**Houses in Multiple Occupation and residential property licensing reforms:**

**Consultation Response by the Housing Law Practitioners Association (HLPA)**

*HLPA*

1. The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics, and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. It has members throughout England and Wales. HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves. The Association is regularly consulted on proposed changes in housing law or in legal changes which may impact on housing law (whether by primary or subordinate legislation or statutory guidance). HLPA’s responses are available at [www.hlpa.org.uk](http://www.hlpa.org.uk). Membership of HLPA is on the basis of a commitment to HLPA’s objectives. These objectives are:
* To promote, foster and develop equal access to the legal system.
* To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
* To foster the role of the legal process in the protection of tenants and other residential occupiers.
* To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
* To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

*Extension of mandatory licensing of Houses in Multiple Occupation*

1. In summary, HLPA supports the extension of mandatory licensing of Houses in Multiple Occupation (“HMOs”). However, they are concerned as to the availability of resources to enable enforcement of the proposed new regime.
2. Question 1: HLPA do not consider that the proposal is sufficiently clear. In particular, as a result of removing the 3 storey rule, self-contained flats occupied by 5 persons or more in households of 2 or more will prima facie become subject to mandatory licensing. The consultation paper does not show any clear recognition of this fact. It is therefore unclear whether the further rules as to flats are an unintentional contradiction of this, or an intentional limit on it by bringing out of the regime flats which would otherwise be in it. HLPA also consider that the phrase *“purpose built block”* requires definition: it is unclear what the *“purpose”* referred to is.
3. Question 2: HLPA consider that this question could have been more clearly worded, but understand that the threshold referred to is a reference to the number of flats contained within the purpose-built block (namely 1 or 2) above which the mandatory licensing will not apply (unless a different test is satisfied). HLPA repeat their answer to Question 1 as to the lack of clarity concerning when a self-contained flat will be an HMO subject to mandatory licensing. HLPA do not agree that mandatory licensing should be limited to 1 or 2 flats only within a purpose-built block. HLPA consider that the problems which mandatory licensing is designed to address are equally likely to exist in blocks containing more than 1 or 2 flats and the reasons for this threshold are not made clear in the consultation document. HLPA therefore recommend that mandatory licensing is extended to purpose built blocks containing more than 1 or 2 flats.
4. Question 3: HLPA do not consider that 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. HLPA repeat their answer to Question 1 as to when a self-contained flat will be an HMO subject to mandatory licensing and the need to define *“purpose built”*. HLPA consider that the reference at paragraph 12 to flats *“above commercial premises”* in *“a purpose built block comprising entirely of self-contained flats”* to be confusing: it is unclear how a flat could at the same time be located in a block comprising entirely of self-contained flats and also above commercial premises. HLPA consider there to be possible conflict between the rules: for example, it is unclear what the licensing regime will be where, for example, a building includes commercial premises, and an HMO which is not a self-contained flat, and also three or more self-contained flats. HLPA do not consider that the rules are clear even after considering Annex A and consider that the rules require further clarification.
5. Question 4: HLPA agree with this proposal.
6. Question 5: HLPA agree with this proposal.
7. Question 6: HLPA do not consider that they can answer this question, which appears to be aimed at the practice of local authorities.
8. Question 7: HLPA agree with this proposal.
9. Question 8: HLPA consider that the transitional arrangements for HMOs that are already licensed, or which ought to have been licensed, are clear and appropriate.
10. Question 9: HLPA agree that persons with protected characteristics are more likely to live in HMOS than in the wider private rented sector. This is because persons with protected characteristics are among the most vulnerable in society by reason of, for example, disability, old age, pregnancy, being of a particular sexual orientation, having undergone gender reassignment, or being a member of an ethnic minority. These people face direct and indirect discrimination which makes it harder for them to obtain accommodation, both directly (through discrimination from landlords and letting agents) and indirectly (through, for example, being at a disadvantage in the job market or through struggling to claim welfare benefits). They are therefore more likely to be forced to resort to less satisfactory housing, including HMOs, and to be vulnerable to exploitation by rogue landlords.
11. Question 10: HLPA believe that extending the scope of mandatory licensing will impact on persons sharing protected characteristics because such persons are more likely to be in accommodation affected by the proposed changes. Whilst HLPA are concerned that the proposed changes may force such people further “underground”, on balance HLPA believe that the impact will be broadly positive rather than negative, leading as it should do to greater regulation and thus better conditions in these properties. HLPA presume in addition that the prohibition on serving a notice under section 21 of the Housing Act 1988 will apply to properties subject to the expanded licensing regime which are not licensed and believe that this offers vulnerable tenants more protection. However, HLPA are concerned as to whether sufficient resources will be made available to monitor and enforce the expanded licensing regime. HLPA note that the proposals are aimed at *“rogue landlords”*. Given that the changes are targeted at landlords who are already breaking the law (or, at least, showing disregard for their tenants’ safety and wellbeing) then it appears highly likely that such *“rogue landlords”* will continue to thwart an expanded licensing regime. It is important that the resources are available to enforce it properly. HLPA also oppose the suggestion that tenants will remain liable to pay rent during any period in which the HMO is unlicensed, which is different from the existing regime. There does not appear to be any reason for this distinction and it operates to the advantage of law-breaking landlords and to the disadvantage of very vulnerable members of society.

*National minimum room size*

1. Question 11: HLPA agree that the regulations should only apply to rooms occupied by one or two persons. This is in accordance with the definitions of overcrowding at Part 10 of the Housing Act 1985, which do not envisage more than 2 adults sharing a room.
2. Question 12: HLPA do not agree that there should be no difference in how children and adults are counted for the purpose of the room size condition. This is for the reasons identified at paragraphs 36 to 39 of the consultation paper, namely that this could lead to the occupation of accommodation by parents with their baby or young child to be a breach of the licensing offence. HLPA are concerned about this because it could lead to the eviction of these vulnerable families.
3. Question 13: HLPA consider that an approach analogous to the overcrowding standards in Part 10 of the Housing Act 1985 could be adopted. Whilst HLPA have serious doubts as to the appropriateness of those standards in a modern society, HLPA are concerned that the approach currently proposed could lead to the eviction of young families whose occupation is not, currently, an offence under the Housing Act 1985.
4. Question 14: HLPA do not consider that they are able to assist with this question.
5. Question 15: HLPA do not consider that 1.5 metres is a sufficient minimum floor to ceiling height. HLPA note that in the Department for Communities and Local Government *Technical housing standards – nationally described safe standard*, the standard requires a minimum floor to ceiling height of 2.3m for at least 75% of the gross internal area and suggests that a figure in this region would be more appropriate.
6. Question 16: HLPA agree with this proposal.
7. Question 17: HLPA agree with this proposal.
8. Question 18: in so far as this is a reference to paragraphs 31 to 32 of the consultation paper, HLPA do not consider that a sufficiently clear definition of *“hostel”* and *“temporary accommodation”* has been put forward. These paragraphs give examples rather than definitions of these concepts. HLPA consider that a clear and specific definition is needed. HLPA are also concerned by the reference to *“voluntary providers of such accommodation where the organisation’s provision of accommodation is ancillary to its main objectives eg as an organisation whose objective is to provide assistance to recovering drug users”*. Whilst the particular example given is of a charitable (or socially-minded) organisation, unless there is a specific requirement that such organisations be of a charitable or other beneficial nature, this exemption could be vulnerable to exploitation.
9. Question 19: HLPA consider that introducing minimum room sizes will impact on persons sharing protected characteristics for the reasons given at their response to question 9. HLPA consider that the impact is likely to be, on balance, broadly positive save that they are concerned about vulnerable people being forced out of their accommodation and they are particularly concerned about young families being evicted as set out at their response to question to 12. HLPA are also concerned about enforcement as set out in their response to question 10.
10. Question 20: HLPA cannot give a figure for how many families living in bedsits or shared houses are likely to be affected but consider it likely to be a very significant number. HLPA note that many families are placed in single room accommodation by local councils pursuant to homelessness applications and that such families could be caught by such a policy. HLPA also note that many families are forced into such accommodation by the severe lack of social housing and affordable housing.
11. Question 21: HLPA consider that the impact on the family would be broadly negative. The family would face eviction if their occupation placed their landlord in breach of an HMO licence. With a severe shortage of social housing and affordable accommodation, such families would face having nowhere to go. Whilst HLPA would wholeheartedly support measures to make available suitable accommodation for these families, a policy which renders them vulnerable to eviction from their accommodation without any other properties being made available for them is likely to cause them harm. HLPA consider that this negative effect could be mitigated by modifying the way in which children and adults are counted as set out above or, of course, by providing an adequate amount of social and affordable housing.

*Impact assessment*

1. Question 22: HLPA are broadly in support of the extension to the licensing regime. They do, however, consider it unfortunate that the Impact Assessment does not address what may be said to be the elephant in the room, namely the shortage of affordable and social housing which drives people to live in inadequate and dangerous accommodation and makes them vulnerable to exploitation by rogue landlords. It is also deficient in that it does not address how the proposals are to be enforced and from what resources.

*Evidence relating to the “fit and proper person” requirement*

1. Question 22 [sic]: HLPA agree that 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.
2. Question 23: HLPA have no comment to make on this.

*Refuse disposal facilities*

1. Question 24: HLPA agree with this proposal in principle but consider that further thought is needed as to how it would work in practice, such as what would constitute *“normal”* household waste.
2. Question 25: HLPA agree with this.
3. Question 26: HLPA are unable to assist with this question.

*Purpose built student housing*

1. Questions 27 to 32: HLPA are unable to assist with these questions.

Tessa Buchanan (Barrister)

tessab@gclaw.co.uk

Vice Chair of the Housing Law Practitioners Association

On behalf of the Housing Law Practitioners Association

4 Garrett Street

London EC1Y 0TY

13th December 2016