

Kingston upon Hull City Council Guidance on the Deemed Additional Licensing Scheme for Houses in Multiple Occupation

1. Houses in multiple occupation (HMOs) which have three or more storeys and five or more occupants are subject to mandatory HMO licensing under the Housing Act 2004. However, in addition to this, the Council operates a transitional licensing scheme, known as Deemed Additional Licensing. This extends to the whole of the City. Deemed Additional Licensing applies because the City Council formerly had a registration scheme with control provisions (“the Registration Scheme”) in operation. This means that any property which was previously registered under the Registration Scheme is passported into HMO licensing, even though it may not be subject to mandatory licensing. Passporting means that the registration will automatically be changed into a licence on the same terms (including expiry date) as the registration. Special provisions also apply where there was a pending application for registration which had been submitted to the Council as at 5th April 2006 when the new legislation came into force.

2. Any properties of a category or type of HMO which were, or would have been, required to be registered under the previous registration scheme are subject to Deemed Additional Licensing, even if they are not subject to mandatory licensing. Landlords must apply for a licence for these properties. HMOs that would have been required to be registered under the Registration Scheme are subject to licensing under the Deemed Additional Licensing scheme. This applies to properties that are both an HMO under the old definition of “house in multiple occupation” contained in the Housing Act 1985 (“the 1985 Act”) and under the new definition in the Housing Act 2004 (“the 2004 Act”). The requirement applies
 - whether the property was registered as an HMO on or before 6th April 2006 or not; and
 - whether the property was occupied as an HMO on or before 6th April 2006 or not.

3. Special rules apply to converted blocks of self contained flats where the conversion does not comply with 1991, or later, building regulation and, as well, more than a third of the flats in the block are rented out. These blocks of flats remain within the registration scheme. However, individual flats within the building may be subject to mandatory licensing or Deemed Additional Licensing.
4. Under the 1985 Act the test to be applied in deciding if a property is an HMO was whether or not the property was occupied as a **single household**. There was case law as to what was meant by a household for this purpose. The 2004 Act provides a new definition of “household”. This means that the Council has to apply two different tests to decide whether or not a property must be licensed. The Council must decide whether properties that are not subject to mandatory licensing satisfy the definition of HMO under the 1985 Act.
5. In the light of case law which interprets the 1985 Act test, the Council accepts that if the following tests are **all** met, it would not consider that the property satisfies the test for an HMO in the 1985 Act. These tests are as follows:-

For properties with five or fewer occupiers

That the property is occupied

- i. on a shared basis by 5 or fewer persons
- ii. by persons who came together as a group at the same time (but subject to point (v) below)
- iii. by persons having a single joint tenancy or licence agreement
- iv. by persons who contribute towards a single rent for the house
- v. such that responsibility for selecting new members of the household, if any of the original occupiers leave the property, is that of the occupiers although any such person may need to be approved by the landlord
- vi. in such a manner that there is a communal living space. Communal living space must include a room of sufficient size to accommodate armchairs and/or sofas for all the occupants of the house at the same time but does not include rooms used solely as a kitchen, bedroom or bathroom. A room

containing kitchen and dining facilities would only be acceptable if it were large enough to accommodate armchairs and sofas.

For properties with six occupiers

That the property is occupied

- i. on a shared basis by 6 persons
- ii. by persons who came together as a group at the same time and whose composition remains stable throughout the period of the tenancy
- iii. by persons having a single joint tenancy or licence agreement and who contribute towards a single rent for the house
- iv. by persons who live communally. This is a complex decision and one that will involve the sensible use of discretion. The sorts of things that need to be considered are
 - a. tenant responsibility for choosing who has which room,
 - b. whether there are locks on doors; and
 - c. communally arranged shopping, cooking, bill paying and cleaning duties.

None of these factors on their own is likely to be conclusive and this is a decision that the Landlord and the Council may disagree about. However, as long as the Council is satisfied that the Landlord has used his discretion reasonably and sensibly in treating the group as a single household, the Council will not take immediate enforcement action. The Council will initially seek to resolve any difficulties by working with the Landlord to establish the nature of the occupiers' relationship with each other

- vii. in such a manner that there is a communal living space. Communal living space must include a room of sufficient size to accommodate armchairs and/or sofas for all the occupants of the house at the same time but does not include rooms used solely as a kitchen, bedroom or bathroom. A room containing kitchen and dining facilities would only be acceptable if it were large enough to accommodate armchairs and sofas. However, it is unlikely that a kitchen/dining room would be large enough to be acceptable to the Council in a property with 6 occupiers.

6. If **all** the criteria listed above are met the property would not have been regarded by the Council as a HMO for the purposes of the Registration Scheme and the property would not be subject to licensing under the Deemed Additional Licensing scheme. If a property does not satisfy all the above criteria, it may be a HMO for the purposes of the 1985 Act and could be subject to Deemed Additional Licensing. In these cases, the Council will consider each property individually and come to a decision as to whether the property falls within the Deemed Additional Licensing Scheme. For more information about how the Council decides whether a property requires a licence in these circumstances, please contact the Private Housing Environmental Health Office at 33 Witham, Kingston upon Hull HU9 1DB, by telephone on 300300 or by e-mail to: housing.standards@hullcc.gov.uk
7. Landlords are therefore required to apply for a licence for each of their properties that fall within the mandatory licensing scheme or the Deemed Additional Licensing scheme unless the property was already registered under the Registration Scheme and the period of registration has not ended. This licence will only last for the balance of the registration period. No fee is payable if passporting applies. Passporting applies to already registered properties irrespective of their size or number of occupants.
8. The Council accepts that the requirements of the Deemed Additional Licensing scheme are complicated and is committed to working with Landlords to determine whether any particular property is required to be licensed.
9. The Council will
 - Not pursue any landlord of a property where the circumstances of the occupation of the property are as set out in paragraph 5
 - Advise landlords as to whether an application for a license is necessary in respect of any particular property

- Only seek to prosecute Landlords where the Council considers that it is absolutely necessary and in accordance with the Central and Local Government Concordat on Good Enforcement
 - Provide advice to Landlords of the Council's opinion (having regard to published guidance on the determination of whether a property is an HMO) about whether a property is required to be licensed where a third party seeks to take action directly against a Landlord under part 2 of the Housing Act 2004. Where reasonably requested the Council will confirm this advice in writing.
10. The Deemed Additional Licensing scheme will last until 5th April 2009 unless revoked or replaced sooner.
11. **Please note that this guidance applies only to the Deemed Additional Licensing Scheme introduced by paragraph 3(2) of part 2 to the schedule of The Housing Act 2004 (Commencement No.5 and Transitional Provisions and Savings) (England) Order 2006. For information about other issues to do with Private Renting or Houses in Multiple Occupation including Mandatory and Selective Licensing and the Housing Health and Safety rating System, please contact Private Housing Environmental Health Office at 33 Witham, Kingston upon Hull HU9 1DB, by telephone on 300300 or by e-mail to: housing.standards@hullcc.gov.uk or by visiting the Council's website at [Hull City Council : Multiple occupancy homes](#)**