

SCHEDULES

SCHEDULE 15

INELIGIBLE PERSONS FROM ABROAD: STATUTORY DISREGARDS

PART 2

SCOTLAND AND NORTHERN IRELAND

Housing (Scotland) Act 1987 (c. 26)

- 9 The Housing (Scotland) Act 1987 is amended as follows.
- 10 (1) Section 20 (persons having priority on housing list and allocation of housing) is amended as follows.
- (2) In subsection (1)(b) at the beginning insert “subject to subsection (1A).”
- (3) After subsection (1) insert—
- “(1A) Homeless persons and persons threatened with homelessness (within the meaning of Part 2) are to be disregarded for the purposes of subsection (1) if they would not be such persons without the local authority having had regard to a restricted person (also within the meaning of Part 2).”
- (4) In subsection (2) for “such housing” substitute “housing falling within subsection (1)”.
- 11 (1) Section 30 (notification of decision and reasons) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) If they decide that he is homeless, threatened with homelessness or has a priority need but would not have done so without having had regard to a restricted person, they shall also notify him of—
- (a) the fact that their decision was reached on that basis,
- (b) the name of the restricted person,
- (c) the reason why the person is a restricted person, and
- (d) the effect of section 31(2G) or (as the case may be) 32(2A) and (2B).”
- (3) After subsection (5) insert—
- “(6) In this Part “a restricted person” means a person—
- (a) who is not eligible for assistance under this Part,
- (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
- (c) either—

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- (i) who does not have leave to enter or remain in the United Kingdom, or
- (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.”

12 (1) Section 31 (duties to persons found to be homeless) is amended as follows.

(2) After subsection (2) insert—

“(2A) In a restricted case the local authority shall cease to be subject to the duty under subsection (2) if the applicant, having been informed of the matters mentioned in subsection (2B)—

- (a) accepts a private accommodation offer, or
- (b) refuses such an offer.

(2B) The matters are—

- (a) the possible consequence of refusal of the offer, and
- (b) that the applicant has the right to request a review of the decisions mentioned in section 35A(2)(e).

(2C) In this section “a restricted case” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.

(2D) For the purposes of this Part an offer is a private accommodation offer if—

- (a) it is an offer of a short assured tenancy made by a landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant’s occupation,
- (b) it is made, with the approval of the local authority, in pursuance of arrangements made by them with the landlord with a view to bringing their duty under subsection (2) to an end, and
- (c) the tenancy being offered is for a period of at least 12 months.

(2E) The local authority shall not approve a private accommodation offer unless they are satisfied that it is reasonable for the applicant to accept the offer.

(2F) For the purposes of subsection (2E) an applicant may reasonably be expected to accept an offer even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.

(2G) In a restricted case the local authority shall, so far as reasonably practicable, bring their duty under subsection (2) to an end as mentioned in subsection (2A).

(2H) Subsections (2A) to (2G) are without prejudice to any other way in which the local authority can cease to be subject to the duty under subsection (2).”

(3) In subsection (3)—

- (a) for “In any other case, they” substitute “In a case not falling within subsection (2), the local authority”, and
- (b) in paragraph (a) for “his”, in the first place where it appears, substitute “the applicant's”.

- 13 (1) Section 32 (duties to persons found to be threatened with homelessness) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Subsection (2B) applies in a restricted threatened homelessness case where, in pursuance of the duty under subsection (2), the local authority secure that accommodation other than that occupied by the applicant when he made his application is available for occupation by him.
- (2B) The provisions of section 31(2A) to (2H) (circumstances in which duty in restricted case ceases) apply, with any necessary modifications, in relation to the duty under subsection (2) as they apply in relation to the duty under section 31(2) in a restricted case (within the meaning of that section).”
- (3) In subsection (3) for “In any other case they shall furnish him” substitute “In a case not falling within subsection (2) the local authority shall furnish the applicant”.
- (4) After subsection (5) insert—
- “(5A) In this section “a restricted threatened homelessness case” means a case falling within subsection (2) where the local authority would not be satisfied as mentioned in subsections (1) and (2) without having had regard to a restricted person.”
- 14 (1) Section 34 (duties to persons whose applications are referred) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) If it is determined that the conditions for referral—
- (a) are satisfied, the notified authority are subject to the duty under section 31(2);
- (b) are not satisfied, the notifying authority are subject to that duty.”
- (3) In subsection (3) for paragraph (a) (but not the “and” after it) substitute—
- “(a) whether they or the notified authority are subject to the duty under section 31(2),”.
- (4) Omit subsection (6).
- 15 In section 35A(2) (right to request review of decision) after paragraph (d) insert—
- “(e) in a case where a private accommodation offer is made to the applicant, any decision—
- (i) that the accommodation offered is not accommodation falling within section 32(5)(a) to (c), or
- (ii) that the authority have discharged their duty to the applicant under section 32(8).”
- 16 In section 43 (minor definitions) at the appropriate places insert—
- (a) ““private accommodation offer” has the meaning assigned to it by section 31(2D);”,
- (b) ““restricted person” has the meaning assigned to it by section 30(6);”, and
- (c) ““short assured tenancy” has the same meaning as in Part 2 of the Housing (Scotland) Act 1988;”.

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Housing (Northern Ireland) Order 1988 (S.I. 1988/1990 (N.I. 23))

- 17 Part 2 of the Housing (Northern Ireland) Order 1988 is amended as follows.
- 18 (1) Article 7A (persons not eligible for housing assistance) is amended as follows.
- (2) In paragraph (4) for “another person” substitute “a person falling within paragraph (4A)”.
- (3) After paragraph (4) insert—
- “(4A) A person falls within this paragraph if the person—
- (a) falls within a class specified in an order under section 119(1) of the Immigration and Asylum Act 1999; but
- (b) is not a national of an EEA State or Switzerland.”
- 19 (1) Article 9 (notification of decision and reasons) is amended as follows.
- (2) After paragraph (3) insert—
- “(3A) If the Executive decides that the applicant is homeless, threatened with homelessness or has a priority need but would not have done so without having had regard to a restricted person, it shall also notify him of—
- (a) the fact that its decision was reached on that basis,
- (b) the name of the restricted person,
- (c) the reason why the person is a restricted person, and
- (d) the effect of Article 10(2E) and (2F) or (as the case may be) 11(2A) and (2B).”
- (3) After paragraph (5) insert—
- “(6) In this Article “a restricted person” means a person—
- (a) who is not eligible for assistance under this Part,
- (b) who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996, and
- (c) either—
- (i) who does not have leave to enter or remain in the United Kingdom, or
- (ii) whose leave to enter or remain in the United Kingdom is subject to a condition to maintain and accommodate himself, and any dependants, without recourse to public funds.”
- 20 (1) Article 10 (duties to persons found to be homeless) is amended as follows.
- (2) After paragraph (2) insert—
- “(2A) In a restricted case the Executive shall cease to be subject to the duty under paragraph (2) if the applicant, having been informed of the possible consequence of refusal—
- (a) accepts a private accommodation offer, or
- (b) refuses such an offer.
- (2B) For the purposes of this Article an offer is a private accommodation offer if—

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- (a) it is an offer of a private tenancy made by a landlord to the applicant in relation to any accommodation which is, or may become, available for the applicant's occupation,
 - (b) it is made, with the approval of the Executive, in pursuance of arrangements made by the Executive with the landlord with a view to bringing its duty under paragraph (2) to an end, and
 - (c) the tenancy being offered is for a term certain of at least 12 months.
 - (2C) The Executive shall not approve a private accommodation offer unless it is satisfied that the accommodation is suitable for the applicant and that it is reasonable for him to accept the offer.
 - (2D) For the purposes of paragraph (2C) an applicant may reasonably be expected to accept an offer even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
 - (2E) In a restricted case the Executive shall, so far as reasonably practicable, bring its duty under paragraph (2) to an end as mentioned in paragraph (2A).
 - (2F) In a restricted case the Executive shall also cease to be subject to the duty under paragraph (2) if the applicant, having been informed of the possible consequence of refusal, refuses a reasonable offer of accommodation under the Housing Selection Scheme.
 - (2G) For the purposes of paragraph (2F)—
 - (a) “the Housing Selection Scheme” means the scheme for the allocation of housing accommodation held by the Executive approved from time to time under Article 22 of the Order of 1981, and
 - (b) an offer of accommodation is reasonable if it is a reasonable offer within the meaning of that Scheme.
 - (2H) Paragraphs (2A) to (2G) are without prejudice to any other way in which the Executive can cease to be subject to the duty under paragraph (2).”
- (3) After paragraph (4) insert—
- “(5) In this Article—
- “a private tenancy” has the same meaning as in the Private Tenancies (Northern Ireland) Order 2006,
 - “a restricted case” means a case falling within paragraph (2) where the Executive would not be satisfied as mentioned in paragraphs (1) and (2) without having had regard to a restricted person,
 - “a restricted person” has the same meaning as in Article 9.”
- 21 (1) Article 11 (duties to persons found to be threatened with homelessness) is amended as follows.
- (2) After paragraph (2) insert—
- “(2A) Paragraph (2B) applies in a restricted threatened homelessness case where, in pursuance of the duty under paragraph (2), the Executive secures that

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accommodation other than that occupied by the applicant when he made his application is available for occupation by him.

(2B) The provisions of Article 10(2A) to (2H) (circumstances in which duty in restricted case ceases) apply, with any necessary modifications, in relation to the duty under paragraph (2) as they apply in relation to the duty under Article 10(2) in a restricted case (within the meaning of that Article).”

(3) After paragraph (4) insert—

“(4A) In this Article—

“a restricted person” has the same meaning as in Article 9,

“a restricted threatened homelessness case” means a case falling within paragraph (2) where the Executive would not be satisfied as mentioned in paragraphs (1) and (2) without having had regard to a restricted person.”

Immigration and Asylum Act 1999 (c. 33)

22 (1) Section 119 of the Immigration and Asylum Act 1999 (persons subject to immigration control to be disregarded in determining another person’s eligibility for accommodation or assistance) is amended as follows.

(2) In subsection (1)(b) for “another person” substitute “a person falling within subsection (1A)”.

(3) After subsection (1) insert—

“(1A) A person falls within this subsection if the person—

- (a) falls within a class specified in an order under subsection (1); but
- (b) is not a national of an EEA State or Switzerland.”