

## SCHEDULE 1

### TRANSITIONAL PROVISIONS

#### Registration in respect of existing undertakings

5.—(1) This paragraph shall have effect subject to paragraphs 6 (supply of information) and 7 (pending decision as to cancellation).

(2) This sub-paragraph applies where, in the case of any existing provider, and whether or not the existing provider has made any representations in accordance with paragraph 3, the regulator has—

- (a) sent the Commission the transfer of registration form relating to the existing undertaking; and
- (b) specified in the form the applicable description in respect of the existing undertaking.

(3) This sub-paragraph applies where, in the case of any existing undertaking, the Commission has received, by not later than twenty-eight days after the return date, any representations made by the existing provider in accordance with paragraph 3 in respect of the information specified in paragraph 4.

(4) Where—

- (a) sub-paragraph (2) applies; and
- (b) sub-paragraph (3) does not apply,

the existing provider shall, with effect from the registration commencement date or, if later, twenty-eight days after the return date, be treated for the purposes of Part II of the Act as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description specified in the transfer of registration form.

(5) Where by virtue of sub-paragraph (4) an existing provider is treated as having been granted registration for the purposes of Part II of the Act, the conditions (if any) specified by the regulator in the transfer of registration form as being the conditions to which the registration or licence is subject shall, in so far as they are capable of being conditions to which the registration for the purposes of Part II of the Act is subject, have effect from the effective date—

- (a) as if they were conditions to which the registration for those purposes is subject; and
- (b) as if, for the purposes of section 19(1) of the Act, they had been agreed in writing between the existing provider and the Commission.

(6) Where sub-paragraphs (2) and (3) apply, the Commission shall, having regard to the representations referred to in sub-paragraph (3), determine—

- (a) the applicable description (if any) that applies to the existing undertaking;
- (b) the conditions (if any) to which the registration or licence was subject at the date of the latest representations made in accordance with paragraph 3;
- (c) in a case where the existing provider is registered under Part I of the 1984 Act in respect of a residential care home, whether for the purposes of section 3 of that Act he is a manager of the home but is not in control of it (whether as owner or otherwise);
- (d) any other matter in relation to the information specified in paragraph 4, so far as may be necessary to enable the existing provider, in accordance with sub-paragraph (7), to be treated for the purposes of Part II of the Act as having applied for and been granted registration in respect of the existing undertaking,

and any determination of the Commission under this sub-paragraph shall for the purposes of section 21 of the Act (appeals to the Tribunal) be treated as if it were a decision of the Commission under Part II of the Act.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(7) When the Commission has, for the purposes of sub-paragraph (6)(a), made a determination of the applicable description that applies to an existing undertaking, then with effect from the registration commencement date or, if the determination is made after the registration commencement date, with effect from the date on which the determination was made—

- (a) the existing provider shall, for the purposes of Part II of the Act, be treated as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description determined in accordance with sub-paragraph (6)(a);
- (b) the conditions (if any) determined in accordance with sub-paragraph (6)(b) shall, in so far as they are capable of being conditions to which the registration for the purposes of Part II of the Act is subject, have effect—
  - (i) as if they were conditions to which the registration for those purposes is subject; and
  - (ii) as if, for the purposes of section 19(1) of the Act, they had been agreed in writing between the existing provider and the Commission.

(8) Where, in accordance with this paragraph, a person who is not registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home is to be treated, for the purposes of Part II of the Act, as having applied for and been granted registration in respect of the existing undertaking as a care home—

- (a) the registration shall be treated as being subject to the condition that the care home shall not provide nursing to any person;
- (b) the condition mentioned in paragraph (a) of this sub-paragraph shall be treated, for the purposes of section 19(1) of the Act, as if it had been agreed in writing between the existing provider and the Commission.

(9) The provisions of sub-paragraphs (5) to (8) shall be without prejudice to the powers of the Commission to vary, remove or impose any conditions in accordance with Part II of the Act.

(10) In this paragraph, references to a person being treated as having applied for and been granted registration in respect of an undertaking shall be taken to refer—

- (a) in a case where—
  - (i) the person is treated as having applied for and been granted registration in respect of a care home, and
  - (ii) the Commission has determined in accordance with sub-paragraph (6)(c), or, if the Commission has not determined the matter, the regulator has specified in the transfer of registration form sent to the relevant provider, that—
    - (aa) the person is registered under Part I of the 1984 Act in respect of a residential care home; and
    - (bb) for the purposes of section 3 of that Act he is a manager of the home but is not in control of it (whether as owner or otherwise),

to registration as a manager;

- (b) in any other case, to registration as a person who carries on the undertaking.

(11) This sub-paragraph applies where—

- (a) the existing provider (“the provider”) is to be treated, in accordance with sub-paragraph (4) or (7), as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of an applicable description; and
- (b) not more than twelve months after the effective date in respect of the provider the Commission is satisfied that, in relation to the existing undertaking, the applicable description is incorrect and was incorrect as at the effective date.

- (12) Where sub-paragraph (11) applies—
- (a) the Commission shall determine, with effect from the date on which it is satisfied as to the matters referred to in sub-paragraph (11)(b), the applicable description that is to apply in the case of the provider;
  - (b) the provider shall be treated, with effect from the date on which the Commission is so satisfied, as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description so determined by the Commission;
  - (c) the Commission shall—
    - (i) ensure that, in relation to the registration of the provider for the purposes of Part II of the Act, any particulars required to be kept by the Commission in accordance with regulations made under section 16 of the Act are recorded or varied consistently with that determination; and
    - (ii) issue an amended certificate of registration to the provider.