

SCHEDULES

SCHEDULE 4

REGISTERED HOMES

PART I

RESIDENTIAL CARE HOMES

Requirement of registration

- 1 (1) Subject to the following provisions of this paragraph, registration under this Part of this Schedule is required in respect of 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 old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder.
- (2) Such an establishment is referred to in this Part of this Schedule as a " residential care home ".
- (3) Registration under this Part of this Schedule does not affect any requirement to register under the Nursing Homes Act 1975.
- (4) Registration under this Part of this Schedule is not required in respect of 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.
- (5) Registration under this Part of this Schedule is not required in respect of any of the following—
- (a) any establishment which is used, or is intended to be used, solely as a nursing home or mental nursing home as defined in sections 1 and 2 of the Nursing Homes Act 1975 ;
 - (b) any hospital as defined in section 128 of the National Health Service Act 1977 which is maintained in pursuance of an Act of Parliament;
 - (c) any hospital as defined in section 145(1) of the Mental Health Act 1983 ;
 - (d) any voluntary home or community home within the meaning of the Child Care Act 1980;
 - (e) any children's home to which the Children's Homes Act 1982 applies ;
 - (f) subject to sub-paragraph (6) below, any school, as defined in section 114 of the Education Act 1944 ;
 - (g) subject to sub-paragraph (7) below, any establishment to which the Secretary of State has made a payment of maintenance grant under regulations made by virtue of section 100(1)(b) of the Education Act 1944 ;

Status: This is the original version (as it was originally enacted).

- (h) any university or university college or college, school or hall of a university ;
 - (j) any establishment managed or provided by a government department or local authority or by any authority or body constituted by an Act of Parliament or incorporated by Royal Charter.
- (6) An independent school within the meaning of the Education Act 1944 is not excluded by sub-paragraph (5) above if the school provides accommodation for 50 or less children under the age of 18 years and is not for the time being approved by the Secretary of State under section 11(3)(a) of the Education Act 1981.
- (7) An establishment to which the Secretary of State has made a payment of maintenance grant under regulations made by virtue of section 100(1)(b) of the Education Act 1944 is only excluded by sub-paragraph (5) above until the end of the period of 12 months from the date on which the Secretary of State made the payment.

General interpretation

- 2 (1) In this Part of this Schedule—
- " disablement", in relation to persons, means that they are blind, deaf or dumb or substantially and permanently handicapped by illness, injury or congenital deformity or any other disability prescribed by the Secretary of State ;
 - " mental disorder " means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind ;
 - " personal care" means care which includes assistance with bodily functions where such assistance is required ;
 - " prescribed " means prescribed by regulations under this Part of this Schedule ;
 - "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned ;
 - " registered", except where the context otherwise requires, means registered under this Part of this Schedule and cognate expressions have a corresponding meaning ;
 - " registration authority ", in relation to a residential care home, means, subject to sub-paragraph (2) below, any council which for the purposes of the Local Authority Social Services Act 1970 is the local authority for the area in which the home is situated ; and
 - " standard scale " means the standard scale as defined in section 75 of the Criminal Justice Act 1982.
- (2) The Council of the Isles of Scilly is the registration authority in relation to a residential care home in the Isles.

Meaning of " relative "

- 3 (1) In this Part of this Schedule " relative " means any of the following—
- (a) husband or wife ;
 - (b) son or daughter ;
 - (c) father or mother ;

Status: This is the original version (as it was originally enacted).

- (d) brother or sister ;
- (e) grandparent or other ascendant;
- (f) grandchild or other descendant;
- (g) uncle or aunt;
- (h) nephew or niece.

- (2) In deducing any relationship for the purposes of sub-paragraph (1) above—
 - (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.
- (3) In this paragraph "husband" and "wife" include a person who is living with a person carrying on or intending to carry on a residential care 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.
- (4) A person, other than a relative, with whom a person carrying on or intending to carry on a residential care 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 Part of this Schedule as if he were a relative.

Penalty for carrying on home without registration

- 4 If any person carries on a residential care home without being registered in respect of it, he shall be liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

Registration of managers etc. and persons in control

- 5 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.

Optional registration

- 6 (1) A person who—
 - (a) is registered under the Nursing Homes Act 1975 in respect of any premises ;
 - and
 - (b) would be required to be registered in respect of them under this Part of this Schedule but for paragraph 1(4) above,may apply to be registered under this Part of this Schedule in respect of those premises.
- (2) If he does so apply, this Part of this Schedule shall have effect in relation to him as if he required to be registered under this Part of this Schedule in respect of those premises.

Status: This is the original version (as it was originally enacted).

Registration

- 7 (1) An application for registration shall be made to the registration authority and shall be accompanied by a registration fee of such amount as the Secretary of State may by regulations prescribe.
- (2) Subject to paragraphs 11, 14 and 15 below, on receipt of an application for registration and of the registration fee the registration authority shall register the applicant in respect of the home named in the application and issue to him a certificate of registration.
- (3) 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 ; and the registration may also be subject to such other conditions (to be specified in the certificate) as the registration authority consider appropriate for regulating the age, sex or category of persons who may be received in the home.
- (4) The registration authority 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 of this Schedule ; or
 - (b) impose an additional condition,
- either on the application of a person registered in respect of it or without such an application.
- (5) If any condition for the time being in force in respect of a home by virtue of this Part of this Schedule is not complied with, any person registered in respect of the home shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.
- (6) The certificate of registration issued in respect of any home shall be kept affixed in a conspicuous place in the home ; and if default is made in complying with this subparagraph, any person registered in respect of the home shall be liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale and to a further fine not exceeding £5 for each day on which the offence continues after conviction.

Death of only person registered in respect of home

- 8 Where—
- (a) one person only is registered 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 registration authority may sanction, carry on the home without being registered in respect of it.

Inspection of registers

- 9 The registers kept by a registration authority for the purposes of this Part of this Schedule shall be available for inspection at all reasonable times, and any person

Status: This is the original version (as it was originally enacted).

inspecting any such register shall be entitled to make copies of entries in the register on payment of such reasonable fee as the registration authority may determine.

Annual fee for registration

- 10 The Secretary of State 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.

Refusal of registration

- 11 The registration authority may refuse to register an applicant for registration in respect of a residential care home if they are satisfied—
- (a) 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 ;
 - (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.

Cancellation of registration

- 12 The registration authority may cancel the registration of a person in respect of a residential care home—
- (a) on any ground which would entitle them to refuse an application for his registration in respect of it;
 - (b) on the ground that the annual fee in respect of the home has not been paid on or before the due date ; or
 - (c) on the ground—
 - (i) that he has been convicted of an offence under this Part of this Schedule or any regulations made under it in respect of that or any other 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 of this Schedule has not been complied with.

Urgent procedure for cancellation of registration etc.

- 13 (1) If—
- (a) the registration authority apply 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 of this Schedule ; or
 - (iii) imposing an additional condition ; and

Status: This is the original version (as it was originally enacted).

- (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 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 sub-paragraph (1) above may be made ex parte and shall be supported by a written statement of the registration authority's reasons for making the application.
- (3) An order under sub-paragraph (1) above shall be in writing.
- (4) Where such an order is made, the registration authority 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 authority's reasons which supported their application for the order.

Procedure—general

- 14 (1) Subject to sub-paragraph (2) below, where—
- (a) a person applies for registration ; and
 - (b) the registration authority propose to grant his application
- the authority shall give him written notice of their proposal and of the conditions subject to which they propose to grant his application.
- (2) The registration authority need not give notice of such a proposal if they propose to grant the application subject only to conditions which—
 - (a) the applicant specified in the application; or
 - (b) the authority and the applicant have subsequently agreed.
 - (3) The registration authority shall give an applicant notice of a proposal to refuse his application.
 - (4) Except where they make an application under paragraph 13 above, the registration authority 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 of this Schedule ; or
 - (c) to impose any additional condition.
 - (5) A notice under this paragraph shall give the registration authority's reasons for their proposal.

Right to make representations

- 15 (1) A notice under paragraph 14 above shall state that within 14 days of service of the notice any person on whom it is served may in writing require the registration authority to give him an opportunity to make representations to them concerning the matter.

Status: This is the original version (as it was originally enacted).

- (2) Where a notice has been served under paragraph 14 above, the registration authority 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 them to give him an opportunity to make representations has elapsed without their being required to give such an opportunity; or
 - (c) the conditions specified in sub-paragraph (3) below are satisfied.
 - (3) The conditions mentioned in sub-paragraph (2) above are—
 - (a) that a person on whom the notice was served has required the registration authority to give him an opportunity to make representations to them concerning the matter;
 - (b) that the registration authority have 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 he informs the registration authority that he desires to make oral representations, they shall give him an opportunity of appearing before and of being heard by a committee or subcommittee of the registration authority.
- 16 (1) If the registration authority decide to adopt the proposal, they shall serve notice in writing of their decision on any person on whom they were required to serve notice of their proposal.
- (2) A notice under this paragraph shall be accompanied by a note explaining the right of appeal conferred by paragraph 17 below.
 - (3) A decision of a registration authority, other than a decision to grant an application for registration subject only to such conditions as are mentioned in paragraph 14(2) above 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 paragraph 17(3) below ; and
 - (b) if an appeal is brought, until it is determined or abandoned.

Appeals

- 17 (1) An appeal against—
 - (a) a decision of a registration authority ; or
 - (b) an order made by a justice of the peace under paragraph 13 above,shall lie to a Registered Homes Tribunal.
- (2) An appeal shall be brought by notice in writing given to the registration authority.
 - (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 registration authority the Tribunal may confirm the decision or direct that it shall not have effect.

Status: This is the original version (as it was originally enacted).

- (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 of this Schedule ;
 - (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 registration authority shall comply with any direction given by a Tribunal under this paragraph.

Service of documents

- 18 (1) Any notice or other document required under this Part of this Schedule to be served on a person carrying on, or intending to carry on, a residential care 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 residential care home enclosing a notice or other document under this Part of this Schedule 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 the firm and in any other case shall be the last known address of the person to be served.

Conduct of residential care homes

- 19 (1) The Secretary of State may make regulations as to the conduct of residential care 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 notification of events occurring in such homes ;
 - (f) 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 ;
 - (g) as to the information to be supplied in such a notice ;

Status: This is the original version (as it was originally enacted).

- (h) making provision for children under the age of 18 years who are resident in such homes to receive a religious upbringing appropriate to the religious persuasion to which they belong;
 - (j) as to the form of registers to be kept by registration authorities for the purposes of this Part of this Schedule and the particulars to be contained in them ; and
 - (k) as to the information to be supplied on an application for registration.
- (2) Regulations under this paragraph may provide that a contravention of or failure to comply with any specified provision of the regulations shall be an offence against the regulations; and any person guilty of an offence against the regulations shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.

Inspection of homes

- 20 (1) Any person authorised in that behalf by the Secretary of State 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.
- (2) Any person authorised in that behalf by a registration authority may at all times enter and inspect any premises in the area of the authority which are used, or which that person has reasonable cause to believe to be used, for those purposes.
- (3) The powers of inspection conferred by sub-paragraphs (1) and (2) above shall include power to inspect any records required to be kept in accordance with regulations under this Schedule.
- (4) The Secretary of State may by regulations require that residential care homes shall be inspected on such occasions or at such intervals as the regulations may prescribe.
- (5) A person who proposes to exercise any power of entry or inspection conferred by this paragraph 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 liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale.

Prosecutions etc.

- 21 Where an offence under this Part of this Schedule or any regulations under it committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- 22 (1) In any proceedings for an offence under this Part of this Schedule, subject to sub-paragraph (2) below, 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

Status: This is the original version (as it was originally enacted).

- (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 sub-paragraph (1) above 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 clear 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

- 23 (1) Any power of the Secretary of State to make regulations under this Part of this Schedule shall be exercisable by statutory instrument; and any statutory instrument containing regulations under this Part of this Schedule shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any such power may be exercised—
- (a) either in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case ; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which it is exercised, or different provision for different cases or different classes of case or different provision as respects the same class or classes of case for different purposes ;
 - (ii) any such provision either unconditionally or subject to any specified condition ;

and includes power to make such incidental or supplemental provision in the regulations as the Secretary of State considers appropriate.