

## SCHEDULES

### SCHEDULE 4

#### REGISTERED HOMES

#### PART II

##### AMENDMENTS OF ACTS RELATING TO REGISTERED HOMES

###### *Nursing Homes Act 1975*

- 24 In section 1 of the Nursing Homes Act 1975—
- (a) the following sub-paragraph shall be added at the end of paragraph (c) of subsection (1)—
    - “(v) treatment by specially controlled techniques.”;
  - (b) the following subsection shall be added after that subsection—
    - “(1A) In subsection (1) above ' specially controlled techniques' means techniques specified under subsection (3) below as subject to control for the purposes of this Act.”;
  - (c) at the end of paragraph (e) of subsection (2) there shall be added (but not as part of sub-paragraph (iii)) the words " unless they are used or intended to be used for the pro\* vision of treatment by specially controlled techniques and are not excepted by regulations under paragraph (g) below "; and
  - (d) the following subsections shall be added after that subsection—
    - “(3) The Secretary of State may by regulations specify as subject to control for the purposes of this Act any technique of medicine or surgery (including cosmetic surgery) as to which he is satisfied that its use may create a hazard for persons treated by means of it or for the start of any premises where the technique is used.
    - (4) Without prejudice to the generality of section 19 below regulations under subsection (3) may define a technique by reference to any criteria which the Secretary of State considers appropriate.
    - (5) In this section ' treatment' includes diagnosis and ' treated ' shall be construed accordingly.”.
- 25 The following subsection shall be inserted after subsection (1) of section 3 of that Act—
  - “(1A) Registration under this Act does not affect any requirement to register under Part I of Schedule 4 to the Health and Social Services and Social Security Adjudications Act 1983 (registration of residential care homes).”.
- 26 The following section shall be inserted after that section—

**“3A Prohibition of holding out premises as nursing home, maternity home or mental nursing home.**

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

(a) applies any name to premises in England or Wales ; or

(b) in any way so describes such premises or holds such premises out, as to indicate, or reasonably be understood to indicate, that the premises are a nursing home or maternity home, shall be guilty of an offence, unless registration has been effected under this Act in respect of the premises as such a home.

(2) A person who, with intent to deceive any person.—

(a) applies any name to premises in England or Wales ; or

(b) in any way so describes such premises or holds such premises out, as to indicate, or reasonably be understood to indicate, that the premises are a mental nursing home, shall be guilty of an offence, unless registration has been effected under this Act in respect of the premises as such a home.”.

27 The following paragraphs shall be inserted after section 5(1)(a) of that Act—

“(aa) make provision as to the giving of notice by a person registered in respect of such a home of periods during which he or, if he is not in charge of the home, the person who is in charge of it, proposes to be absent from the home ;

(ab) specify the information to be supplied in such a notice ;

(ac) provide for the making of adequate arrangements for the running of such a home during a period when the person in charge of it is absent from it;”.

28 The following paragraphs shall be inserted after section 6(c) of that Act—

“(ca) requiring persons registered under this Act to pay an annual fee of such amount as the regulations may specify ;

(cb) specifying when the fee is to be paid ;”.

29 In paragraph (c) of section 7 of that Act for the words " imposed by section 8(1) and (2) below" there shall be substituted the words " for the time being in force in respect of the home by virtue of this Act ".

30 The following paragraph shall be inserted after paragraph (d) of that section—

“(e) on the ground that the annual fee in respect of the home has not been paid on or before the due date.”.

31 (1) The following subsection shall be substituted for subsection (2A) of section 8 of that Act—

“(2A) The Secretary of State may make regulations—

(a) as to the variation of any condition for the time being in force in respect of a nursing home or mental nursing home by virtue of this Act; and

(b) as to the imposition of additional conditions.”.

(2) In subsection (3) of that section, for the words " imposed by or under subsection (1) or (2) above" there shall be substituted the words " for the time being in force in respect of a home by virtue of this Act ".

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32 The following sections shall be inserted after that section—

**“8A Urgent procedure for cancellation of registration etc.**

- (1) If—
  - (a) the Secretary of State applies to a justice of the peace for an order—
    - (i) cancelling the registration of a person in respect of a nursing home or mental nursing home;
    - (ii) varying any condition for the time being in force in respect of a home by virtue of this Act; or
    - (iii) imposing an additional condition; and
  - (b) it appears to the justice of the peace that there will be a 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 subsection (1) above may be made *ex parte* and shall be supported by a written statement of the Secretary of State's reasons for making the application.
- (3) An order under subsection (1) above shall be in writing.
- (4) Where such an order is made, the Secretary of State shall serve on any person registered in respect of the home, as soon as 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 Secretary of State's reasons which supported his application for the order.

**8B Ordinary procedure.**

- (1) Where—
  - (a) a person applies for registration in respect of a nursing home or mental nursing home; and
  - (b) the Secretary of State proposes to grant his application,

the Secretary of State shall give him written notice of his proposal and of the conditions subject to which he proposes to grant his application.
- (2) The Secretary of State shall give an applicant notice of a proposal to refuse his application.
- (3) Except where he makes an application under section 8A above, the Secretary of State shall give any person registered in respect of a nursing home or mental 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 Act; or
  - (c) to impose any additional condition.
- (4) A notice under this section shall give the Secretary of State's reasons for his proposal.

**8C Right to make representations.**

- (1) A notice under section 8B above shall state that within 14 days of service of the notice any person on whom it is served may in writing require the Secretary of State to give him an opportunity to make representations to him concerning any matter which that person wishes to dispute.
- (2) Where a notice has been served under section 8B above, the Secretary of State shall not determine any matter in dispute until either—
  - (a) any person on whom the notice was served has made representations to him concerning the matter; or
  - (b) the period during which any such person could have required the Secretary of State to give him an opportunity to make representations has elapsed without the Secretary of State being required to give such an opportunity ; or
  - (c) the conditions specified in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are—
  - (a) that a person on whom the notice was served has required the Secretary of State to give him an opportunity to make representations to him concerning the matter;
  - (b) that the Secretary of State has allowed him a reasonable period to make his representations ; and
  - (c) that he has failed to make them within that period.
- (4) The representations may be made, at the option of the person making them, either in writing or orally.
- (5) If he informs the Secretary of State that he desires to make oral representations, the Secretary of State shall give him an opportunity of appearing before and of being heard by a person appointed by the Secretary of State.

**8D Decision of Secretary of State.**

- (1) If the Secretary of State decides to adopt the proposal, he shall serve notice in writing of his decision on any person on whom he was required to serve notice of the proposal.
- (2) A notice under this section shall be accompanied by a note explaining the right of appeal conferred by section 8E below.
- (3) A decision of the Secretary of State, other than a decision to grant an application for registration subject only to conditions agreed between the applicant and the Secretary of State or to refuse an application for registration, shall not take effect—
  - (a) if no appeal is brought, until the expiration of the period of 28 days referred to in section 8E(3) below; and
  - (b) if an appeal is brought, until it is determined or abandoned.

## **8E Appeals.**

- (1) An appeal against—
  - (a) a decision of the Secretary of State under this Act; or
  - (b) an order made by a justice of the peace under section 8A above, shall lie to a Registered Homes Tribunal.
- (2) An appeal shall be brought by notice in writing given to the Secretary of State.
- (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 the Secretary of State 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 Act;
  - (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) The Secretary of State shall comply with any directions of a Tribunal given under this section.”.

33 The following section shall be inserted after section 10 of that Act—

### **“10A Service of documents.**

- (1) Any notice or other document required under this Act to be served on a person carrying on, or intending to carry on, a nursing home or mental nursing home may be served on him by being delivered personally to him, or being sent by post to him in a registered letter or by the recorded delivery service.
- (2) For the purposes of section 7 of the Interpretation Act 1978 (which defines "service by post") a letter to a person carrying on a nursing home or mental nursing home enclosing a notice or other document under this Act shall be deemed to be properly addressed if it is addressed to him at the home.
- (3) Any such notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.
- (4) For the purposes of this section, and of section 7 of the Interpretation Act 1978 in its application to this section, without prejudice to subsection (2) above the proper address of a person, in the case of a secretary or clerk of a body corporate, shall be that of the registered or principal office of that body, in the case of a partner of a firm shall be that of the principal office of

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the firm, and in any other case shall be the last known address of the person to be served.”.

34 (1) The following paragraph shall be substituted for subsection (1)(a) of section 13 of that Act (fines for failure to affix certificate of registration)—

“(a) to a fine of an amount not exceeding level 2 on the standard scale as defined in section 75 of the Criminal Justice Act 1982 ; and”,

(2) " £5 " shall be substituted for " £2 " in subsection (1)(b).

35 The following section shall be inserted after that section—

**“13A Contravention of section 3A.**

A person guilty of an offence under section 3A above shall be liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale as defined in section 75 of the Criminal Justice Act 1982.”.

36 The following section shall be substituted for section 17 of that Act—

**“17 Bodies corporate and their officers.**

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”.

37 In section 23(2) of that Act for the words "the provisions of this Act relating to mental nursing homes" there shall be substituted the words " this Act ".