

SCHEDULES

SCHEDULE 4

Section 16.

NURSING HOMES AND MENTAL NURSING HOMES, ETC.

PART I

ENGLAND AND WALES

Preliminary

- 1 In this Part of this Schedule references to sections are, where not further identified, references to sections of the Nursing Homes Act 1975.

Meaning of "nursing home "

- 2 (1) For section 1 (meaning of " nursing home ") there shall be substituted the following section—

“1 Meaning of nursing home.

- (1) In this Act " nursing home " means, subject to subsection (2) below—
- (a) any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity;
 - (b) any premises used, or intended to be used, for the reception of pregnant women, or of women immediately after childbirth (in this Act referred to as a " maternity home "); and
 - (c) any premises not falling within either of the preceding 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) the termination of pregnancies ;
 - (iii) endoscopy ;
 - (iv) haemodialysis or peritoneal dialysis.
- (2) The definition in subsection (1) above does not include—
- (a) any hospital or other premises maintained or controlled by a government department or local authority or any other authority or body instituted by special Act of Parliament or incorporated by Royal Charter ;
 - (b) any mental nursing home as defined in section 2 below;
 - (c) any sanatorium provided at a school or educational establishment and used or intended to be used solely by persons in attendance at,

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or members of the staff of, that school or establishment or members of their families ;

- (d) any first aid or treatment room provided at factory premises, at premises to which the Offices, Shops and Railway Premises Act 1963 applies or at a sports ground, show ground or place of public entertainment;
 - (e) 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
 - (iii) for the provision of occupational health facilities;
 - (f) any premises used, or intended to be used, wholly or mainly as a private dwelling; or
 - (g) any other premises excepted from that definition by regulations made by the Secretary of State.”.
- (2) In section 20(1) (interpretation) in the definition of " maternity home" for the words " section 1(2)" there shall be substituted the words " section 1(1) " –

Grounds for refusal of registration

- 3 (1) Section 4 (refusal of registration) shall be renumbered as subsection (1) of that section ; and in that provision as so renumbered—
- (a) after paragraph (cc) there shall be inserted the following paragraph—
 - “(cd) that the use of the home or any premises used in connection therewith is in contravention of any term contained in an authorisation under section 13 of the said Act of 1976 ;”;
 - and
 - (b) for paragraphs (d) and (e) there shall be substituted the following paragraphs—
 - “(d) that the home is not, or will not be, in the charge of a person who is either a registered medical practitioner or a qualified nurse or, in the case of a maternity home, a certified midwife ; or
 - (e) that the condition mentioned in subsection (3) below is not, or will not be, fulfilled in relation to the home.”.
- (2) After that provision as so re-numbered there shall be inserted the following subsections—
- “(2) In subsection (1) above ' qualified nurse ' , in relation to a home, means a nurse possessing such qualifications as may be specified in a notice served by the Secretary of State on the person carrying on or proposing to carry on the home.
 - (3) The condition referred to in subsection (1) above is that such number of nurses possessing such qualifications and, in the case of a maternity home, such number of certified midwives as may be specified in a notice served by the Secretary of State 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 subsection (2) or (3) above, the Secretary of State shall have regard to the class and, in the case of a notice under subsection (3) above, the number of patients for whom nursing care is or is to be provided in the home.”.
- (3) Where a person's registration in respect of a home is in force immediately before the coming into force of this paragraph, the Secretary of State shall not cancel the registration on any ground mentioned in paragraph (d) or (e) of subsection (1) of section 4 before the expiration of the period of three months beginning with the day on which the relevant notice is served by him under subsection (2) or (3) of that section.
- (4) In section 20 (interpretation) subsection (2) and the definitions of " pupil midwife " and " qualified nurse " in subsection (1) shall be omitted.
- (5) In Schedule 7 to the Nurses, Midwives and Health Visitors Act 1979 paragraphs 24 and 25 shall be omitted and for paragraph 23 there shall be substituted the following paragraph—
- “23 In section 4(1)(d) and (3) of the Nursing Homes Act 1975 for ' certified ' substitute ' registered '.”.

Registration conditions

- 4 (1) In subsection (1) of section 8 (additional registration conditions for mental nursing homes) immediately before the words " a mental nursing home " there shall be inserted the words " a nursing home or ".
- (2) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) The Secretary of State may make regulations as to the manner in which conditions imposed by or under subsection (1) or (2) above may be varied.”.
- (3) Section 5(2) (which is superseded by sub-paragraph (1) above) shall be omitted.

Regulations

- 5 In section 19(3) (regulations) for the words from " under section 5 above " to " contrary intention appears " there shall be substituted the word " may ".

PART II

SCOTLAND

- 6 In this Part of this Schedule references to sections are, where not further identified, references to sections of the Nursing Homes Registration (Scotland) Act 1938.
- 7 In section 1 (registration of nursing homes)—
- (a) after subsection (1) there shall be inserted the following subsection—
- “(1A) If any person carries on a nursing home in contravention of a condition of his registration in respect of that home he shall be guilty of an offence against this Act.”;
- (b) after paragraph (bb) of the proviso to subsection (3), there shall be inserted the following—

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- “; or
- (bc) that the use of the home or any premises used in connection therewith is in contravention of any term contained in an authorisation under section 13 of the said Act of 1976 ; or”;
- (c) for paragraphs (c) and (d) of the said proviso there shall be substituted the following paragraphs—
- “(c) in the case of a nursing home other than a maternity home—
- (i) that the home is not, or will not be, in the charge of a person who is either a registered medical practitioner or a qualified nurse ; or
- (ii) that the condition mentioned in subsection (3B) below is not, or will not be, fulfilled in relation to the home ; or
- (d) in the case of a maternity home—
- (i) that the home is not, or will not be, in the charge of a person who is either a registered medical practitioner or a certified midwife and qualified nurse; or
- (ii) that the condition mentioned in subsection (3B) below is not, or will not be, fulfilled in relation to the home”;
- (d) after subsection (3) there shall be inserted the following subsections—
- “(3A) In the proviso to subsection (3) above " qualified nurse", in relation to a home, means a nurse 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.
- (3B) The condition referred to in the proviso to subsection (3) above is that such number of nurses possessing such qualifications and, in the case of a maternity home, such number of certified midwives as may be specified in a notice served by the Health 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.
- (3C) In preparing any notice under subsection (3A) or (3B) above, the Health Board shall have regard to the class and, in the case of a notice under subsection (3B) above, the number of patients for whom nursing care is or is to be provided in the home.
- (3D) It shall be a condition of the registration of any person in respect of a nursing home that the number of persons kept at any one time in the home (excluding persons carrying on, or employed in, the home, together with their families) does not exceed such number as may be specified in the certificate of registration.
- (3E) Without prejudice to subsection (3D) above, any such registration may be effected subject to such conditions (to be specified in the certificate of registration) as the Health Board may consider appropriate for regulating the age, sex or other category of persons who may be received into the home in question.

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(3F) The Health Board may, upon application in writing made to them by the person registered in respect of a nursing home, vary any condition of the registration of that person in respect of that nursing home imposed by or under subsection (3D) or (3E) above.

(3G) A variation under subsection (3F) above may be for a definite or indefinite period.”.

8 In section 2(1) (cancellation of registration)—

(a) before the proviso there shall be inserted the words " or on the ground that any condition imposed by or under section 1(3D) to (3G) of this Act has not been complied with "; and

(b) in the proviso, after the words " Provided that" there shall be inserted the following words—

“(a) where a person's registration in respect of a home is in force immediately before the coming into force of paragraph 8 of Schedule 4 to the Health Services Act 1980, the Health Board shall not cancel the registration on any ground mentioned in paragraph (c) or (d) of the proviso to subsection (3) of section 1 of this Act before the expiration of the period of three months beginning with the day on which the relevant notice is served by them under subsection (3A) or (3B) of that section ; and

(b)”.

9 After section 3 there shall be inserted the following section—

“3A Conduct and inspection of nursing homes.

The Secretary of State may make regulations—

- (a) as to the conduct of nursing homes;
- (b) with respect to entry into and the inspection of premises used or reasonably believed to be used as a nursing home ;
- (c) with respect to the production and inspection of records required to be kept under this Act,

and regulations made under paragraph (a) above may include provision as to the facilities and services to be provided in nursing homes.”.

10 In section 4 (regulations) for subsection (2) there shall be substituted the following subsection—

“(2) Any regulations under this Act shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

11 Section 5 shall be omitted.

12 In section 7 (power to exempt Christian Science Homes), in subsection (1), for the words from " any requirement" to the end there shall be substituted the words " the provisions of this Act. ".

13 In section 10—

(a) the definition of " pupil midwife" and " qualified nurse" shall be omitted;

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- (b) for the definition of " nursing home " there shall be substituted the following—
 - “ nursing home' has the meaning given by subsection (2) below ;”;
 - and
- (c) in the definition of "certified midwife", for the word " 1915 " there shall be substituted the word " 1951 ".

14 The said section 10 shall be renumbered as subsection (1) of that section, and after that subsection there shall be inserted the following subsections—

- “(2) In this Act' nursing home' means, subject to subsection (3) below—
 - (a) any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity;
 - (b) any maternity home ; and
 - (c) any premises not falling within either of the preceding 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) the termination of pregnancies ;
 - (iii) endoscopy;
 - (iv) haemodialysis or peritoneal dialysis.
- (3) The definition in subsection (2) above does not include—
 - (a) any hospital or other premises maintained or controlled by a government department or local authority or any other authority or body established or incorporated by or under any local Act or by Royal Charter ;
 - (b) any private hospital within the meaning of the Mental Health (Scotland) Act 1960;
 - (c) 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 ;
 - (d) any first aid or treatment room provided at factory premises, at premises to which the Offices, Shops and Railway Premises Act 1963 applies or at a sports ground, show ground or place of public entertainment;
 - (e) 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
 - (iii) for the provision of occupational health facilities;
 - (f) any premises used, or intended to be used, wholly or mainly as a private dwelling ; or
 - (g) any other premises excepted from that definition by regulations made by the Secretary of State.”.

- 15 In section 16(1) of the Mental Health (Scotland) Act 1960 (prerequisites of registration of private hospital) after paragraph (bb) there shall be inserted the following paragraph—
- “(bc) that the use of the hospital or any premises used in connection therewith is in contravention of any term contained in an authorisation under section 13 of the said Act of 1976;”.
- 16 In Schedule 7 to the Nurses, Midwives and Health Visitors Act 1979—
- (a) in paragraph 1, the words from " and ", where it first occurs, to the end and paragraphs 2 and 3(b) shall be omitted ; and
 - (b) in paragraph 3(a), for the words "definitions of 'qualified nurse' and " there shall be substituted the words " definition of ".