

# Maidstone Borough Council

## Housing Enforcement Policy

VERSION: JULY 2016

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## **1.0 Introduction**

- 1.1. Maidstone is the county town of Kent. The Borough covers 40,000 hectares and is largely rural with approximately 50% of the Borough's population living in a parished area<sup>1</sup>. The Borough comprises the large urban area of Maidstone town and a rural area containing a number of smaller villages and the Kent Downs Area of Outstanding National Beauty.
- 1.2. Within the borough, there are 65,526 dwellings with 86% of them being privately owned or rented<sup>2</sup>. The council has a key role to play to support investment and improvement within the sector for the benefit of Maidstone's residents.
- 1.3. Maidstone Borough Council's Strategic Plan identifies our vision "That our residents live in decent homes; enjoy good health and a pleasant environment, with a successful economy that is supported by reliable transport links".
- 1.4. A key action area is encouraging good health and wellbeing. To support, the council aims to maintain and improve the condition of housing through providing support, enforcement action, and assistance to home owners, tenants, and landlords and hence maximise the supply of high quality housing within the borough. This policy details how the council intends to use its mandatory and discretionary powers and resources to ensure Maidstone is a decent place to live.
- 1.5. We have a direct duty or authority to enforce relevant legislation. We are committed to the principles of good enforcement when this applies. Each case is unique and must be considered on its own merits.
- 1.6. General principles apply to each situation. This policy sets out factors to be taken into account when considering the type of enforcement action we take. The policy must be followed except in exceptional circumstances.
- 1.7. Priority will be given to addressing poor housing conditions that threaten the safety and wellbeing of occupiers. Resources will be targeted particularly at situations where occupiers have little influence over the condition of the accommodation they occupy.

## **2.0 Background**

- 2.1 The right home environment is critical to our health and wellbeing. Good housing helps people stay healthy, and provides a base from which to sustain a job, contribute to the community, and achieve a

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<sup>1</sup> Maidstone Borough Council's Strategic Plan 2015-2020

<sup>2</sup> 2011 Census, Table KS401EW

decent quality of life. Safe and suitable housing also aids recovery from periods of ill-health, and enables people to better manage their health and care needs.

2.2 Housing is a key determinant of health, and by promoting good quality housing this policy will contribute to reducing health inequalities for Maidstone's residents and contribute to the key action area of encouraging good health and wellbeing.

2.3 Poor housing also has the potential to impact negatively on both the local neighbourhood but also on the wider housing market and by supporting investment in private sector housing the council will contribute to the key action areas of securing a successful economy and providing a clean and safe environment.

### **3.0 Aims of policy**

3.1 The council's over-arching Housing Strategy (2016-20) sets out the strategic priorities over the next five years. This Housing Enforcement Policy flows from the council's Housing Strategy and should be read in conjunction with the council's Housing Assistance Policy, Empty Homes Policy and Affordable Energy Strategy.

3.2 To set out in greater detail our priorities and how we intend to accomplish them. It also details how we will work to maintain and improve housing conditions. The policy also details how the council will meet its statutory obligations.

3.3 To ensure that housing enforcement decisions are always consistent, balanced, fair, transparent, proportionate and relate to common standards.

3.4 To inform the community at large of the principles by which enforcement action is taken.

3.5 To empower Officers to deliver on the Council's objectives to ensure that the housing conditions comply with statutory standards, making the most effective use of capital and manpower resources and reduce the number of long term empty dwellings (please see the Empty Homes Policy).

3.6 To provide customer focused, effective, intelligence driven services that support empower and secure a safe and healthy environment for all residents.

3.7 To support a growing economy where all landlords meet their legal responsibilities.

3.8 To set out the factors to be taken into account when considering enforcement action.

### **4.0 Partners**

- 4.1 Officers shall consider if there are relevant internal or external partners. Some of these are listed below (this is not an exhaustive list):

Internal partners include:

- Community Safety
- Planning
- Planning Enforcement
- Environmental Health
- Environmental Enforcement

External partners include:

- Kent Fire and Rescue
- Kent Police
- Maidstone Mediation Service
- Voluntary sector organisations
- UK Border Agency

## **5.0 Governance and ethics**

- 5.1 We will take into account the legal and procedural implications of both The Human Rights Act 1998 and European Convention on Human Rights.
- 5.2 We will also have regard to our responsibilities as described in the Maidstone Borough Council Equality Policy. We recognise there is diversity within the community. Care will be taken to ensure enforcement actions are clearly understood by all. For example, we will provide documents in an appropriate language wherever possible. We may also arrange for an interpreter.
- 5.3 The code for crown prosecutors and legislative and regulatory reform sets out what people being regulated can expect from us. It commits us to good enforcement practice with effective procedures and clear policies.
- 5.4 This document has been prepared with regard to the current principal legislation and statutory guidance including:
- The Regulatory Enforcement and Sanctions Act 2008;
  - Legislative and Regulatory Reform Act 2006;
  - Legislative and Regulatory Reform (Regulatory Functions) Order 2007;
  - Regulators' Compliance Code;
  - Housing Health & Safety Rating System Enforcement Guidance.
- 5.5 The Regulatory Enforcement and Sanctions Act established The Local Better Regulation Office. It also imposed upon us a duty to:
- Have regard to any guidance given to us by Local Better Regulation Office.

- Comply with guidance where we are directed to do so by Local Better Regulation Office
- Have regard to any list of enforcement priorities published by Local Better Regulation Office.

5.6 The Legislative and Regulatory Reform Act, Part 2, requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is:

- Proportionate,
- Accountable,
- Consistent,
- Transparent,
- Targeted to situations which need action.

5.7 We have had regard to the Regulators' Compliance Code in the preparation of this policy and will base our enforcements on the principles within:

- Change the behaviour of the offender,
- Change attitudes in society to offences which may not be serious in themselves, but which are widespread,
- Eliminate any financial gain or benefit from non-compliance,
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction,
- Be proportionate to the nature of the offence and the harm caused,
- Restore the harm caused by regulatory non-compliance, where appropriate,
- Deter future non-compliance.

5.8 This Policy has also been prepared having regard to the Code for Crown Prosecutors and the Regulators Compliance Code and the Principles of Good Enforcement:

- Standards
- Openness
- Helpfulness
- Complaints
- Proportionality
- Consistency

5.9 Our primary function is to achieve regulatory compliance in order to protect residents. However, we may take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.

5.10 When considering formal enforcement action, we will, where appropriate/reasonably practicable, discuss the circumstances with those suspected of a breach. And take these discussions into account when deciding on the best approach. This paragraph does not apply where immediate action is required to prevent or respond to a breach

or where to do so is likely to defeat the purpose of the proposed enforcement action.

## **6.0 Methods of enforcement**

6.1 We recognise that prevention is better than cure. But where it becomes necessary we will take enforcement action. The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places a duty. The range of actions available to the authority are:-

- No action
- Informal action and advice
- Housing Act Notices
- Local Government Act Notices
- Public Health Act Notices
- Building Act Notices
- Smoke and Carbon Monoxide Alarm Regulations
- Protection from Eviction Act
- Works in default
- Charges for enforcement
- Standards of Houses in Multiple Occupation
- Management of Houses in Multiple Occupation
- Licensing of Houses in Multiple Occupation
- Simple Caution
- Prosecution
- Rent Repayment Orders
- Compulsory Purchase Orders
- The Redress Scheme for Letting Agents and Property Managers

## **7.0 No action**

7.1 Before considering taking any action in tenanted properties, we will require the tenant to have contacted their Landlord. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Any copies of correspondence between the tenant and landlord should be provided to officers.

7.2 Tenants will be expected to keep officers informed of any contact they have with their landlord (or landlords agent, builder etc.) that may have an effect on what action we take.

7.3 The following situations may lead us to withdraw the service or not provide the service, are as follows:

- Where tenants of their own free will shortly move out of the property;
- Where the tenants unreasonably refuse access to the landlord, landlords agent or builder to arrange or carry out the works;



- Where the tenants, in our opinion, have clearly caused the damage they are complaining about, and there is no other disrepair;
- Where the tenant has requested a service and then failed to keep an appointment and not responded to a follow-up letter or appointment card.

## **8.0 Informal action and advice (Owners)**

8.1 Owner/Occupiers generally have control over the repair of their property and as such taking formal action, serving notices requiring works may appear heavy handed and it is for this reason that we will adopt a policy of notifying owner/occupiers of risks by letter rather than by notice. (Even Hazard awareness notices may seem officious to elderly owners).

8.2 We usually inspect Owner/Occupied properties when owners are requesting some financial assistance under our Housing Assistance Policy and we may identify hazards that the owner has not been aware of, (electrical wiring being old or dangerous is a typical example). Owners may be reluctant to have this work done particularly if their have requested assistance to renew windows for example. Every effort should be made to encourage the owners to carry out works in order to deal with the most serious hazards first, but if this fails then grant aid will be refused.

8.3 Where category 1 hazards are left, after maximum financial assistance has been used we would inform the owner by letter or if very serious hazards we would consider the service of a more formal notice. If the house is so defective of course we would consider other actions such as re-housing the occupant/owner.

8.4 Where category 2 hazards, band D-F are left after maximum financial assistance has been used we would inform the owner of the hazards by letter.

8.5 Where an owner qualifies for financial assistance for dealing with hazards, but does not want work done, maybe wanting lesser hazards dealt with we will inform the owner by letter/notice of the category 1 hazards, and informed that they will not get a grant if they do not deal with category 1 hazards first.

8.6 Where an owner does not qualify for any financial assistance due to their financial circumstances we will inform the owner of the category 1 hazards by notice and the category 2 hazards by letter.

## **9.0 Informal action and advice (Tenants)**

9.1 We may initially take informal action to secure improvements. This will be most likely where the assessed level of risk to current occupiers is low and cooperation is being received from the person having control of the property.

## **10.0 Enforcement Action**

10.1 For information on the different forms of enforcement action please see the attached appendices.

## **11.0 Charges For Enforcement Action**

11.1 We can charge the reasonable expenses incurred in taking formal enforcement action against property owners. Whilst this has not generated much income for us it has proved to be a valuable deterrent and has encouraged prompt cooperation from landlords in carrying out required works.

11.2 Landlords have a duty of care to their tenants and should provide accommodation that is both free from significant hazards and properly maintained, thus avoiding the need for our intervention. The Housing Act 2004 enables us to recover our reasonable expenses associated with Hazard Awareness Notices, Improvement Notices, Prohibition Notices and other enforcement activity.

11.3 Charges will therefore normally be made when the following types of notice are served:

- Improvement Notices,
- Prohibition Notices,
- Emergency Prohibition Orders, and
- Emergency Remedial Action Notices.

11.4 Charges for enforcement action will include all expenses incurred from the point that enforcement action was deemed necessary including the cost of preparing and serving the notice.

11.5 Charges in respect of us taking enforcement action will be notified to recipients by way of a formal demand for expenses on which there is a right of appeal to the First-tier Tribunal.

11.6 Charges in respect of Suspended Improvement Notices or Prohibition Orders will not be invoked until such notices and orders come into force.

11.7 Charges in certain circumstances can be waived by agreement in the following circumstances:

- The Landlord / Person having control of the property could not reasonably have known about the existence of the hazard or the need for the remedial works;
- The Notice was served as the result of a consultation or request for assistance;
- The Notice relates to matters caused solely by the actions of tenants;
- The person responsible for carrying out the remedial works / prohibiting its use is cooperating fully with us.

## **12.0 Works In Default**

- 12.1 Most notices allow carrying out work in default. This ensures ultimately that the work is completed if the recipient of any notice does not carry out the work required by the notice. We may employ a contractor to enter the property and carry out the work required. We may charge the appropriate person for the cost of works together with the costs involved in arranging for the work to be done.
- 12.2 The decision as to whether to carry out works in default we will take into account the following (not exclusive) matters:
- The prospect of the person responsible carrying out the work e.g. if the owner is absent or infirm;
  - There is imminent risk to an individuals or public health and safety;
  - A prosecution has been brought, is successful, but the works have not been carried out;
  - A prosecution is not appropriate;
  - It is appropriate to carry out the works quickly.
- 12.3 Following the completion of works in default we will send the appropriate person an invoice requesting payment. If this is not paid the matter may be referred to the Councils legal services for further action. We will place a charge on the property, or may enforce the sale of the property.

## **13.0 Monitoring**

- 13.1 All notices will be signed by an authorised officer, normally a different officer than the one who prepared it. This allows the opportunity to review cases to ensure compliance with this policy.
- 13.2 All enforcement activity will be monitored regularly.

## **14.0 Serving Notices**

- 14.1 If the service of a notice is appropriate we will use the following procedure. If the recipient of the notice lives with the Borough, the Case Officer may hand deliver the notice either by handing it to the recipient in person or by posting the notice through their letterbox or by first class mail. We may email notices if the recipient has agreed to receive notices via email.
- 14.2 If the recipient of the notice lives outside of the Borough, the Case Officer will send the notice by first class mail. We may email notices if the recipient has agreed to receive notices via email.

## **15.0 Authorisations**

- 15.1 No Officer will carry out enforcement work unless they are suitably trained, experienced and authorised to do so in writing.

15.2 Individuals authorised to sign and serve various documents shall have the level of competence and ability as required in their job descriptions and specifications. Individuals authorised will carry identification and will have evidence of their authorisation.

## **16.0 Application Of This Policy**

16.1 The principles contained within this policy shall be applied to the enforcement of legislation relating to investigations by the Housing & Health Team.

16.2 This policy provides the overarching principles applied by Maidstone Borough Council Housing and Health Team when enforcing the legislation within its remit.

## **17.0 Access To The Policy**

17.1 The policy is available on Maidstone Borough Councils website and at the Maidstone Borough Council Offices. The Case Officer will be able to provide copies of this policy given suitable notice. On request and where practicable this policy may be made available on tape, in braille, large type, or in a language other than English.

## **18.0 Review Of Policy**

18.1 The policy will be kept under review to take into account changes in legislation and amendments found necessary as a result of internal monitoring. Minor revisions of this policy may be authorised by the relevant Director for the service on receipt of a report documenting proposed changes.

## **19.0 Complaints**

19.1 If you are dissatisfied with the service you receive please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence.

19.2 Wherever possible we will attempt to resolve your complaint informally through the Case Officer or the Team Leader. If we cannot do this we have a Corporate Complaints procedure. Details of this are available on request and on our website.

19.3 If you are still unhappy you can discuss your complaint with your local ward Councillor, MP or you can complain to the Local Government Ombudsman.

## Appendix 1: Housing Act notices

- 1.1 The Housing Health and Safety Rating System (The Rating System) assesses the risk to the health & safety of occupiers posed by certain specified housing related hazards. The Rating System involves the assessment of 29 potential hazards and scoring of their severity to decide whether improvements are needed. Assessed hazards are banded Category 1 or Category 2 depending on the seriousness of the risk. Where Category 1 hazards are found we have a duty to take action. If Category 2 hazards are found, we have a discretionary power to take action.
- 1.2 The process can be summarised as:
- Determine hazards present.
  - Assess hazard score.
  - Power or duty to take action?
  - Determine the most appropriate action to deal with the hazard(s).
- 1.3 A range of enforcement options are available to us, how these discretionary powers are used will depend on the circumstances of each case. In making decisions the following will be taken into account excepted that where a category 1 hazard exists within a property we must take some action:
- The nature of the hazard;
  - The nature and circumstances of the current occupier (Age, vulnerability etc.);
  - Views of Occupiers;
  - Local priorities for improving housing conditions;
  - Availability of other forms of Housing Assistance;
  - Action must be proportionate to the risk.
- 1.4 When a hazard is identified, we must decide the most practical course of action to take. We can choose to deal with matter informally as an alternative to enforcement action. This will be most likely where the assessed level of risk to current occupiers is low and cooperation is being received from the person having control of the property or in the case of Owner Occupiers where they have control over their circumstances. This does not prevent subsequent service of enforcement notices.
- 1.5 We will, other than in exceptional cases, for instance where it will result in an unacceptable delay in alleviating a serious hazard, always ensure that landlords, tenant(s) and owners have the opportunity to discuss our proposed action before a notice is served.
- 1.6 The Housing Act requires us to produce a Statement of reasons justifying the type of action they are taking. This must accompany all improvement notices and orders served.
- 1.7 Notices available
- Power to require documents to be produced (s235)

- Power of entry (s239)
- Warrant (s240)
- Improvement Notice (s.11 + s.12);
- Prohibition Order (s.20 + s.21);
- Emergency Remedial Action Notice (s.40 + s.41);
- Emergency Prohibition Order (s.43);
- Demolition Order (Housing Act 1985);
- Clearance Areas (Housing Act 1985);
- Statutory Overcrowding Notice (Housing Act 1985)
- HMO Overcrowding Notice (s139)
- Management Orders / Interim Management Orders;
- Hazard Awareness Notice (s.28 + s.29);
- Suspended Orders / Notices

## **1.8 Power to require documents to be produced**

1.9 This notice allows us to require the relevant person to provide documents which they may hold to help us determine the course of action we may take. The notice is useful for requiring documents such as tenancy agreements, gas safety certificates, and electrical inspection reports.

1.10 The documents must be produced on (or before) the date specified in the notice. If the relevant person does not comply with the notice we may prosecute them which could result in a fine.

## **1.11 Power of entry**

1.12 This notice enables us to enter premises at any reasonable time. If the premises is being entered in order to ascertain whether an offence has been committed under section 72 (failing to licence an HMO), section 95 (failing to selectively licence a premises, not relevant in Maidstone), or section 234(3) Management of Houses in Multiple Occupation we do not need to give 24 hours' notice to the owner or the occupier of the premises.

1.13 If we are entering the premises for other reasons we must give the owner and occupier at least 24 hours' notice. We may give notice by phone, text or in person but we will normally give notice via a letter or a more formal notice.

1.14 If we fail to enter the premises we may serve another notice giving the owner and occupier at least 24 hours' notice of our intended visit.

1.15 It is an offence if an owner or occupier obstructs us in the course of our duties. We may therefore take evidence such as witness statements. We may also caution the relevant person.

1.16 If we fail to enter the property after one or two attempts of giving notice we may apply for a warrant at the Magistrate's Court to gain entry to the premises by force.

## **1.17 Warrant**

- 1.18 We may apply for a Warrant to the Magistrate's Court to enter premises for the purposes of carrying out our functions.
- 1.19 We may apply for a warrant if we have failed to inspect the property after giving repeated notice of our intention to inspect.
- 1.20 We may also apply for a warrant if the purpose of the entry would be defeated by giving the owner or occupier prior warning. Such as the collection of evidence for a prosecution.
- 1.21 We will endeavour to take a Police Officer or Police Community Support Officer with us when we gain entry. We will leave the premises as secure as it was before we entered.

### **1.22 Improvement Notices**

- 1.23 Improvement Notices are the most practical formal remedy for most hazards, particularly in tenanted property. Repair or renewal will generally be cost-effective because of the high value of property in Maidstone.
- 1.24 An improvement notice can be used for Category 1 or 2 hazards and can deal with more than one hazard of either type

### **1.25 Prohibition Orders**

- 1.26 Prohibition Orders may be applied to part or all of a dwelling, for example, where there it is not practical or cost effective to alleviate an identified hazard. Also where there are other restrictions on the improvement of the property e.g. Listed Building status. They may be used in conjunction with Improvement Notices to prohibit parts of a premise that cannot reasonably be improved. An example might be where there is inadequate natural lighting to a basement or where there is no possible safe means of fire escape from an attic room.
- 1.27 A Prohibition Order must specify whether the prohibition relates to Category 1 or 2 hazards, must detail the remedial works deemed necessary to alleviate the hazard(s), and may allow the owner / occupier to apply for compensation.

### **1.28 Emergency Remedial Action**

- 1.29 Emergency Remedial Action will be used where immediate action is required to remove an unacceptable and imminent risk to occupiers or other persons. This action enables us to carry out remedial works ourselves and recover all expenses incurred.
- 1.30 To carry out Emergency Remedial Action there must be a Category 1 Hazard + an imminent risk, and notices must be served within seven days of taking action.

### **1.31 Emergency Prohibition Orders**

1.32 Emergency Prohibition Orders are the same as Prohibition Orders but they have immediate effect to prevent occupation of all or part of the premises.

1.33 To carry out an Emergency Prohibition there must be Category 1 Hazard + an imminent risk, notices should be served on the day the order is made, and may allow the owner / occupier to apply for compensation.

### **1.34 Demolition Orders**

1.35 Demolition Orders enable the compulsory demolition of an individual property where the house is considered to be beyond economic repair. Such action is considered unlikely in Maidstone where property values are high. Demolition of property will only be considered on housing grounds after a full Neighbourhood Renewal Assessment has been completed which indicates that this is the most appropriate course of action.

1.36 Compensation will be payable to the owner / occupier in all cases.

### **1.37 Clearance Areas**

1.38 Clearance Areas enable the compulsory clearance of neighbourhoods where the housing is considered to be beyond economic repair. Such action is considered unlikely in Maidstone where property values are high. Clearance will only be considered on housing grounds after a full Neighbourhood Renewal Assessment has been completed which indicates that this is the most appropriate course of action.

1.39 Compensation will be payable to the owner / occupier in all cases.

### **1.40 Overcrowding Notices**

1.41 If a premise is statutory overcrowded Part X of the Housing Act 1985 still applies and we may serve a notice.

1.42 We will measure the floor areas of each bedroom and living room. We will determine the ages and sexes of the occupants and determine whether the premises is statutorily overcrowded having regard to the room sizes and maximum number of persons per room as given below.

| Room size                            | Maximum number of persons |
|--------------------------------------|---------------------------|
| 5m <sup>2</sup> to 6.5m <sup>2</sup> | 0.5                       |
| 6.5m <sup>2</sup> to 9m <sup>2</sup> | 1 person                  |
| 9m <sup>2</sup> to 11m <sup>2</sup>  | 1.5 persons               |
| 11m <sup>2</sup> +                   | 2 persons                 |



| Age           | Calculation of persons |
|---------------|------------------------|
| 0 to 1 year   | 0                      |
| 1 to 10 years | 0.5 persons            |
| 10 years+     | 1 person               |

### 1.43 HMO Overcrowding Notices

1.44 If a premise is an HMO which is not licensable and is crowded we may serve an HMO Overcrowding Notice.

1.45 We will measure the floor areas of each bedroom / living room. We will count the number of facilities provided such as bathrooms and kitchens. We will determine the number of occupants and whether the premises is overcrowded having regard to:

### 1.46 Room sizes:

| Use of room:                        | Minimum Room Size: |
|-------------------------------------|--------------------|
| Bedroom occupied by 1 person        | 9m <sup>2</sup>    |
| Bedroom occupied by 2 people        | 14m <sup>2</sup>   |
| Kitchen used by up to 5 people      | 7m <sup>2</sup>    |
| Kitchen used by up to 10 people     | 10m <sup>2</sup>   |
| Living room used by up to 5 people  | 11m <sup>2</sup>   |
| Living room used by up to 10 people | 16.5m <sup>2</sup> |

### 1.47 Amenities:

| Use of room: | Number required:     |
|--------------|----------------------|
| Bathroom     | 1 for every 5 people |
| WC           | 1 for every 5 people |
| Kitchen      | 1 for every 5 people |

### 1.48 Facilities:

| Facility:                           | Number required:                       |
|-------------------------------------|--|
| Bath or shower                      | 1 for every 5 people                   |
| WC                                  | 1 for every 5 people                   |
| Wash hand basin                     | 1 for every 5 people                   |
| Kitchen sink                        | 1 for every 5 people                   |
| Fridge                              | 1 for every 5 people                   |
| Freezer                             | 1 for every 5 people                   |
| Cooker (4 hot ring, grill and oven) | 1 for every 5 people                   |
| Food storage                        | 1 base unit per person (or equivalent) |
| Worktop (shared)                    | 2 meters for every 5 people            |
| Worktop (individual)                | 1 meter for every unit                 |

- 1.49 If the premises is, or is likely to be overcrowded, we may serve an intention to serve an overcrowding notice on each person with an interest in the property such as occupiers, owners, managers and mortgagee's.
- 1.50 The intention to serve an overcrowding notice gives the recipient of the notice at least fourteen days to make representations.
- 1.51 After the consultation period has ended we may serve an overcrowding notice which will require the relevant person to either not add additional occupants or to seek possession of the property back from the occupants.
- 1.52 The overcrowding notice will be placed as a charge on the property and failure to comply with it is an offence.

### **1.53 Management Orders / Interim Management Orders**

- 1.54 We may use Management Orders / Interim Management Orders if Houses in Multiple Occupation (HMO's) are not licensed, do not comply with the required standards or if the person in control is not a "Fit and Proper" person.
- 1.55 If a landlord fails to bring an HMO up to the required standard, or fails to meet the Fit and Proper person criteria, we can take over the management of the property. An Interim Management Order (IMO), allows us to manage the property for up to a year, until suitable management arrangements have been made. The owner does keep their right as an owner.
- 1.56 If the IMO expires and no improvement in management has been made, then we can issue a Final Management Order (FMO). This can last up to five years and be renewed following this period.

### **1.57 Hazard Awareness Notices**

- 1.58 Hazard Awareness Notices are advisory notices only. They may be appropriate where the hazard is minor or where remedial action is unreasonable and impractical. They may also be used as an alternative to informal action where the owner has agreed to take remedial action.
- 1.59 This does not prevent subsequent formal action should an unacceptable hazard remain.
- 1.60 We may choose to use Hazard Awareness Notices where significant hazards have been identified in owner occupied accommodation. And in other circumstances where we consider the occupier has some control over his circumstances. In these cases other forms of enforcement action may be inappropriate.

## **1.61 Suspended Notices**

1.62 Improvement Notices / Prohibition Orders may be suspended until such time or event specified. We may consider this:

- As an alternative to Hazard Awareness Notices;
- Where the most vulnerable age group for particular hazard are not present;
- As a consequence of the current occupiers views;
- As an option for a more strategic approach;

1.63 Suspended Notices and Orders must be reviewed (not less than annually). In deciding what action is necessary and appropriate in each case we will take account of:

- The severity of hazard;
- Nature of hazard;
- Risk posed to existing occupants;
- Practicality of remedial action;
- Cooperation of the Person Having Control;
- Tenure;
- Occupiers wishes;
- All relevant Local Housing Strategies / Policies. Fees & Charges.

## **Appendix 2: Other legislation**

- 2.1 **Local Government (Miscellaneous Provisions) Act 1982, section 33.**
- 2.2 This section enables us to re-connect or prevent the disconnection of gas, electricity or water supply in tenanted properties. These powers will be used in exceptional circumstances when all other negotiation has failed. These powers will only be used where the tenant is not responsible for the payment of the bill. We may re-charge our costs and place a charge on the property.
- 2.3 **Local Government (Miscellaneous Provisions) Act 1982, section 29.**
- 2.4 This section enables us to board up unsecure empty properties. We will attempt to contact the owner to carry out the work. If the property remains unsecure we may serve a notice giving the owner 48 hours to make the property secure. If the property remains unsecure after this we may carry out the work, re-charge our costs and place a charge on the property.
- 2.5 **Local Government (Miscellaneous Provisions) Act 1976, section 16**
- 2.6 This section enables us to obtain information about the interest in land. The notice is used to determine who owns, manages, and occupies a dwelling. The information must be provided within 14 days of service of the document. Failure to provide the information may result us prosecuting the relevant person. On summary conviction the Magistrates Court can issue a fine.
- 2.7 **Public Health Act 1936, section 17**
- 2.8 This section enables us to require owners / occupiers to unblock or repair toilets. If negotiation fails we may serve a notice requiring the toilet to be unblocked within 7 days. If the toilet remains blocked we may carry out the work and re-charge our costs.
- 2.9 If the toilet requires repair we may serve a notice requiring the toilet to be repaired within 14 days. If the toilet remains in disrepair we may carry out the work and re-charge our costs.
- 2.10 **Building Act 1985, section 59**
- 2.11 This section allows us to require owners to provide new, repair, or upgrade existing: drains, guttering, cesspools, sewers, drains, soil pipes, and rainwater pipes etc.
- 2.12 We must give the owner of the property at least 21 days to carry out the work. If the owner fails to carry out the work we may carry out the work ourselves and also prosecute the owner. The fine on summary conviction is level 4 on the standard scale.

2.13 **Protection From Eviction Act 1977**

2.14 We are responsible for enforcing the Protection from Eviction Act 1977. This is when landlords unlawfully evict or harass tenants with the intention of causing their tenant to vacate their home. The maximum penalty on summary conviction is up to 6 months years' imprisonment and a fine of up to £400. On conviction of an indictment to a fine and/or to imprisonment up to 2 years.

2.15 There is no formal notice; therefore the only course of action would be to prosecute the landlord if they commit an offence under the act.

2.16 We will normally negotiate with the landlord in order to prevent an illegal eviction from occurring. If this fails we may provide advice to the tenant in order to allow re-entry into the dwelling.

2.17 If we deem that an offence has occurred we may caution the landlord and invite them in for a formal interview which will be in accordance with the Police and Criminal Evidence Act. We may also obtain evidence from the tenant.

2.18 We may decide not take further action if the landlord desists with their actions and the tenant remains in the dwelling.

2.19 If the landlord does not desist with their actions and the tenants are unable to remain in the dwelling we will consult with legal services and determine whether it is in the public interest to take forward a prosecution.

2.20 **Simple Cautions**

2.21 A simple caution may be an appropriate course of action where there is a criminal offence but the public interest does not require a prosecution. Ministry of Justice guidance – simple cautions for adult offenders 2013 states that the purpose of the caution is:

- § To offer a proportionate response to low level offending where the offender has admitted the offence;
- To deliver swift, simple and effective justice that carries a deterrent effect;
- To record an individual's criminal conduct for possible reference in future criminal proceedings or in criminal record or other similar checks;
- To reduce the likelihood of re-offending;
- To increase the amount of time officers spend dealing with more serious crime and reduce the amount of time officers spend completing paperwork and attending court, whilst simultaneously reducing the burden on the courts.

2.22 In considering whether a Caution is appropriate, we will consider the following questions:-

- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)?

- Is there a realistic prospect of conviction if the offender were to be prosecuted?
- Is it in the public interest to use a Caution as the appropriate means of disposal?

2.23 The decision to issue a simple caution will be made by the Head of Housing & Community Services or the Director of Regulation and Communities in consultation with the Head of Legal Services.

## 2.24 **Compulsory Purchase Orders**

2.25 Making a Compulsory Purchase Order is an option that will only be taken in exceptional circumstances and must be approved by the relevant Secretary of State before it can be made. It may be an option: -

- Where a property has been derelict for some time and is having a detrimental effect on the local environment or neighbouring properties,
- Where the property appears to have been abandoned and the owner cannot be traced,
- Where all other avenues for bringing the property back into use have been exhausted, or
- Where the property is suitable for immediate residential use but it is unlikely to be occupied for residential purposes unless bought by us.

## 2.26 **Interviewing Under Caution**

2.27 As soon as it is determined that an offence has been committed we will caution the person(s) suspected of the offence if they are present.

2.28 We will normally invite the person(s) suspected of committing the offence to our offices to carry out an interview under caution. The interview will be recorded in accordance with the Police and Criminal Evidence Act.

2.29 The interview is to determine whether the person suspected of the offence has a defence and to hear their side.

2.30 If the person suspected of committing the offence does not attend the interview will prepare a case for prosecution with the help of our Legal Department.

## 2.31 **Deregulation Act 2015**

2.32 The Deregulation Act has amended section 21 of the Housing Act 1988 for tenancies starting on or after 1 October 2015.

2.33 If we serve a Housing Act 2004 section 11 or 12 Improvement Notice or carry out Emergency Remedial Action under section 40 any section 21 notices served on a tenant by a landlord are invalid for a period of six months from the date of service of the notice.

- 2.34 We may inform the landlord and tenant about the effect of the Deregulation Act in relation to section 21 notices during our consultation and/or when we serve the notice.
- 2.35 If we become aware that a tenant has received a section 21 notice within six months of the date of service of an improvement notice, we may advise the tenant or landlord of the section 21 notice's invalidity.

### **Appendix 3: Smoke And Carbon Monoxide Alarm Regulations**

- 3.1 We must serve a notice (within 21 days) on a private landlord if there is no smoke alarm fitted on each storey of the premises on which there is a room used wholly or partly as living accommodation.
- 3.2 We must serve a notice on a private landlord if there is no a carbon monoxide alarm fitted in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.
- 3.3 The notice will allow 28 days to make written representations. If the landlord makes representations to us we will consider these and confirm in writing of our decision.
- 3.4 If the private landlord fails to carry out the work, unless they have taken all reasonable steps, we will within 28 days following the end of the notice period carry out the work (if there is consent by the occupier) after giving the occupier 48 hours' notice.
- 3.5 If a private landlord fails to carry out the work we may impose a penalty charge (amount as agreed in the Maidstone Borough Council, Smoke and Carbon Monoxide Alarms Statement of Principles), within 6 weeks of determining that the landlord has breached the regulations.
- 3.6 If the private landlord pays the charge or provides written representations within 14 days following service of the notice the fixed penalty notice is reduced to an amount as detailed in the Maidstone Borough Council, Smoke and Carbon Monoxide Alarm Statement of Principles.
- 3.7 Following service of a penalty charge notice the landlord may review our decision to serve the penalty charge notice. Following which we will serve a notice on the landlord of our decision to confirm, vary or withdraw the penalty charge notice.
- 3.8 The landlord may appeal to the First-tier Tribunal following a decision by us to confirm or vary a penalty charge notice if the decision was based on an error of fact, the decision was wrong in law, the amount of penalty charge was unreasonable, or the decision was unreasonable for any other reason.
- 3.9 The Tribunal may quash, vary or confirm the penalty charge notice, but may not increase the amount of penalty charge.



### **3.10 Statement of principles for determining financial penalties Smoke And Carbon Monoxide Alarm Regulations**

3.11 The purpose of this statement is to set out the principles, which we will apply in exercising our powers to require a relevant landlord to pay a financial penalty.

### **3.12 The legal framework**

3.13 Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations) provides that we may require a landlord to pay a penalty charge if we are satisfied on the balance of probabilities that when served with a remedial notice under regulation 5 they failed to take the required action within the period specified.

### **3.14 The scope of this document**

3.15 Regulation 13 of the regulations requires us to prepare and publish statement of principles, which we propose to follow in determining the amount of a penalty charge.

3.16 We may revise our statement of principles and, when we do so, we must publish the revised statement.

3.17 Where a penalty charge is made, we must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

3.18 This document sets out the principles, which we will apply and will have regard-to when exercising our powers under regulation 8.

### **3.19 Applicable principles**

3.20 The primary purpose of the exercise of our regulatory powers is to protect the interests of the public, although they may have a punitive effect.

3.21 The primary aims of financial penalties will be to:

- Change the behaviour of the landlord,
- Eliminate any financial gain or benefit from non-compliance with the regulations,
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes,
- Aim to deter future non-compliance, and
- Reimburse the costs incurred in undertaking work in default.

### **3.22 Criteria for the imposition of a financial penalty**

3.23 By virtue of regulation 8, a failure to comply with the requirements of a remedial notice allows us to require payment of a penalty charge. In considering the imposition of a penalty we will have regard to:

- The evidence of a breach of the requirement of the remedial notice.

3.24 In deciding whether it would be appropriate to impose a penalty, we will take full account of the particular facts and circumstances of the breach under consideration. Factors which we will take into consideration are:

- That we are satisfied on the balance of probabilities that the landlord on whom was served a remedial notice has failed to take the remedial action specified in the notice within the period specified.

3.25 A financial penalty allows us, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in the following circumstances:

- Where the landlord has failed to comply with the requirements of a remedial notice.

### **3.26 Criteria for determining the quantum of a financial penalty**

3.27 Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to us) and a cost element relating to the works carried out by us.

3.28 The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served.

### **3.29 Early repayment period**

3.30 We have discretion to specify that if a landlord pays the penalty charge within a specified earlier period a reduction in the penalty charge may be applied. We will exercise this discretion to reduce the penalty charge in relation to payment within a specified "early payment" period.

3.31 The specified period for early payment is within 14 days beginning with the day on which the penalty charge notice was served. Early repayment will attract a discount of 50% on the charge.

### **3.32 Review of penalty charge**

3.33 We may also exercise a similar discretion where the landlord gives written notice to us that they wish the authority to review the penalty charge notice. We may exercise the discretion to reduce the penalty charge where a landlord gives written notice, including evidence of mitigating factors, to us to review the penalty charge notice.

3.34 The mitigating factors are that the landlord has taken all reasonable steps to comply, the landlord has been actively co-operating with the Council, has effective systems in place for monitoring compliance, and

has been pro-active on their approach to the legislation. Each case will be considered by officers on the basis of the information available.

3.35 **Landlord has taken all reasonable steps to comply**

3.36 Landlords will not be able to provide evidence that they have taken all reasonable steps to comply if they have done nothing, have not written to the tenant to explain the legal requirement and that it is for their own safety, or they have not checked the alarms are in good working order on the first day of the tenancy.

3.37 **Landlord has been actively co-operating with the Council.**

3.38 Landlords will not be able to provide evidence that they have been actively been co-operating with the Council if they have not provided officers when requested access to the property, alarm service records, and tenancy records. Landlords will also not be able to provide evidence that they have been actively been co-operating with the Council if they have not responded promptly, honestly and accurately to officers or have not disclosed any evidence which may assist the Council in their investigations.

3.39 **Landlord has effective systems in place for monitoring compliance**

3.40 Landlords will not be able to provide evidence that they have effective systems in place for monitoring compliance if they do not have robust document checking systems in place, records of alarms for the premises, or records of testing the alarms on the first day of the tenancy (i.e. an inventory showing the alarm has been checked as working and signed by the tenant).

3.41 **Landlord has been pro-active on their approach to the legislation**

3.42 Landlords will not be able to provide evidence that they have been proactive on their approach to the legislation if they have not informed, preferably in writing, the Housing & Health Team Council that they have had difficulty with complying with the legislation before a notice is served under regulation 5 of the regulations.

3.43 **Levels of fine**

3.44 For a first breach the penalty charge applied will be £2,500.

3.45 For subsequent breaches the penalty charge will be £4,000 to deter continued non-compliance.

3.46 If a landlord provides evidence of mitigating factors the Council may reduce the penalty charge notice by £500 for each mitigating factor. Therefore the fine may be reduced by a maximum of £2,000.

3.47 Early repayment of the penalty charge will will attract a discount of 50%.

### **3.48 Procedural matters**

3.49 The regulations impose a number of procedural steps which must be taken before we can impose a financial penalty.

3.50 Before imposing a requirement on a landlord to pay a penalty charge we must, within a period of six weeks from the point at which we are satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- The reasons for imposing the penalty charge;
- The premises to which the penalty charge relates;
- The number and type of prescribed alarms (if any) installed at the premises;
- The amount of the penalty charge;
- The obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- How payment of the charge must be made; and
- The name and address of the person to whom a notice requesting a review may be sent.

3.51 The landlord can request a review in writing within 28 days of service of the notice. In conducting the review, we will consider any representations made by the landlord, and serve notice of our decision whether to confirm, vary or withdraw the penalty charge to the landlord.

3.52 A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal (Property) against our decision.

## **Appendix 4: Houses in multiple occupation**

- 4.1 Houses in multiple occupation are defined in section 254 of the Housing Act 2004.
- 4.2 We will inspect Houses in multiple occupation having regard to the Housing Health and Safety Rating System, our own standards and the Management Regulations.
- 4.3 If after the inspection it is found that the property does not meet our HMO standards, or has hazards under the Rating System, enforcement action will be considered.
- 4.4 If works are required in relation to the Hazard of Fire, we will consult with the Kent Fire and Rescue Service as to the works required. A letter will be sent to the interested parties of the property stating what works are required.
- 4.5 If the work remains outstanding we may serve an Improvement Notice or if an Improvement Notice is not appropriate a Prohibition Order may be considered so as to reduce the risk.
- 4.6 If the HMO is overcrowded, or may be overcrowded we may serve an intention to serve an overcrowding notice on the interested parties. Following representations (if any) we may serve an overcrowding notice.
- 4.7 **Management of houses in multiple occupation**
- 4.8 The Management of Houses in Multiple Occupation (England) Regulations 2006 applies to Houses in Multiple Occupation ("HMOs") in England apart from Housing Act 2004 section 257 HMOs to which the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply.
- 4.9 The Regulations impose duties on a person managing an HMO 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, fixtures, fittings and appliances;
  - Maintaining living accommodation; and
  - Providing waste disposal facilities.
- 4.10 Regulation 10 imposes duties on occupiers of an HMO for the purpose of ensuring that the person managing it can effectively carry out the duties imposed on him by these regulations.
- 4.11 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 apply to converted blocks of flats to which section 257 of the Act applies. These are

buildings that have been converted into and consist of self-contained flats where the building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them, and less than two-thirds of the self-contained flats are owner occupied.

- 4.12 If after the property is inspected there are issues related to the management of the property that in our opinion requires further action the following procedure will be followed.
- 4.13 We will write to the owner/manager of the HMO detailing the defects which should be addressed and under what regulation. We will give the owner/manager a period of time to carry out the work, dependant on the severity of the defect and the work involved to eliminate it. For Example rectify faulty alarm system – up to 7 days.
- 4.14 We will determine who is responsible for remedying the defect. If the property is licensed this would be through the licence details, if not, we may serve a Notice requiring this information.
- 4.15 If after the period of time to remedy the defect has expired and the defect has not been rectified we may, collate evidence for a prosecution. If a prosecution is deemed appropriate the evidence will be passed to our Legal Department who may prepare a case for prosecution.
- 4.16 A person who fails to comply with these Regulations commits an offence under section 234(3) of the Housing Act 2004, punishable on conviction with a fine not exceeding level 5 on the standard scale (currently unlimited).
- 4.17 **Licensing Of Houses In Multiple Occupation**
- 4.18 Mandatory Licensing of Houses in Multiple Occupation (HMO) is contained under Part 2 of the Housing Act 2004. We are required to have a licensing scheme in place, seek properties that require licences and licence those properties that are licensable (currently HMO's with three floors and five persons in two or more households, and where there is sharing of an amenity or the units are not self-contained).
- 4.19 Failure to licence a 'licensable' property is an offence with the maximum fine on summary conviction being an unlimited fine. The other actions that could be taken are rent repayment orders to recover up to one years' worth of rent and section 21 notices (Notice requiring possession) are invalid.
- 4.20 If we identify a house in multiple occupation which should be licensed but isn't we will send out a letter and application pack. The letter will inform the owner/manager of the need to licence their property.
- 4.21 If the owner/manager has not returned the licensing application form and fee within 1 month we will send a reminder letter with another copy of the licence application form and give another month.

- 4.22 If no licence application or fee is received after a further month we may inspect the property and gain evidence.
- 4.23 If a prosecution is deemed appropriate the evidence will be passed to our Legal Department who will prepare a case for prosecution.
- 4.24 If a property is identified as a licensed house in multiple occupation but there is a breach of the licence conditions or that the property is occupied by more than allowed by the licence we may collect evidence for a prosecution.
- 4.25 At this time we will also consider the implementation of a Management Order to take over the management of the property. Our use of HMO management orders will be in accordance with Government guidance.

## **Appendix 5: The Redress Schemes For Letting Agents/Managers**

5.1 Letting Agents and Managers of privately rented dwellings must belong to one of three Government approved redress schemes. The three schemes are:

- Ombudsman Services Property [www.ombudsman-services.org/property](http://www.ombudsman-services.org/property)
- Property Redress Scheme [www.theprs.co.uk](http://www.theprs.co.uk)
- The Property Ombudsman [www.tpos.co.uk](http://www.tpos.co.uk)

### **5.2 Notice of intent**

5.3 Where on the balance of probability that a letting agent or manager is not registered we may serve a notice of intent on the letting agent or manager. The notice of intent must be served within six months of when we became satisfied that the letting agent or manager had failed to comply. The notice of intent must specify:

- The reasons for imposing the monetary penalty,
- The amount of the penalty (which must not exceed £5,000), and
- The right to make representations and objections within 28 days of service of the notice.

### **5.4 Penalty charge notice**

5.5 After the representations and objection period ends we must decide whether to impose the penalty with or without modifications. If we decide to impose a penalty we must serve a final notice. The final notice must contain:

- The reasons for imposing the monetary penalty,
- The amount to be paid (which must not exceed £5,000),
- How the payment may be made,
- The period within which the payment must be made (min 28 days),
- Information about the rights of appeal to the First-tier Tribunal, and
- Information about the consequences of failing to comply with the notice.

### **5.6 Withdrawals / reductions to the fine**

5.7 We may withdraw a notice of intent or final notice. And we may also reduce the penalty charge subject on a case by case basis at our discretion. We will reduce the amount of the penalty charge if the charge is paid within 14 days of the date of service of the notice penalty charge notice.

5.8 Typical reason for reducing the penalty charge include the letting agent / manager providing evidence that they have taken all reasonable steps to comply with the notice.



5.9 **Level of fines**

5.10 For first time breaches we may impose a financial penalty of £2,500.

5.11 For subsequent breaches we will normally impose a financial penalty of £3,000.

5.12 If the letting agent or manager fails to register with a scheme after 28 days of a final notice we may then serve another notice of intent. We may repeat this process until the letting agent or manager has registered with a redress scheme.

5.13 We may recover the monetary penalty by way of a Court Order.

5.14 **Appeals**

5.15 The letting agent or manager can appeal the penalty charge notice to the First-tier Tribunal (Property Chamber).

5.16 If the letting agent or manager appeals to the First-tier Tribunal following service of a final notice they Tribunal may confirm, vary or quash the notice.