
STATUTORY INSTRUMENTS

1992 No. 3204

The Registered Homes (Northern Ireland) Order 1992

PART I
INTRODUCTORY

Title and commencement

- 1.—(1) This Order may be cited as the Registered Homes (Northern Ireland) Order 1992.
- (2) Except as provided by paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint.
- (3) The following provisions shall come into operation on the expiration of 2 months from the day on which this Order is made, namely—
- (a) paragraph 2(1) and (2) of Schedule 1 and Article 37 so far as relating thereto; and
 - (b) in Schedule 2 the entries relating to Article 71(1) and (3) of the Health and Personal Social Services (Northern Ireland) Order 1972(1) and to the amendment to Article 71(1) of that Order in Part II of Schedule 5 to the Health and Personal Social Services (Northern Ireland) Order 1991(2), and Article 38 so far as relating thereto.
- (4) An order under paragraph (2) may contain such transitional provisions and savings (whether or not involving the modification of any statutory provision) as appear to the Head of the Department necessary or expedient in connection with the provisions brought into operation.

Interpretation

- 2.—(1) The Interpretation Act (Northern Ireland) 1954(3) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.
- (2) In this Order—
- “Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 and references to “the Board”, in relation to a residential care home or nursing home, are references to the Board for the area in which that home is situated;
- “the Department” means the Department of Health and Social Services;
- “government department” means a department of the Government of the United Kingdom or a Northern Ireland department;
- “HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991(4);

(1) 1972 NI 14
(2) 1991 NI 1
(3) 1954 c. 33 (N.I.)
(4) 1991 NI 1

“maternity home” means any premises used, or intended to be used, for the reception of pregnant women, or of women immediately after childbirth;

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983(5);

“nursing home” has the meaning given by Article 16;

“personal care” has the meaning given by Article 3(4);

“prescribed” means prescribed by regulations;

“registered”, in relation to nurses or midwives, has the meaning given by section 10(7) of the Nurses, Midwives and Health Visitors Act 1979(6);

“regulations” means regulations made by the Department;

“relative” shall be construed in accordance with paragraphs (3) to (6);

“residential care home” has the meaning given by Article 3;

“small home” has the meaning given by Article 4(5);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954(7).

(3) Subject to paragraphs (4) to (6), in this Order “relative” means any of the following—

- (a) husband or wife;
- (b) son or daughter;
- (c) father or mother;
- (d) brother or sister;
- (e) grandparent or other ascendant;
- (f) grandchild or other descendent;
- (g) uncle or aunt;
- (h) nephew or niece.

(4) In deducing any relationship for the purposes of paragraph (3)—

- (a) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the stepchild of any person as his child; and
- (b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(5) In paragraph (3) “husband” and “wife” include a person who is living with a person carrying on or intending to carry on a residential care home or nursing home as that person’s husband or wife, as the case may be, and who has been so living for a period of not less than 6 months.

(6) A person, other than a relative, with whom a person carrying on or intending to carry on a residential care home or nursing home ordinarily resides, and with whom that person has been ordinarily residing for a period of not less than 5 years, shall be treated for the purposes of this Order as if he were a relative.

(5) 1983 c. 54
(6) 1979 c. 36
(7) 1954 c. 33 (N.I.)

PART II

RESIDENTIAL CARE HOMES

Meaning of “residential care home”

3.—(1) Subject to paragraph (2), in this Order “residential care home” means any establishment which provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of—

- (a) old age and infirmity;
- (b) disablement;
- (c) past or present dependence on alcohol or drugs; or
- (d) past or present mental disorder.

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

- (a) any establishment which is used, or is intended to be used, solely as a nursing home;
- (b) any hospital which is vested in the Department or managed by an HSS trust;
- (c) any private hospital, as defined in Article 90(2) of the Mental Health (Northern Ireland) Order 1986⁽⁸⁾;
- (d) any voluntary home or HSS home within the meaning of the Children and Young Persons Act (Northern Ireland) 1968⁽⁹⁾ or any home or hostel provided under Part VII of that Act;
- (e) a university, or an institution of further education, college of education or school within the meaning of the Education and Libraries (Northern Ireland) Order 1986⁽¹⁰⁾;
- (f) any establishment 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;
- (g) any other establishment excepted from that definition by regulations.

(3) In paragraph (1)—

“disablement”, in relation to persons, means that they are substantially and permanently handicapped by illness, injury, congenital deformity, sensory impairment or any other prescribed disability;

“mental disorder” has the meaning given by Article 3 of the Mental Health (Northern Ireland) Order 1986⁽¹¹⁾.

(4) In this Order “personal care” includes the provision of appropriate assistance in counteracting or alleviating the effects of any of the matters mentioned in paragraph (1)(a) to (d) and, in particular, includes—

- (a) action taken to promote rehabilitation;
- (b) assistance with physical or social needs; and
- (c) counselling.

⁽⁸⁾ 1986 NI 4
⁽⁹⁾ 1968 c. 34 (N.I.)
⁽¹⁰⁾ 1986 NI 3
⁽¹¹⁾ 1986 NI 4

Requirement of registration

4.—(1) Subject to paragraphs (3) and (4), any person who carries on a residential care 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 residential care 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 residential care 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 this Part is not required in respect of a small home—

- (a) if the only persons for whom it provides or is intended to provide residential accommodation with both board and personal care are persons carrying on or intending to carry on the home or employed or intended to be employed there or their relatives; or
- (b) in such other cases as may be prescribed.

(5) In this Order a “small home” means an establishment which provides or is intended to provide residential accommodation with both board and personal care for fewer than 4 persons, excluding persons carrying on or intending to carry on the home or employed or intended to be employed there and their relatives.

(6) The references in paragraphs (4) and (5) to the persons for whom residential accommodation is or is intended to be provided relate only to persons who are in need of personal care by reason of any of the matters mentioned in Article 3(1)(a) to (d).

(7) A person who—

- (a) is required to be registered under this Part in respect of a small home; and
- (b) is registered under Part III in respect of the same premises,

may apply to be registered under this Part as if the home were not a small home.

(8) If he does so the provisions of this Part have effect as in relation to a home which is not a small home.

(9) Registration under Part III does not affect any requirement to register under this Part.

Offence to hold out premises as residential care home unless registered

5.—(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 residential care 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

6.—(1) Each Board shall, for the purposes of this Part, maintain a register of residential care 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 shall be accompanied by a registration fee of such amount as may be prescribed.

(4) Subject to Articles 8, 11 and 12, on receipt of an application for registration and of the registration fee the Board shall register the applicant in respect of the home named in the application and issue to him a certificate of registration.

(5) A registration fee shall not be payable in the case of an application of a prescribed description and, in the case of an application for registration in respect of a small home, the Board may waive the whole or part of the registration fee; and in either such case the references in paragraphs (3) and (4) to the registration fee shall be construed as references to such registration fee (if any) as may be payable.

(6) The certificate of registration issued under paragraph (4) in respect of a home other than a small home shall be kept affixed in a conspicuous place in the home.

(7) If default is made in complying with paragraph (6), 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 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.

(8) The Department may by regulations—

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

(9) In the case of registration in respect of a small home, the Board may waive the whole or part of the annual fee, and in such a case the reference in Article 9(b) to the annual fee shall be construed as a reference to such annual fee (if any) as may be payable.

Conditions of registration

7.—(1) Subject to paragraph (2), the registration of any person in respect of a residential care home shall be subject to such conditions (to be specified in the certificate of registration issued under Article 6(4)) as the Board considers appropriate.

(2) It shall be a condition of the registration of any person in respect of a residential care home that the number of persons for whom residential accommodation with both board and personal care is provided 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 residential care 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), the 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

8.—(1) The Board may refuse to register an applicant for registration in respect of a residential care home (other than a small 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.

(2) The Board may refuse to register an applicant for registration in respect of a small home only if it is satisfied that he or any other person concerned or intended to be concerned in carrying on the home is not a fit person to be concerned in carrying on a residential care home.

Cancellation of registration

9. The Board may at any time cancel the registration of a person in respect of a residential care 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 residential care home or any nursing 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;
- (d) in the case of a small home, on the ground that the annual return has not been duly made in accordance with regulations under Article 15.

Urgent procedure for cancellation of registration, etc.

10.—(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 residential care 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 residents 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 14.

Ordinary procedure for registration, etc. by Board

11.—(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 10 and subject to paragraph (5), the Board shall give any person registered in respect of a residential care 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 residential care 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

12.—(1) A notice under Article 11 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 11, 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

13.—(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 14.

(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 14(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 11(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 residential care 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

14.—(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 10,

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.

Annual return in respect of small home

15.—(1) The Department may by regulations require a person registered under this Part in respect of a small home to make an annual return to the Board.

(2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.

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⁽¹²⁾;
- (d) any voluntary home or HSS home within the meaning of the Children and Young Persons Act (Northern Ireland) 1968⁽¹³⁾ 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⁽¹⁴⁾ or the Office and Shop Premises Act (Northern Ireland) 1966⁽¹⁵⁾ 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 chiroprapist for the purpose of treating his patients; or
 - (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,

(12) 1986 NI 4
 (13) 1968 c. 34 (N.I.)
 (14) 1965 c. 20 (N.I.)
 (15) 1966 c. 20 (N.I.)

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(16); 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.

PART IV

CONDUCT AND INSPECTION OF RESIDENTIAL CARE HOMES AND NURSING HOMES

Regulations as to conduct of residential care homes and nursing homes

28.—(1) The Department may make regulations as to the conduct of residential care homes and nursing homes, and in particular—

- (a) as to the facilities and services to be provided in such homes;

- (b) as to the numbers and qualifications of staff to be employed in such homes;
 - (c) as to the numbers of suitably qualified and competent staff to be on duty in such homes;
 - (d) as to the records to be kept and notices to be given in respect of persons received into such homes;
 - (e) as to the information to be supplied to such persons concerning the manner in which any complaint is to be made;
 - (f) as to the notification of events occurring in such homes;
 - (g) as to the giving of notice by a person of a description specified in the regulations of periods during which any person of a description so specified proposes to be absent from a home;
 - (h) as to the information to be supplied in such a notice;
 - (i) as to the information to be supplied on an application for registration.
- (2) Regulations under this Article may provide that—
- (a) a contravention of any specified provision of the regulations shall be an offence against the regulations; and
 - (b) a person guilty of any such offence shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Inspection of residential care homes and nursing homes

29.—(1) Any person authorised in that behalf by a Board may at all times enter and inspect any premises in the area of the Board which are used, or which that person has reasonable cause to believe to be used, for the purposes of a residential care home or a nursing home.

(2) Any person authorised in that behalf by the Department may at all times enter and inspect any premises which are used, or which that person has reasonable cause to believe to be used, for the purposes of a residential care home or a nursing home.

(3) The powers of inspection conferred by paragraphs (1) and (2) shall include power to inspect any records required to be kept in accordance with regulations under Article 28.

(4) The Department may by regulations require that residential care homes and nursing homes shall be inspected on such occasions or at such intervals as may be prescribed.

(5) A person who proposes to exercise any power of entry or inspection conferred by this Article shall if so required produce some duly authenticated document showing his authority to exercise the power.

(6) Any person who obstructs the exercise of any such power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART V

REGISTERED HOMES TRIBUNALS

Constitution of panels for chairmen and members

30.—(1) For the purpose of enabling a tribunal to hear an appeal under Article 14 or 27 to be constituted as occasion may require there shall be—

- (a) a panel appointed by the Lord Chancellor (in this Part referred to as “the legal panel”) of persons available to act as chairmen of any such tribunals; and

- (b) a panel appointed by the Department (in this Part referred to as “the panel of experts”) of persons available to act as members.
- (2) Tribunals constituted under this Part are to be known as Registered Homes Tribunals.
- (3) No person shall be qualified to be appointed to the legal panel unless he possesses such legal qualifications as the Lord Chancellor considers suitable.
- (4) No person shall be qualified to be appointed to the panel of experts unless he has had experience in social work, medicine, nursing or midwifery or such other experience as the Department considers suitable.
- (5) No officer of a government department may be appointed to either panel.
- (6) A person appointed to a panel shall hold office subject to such conditions as to the period of his membership and otherwise as may be determined by the person or body appointing him.
- (7) The Department may—
 - (a) pay to members of Registered Homes Tribunals such fees and allowances as the Department, with the approval of the Department of Finance and Personnel, may determine;
 - (b) defray the expenses of such tribunals up to such amount as the Department, with the approval of the Department of Finance and Personnel, may determine; and
 - (c) provide for such tribunals, such officers and servants and such accommodation as the tribunals may require.

Constitution of tribunals-general

- 31.**—(1) A Registered Homes Tribunal shall consist of a chairman and two other members.
- (2) The chairman shall be a member of the legal panel appointed to the tribunal by the Lord Chancellor.
- (3) The other two members shall be members of the panel of experts appointed to the tribunal by the Department.

Tribunal for appeals relating to nursing homes

- 32.**—(1) A Registered Homes Tribunal to hear an appeal relating solely to registration under Part III shall include a medical practitioner.
- (2) Such a tribunal shall also include—
 - (a) if the appeal relates to registration of a maternity home, a registered midwife; and
 - (b) in any other case, a nurse registered in a prescribed part of the register maintained under section 10 of the Nurses, Midwives and Health Visitors Act 1979(17).
- (3) A tribunal which is constituted to hear both an appeal relating to registration under Part II and an appeal relating to registration under Part III shall include a person selected in accordance with paragraph (2).

Procedure of tribunals

- 33.**—(1) The Department may make rules as to the practice and procedure to be followed with respect to the constitution of Registered Homes Tribunals, and as to proceedings before such tribunals and matters incidental to or consequential on such proceedings; and without prejudice to the generality of this paragraph such rules may make provision—

- (a) requiring particulars to be supplied of matters relevant to the determination of an appeal;
- (b) enabling two or more appeals to be heard together; and
- (c) as to representation before a tribunal, by counsel or a solicitor or otherwise.

(2) Rules under this Article shall be subject to negative resolution.

(3) The Arbitration Act (Northern Ireland) 1937(18) shall not apply to any proceedings before Registered Homes Tribunals except so far as any provision of that Act may be applied to such tribunals with or without modifications by rules made under this Article.

Appeal from decision of tribunal

34. Where a person who appeals to a Registered Homes Tribunal or the Board is dissatisfied in point of law with a decision of the tribunal, that person or the Board may, according as rules of court may provide, either appeal therefrom to the High Court or require the tribunal to state and sign a case for the opinion of the High Court.

PART VI

MISCELLANEOUS AND SUPPLEMENTARY

Defences

35.—(1) In any proceedings for an offence under this Order, subject to paragraph (2), it shall be a defence for the person charged to prove—

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any such case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Regulations and orders

36.—(1) Regulations and orders made by the Department under this Order (other than an order under Article 1(2)) shall be subject to negative resolution.

(2) Regulations and orders made by the Department under this Order may contain such incidental, supplementary or transitional provisions as the Department considers appropriate.

Amendments

37. The statutory provisions set out in Schedule 1 shall have effect subject to the amendments specified in that Schedule.

Repeals

38. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the third column of that Schedule.

N. H. Nicholls
Clerk of the Privy Council