

Freedom of Information Internal Review decision

Internal Reviewer	Katherine Leslie, BBC Advisor – Freedom of Information
Reference	RFI20161575 / IR2016079
Date	31 October 2016

Requested information

On 23 August 2016 the Applicant, Joyce Lawrence via www.whatdotheyknow.com, requested the following information under the Freedom of Information Act 2000 ('the Act'):

I have searched your Legislation and can find no reference as to Sheltered Housing can only receive a ARC Licence if it has only one guest room if more than one guest room then a ARC Licence will be refused can you please verify if that a ARC Licence will be refused if the sheltered accommodation has more than one guest room for residents visitors and show me a copy of the Legislation stating this.

On 20 September 2016 the BBC responded advising:

The information you are seeking is contained in part 2 of schedule 4 of the Communications (Television Licensing) Regulations 2004. Pursuant to section 21 of the Act (information freely available elsewhere) I am happy to refer you to the published source below:

<http://www.legislation.gov.uk/uksi/2004/692/contents/made>

On 26 September 2016 the Applicant sought an internal review on the basis that:

This is the response received which is unsatisfactory, the link given I am told (2004 legislation)is in Part 2 Schedule 4 but the only reference I can see with any remote bearing on this is Part 3 (not 2) schedule four ,this refers to a room that is included in the Arc Licence (not a guest room as guest rooms have to have a full TVs licence) April 1st 2007 included 1 respite room in the ARC Licence (not a guest room) as guest rooms as I have stated have to pay a full tv licence I do not see the connection as to whether a ARC Licence is allowed connected to guest rooms if it had been two respite rooms then I could understand the refusal.

Added to this is it not statutory that if a ARC Licence is refused the person who applied for it would receive written details of the refusal also stating reason why with full details.

Issues on review

The issue on review is whether the BBC handled the Applicant's request in accordance with its obligations and duties under the Act. In particular, as required by section 1(1)(a) and (b), did the BBC confirm or deny that it holds the requested information, and have that information communicated to the Applicant?

Decision

I am satisfied that the BBC handled the request in accordance with the Act.

Analysis

The Freedom of Information Act 2000 only covers recorded information held by the BBC, and the BBC is not required to create new information to respond to a request, or give a judgement or opinion that is not already recorded. The Information Commissioner has confirmed this position in its online guidance on handling FOI requests.¹ Furthermore, pursuant to section 21 of the Act, the BBC does not have to provide information which is accessible to the public by other means.

The Applicant made a request under the Act seeking clarification for whether an ARC Licence will be refused if the sheltered accommodation has more than one guest room for residents' visitors and requested a copy of the relevant legislation. In her request for an internal review, the Applicant is not satisfied with the BBC's response and believes that Part three (not Part two) of Schedule Four is relevant.

I have reviewed the relevant Regulation. Part three of Schedule Four does not exist.

As indicated in the BBC's initial response, Schedule Four of the *Communications (Television Licensing) Regulations 2004* sets out the relevant law for Accommodation for Residential Care (ARC) Concessionary TV Licences, and this Schedule specifies the fee payable for ARC Licences and provides the conditions that must be met for an ARC licence to be valid. While not explicitly referenced in the first response, Part 1 of Schedule 4 is also relevant to the Applicant's request. Despite section 21 of the Act, the BBC included the URL link to the relevant legislation.

As required by section 1(1) of the Act, I am satisfied that the BBC confirmed the requested information was held and the BBC directed the Applicant to the

¹See the Information Commissioner's guidance at <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>



relevant legislation. The BBC is not required under the FOI Act to give a judgement or opinion on an application for an ARC Licence.

To assist the Applicant further, I have **attached** a copy of Schedule Four to this decision. In addition, I refer the Applicant to information available on the TVL website about ARC licences and sheltered homes; see for example: <http://www.tvlicensing.co.uk/faqs> and <http://www.tvlicensing.co.uk/check-if-you-need-one/business-and-organisations/sheltered-accommodation-aud9>.

In her request for an internal review, the Applicant also refers to an application of an ARC licence, which was refused but no written details of the refusal were provided. As mentioned in subsequent FOI requests with the Applicant, the TV Licensing Customer Relations team is fully qualified to answer these particular queries and the Applicant may contact the team directly via email on tvldarwenCR@capita.co.uk.

Appeal Rights

If you are not satisfied with the outcome of your internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF; Telephone 01625 545 700 or www.ico.gov.uk

SCHEDULE 4

Regulation 3(1)(d)

Accommodation for Residential Care Licences

PART 1

Fees payable in respect of TV licences for accommodation for residential care

Type and description of TV licence

1.—(1) This Schedule specifies the fee payable in respect of a TV licence known as a “TV licence (including colour) Accommodation for Residential Care Composite Form”.

(2) A licence of the type referred to in sub-paragraph (1) is a licence to install and use television receivers at such parts of accommodation for residential care as consist of—

- (a) in the case of a group of dwellings, residential care dwellings;
- (b) in all other cases, living rooms or bedrooms provided for the private occupation of residents in that accommodation,

and which are specified in the licence.

Issue fee

2.—(1) Subject to regulation 6(3), the fee for a TV licence of the type referred to in paragraph 1 shall be determined in accordance with sub-paragraphs (2) to (4).

(2) In the case of accommodation described or referred to in paragraph (a) of any of the definitions of “accommodation for residential care” in paragraphs 4 and 7 to 11 of this Schedule, the fee shall be £5.00 for each unit of accommodation specified in the licence.

(3) In the case of accommodation which consists of a group of dwellings, the fee shall be £5.00 for each residential care dwelling specified in the licence.

(4) In the case of accommodation which is accommodation for residential care by virtue of paragraph 12 of this Schedule, the fee shall be £5.00.

PART 2

Interpretation

General

3.—(1) In this Schedule—

“resident” means—

- (a) in relation to accommodation which is accommodation for residential care by virtue of any of paragraphs 4 to 12, a disabled or retired person who is ordinarily resident in the accommodation, but does not include a person in charge of the accommodation or otherwise employed in it, or a member of the family of either of them;
- (b) in relation to accommodation which is accommodation for residential care by virtue of paragraph 13 below, an eligible person (within the meaning of that paragraph);

“residential care dwelling” means—

- (a) in relation to a group of dwellings which is accommodation for residential care by virtue of any of paragraphs 4 to 11 below, any dwelling which satisfies the requirements of sub-paragraph (4)(a) to (c);
- (b) in relation to a group of dwellings which is accommodation for residential care by virtue of paragraph 13, any dwelling occupied by an eligible person (within the meaning of that paragraph);

“retired” means any person who is aged 60 years or more and, if he works—

- (a) whose working hours do not exceed 15 hours a week; or
- (b) where they do exceed that amount, immediately before 1st April 2004 the person—
 - (i) was ordinarily resident in accommodation in respect of which a television licence for accommodation for residential care was in force; and
 - (ii) was living in that accommodation as a resident (within the meaning of the Wireless Telegraphy (Television Licence Fees) Regulations 1997⁽¹⁾ as they had effect at that time).

(2) In this Schedule “publicly provided or managed”, in relation to a dwelling, means provided or managed in one of the ways specified in—

- (a) paragraph 6; or
- (b) paragraph (b) of each of the definitions of accommodation for residential care in paragraphs 7 to 11.

(3) For the purposes of this Schedule a person is disabled if—

- (a) his sight, hearing or speech is substantially impaired;
- (b) he has a mental disorder; or
- (c) he is physically substantially disabled by any illness, any impairment present from birth, or otherwise.

(4) In this Schedule “a group of specially provided dwellings” means a group of at least four dwellings which fall within a common and exclusive boundary and (subject to sub-paragraph (5))—

- (a) which are provided for occupation by disabled or retired persons;
- (b) which have been erected or converted for the purposes of such occupation; and
- (c) for which there is a person whose function is to care for the needs of the persons referred to in paragraph (a) and who either lives in one of the dwellings within the group or is employed to work in that group for at least 30 hours a week.

(5) The conditions in paragraphs (a) to (c) of sub-paragraph (4) shall not cease to be satisfied in relation to a group of dwellings because—

- (a) (where the group of dwellings is situated in England, Wales, Scotland or Northern Ireland) not more than 25 per cent of the dwellings are right to buy dwellings which do not satisfy the condition in sub-paragraph (4)(a);
- (b) any dwelling is also occupied by any member of the family of any person referred to in sub-paragraph (4)(a);
- (c) any dwelling is occupied by a person who, although aged 60 years or over, is not retired;
- (d) any dwelling is occupied by the person referred to in sub-paragraph (4)(c);
- (e) one dwelling within the group is occupied by a person who is employed to maintain the dwellings in the group or the grounds of those dwellings and that person works in that employment at least 30 hours a week;

(1) S.I. 1997/290, amended by S.I. 1998/558, 1999/765, 2000/630, 2001/772, 2002/641, and 2003/663.

- (f) any dwelling occupied by the person referred to in sub-paragraph (4)(c) or in paragraph (e) above is also occupied by a member of that person's family; or
- (g) one dwelling within the group is used for overnight accommodation, for no longer than 28 nights in any consecutive period, for any member of the family of any person referred to in sub-paragraph (4)(a).

(6) In this paragraph, "employed" has the same meaning as in section 230 of the Employment Rights Act 1996⁽²⁾.

(7) For the purposes of this paragraph, a person is not to be regarded as working if he receives no remuneration for his work.

(8) Sub-paragraph (9) is to apply for the purposes of calculating the number of hours a week worked by any person referred to in sub-paragraph (1), (4)(c) or (5)(e).

(9) The number of hours a week a person works is to be the average number of hours worked in each week for the period of 12 weeks ending—

- (a) where the date (referred to in this sub-paragraph as "the relevant date") on which the application for the licence is made is the last day of a week, with that week; or
- (b) in any other case, with the last complete week before the relevant date.

(10) In calculating the period of 12 weeks referred to in sub-paragraph (9) no account shall be taken of any week during which the person concerned was absent from work for any reason.

(11) For the purposes of this paragraph, "week" means any period of 7 days ending on a Saturday.

(12) In this Schedule two persons are members of the same family if—

- (a) they are married;
- (b) they are partners;
- (c) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle;
- (d) one of them is the child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, aunt or uncle of the other's spouse or partner;
- (e) one of them is or has been the foster child of the other;
- (f) one of them is or has been the foster child of the other's spouse or partner;
- (g) the parent or present or former foster parent of one of them is or has been the other's foster parent; or
- (h) one of them is or has been regularly involved in caring for or being in sole charge of the other whilst living in the same household.

(13) For the purposes of sub-paragraph (12) a person is another's foster child if—

- (a) he has been placed with that person under section 23(2)(a) or 59(1)(a) of the Children Act 1989⁽³⁾; or
- (b) that other person fosters him privately within the meaning given by section 66(1)(b) of that Act.

(14) For the purposes of sub-paragraph (12)—

- (a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning; and
- (b) a person is another's partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship.

(2) 1996 c. 18; section 230 was amended by the Public Interest Disclosure Act 1998 (c. 23), section 15(1).

(3) 1989 c. 41.

England and Wales

4. In this Schedule, in relation to England and Wales—

“accommodation for residential care” means, subject to paragraphs 12 and 13, either—

- (a) an establishment to which paragraph 5 applies, or
- (b) a group of specially provided dwellings which meets the condition specified in paragraph 6;

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind;

“psychopathic disorder” means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned; and

“right to buy dwelling” is a dwelling owned by a person who bought the dwelling in exercise of his right to buy under Part V of the Housing Act 1985 or any successor in title of such a person.

5.—(1) This paragraph applies to any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and which is—

- (a) provided by a local authority under section 21(1)(a) of the National Assistance Act 1948(4);
- (b) an independent school within the meaning of the Education Act 1996(5)—
 - (i) which provides accommodation for 50 or fewer children under the age of 18 years and which is not for the time being approved by the Secretary of State under section 347 of the Education Act 1996(6); and
 - (ii) which provides or is intended to provide residential accommodation with both board and personal care for children at the school who are in need of personal care by reason of being disabled, including by reason of a past or present mental disorder;
- (c) an establishment that is carried on or managed by a person who is registered under Part II of the Care Standards Act 2000(7) to carry on or manage the establishment as a care home within the meaning of section 3 of that Act, or who would be so registered but for—
 - (i) regulation 3(1)(b) of the Care Homes Regulations 2001(8), or
 - (ii) regulation 3(1)(a) or (d) of the Care Homes (Wales) Regulations 2002(9);
- (d) a care hospital; or
- (e) an almshouse established as such before 1st November 1949.

(2) In sub-paragraph (1)(d) the reference to a care hospital is to—

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- (4) 1948 c. 29; section 21(a) was amended by the Children Act 1989 (c. 41), section 108(5) and Schedule 13, paragraph 11(1), and by the National Health Service and Community Care Act 1990 (c. 19), section 42(1). Section 21 was repealed in relation to Scotland by the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9, Part 1.
 - (5) 1996 c. 56; section 463 of the Education Act 1996 (c. 56) defines ‘independent school’. That definition has been amended by the Education Act 2002 (c. 32), section 172. The new definition is in force in relation to England but not yet in force in relation to Wales. The definition still in force for Wales has been amended by the School Standards and Framework Act 1998 (c. 31), section 140(1) and (3), Schedule 30, paragraph 124(a) and Schedule 31, paragraph 124(b).
 - (6) 1996 c. 56; section 347 was amended by the Special Educational Needs and Disability Act 2001 (c. 10), section 42(1) and Schedule 8, Part 1, paragraphs 1 and 12. Section 347 was also amended by the Education Act 2002 (c. 32), section 174. This amendment is in force in relation to England but not Wales. Functions of the Secretary of State, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1.
 - (7) 2000 c. 14; section 11 contains the requirement to be registered under Part 2. Section 11 was amended by the Adoption and Children Act 2002 (c. 38), section 139(1) and Schedule 3, paragraphs 103 and 106.
 - (8) S.I. 2001/3965.
 - (9) S.I. 2002/324.

- (a) any establishment carried on or managed by a person who is registered under Part II of the Care Standards Act 2000 to carry on or manage the establishment as an independent hospital within the meaning of section 2 of that Act⁽¹⁰⁾; or
 - (b) a health service hospital.
- (3) In this paragraph—
- “health service hospital” has the same meaning as in section 128 of the National Health Service Act 1977⁽¹¹⁾; and
- “personal care” means care which includes assistance with bodily functions where such assistance is required.
6. Where accommodation for residential care comprises a group of specially provided dwellings, the dwellings which satisfy the requirements of paragraph 3(4)(a) to (c) must all be dwellings which are provided or managed—
- (a) under Part II of the Housing Act 1985⁽¹²⁾;
 - (b) by a housing association within the meaning of the Housing Associations Act 1985⁽¹³⁾; or
 - (c) by a development corporation within the meaning of the New Towns Act 1981⁽¹⁴⁾.

Scotland

7. In this Schedule in relation to Scotland—
- “accommodation for residential care” means, subject to paragraphs 12 and 13, either—
- (a) any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and—
 - (i) which is provided by a local authority under sections 12, 13A, 13B and 59 of the Social Work (Scotland) Act 1968⁽¹⁵⁾, or section 7 of the Mental Health (Scotland) Act 1984⁽¹⁶⁾;
 - (ii) at which a care service is provided (within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001⁽¹⁷⁾) and that service is registered under Part 1 or Part 2 of that Act; or
 - (iii) which is a health service hospital; or

⁽¹⁰⁾ 2000 c. 14; section 2 was amended, in relation to England, by S.I. 2001/3968, regulation 3(4).

⁽¹¹⁾ 1977 c. 49; this definition was amended by the Health Services Act 1980 (c. 53), sections 1 and 2 and Schedule 1, paragraph 77(d), the National Health Service and Community Care Act 1990 (c. 19), section 26(2)(c), and by the Health Act 1999 (c. 8), section 65 and Schedule 4, paragraphs 4 and 38(1) and (2)(a), the latter of these amendments not being in force in relation to Wales.

⁽¹²⁾ 1985 c. 68.

⁽¹³⁾ 1985 c. 69; section 1 defines ‘housing association’.

⁽¹⁴⁾ 1981 c. 64; a development corporation is defined in section 3. Section 3 was amended by the Government of Wales Act 1998 (c. 38), section 152 and Schedule 18, Part 4.

⁽¹⁵⁾ 1968 c. 49; section 12 was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66(1) and Schedule 9, paragraph 10(5), the Children (Scotland) Act 1995 (c. 36), section 105(4) and Schedule 4, paragraph 15(11), the Community Care (Residential Accommodation) Act 1998 (c. 19), sections 2 and 3(2), the Immigration and Asylum Act 1999 (c. 33), section 120(1), the Community Care and Health (Scotland) Act 2002 (asp 5), section 3, and the Nationality, Immigration and Asylum Act 2002 (c. 41), section 46. Section 13A was amended by the Immigration and Asylum Act 1999 (c. 33), section 120(2), the Regulation of Care (Scotland) Act 2001 (asp 8), sections 72, 79 and Schedule 3, paragraph 4, the Community Care and Health (Scotland) Act 2002 (asp 5), Schedule 2, paragraph 1, and the Nationality, Immigration and Asylum Act 2002 (c. 41), section 46. Section 13B was amended by the Immigration and Asylum Act 1999 (c. 33), section 120, and the Nationality, Immigration and Asylum Act 2002 (c. 41), section 46. Section 59 was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 10(7), the Children (Scotland) Act 1995 (c. 36), Schedule 4, and by the Regulation of Care (Scotland) Act 2001 (asp 8), section 72.

⁽¹⁶⁾ 1984 (c. 36); section 7(b) was amended by the Adults with Incapacity Act (Scotland) 2000 (asp 4), section 88(3) and Schedule 6 to delete the phrase ‘under the following provisions of this Act’. This follows the transfer of guardianship provisions from the Mental Health (Scotland) Act 1984 (c. 36) to the Adults with Incapacity Act (Scotland) 2000 (asp 4).

⁽¹⁷⁾ 2001 asp 8.

- (b) a group of specially provided dwellings in which the dwellings which satisfy the requirements of paragraph 3(4)(a) to (c) of this Schedule are dwellings which are provided or managed—
 - (i) under Part 1 of the Housing (Scotland) Act 1987⁽¹⁸⁾;
 - (ii) by a registered social landlord within the meaning of section 57 of the Housing (Scotland) Act 2001⁽¹⁹⁾; or
 - (iii) by Scottish Homes under section 1 of the Housing (Scotland) Act 1988⁽²⁰⁾;
- “health service hospital” has the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978⁽²¹⁾;
- “mental disorder” means any mental disorder within the meaning of the Mental Health (Scotland) Act 1984⁽²²⁾; and
- “right to buy dwelling” is a dwelling owned by a person who bought the dwelling in exercise of his right to buy under Part III of the Housing (Scotland) Act 1987 or any successor in title of such a person.

Northern Ireland

8. In this Schedule in relation to Northern Ireland—

- “accommodation for residential care” means, subject to paragraphs 12 and 13, either—
- (a) any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and which—
 - (i) is provided by the Department of Health and Social Services for Northern Ireland under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽²³⁾;
 - (ii) is carried on by a person who is duly registered in respect thereof under Part II of the Registered Homes (Northern Ireland) Order 1992⁽²⁴⁾ or who would be so registered but for Article 3(2)(f) or 4(4) of that Order; or
 - (iii) is carried on by a person who is duly registered in respect thereof under Part III of the Registered Homes (Northern Ireland) Order 1992 or who would be so registered but for Article 16(2)(a) or (b) of that Order; or
 - (b) a group of specially provided dwellings in which the dwellings which satisfy the requirements of paragraph 3(4)(a) to (c) of this Schedule are dwellings which are provided or managed—
 - (i) under the Housing (Northern Ireland) Order 1981⁽²⁵⁾; or

⁽¹⁸⁾ 1987 c. 26.

⁽¹⁹⁾ 2001 asp 10.

⁽²⁰⁾ 1988 c. 43; section 1 was amended by the Housing (Scotland) Act 2001, section 112 and Schedule 10, paragraph 14(1), (2)(a) and (2)(b)(i) - (2)(b)(iv). Scottish Homes continue to exercise their functions under section 1(3)(b) of the Housing (Scotland) Act 1988 (c. 43) by virtue of regulation 3(a) of S.S.I. 2001/397.

⁽²¹⁾ 1978 c. 29; the definition of “health service hospital” was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66(1) and Schedule 9, paragraph 19(22)(b).

⁽²²⁾ 1984 c. 36; the definition of “mental disorder” was amended by the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 (asp 1), section 3(1)(a), to include after ‘mental illness’ ‘(including personality disorder)’.

⁽²³⁾ S.I. 1972/1265 (N.I. 14); article 15 was amended by S.I. 1992/3204 (N.I. 20), article 37 and Schedule 1, S.I. 1991/194 (N.I. 1), article 34 and Schedule 5, the Immigration and Asylum Act 1999 (c. 33), section 121, and the Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 (c. 5) (N.I.), section 4 and the Schedule.

⁽²⁴⁾ S.I. 1992/3204 (N.I. 20).

⁽²⁵⁾ S.I. 1981/156 (N.I. 3).

- (ii) by a Housing Association within the meaning of the Housing (Northern Ireland) Order 1992⁽²⁶⁾;

“mental disorder” means any mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986⁽²⁷⁾; and

“right to buy dwelling” is a dwelling owned by a person—

- (a) who bought the dwelling in exercise of his right to buy under Part II of the Housing (Northern Ireland) Order 1983⁽²⁸⁾ as it had effect immediately before the day of the coming into operation of Article 96 of the Housing (Northern Ireland) Order 1992; or
- (b) who bought it under a scheme made under Article 3 of the Housing (Northern Ireland) Order 1983 as substituted by Article 96 of the Housing (Northern Ireland) Order 1992, or under an earlier scheme made by the Northern Ireland Housing Executive and having like effect,

or any successor in title of such a person.

Guernsey

9. In this Schedule in relation to the Bailiwick of Guernsey—

“accommodation for residential care” means, subject to paragraphs 12 and 13, either—

- (a) any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and which—
 - (i) is carried on by a person who is duly registered in respect thereof under the Nursing Homes and Residential Homes (Guernsey) Law 1976; or
 - (ii) is exempt from registration under section 6 of that Law; or
- (b) a group of specially provided dwellings which are provided or managed—
 - (i) by any Committee of the States of Guernsey; or
 - (ii) by a body approved in writing for the purposes of these Regulations by the States of Guernsey Board of Health;

“mental disorder” means any mental ailment within the meaning of the Mental Treatment Law (Guernsey) 1939.

Isle of Man

10. In this Schedule in relation to the Isle of Man—

“accommodation for residential care” means, subject to paragraphs 12 and 13, either—

- (a) any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and which—
 - (i) is provided under section 22 of the National Health Service (Isle of Man) Act 1948⁽²⁹⁾;
 - (ii) is provided under section 22(1) of the National Assistance (Isle of Man) Act 1951⁽³⁰⁾; or

⁽²⁶⁾ S.I. 1992/1725 (N.I. 15). “Housing association” is defined in article 3.

⁽²⁷⁾ S.I. 1986/595 (N.I. 4).

⁽²⁸⁾ S.I. 1983/1118 (N.I. 15); Part II was amended by article 96 of S.I. 1992/1725 (N.I. 15).

⁽²⁹⁾ An Act of Tynwald.

⁽³⁰⁾ An Act of Tynwald.

- (iii) is carried on by a person who is duly registered in respect thereof under the Nursing and Residential Homes Act 1988⁽³¹⁾; or who would be so registered but for section 1(2), (3) or (5) of that Act; or
- (b) a group of specially provided dwellings which are provided or managed—
 - (i) under Part IV of the Housing Act 1955⁽³²⁾; or
 - (ii) by a housing association under Part II of the Housing (Miscellaneous Provisions) Act 1976⁽³³⁾;

“mental disorder” means any mental disorder within the meaning of the Mental Health Act 1998⁽³⁴⁾.

Jersey

11. In this Schedule in relation to the Bailiwick of Jersey—

“accommodation for residential care” means, subject to paragraph 13, either—

- (a) any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for disabled or retired persons and which—
 - (i) is carried on by a person who is duly registered in respect thereof under the Nursing and Residential Homes (Jersey) Law 1994; or
 - (ii) is exempt from registration under that Law; or
- (b) a group of specially provided dwellings which are provided or managed—
 - (i) by a Committee of the States;
 - (ii) by one of the Parishes; or
 - (iii) by a body approved in writing for the purposes of these Regulations by the Health and Social Services Committee;

“mental disorder” means a mental disorder as defined in the Mental Health (Jersey) Law 1969.

Accommodation for residential care: supplementary provisions

12.—(1) For the purposes of Part 1 of this Schedule, accommodation for residential care is to include a dwelling which is occupied by—

- (a) a person who immediately before 19th May 1988 was licensed by a television licence for accommodation for residential care (“a licensee”); or
- (b) a person who immediately before that date was living with a licensee and who would, at that time, have qualified to be so licensed,

and which is publicly provided or managed.

(2) A dwelling, which is situated in England, Wales, Scotland or Northern Ireland, shall not constitute accommodation for residential care by virtue of sub-paragraph (1) if every person occupying it who falls within paragraph (a) or (b) of that sub-paragraph is aged 75 years or more.

(3) Sub-paragraph (1) does not apply in the Bailiwick of Jersey.

13.—(1) For the purposes of Part 1 of this Schedule, accommodation for residential care is to include qualifying accommodation in which one or more eligible persons are living.

⁽³¹⁾ An Act of Tynwald.

⁽³²⁾ An Act of Tynwald.

⁽³³⁾ An Act of Tynwald.

⁽³⁴⁾ An Act of Tynwald.

(2) In this paragraph—

- (a) “eligible person”, in relation to any qualifying accommodation, means any person who—
 - (i) is a disabled or retired person;
 - (ii) is ordinarily resident in the accommodation in a dwelling which is provided for occupation by such persons, and which was erected or converted for the purposes of such occupation;
 - (iii) (where the accommodation is situated in England, Wales, Scotland or Northern Ireland) is under the age of 75 years;
 - (iv) was ordinarily resident in any dwelling forming part of the accommodation at any time on or after 1st June 1998 during the period specified in a relevant licence issued in respect of the accommodation; and
 - (v) at that time was a disabled or retired person, and was living in the accommodation in a dwelling which was provided for occupation by such persons, and which was erected or converted for the purposes of such occupation;
- (b) “qualifying accommodation” means a group of at least 4 dwellings—
 - (i) which are publicly provided or managed;
 - (ii) one or more of which are provided for occupation by disabled or retired persons and were erected or converted for the purposes of such occupation; and
 - (iii) which together constituted accommodation in respect of which a relevant licence was issued for any period ending on or after 1st June 1998;
- (c) “relevant licence” means a licence of the type specified in paragraph 1 of this Schedule which was issued on the grounds that the accommodation to which it applied constituted accommodation for residential care by virtue of being a group of specially provided dwellings as described or referred to in any of paragraphs 4 to 11 above.

(3) For the purposes of sub-paragraph (2)—

- (a) a dwelling does not cease to be provided for occupation by a disabled or retired person by reason only that it is also occupied by members of that person’s family;
- (b) in the case of a group of dwellings in England, Wales, Scotland or Northern Ireland, the dwellings are to be treated as being publicly provided or managed if—
 - (i) at least 75 per cent of the dwellings are so provided or managed (including all of those provided for occupation by disabled persons or retired persons); and
 - (ii) the remainder are right to buy dwellings.