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STATUTORY INSTRUMENTS

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**1992 No. 3204**

**The Registered Homes (Northern Ireland) Order 1992**

**PART III**

**NURSING HOMES**

*Meaning of “nursing home”*

**16.**—(1) Subject to paragraph (2), in this Order “nursing home” means—

- (a) any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any illness, injury or infirmity;
- (b) any maternity home; and
- (c) any premises not falling within either of the preceding sub-paragraphs which are used, or intended to be used, for the provision of all or any of the following services, namely—
  - (i) the carrying out of surgical procedures under anaesthesia;
  - (ii) endoscopy;
  - (iii) haemodialysis or peritoneal dialysis;
  - (iv) treatment by specially controlled techniques.

(2) The definition in paragraph (1) does not include—

- (a) any hospital which is vested in the Department or managed by an HSS trust;
- (b) any premises managed or provided by a government department, a Board, an HSS trust, or by any other body constituted by a statutory provision or incorporated by Royal Charter;
- (c) any private hospital, as defined in Article 90(2) of the Mental Health (Northern Ireland) Order 1986<sup>(1)</sup>;
- (d) any voluntary home or HSS home within the meaning of the Children and Young Persons Act (Northern Ireland) 1968<sup>(2)</sup> or any home or hostel provided under Part VII of that Act;
- (e) any sanatorium provided at a school or educational establishment and used, or intended to be used, solely by persons in attendance at, or members of the staff of, that school or establishment or members of their families; 1966 c. 26 (N.I.)
- (f) any first aid or treatment room provided at premises to which the Factories Act (Northern Ireland) 1965<sup>(3)</sup> or the Office and Shop Premises Act (Northern Ireland) 1966<sup>(4)</sup> applies or at a sports ground, show ground or place of public entertainment;
- (g) any premises used, or intended to be used, wholly or mainly—
  - (i) by a medical practitioner for the purpose of consultations with his patients;
  - (ii) by a dental practitioner or chiropodist for the purpose of treating his patients; or

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(1) 1986 NI 4  
(2) 1968 c. 34 (N.I.)  
(3) 1965 c. 20 (N.I.)  
(4) 1966 c. 20 (N.I.)

- (iii) for the provision of occupational health facilities, unless they are used, or intended to be used, for the provision of treatment by specially controlled techniques and are not excepted by regulations under sub-paragraph(i);
- (h) any premises used, or intended to be used, wholly or mainly as a private dwelling; or
- (i) any other premises excepted from that definition by regulations.

(3) In paragraph (1) “specially controlled techniques” means techniques specified under paragraph (4) as subject to control for the purposes of this Part.

(4) The Department may by regulations specify as subject to control for the purposes of this Part any technique of medicine or surgery (including cosmetic surgery) as to which it is satisfied that its use may create a hazard for persons treated by means of it or for the staff of any premises where the technique is used.

(5) Regulations under paragraph (4) may define a technique by reference to any criteria which the Department considers appropriate.

(6) In this Article “treatment” includes diagnosis and “treated” shall be construed accordingly.

#### *Requirement of registration*

**17.—**(1) Subject to paragraph (3), any person who carries on a nursing home without being registered under this Part in respect of it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where the manager or intended manager of a nursing home is not in control of it (whether as owner or otherwise) both the manager or intended manager and the person in control are to be treated as carrying on or intending to carry on the home and accordingly as requiring to be registered under this Part.

(3) Where—

- (a) one person only is registered under this Part in respect of a nursing home; and
- (b) that person dies,

his personal representatives or his widow or any other relative of his may for a period not exceeding 4 weeks from his death, or such longer period as the Board may sanction, carry on the home without being registered in respect of it.

(4) Registration under Part II does not affect any requirement to register under this Part.

#### *Offence to hold out premises as nursing home unless registered*

**18.—**(1) A person who, with intent to deceive any person,—

- (a) applies any name to premises; or
- (b) in any way so describes premises or holds premises out,

as to indicate, or reasonably be understood to indicate, that the premises are a nursing home shall be guilty of an offence unless registration has been effected under this Part in respect of the premises.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Registration-general*

**19.—**(1) Each Board shall, for the purposes of this Part, maintain a register of nursing homes in such form and containing such information as may be prescribed.

(2) The register maintained under paragraph (1) shall be available for inspection at all reasonable times and any person inspecting the register shall be entitled to make copies of entries in the register on payment of such reasonable fee as the Board may determine.

(3) An application for registration under this Part shall be made to the Board and, except in prescribed cases, shall be accompanied by a registration fee of such amount as may be prescribed.

(4) Subject to Articles 21, 24 and 25, on receipt of an application for registration and of the registration fee payable (if any) the Board shall register the applicant in respect of the home named in the application and issue to him a certificate of registration.

(5) The certificate of registration issued under paragraph (4) in respect of a nursing home shall be kept affixed in a conspicuous place in the home.

(6) If default is made in complying with paragraph (5), any person registered in respect of the nursing home shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale and to a further fine not exceeding one-tenth of level 2 on the standard scale for each day on which the offence continues after conviction.

(7) The Department may by regulations—

- (a) require persons registered in respect of nursing homes to pay an annual fee of such amount as the regulations may specify; and
- (b) specify when the fee is to be paid.

#### *Conditions of registration*

**20.**—(1) Subject to paragraph (2), the registration of any person in respect of a nursing home shall be subject to such conditions (to be specified in the certificate of registration issued under Article 19(4)) as the Board considers appropriate.

(2) It shall be a condition of the registration of any person in respect of a nursing home that the number of persons kept in the home at any one time (excluding persons carrying on or employed at the home and their relatives) does not exceed such number as may be specified in the certificate of registration.

(3) Without prejudice to the generality of paragraph (1), the conditions imposed under that paragraph by a Board on the registration of any person in respect of a nursing home may include conditions for regulating the age, sex or category of persons who may be received in the home.

(4) The Board may from time to time—

- (a) vary any condition for the time being in force in respect of a home by virtue of this Part; or
- (b) impose an additional condition,

either on the application of a person registered in respect of it or without such an application.

(5) The power of the Board to vary any condition mentioned in paragraph (4)(a) includes, subject to paragraph (2), power to cancel any such condition; and references in this Part to the variation of a condition by the Board shall be construed accordingly.

(6) If any condition for the time being in force in respect of a home by virtue of this Part is not complied with, any person registered in respect of the home shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Refusal of registration*

**21.**—(1) The Board may refuse to register an applicant for registration in respect of a nursing home if it is satisfied—

- (a) that—

- (i) the applicant,
  - (ii) any person concerned or intended to be concerned in carrying on the home, or
  - (iii) any person employed or proposed to be employed at the home,
- is not a fit person to carry on or (as the case may be) be employed at the home;
- (b) that for reasons connected with their situation, construction, state of repair, accommodation, staffing or equipment, the premises used or intended to be used for the purposes of the home, or any other premises used or intended to be used in connection with it, are not fit to be so used; or
  - (c) that the way in which it is intended to carry on the home is such as not to provide services or facilities reasonably required;
  - (d) that the home is not, or will not be, in the charge of a person who is either a medical practitioner or a qualified nurse or, in the case of a maternity home, a registered midwife; or
  - (e) that the condition mentioned in paragraph (3) is not, or will not be, fulfilled in relation to the home.
- (2) In paragraph (1)(d) “qualified nurse”, in relation to a home, means a nurse—
- (a) registered in a prescribed part of the register maintained under section 10 of the Nurses, Midwives and Health Visitors Act 1979(5); and
  - (b) possessing such qualifications as may be specified in a notice served by the Board on the person carrying on or proposing to carry on the home.
- (3) The condition referred to in paragraph (1)(e) is that such number of nurses possessing such qualifications and, in the case of a maternity home, such number of registered midwives as may be specified in a notice served by the Board on the person carrying on or proposing to carry on the home are on duty in the home at such times as may be so specified.
- (4) In preparing any notice under paragraph (2) or (3) the Board shall have regard to the class and, in the case of a notice under paragraph (3), the number of patients for whom nursing care is or is to be provided in the home.

### *Cancellation of registration*

- 22.** The Board may at any time cancel the registration of a person in respect of a nursing home—
- (a) on any ground which would entitle it to refuse an application for the registration of that person in respect of that home;
  - (b) on the ground that the annual fee in respect of the home has not been paid on or before the due date;
  - (c) on the ground—
    - (i) that that person has been convicted of an offence under this Order or any regulations made under it in respect of that or any other nursing home or any residential care home;
    - (ii) that any other person has been convicted of such an offence in respect of that home; or
    - (iii) that any condition for the time being in force in respect of the home by virtue of this Part has not been complied with.

*Urgent procedure for cancellation of registration, etc.*

**23.—**(1) If—

- (a) the Board applies to a justice of the peace for an order—
  - (i) cancelling the registration of a person in respect of a nursing home;
  - (ii) varying any condition for the time being in force in respect of a home by virtue of this Part; or
  - (iii) imposing an additional condition; and
- (b) it appears to the justice of the peace that there will be serious risk to the life, health or well-being of the patients in the home unless the order is made,

he may make the order, and the cancellation, variation or imposition shall have effect from the date on which the order is made.

(2) An application under paragraph (1) may be made *ex parte* and shall be supported by a written statement of the Board's reasons for making the application.

(3) An order under paragraph (1) shall be in writing.

(4) Where such an order is made, the Board shall serve on any person registered in respect of the home, as soon as is practicable after the making of the order,—

- (a) notice of the making of the order and of its terms; and
- (b) a copy of the statement of the Board's reasons which supported its application for the order.

(5) A notice under paragraph (4)(a) shall be accompanied by a notice explaining the right of appeal conferred by Article 27.

*Ordinary procedure for registration, etc. by Board*

**24.—**(1) Subject to paragraph (2), where—

- (a) a person applies for registration under this Part; and
- (b) the Board proposes to grant his application,

the Board shall give him written notice of its proposal and of the conditions subject to which it proposes to grant his application.

(2) The Board need not give notice of such a proposal if it proposes to grant the application subject only to conditions which—

- (a) the applicant specified in the application; or
- (b) the Board and the applicant have subsequently agreed.

(3) The Board shall give an applicant notice of a proposal to refuse his application.

(4) Except where it makes an application under Article 23 and subject to paragraph (5), the Board shall give any person registered in respect of a nursing home notice of a proposal—

- (a) to cancel the registration;
- (b) to vary any condition for the time being in force in respect of the home by virtue of this Part; or
- (c) to impose any additional condition.

(5) The Board need not give a person registered in respect of a nursing home notice of a proposal such as is mentioned in paragraph (4)(b) or (c) if the variation or additional condition in question is to be made or imposed on the application of, or with the agreement of, that person.

(6) A notice under this Article shall give the Board's reasons for its proposal.

### *Right to make representations*

**25.—**(1) A notice under Article 24 shall state that within 14 days of service of the notice any person on whom it is served may in writing require the Board to give him an opportunity to make representations to it concerning the proposal.

(2) Where a notice has been served under Article 24, the Board shall not determine the matter until either—

- (a) any person on whom the notice was served has made representations concerning the matter; or
- (b) the period during which any such person could have required the Board to give him an opportunity to make representations has elapsed without the Board being required to give such an opportunity; or
- (c) the conditions specified in paragraph (3) are satisfied.

(3) The conditions mentioned in paragraph (2) are—

- (a) that a person on whom the notice was served has required the Board to give him an opportunity to make representations to the Board concerning the matter;
- (b) that the Board has allowed him a reasonable period to make his representations; and
- (c) that he has failed to make them within that period.

(4) Representations may be made, at the option of the person making them, either in writing or orally.

(5) If a person informs the Board that he desires to make oral representations, the Board shall give him an opportunity of appearing before and of being heard by the Board.

### *Decision of Board*

**26.—**(1) If the Board decides to adopt the proposal, it shall serve notice in writing of its decision on any person on whom it was required to serve notice of the proposal.

(2) A notice under this Article shall be accompanied by a notice explaining the right of appeal conferred by Article 27.

(3) Subject to paragraph (4), a decision of the Board under this Part shall not take effect—

- (a) if no appeal is brought, until the expiration of the period of 28 days referred to in Article 27(3); and
- (b) if an appeal is brought, until it is determined or abandoned.

(4) Paragraph (3) does not apply to—

- (a) a decision to grant an application for registration subject only to such conditions as are mentioned in Article 24(2);
- (b) a decision to refuse an application for registration; or
- (c) a decision to vary any condition for the time being in force in respect of a nursing home by virtue of this Part or to impose any additional condition if the variation or additional condition is made or imposed on the application of, or with the agreement of, any person registered in respect of that home.

### *Appeals to Registered Homes Tribunal*

**27.—**(1) An appeal against—

- (a) a decision of a Board under this Part; or

- (b) an order made by a justice of the peace under Article 23, shall lie to a Registered Homes Tribunal.
- (2) An appeal shall be brought by notice in writing given to the Board.
- (3) No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order.
- (4) On an appeal against a decision of a Board the tribunal may confirm the decision or direct that it shall not have effect.
- (5) On an appeal against an order made by a justice of the peace the tribunal may confirm the order or direct that it shall cease to have effect.
- (6) A tribunal shall also have power on an appeal against a decision or order—
  - (a) to vary any condition for the time being in force in respect of the home to which the appeal relates by virtue of this Part;
  - (b) to direct that any such condition shall cease to have effect; or
  - (c) to direct that any such condition as it thinks fit shall have effect in respect of the home.
- (7) A Board shall comply with any direction given by a tribunal under this Article.