body.
 - Student accommodation which is in the control of an educational establishment
 - Buildings occupied by religious communities.
 - Any building entirely occupied by owner/occupiers i.e. freehold estate or leasehold interest of at least 21 years.
 - Any building occupied by only two persons and who form two households.
- 16.4 The Licensing of Houses in Multiple Occupation (Prescribed Circumstances) (England) Order 2006, prescribes the definition of a licensable HMO. It also defines basements, attic spaces and mezzanine levels as a storey.

17.0 Applications for licences

- 17.1 It is anticipated that 220 HMOs in the district will require a licence. Each licence application must be dealt with systematically and will require a degree of checking before a licence can be issued. Checks must be carried out within agreed timescales and a Notice either granting or refusing a licence must be issued before the licence itself is issued.

18.0 Application forms

- 18.1 The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous provisions) (England) Regulations 2006 stipulate the contents of the application form that should be used for HMO Licensing. Thanet District Council's Private Sector Housing Team has designed its own application form, which has been adopted by other authorities within Kent.

19.0 Checking and processing an application

- 19.1 When an application is received it must be checked by the area officers to ensure that the application is complete.

- 19.2 A complete application must contain a floor plan of the property including room sizes and have marked on it the location of bathrooms, toilets and kitchens as well as any smoke detectors and alarms.
- 19.3 It must also have the required certificates, the correct fee and be signed by all appropriate parties.

20.0 Evidence and certificates

- 20.1 Each application must provide gas safety certificates, electrical safety certificates, furniture certificates or a signed declaration that all the furniture that has been provided is up to current standards, commissioning certificates for any alarm systems and building notice completions where other works have been carried out. There should be plans of the property and any supporting documents for the fit and proper person criteria. The officer checking the application must ensure that the certificates are valid.

21.0 Test for suitability for use as an HMO

- 21.1 Each HMO must satisfy a test of suitability to be used as an HMO. If it fails to meet these criteria this will be grounds to refuse a licence.
- 21.2 The Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous provisions) (England) Regulations 2006 stipulate the standard of amenities required in order to be considered suitable.
- 21.3 As a result of these Regulations, guidelines have been produced to assess the suitability of licensable HMOs. When an HMO does not meet these guidelines, wherever possible the additional items should be included as part of the licence conditions.
- 21.4 If it appears that it is going to be impossible to satisfy this test, it may be necessary to refuse the licence. (Refer to section 29.0)

22.0 Fit and Proper Person and Management

- 22.1 The purpose of HMO licensing is to ensure that the most high risk and poorly managed sector of the rented accommodation forms the focus of local authority resources. One of the ways of improving this sector is to look at how these properties are being managed and by whom.
- 22.2 The requirement that the licence holder should be a fit and proper person is to ensure that tenants are protected from rogue landlords and the act stipulates criteria that the licence holder must meet to be regarded as fit and proper.
- 22.3 The local housing authority must have regard to evidence, which indicates that a person has:
- a) Committed an offence involving fraud, dishonesty, violence, drugs, and/or sexual offences.

- b) Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or disability in connection with any business
- c) Contravened any law relating to housing or landlord and tenant law
- d) Acted otherwise than in accordance with any codes of practice that are relevant under section 233 of the housing act 2004.

They must also have regard to evidence which shows that:

- a) any person associated or formerly associated (either on a personal or work level) meets any of the criteria above,
- b) and this evidence is relevant for the person being fit and proper to be the licence holder or manager of the house.

- 22.4 It is anticipated that most landlords will self certify as fit and proper to hold a licence. The application form contains a series of questions in order to ascertain the status of the applicant and will be expected to sign a declaration that all the information is correct.
- 22.5 Where the proposed manager or licence holder is not a fit and proper person, the applicant should be given the opportunity to review the current situation and make proposals that do meet these criteria. If this is not possible, it may be necessary to refuse the licence.

23.0 Provision of false or misleading information

- 23.1 On occasions it may be necessary to verify the information provided regarding fit and proper persons where problems are encountered.

As a minimum a check with council tax and housing benefit should be made to validate names and addresses and any other information these records may hold. The Housing Act 2004 makes provisions through section 237 that this information must be made available for use in relation to parts 1-4 of the Act.

- 23.2 It may also be necessary to contact other local authorities to check that the applicant has not been refused a licence in other areas.
- 23.3 Section 238 of the Act makes it an offence to provide false or misleading information. On conviction of an offence under this part a fine of up to level 5 can be incurred.
- 23.4 Where the statement has been signed this is a declaration that information provided is correct. Should contradictory information come to light, prosecution should be considered.

24.0 Licence holder and management arrangements

- 24.1 The local housing authority should assume that the person in control of the HMO (owner/landlord) is the most appropriate person to hold the licence, unless the contrary is shown to be true.

- 24.2 In deciding if the proposed management arrangements are satisfactory regard must be had to the following considerations
- a) whether the proposed manager of the house has a sufficient level of competence
 - b) whether the proposed manager is a fit and proper person – regard must then be had to the fit and proper person criteria.
 - c) Whether the proposed management structure and funding arrangements are suitable.
- 24.3 In Thanet a number of problems occur due to absent landlords who do not have sufficient management in place and are too far from the property to manage it themselves. In these cases it would be reasonable to require that managers of properties should be local to the property.

25.0 Missing information

- 25.1 Where there is missing documentation such as the certificates or the application is incomplete or there is concern over some of the information provided, a letter should be sent to the applicant detailing the problems with the application and requesting that the information be sent within 21 days of the date of the letter.
- 25.2 If the information is not returned there are a number of options available depending on the situation. It may be possible to grant the licence and request the information as part of the licence conditions. However, where this is not possible it may be more appropriate to treat the property as operating as an HMO without a licence and look to pursue a prosecution. Alternatively the applicant may have decided not to continue as an HMO so a temporary exemption notice may be necessary. If the decision is to refuse the licence the council must consider a management order.

26.0 Fees and charges

- 26.1 Section 63(3) provides that the local housing authority may require an application for a licence to be accompanied by a fee, which has been fixed by the authority.
- 26.2 The fee must only take into account all the costs incurred by the authority in carrying out their functions under part 2 of the act. Thanet District Council has interpreted this to mean that the licence fee should reflect the work involved in processing an application and granting or refusing a licence.
- 26.3 The fees will be reviewed at regular intervals to reflect how the scheme evolves and any additional costs incurred by the council.

27.0 Granting a Licence

- 27.1 Where an application for a licence has been received and the council is satisfied that the proposed licence holder is fit and proper, that the house is suitable for multiple occupation and the application submitted is valid, the local housing authority must grant a licence.

- 27.2 Each licence must only relate to one HMO and can last for up to 5 years. In some cases it may be necessary to grant the licence for less than 5 years.
- 27.3 A licence may not be transferred to another party. If the property is sold, the new owner or appropriate person must then apply for a new licence.
- 27.4 Before a licence can be granted the Local Housing Authority must serve a notice under schedule 5 part 1 paragraph 1 of the Act. It must state:
- the reasons for granting the licence,
 - the main terms of the licence and
 - the end of the consultation period.

This notice must be served with a copy of the proposed licence and the proposed conditions. It should be sent to the proposed licence holder and all relevant people named in the application.

- 27.5 The consultation period should be 21 days. In certain circumstances it may be necessary to allow more or less time. This should be no less than 14 days and up to 28 days.
- 27.6 Once any representations have been considered the Local Housing Authority may decide to alter the licence. A further notice must be served which sets out the proposed modifications, the reasons for them and the end of the consultation period – normally 7 days.
- 27.7 If a response is not received within the agreed consultation period then the licence must be prepared with the proposed conditions. If any amendments are made at this stage the consultation procedure must be followed again.
- 27.8 Once the consultation period has ended and the proposed licence and conditions have been agreed, a further notice must then be served on the proposed licence holder and all relevant people advising of the decision.
- 27.9 Where the decision is to grant the licence the notice must state:
- The reasons for deciding to grant the licence and the date the decision was made
 - The right of appeal
 - The period within which an appeal can be made

This notice must be accompanied by a copy of the licence and the conditions and must be served within 7 days of the final decision being made.

- 27.10 **The Council must hold the original licence. Only copies of the licence and conditions are issued to all relevant parties.**
- 27.11 The licence becomes operative at the end of the appeal period, which is 28 days. If an appeal is made, then it becomes operative on the date decided by the residential property tribunal. This depends on whether their decision is to vary, quash, or uphold the licence and its conditions.

28.0 Licence conditions

28.1 Once the application has been checked and it is valid, the licence can be prepared. A set of conditions will be attached to each licence and generally the same set of conditions will apply. However, there may be situations where the use of the property or the information provided in the form lead the officer to require additional conditions to be placed on the property or licence holder.

28.2 The conditions must be appropriate in regulating the management, use and occupation of the house and its condition and contents (section 67).

Conditions may include:

- Conditions imposing restrictions or prohibitions on the use or occupation of parts of the house
- Conditions requiring that reasonable and practicable steps are taken to prevent or reduce anti-social behaviour by persons occupying or visiting the house.
- Conditions requiring facilities and equipment to be made available in the house in order to meet the standards set out under section 65 (HMO standards).
- Conditions requiring the facilities and equipment to be kept in good repair and proper working order.
- Where works are needed to meet the HMO standards, conditions may be set requiring the works to be carried out in timescales specified or determined under the licence.

28.3 The licence **must** include the conditions set out in schedule 4 of the Act as follows:

- The licence holder must produce every year to the local housing authority for their inspection, a valid gas safety certificate that has been obtained within the last 12 months.
- The licence holder must keep electrical appliances and furniture provided by him/her in a safe condition
- The licence holder must supply on demand a declaration by him/her on the safety of the appliances and furniture.
- The licence holder must ensure that smoke alarms are installed in the house and that they are in proper working order.
- The licence holder must supply on demand a declaration by him/her on the condition and positioning of the alarms.
- The licence holder must supply to the occupiers of the house a written statement of the terms on which they occupy it.

29.0 Refusing a Licence

- 29.1 A licence can be refused if the local authority is not satisfied that the following criteria have been met.
- The house must be reasonably suitable for occupation by not more than the maximum households or persons specified in the application or a maximum decided by the authority.
 - The proposed licence holder must be a fit and proper person having regard to the specified criteria and is the most appropriate person to hold the licence.
 - The proposed manager should be the person having control of the house or be employed by an agent or employee of the person in control.
 - The proposed manager must be a fit and proper person to be the manager.
 - The proposed management arrangements must be satisfactory.
- 29.2 Before a licence can be refused a similar process must be followed as described in section 27.0. The Local Housing Authority must serve a notice under schedule 5 part 1 paragraph 5 of the Act. It must state:
- the reasons for refusing the licence,
 - the end of the consultation period.
- 29.3 The consultation period should be 21 days. In certain circumstances it maybe necessary to allow more or less time. This should be no less than 14 days and up to 28 days.
- 29.4 The applicant or proposed licence holder should provide within their consultation, ways in which the reasons for refusing the licence can be rectified.
- 29.5 If, once the consultation period has ended, it is still not possible to grant the licence, a further notice must be served stating:
- The authority's decision to refuse the licence
 - The reasons for the decision and the date it was made
 - The right of appeal
 - The period within which an appeal can be made
 - The consequences of refusing the licence
- 29.6 This Notice must be served within 7 days of the final decision being made. An appeal can be made to the residential property tribunal within 28 days.

30.0 Consequences of refusing a licence

- 30.1 If a licence is to be refused serious consideration must be given to the consequences of this decision. Depending on the reasons for the refusal it may be appropriate to consider the options available for dealing with the property.
- 30.2 Where a licence is refused the Council has a duty to take on the management of the property by serving an Interim Management Order.
- 30.3 A management order should be the last resort and other avenues should be considered before instigating this action (section 38.0)
- 30.4 It may be more appropriate to consider a Temporary Exemption Notice (see section 39.0)
- 30.5 It may also be necessary for an inspection to be carried out when a refusal is being considered to ensure that the plans and other paperwork relating to the application provide a true picture of the property.
- 30.6 All reasonable steps must be taken to assist the proposed licence holder or owner of the property to either take action to allow the property to become licensed or to take the property out of use as an HMO.

31.0 Inspections

- 31.1 All licensed HMOs must be inspected within 5 years of the licence being granted to check that the information supplied is correct and that the property is free from serious hazards. Depending on the total number of licence applications received and officer workloads, the PSH team will inspect all licensed properties within 2 years of application. However, this target will remain under review.
- 31.2 Due to the anticipated level of HMOs to be licensed (around 220) it will be necessary for the properties to be prioritised for inspection. Prioritisation will be based on the information provided within the application form, in particular:
 - the level of fire precautions within the property
 - the number of storeys
 - the number of units within the dwelling
 - the number of people in occupation
 - the provision or lack of amenities,
 - the management of the property
- 31.3 Each of these areas will be weighted to provide a score for each property. This will form the basis of the programmed inspections.
- 31.4 An officer must carry out an inspection in accordance with part one of the Act. Therefore, each unit of accommodation will be individually assessed along with any common areas. The purpose is to ensure that the HMO is free from category 1 hazards, however officers will be expected to follow the procedures and guidance set out in part one of this policy

relating to category 2 hazards and priority hazards. Licensing does not preclude the property from having any of the enforcement action described in part one being taken in relation to any hazards found and in most cases an improvement notice will be the most appropriate course of action.

32.0 Revoking a licence

32.1 A licence may be revoked under a number of circumstances.

- 1) Where the licence holder or any other person has committed a serious breach of a condition on the licence or repeated breaches.
- 2) Where the authority no longer considers the licence holder to be fit and proper.
- 3) Where the authority no longer considers the management to be satisfactory or the person involved to be fit and proper.
- 4) Where the HMO ceases to be an HMO
- 5) Where the authority believes the structure of the HMO is such that they would not normally have granted a licence. E.g. it is no longer suitable for the number of households or persons.
- 6) By request of the licence holder or other relevant person

32.2 Where the decision is made to revoke the licence a notice must be served under schedule 5 part 2 paragraph 22 of the Act. It must state the reasons why the licence is being revoked and give a consultation period of 21 days. In certain circumstances it may be necessary to allow more or less time. This should be no less than 14 days and up to 28 days.

32.3 Where no representation is received or a final decision is made to continue with the revocation of the licence a further notice should be served stating the authorities decision, the reasons for that decision, and the right of appeal.

32.4 This notice must be served within 7 days of the final decision to revoke the licence.

32.5 In deciding to revoke the licence consideration must be given to the consequences of doing so. If the property is to remain a licensable HMO then the council must make an interim management order. If it is no longer an HMO no further action is required.

32.6 The revocation will come into force following a 28 day appeal period providing an appeal is not made to the residential property tribunal.

32.7 If an appeal is made the revocation will become effective following the decision made by the residential property tribunal.

32.8 Where the revocation has been made with agreement by the licence holder and other relevant persons it may not be necessary to serve notices relating to the consultation period.

32.9 If the Council decides not to revoke the licence it must serve a notice advising of this decision and the reasons why it has been refused.

33.0 Varying a licence

- 33.1 A licence may be varied where either the licence holder makes a request or the local authority feels it is relevant to do so. It may be varied where there has been a change in circumstances, which also includes the discovery of new information.
- 33.2 The inspection may identify issues that were unknown previously. This may lead to the licence needing to be varied as a result with regards to the maximum numbers of households who are authorised to occupy the building.
- 33.3 The licence may also be varied where the applicable standards have been altered as a result of revision of regulations or where further regulations have superseded them.
- 33.4 Before the licence can be varied the local housing authority must serve a notice under schedule 5 part 2 paragraph 14 on the licence holder and interested parties, stating the effect of the variation, the reasons for the variations, and give a consultation period of 21 days. In certain circumstances it may be necessary to allow more or less time. This should be no less than 14 days and up to 28 days.
- 33.5 Where no representation is received or a final decision is made to continue with the variation of the licence a further notice should be served stating the authorities decision, the reasons for that decision, and the right of appeal.
- 33.6 This notice must be served within 7 days of the final decision to vary the licence.
- 33.7 The varied licence will come into force following a 28 day appeal period providing an appeal is not made to the residential property tribunal.
- 33.8 If an appeal is made the variation will become operative following the decision made by the residential property tribunal.
- 33.9 If the Council decide not to vary the licence it must serve a notice advising of this decision and the reasons why it has been refused.
- 33.10 Where the variation has been made with agreement by the licence holder and other relevant persons it may not be necessary to serve notices relating to the consultation period.

34.0 Penalties

- 34.1 There are a number of possible offences relating to HMO licensing. It is the intention of the PSH team to take action where there is evidence of an offence and it is appropriate to take action.
- 34.2 The following offences apply:
- A person commits an offence if he manages or is in control of an HMO that should have a licence but does not have one. Prosecution can result in fines of up to £20,000.
 - A person commits an offence if he manages or is in control of an HMO and knowingly permits another person to occupy the house, which then results in the

house being occupied by more than the agreed number of households or persons authorised by the licence. Prosecution can result in fines of up to £20,000.

- A person commits an offence if he is a licence holder or person on which restrictions/obligations apply and he fails to comply with any condition on the licence. A breach of licence conditions can lead to prosecution and up to £5,000 per breach.

34.3 Other penalties include:

- Rent Repayment Orders – if a person has committed the offence described in 1 above, in that no licence is being held for a property that should have one, then the local authority or tenants can apply for a rent repayment order. The residential property tribunal can award this order, which requires the appropriate person to repay all rents and other periodical payments, and housing benefit for the period up to a licence being issued. The Order will state the amount to be repaid.
- Termination of Tenancies – Landlords will not be able to issue any section 21 notices under the Housing Act 1988 (recovery of possession on termination of a shorthold tenancy), whilst the HMO is unlicensed.
- Category 1 and 2 hazards – where an inspection has been carried out and hazards have been identified the procedures laid out in the first part of this enforcement policy must be followed.

35.0 Appeals

35.1 Appeals relating to any part of licensing are made to the residential property tribunal.

36.0 Unlicensed HMOs

- 36.1 When an HMO is brought to the attention of the private sector housing team they will investigate whether the property requires a licence.
- 36.2 If the property does need a licence a letter and application pack will be sent to the owner advising of the need to licence and requiring an application to be made within 28 days.
- 36.3 Where the owner makes representation suggesting that a licence is not required and the private sector housing team agrees, the details will be kept on file to be investigated further when resources allow.
- 36.4 If no response is received from the owner, further investigation is required including an inspection to establish if a licence is required.
- 36.5 Where the property is licensable and reasonable attempts have been made to contact the owner without success, prosecution should be considered.

37.0 Registered HMOs

- 37.1 For those HMOs already registered with the council under the previous registration scheme, the process is slightly amended.
- 37.2 These properties should be passported into the licensing scheme for the remainder of their registration period.
- 37.3 These properties will be required to complete an application form and provide all of the documentation, they will not be required to pay the fee until the registration is due to be renewed. At this point they will need to apply again for a full licence.
- 37.4 Additional conditions cannot be attached to passported properties over and above those on the registration, however the licence holder should be informed if additional works are likely to be required once the current registration has expired.
- 37.5 Passported HMOs are still subject to an inspection under part 1 of the act to ensure that they are free from category 1 hazards.

38.0 Interim Management Orders and Final Management Orders

- 38.1 An interim management order is made for the purpose of securing any action that the authority considers necessary, to protect the health, safety and welfare of the occupants.
- 38.2 An order can also be served in circumstances that the authority thinks are appropriate with a view to ensuring the proper management of the house pending the licence being granted.
- 38.3 The authority has a duty to make an interim management order in respect of an HMO where there is no reasonable prospect of it being licensed in the near future or it is necessary to protect the health, safety and welfare of the occupants.
- 38.4 Where a licence has been revoked for any reason and the property remains a licensable HMO an interim management order must be made if there is no reasonable prospect of the property regaining its licence.
- 38.5 Once an interim management order has been served the local authority must take over the management of the property for up to 12 months. This includes carrying out any remedial works necessary to deal with the immediate risks to health and safety.
- 38.6 If there is still no prospect of a licence being granted after 12 months then a final management order must be made which may be in force for up to 5 years. If after 5 years there is no prospect of the property being licensed a further management order must be made.
- 38.7 The Council is under a duty to issue interim and final management orders where necessary. The PSH team will instigate this action where necessary **but as a last resort**. All practical steps should be taken to assist the owner of the property to satisfy the licensing requirements.

- 38.8 The procedural element of carrying out interim and final management orders is under review. East Kent authorities are working together to establish an effective working protocol for delivering this.
- 38.9 Management orders can be varied or revoked at any time as a result of a request from the owner or on the local authorities initiative.

39.0 Temporary Exemption Notices

- 39.1 A temporary exemption notice (TEN) may be issued where an HMO that is due to be licensed is to be taken out of use as a licensable HMO. A person having control or managing an HMO can notify the local authority of its plans and request that the property be exempt from licensing. The authority must then consider this representation and if appropriate, serve the temporary exemption notice. A TEN remains in force for a period of 3 months, after which the property must have a license if it is still in such a condition as to require one. If further notification is received and the authority considers that there are exceptional circumstances a second TEN may be served which will remain in force for a further 3 months.
- 39.2 If the authority decide not to issue a TEN a further notice must be served under section 62 (6) which details the decision, the reasons for it and the date on which it was made, the right of appeal and the period within which the appeal must be made.