Response to Department for Communities and Local Government's consultation paper 'Houses in Multiple Occupation and residential property licensing reforms' from Association of Residential Letting Agents (ARLA)

December 2016

Background

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.

2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.

3. ARLA members are governed by a Code of Practice as well as Membership and Conduct Rules providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection (CMP) and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Questions

1. Is the proposal sufficiently clear about how the new scheme will apply to buildings that are HMOs occupied by five persons or more in two or more households? If not please explain why.

4. Yes, ARLA believes the proposal is sufficiently clear about how the new scheme will apply to buildings that are HMOs occupied by five persons or more in two or more households.

2. Do you agree with our approach with regard to the threshold for mandatory licensing of multiply occupied purpose built flats? If not, please explain why.

5. ARLA doesn't agree with licensing because it doesn't work. Councils already have a wide variety of powers to prosecute for poor property conditions and bad management practices; with penalties ranging from fines to seizure of property and

even imprisonment. But Councils don't have the resources to undertake effective enforcement action. Imposing more burdens on councils will not mean improved standards and better conditions for tenants; it will merely mean more laws that are not being enforced.

3. Are the different rules that apply in relation to the mandatory licensing of flats in purpose built blocks and converted premises set out sufficiently clearly? If not please explain why.

6. Yes, the different rules that apply in relation to the mandatory licensing of flats in purpose built blocks and converted premises are set out sufficiently clearly.

4. Do you agree that where buildings contain individual flats in multiple occupation that these should be separately licensed, including where the flat is in a building which also contains bedsits? If not please explain why.

7. We think that only if there are different owners should buildings containing individual flats in multiple occupation be licensed, including where the flat is in a building which also contains bedsits.

5. Do you agree the licence of a multiply occupied flat should extend to the common parts, in appropriate cases? If not please explain why.

8. No, we do not agree that the licence of a multiply occupied flat should extend to the common parts. This is because the structure and common parts of the building and the land it stands on are usually owned by the freeholder, who is responsible for the maintenance and repair of the building. In this situation the costs for doing so are recoverable though the service charges that the leaseholder is responsible for paying.

6. How are the common parts dealt with under additional licensing which relate to self-contained flats (a) when the whole building is owned or managed by the licence holder and (b) where the licence holder is a leaseholder of an individual flat let in multiple occupation and doesn't have control of the common parts?

9. To build on the points made in the response to the previous question, it is our view that leaseholders cannot be held accountable for actions beyond their control. For instance, maintenance issues in the common parts of buildings which are owned and controlled by the freeholder. This was highlighted recently in the Edwards v Kumarasamy case.[1]

[1] https://www.supremecourt.uk/cases/uksc-2015-0095.html

7. Do you agree that the proposal for implementing the new regime in two phases is clear and appropriate? If not please explain why.

10. Yes we do think that the proposal for implementing the new regime in two phases is clear and appropriate.

8. Are the transitional arrangements for HMOs that are already licensed, or which ought to have been licensed, clear and appropriate? If not please explain why.

11. Yes the transitional arrangements for HMOs that are already licensed, or which ought to have been licensed are clear and appropriate.

9. Do you agree that persons sharing protected characteristics are more likely to live in HMOs than in the wider private rented sector? Please give your reasons.

12. We do not have evidence to suggest this or disprove, so we are unable to agree or disagree as to whether persons sharing protected characteristics are more likely to live in HMOs than in the wider private rented sector.

10. Do you believe that extending the scope of mandatory licensing will impact upon persons sharing protected characteristics and if so how will it impact upon them? If you think the impact is negative can you suggest how it may be mitigated?

13. We do not have evidence to suggest this or disprove, so we are unable to say how extending the scope of mandatory licensing will impact upon persons sharing protected characteristics.

11. Do you agree that the regulations should only apply to rooms occupied by one or two persons? If not, please explain why.

14. No, we do not agree that the regulations should only apply to rooms occupied by one or two persons. This is because we have to consider the unintended consequences of minimum room sizes. We know that some people are happy to take small rooms to keep their costs down. If these rooms are no longer available, where are people supposed to live? What's more, if a small room in a property can no longer be let out, the costs of that room will be spread across the other tenants living in the property, pushing up their rents. A habitable room is essential but a one-size-fits-all policy doesn't always work.

12. Do you agree that there should be no difference in how children and adults are counted for the purpose of the room size condition? If not please explain why.

15. We believe that the private rented sector should be treated the same as the social rented sector when determining how children and adults are counted for the purpose of the room size condition.

13. If you do not agree with question 12 how you would treat children for the purpose of calculating minimum room sizes?

16. When calculating minimum room sizes, children should be treated as they are in the social rented sector with a criteria for calculating whether a property is suitable. For instance defining a child by age and gender.

14. How easy or difficult would it be for local housing authorities to monitor and enforce where children are to be counted separately from adults?

17. We do not know how easy or difficult it would be for local housing authorities to monitor and enforce where children are to be counted separately from adults.

15. Do you agree that the minimum floor to ceiling height should be set at 1.5 metres? If not, do you have an alternative measure that can be used? Please explain your alternative measure.

18. Yes, we agree that the minimum floor to ceiling height should be set at 1.5 metres.

16. Do you think that the proposal not to treat temporary visitors as occupiers is appropriate?

19. Yes, we think that the proposal not to treat temporary visitors as occupiers is appropriate and this is consistent with measures under the Right to Rent checks.

17. Do you agree that if the landlord causes or permits the occupation of a room which does not comply with the room size rule, they shall be in breach of the HMO licence?

20. Where the landlord permits occupation and had knowledge that the room did not comply with the room size rule, we agree that they shall be in breach of the HMO licence. However, landlords should not be penalised if tenants overcrowd properties and local authorities should work with landlords where tenant overcrowding occurs.

18. Do you think the definition of hostel and temporary accommodation providers is appropriate? If not please explain why. Can you give examples of the types of providers whose accommodation may be subject to the exemption?

21. Yes, we think the definition of hostel and temporary accommodation providers is appropriate.

19. Do you think that introducing minimum room sizes will impact upon persons sharing protected characteristics and if so how will it impact upon them? If you think the impact is negative can you suggest how it may be mitigated?

22. We do not think that introducing minimum room sizes will have a specific impact upon persons sharing protected characteristics.

20. How many families living in bedsits or shared houses do you think would be affected by the policy of restricting the number of occupants to specific size of the rooms?

23. We do not know how many families living in bedsits or shared houses would be affected by the policy of restricting the number of occupants to specific size of the room.

21. Do you think the impact on the family would be negative or positive? Please explain why. If you think the impact is negative please say how you think it might be mitigated.

24. As outlined on page 13 of the consultation paper at point 37, 10.23 sq. m is a reasonably sized room and the impact will be that it will end the ability for families or couples to live in HMOs as rooms will not meet this requirement. Whilst minimum room sizes in new builds are 7.5 sq. m a lot of rooms in recent builds (i.e. property built in the 1990s and 2000s) fall below this size and won't fall in line with the standard. As a result, this may cause problems in areas where residential property is in high demand. The result will be low income families not having anywhere to live and having to find individual flats which they may not be able to afford.

22. Do you have any comments on the Impact Assessment?

25. As outlined on page 30 of the consultation paper we acknowledge the Government's determination to tackle rogue landlords and create a fairer private rented sector for legitimate landlords to operate in. However, ARLA believes that enforcement and not administration is the key to removing rogue and criminal landlords and letting agents.

26. Local authorities need to be adequately resourced and be able to keep and use the revenue generated from penalties to further enforce the rules. Furthermore, failure to tackle and inspect landlords without a licence is a concern for our members and only serves to enforce our current view that licensing is not an effective solution to the correctly identified problem**.** Therefore the Government must consider the

number of additional HMOs that will be caught by the new rules and the resources that local authorities have to police unlicensed properties.

22. Do you think regulations should be made that would require a criminal record certificate to be obtained for an applicant for a licence and any manager of the property?

27. We do not have a specific opinion on whether regulations should be made that would require a criminal record certificate to be obtained for an applicant for a licence and any manager of the property. However, adding additional costs that are not absolutely necessary should be avoided and a consistent approach taken across all licensing schemes.

23. Do you have a preference for checks through DBS or Disclosure Scotland? If so please explain why.

28. No, we do not have a preference for checks through DBS or Disclosure Scotland.

Q.24 Do you agree that there should be a mandatory condition in HMO licences relating to household refuse?

29. We do not agree that there should be a mandatory condition in HMO licences relating to household waste.

Q25 Do you think the terms of the condition are reasonable and appropriate?

30. We do not think the terms of the condition are reasonable and appropriate. There is no reference to tenant responsibility for using the adequate receptacles that the licence holder would have to provide. Furthermore, the number of receptacles, in many cases, is determined by the local authority and the waste and recycle scheme that they provide. For example, in London there are 32 Boroughs and they all have a different waste and recycling scheme. Outside of London, many local authorities at a Borough level will collect the waste, whereas the County Council will sort and deal with contamination. Therefore putting all of the onus on the licence holder to comply will not change tenant behaviour or improve waste and recycle rates in HMOs.

31. ARLA has been working with the London Environment Directors' Network (LEDNet) to produce a tool kit for tenants, landlords, letting agents and local authorities to improve waste and recycling rates in the Private Rented Sector and we would encourage the Department for Communities and Local Government (DCLG) to engage with the project. ARLA has also made representation to DCLG to include wording about responsibility for waste and recycling in the How to Rent guide.

Q26. Do you think that such a condition would impose additional costs on licence holders? If so please provide an estimate of how much compliance with such a condition might cost and give your reasons.

32. Any costs that the licence holder incurs such as the licence fee, paying the local authority for more receptacles or the removal of extra waste is likely to be passed on to the tenant.

Q27. Is local housing authority intervention in purpose built licensed student accommodation currently minimal? Please give your reasons.

33. We do not have a view on whether the local housing authority intervention in purpose built licensed student accommodation is currently minimal.

Q28. Do you think that membership of a code of practice approved under section 233 ensures acceptable management practice and standards? If not, please explain why.

Q29. Do you agree that the Secretary of State should consider whether to approve a code of practice under section 233 which relates to purpose built blocks of flats exclusively providing accommodation for students? Please give your reasons.

Q30. Do you agree those private providers who comply with such a code should be entitled to a discount on the standard rate for a licence application? Please give your reasons.

Q31. Do you think a 50% is appropriate? If not should this be more or less? Please give your reasons

Q32. What savings could a landlord expect by a reduction in fees of say 50%?

34. In relation to questions 28 to 32 we would raise the issue of landlords who let exclusively to students. For instance, unless they are covered by the Code, this will affect competition in the market. Furthermore, has the Government considered universities who have set up letting agencies or agencies that exclusively cater for the student market? It is our view that exclusivity to this area of the market would be unfair on private landlords.