

SCHEDULE 1

Article 2

TRANSITIONAL PROVISIONS

Interpretation

1.—(1) In this Schedule—

“1984 Act home” means, in relation to an existing provider, a residential care home, nursing home or mental nursing home in respect of which he is at any time before 1st April 2002 registered under Part I or II of the 1984 Act;

“1989 Act home” means, in relation to an existing provider, a home which is carried on by him and at any time before 1st April 2002 is registered in a register kept for the purposes of section 60 of the 1989 Act or registered under Part VIII of that Act;

“applicable description” means, in respect of an existing undertaking, any description of establishment referred to in section 4(8)(a) of the Act, or description of agency referred to in section 4(9)(a) of the Act, other than a voluntary adoption agency, which applies to that undertaking;

“application transfer date” shall be construed in accordance with paragraph 13;

“authority” means—

- (a) in respect of a person who is or has applied to be registered under Part I of the 1984 Act in respect of a residential care home, the local authority which is the registration authority for the purposes of that Part of that Act in relation to that home;
- (b) in respect of a person who is or has applied to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home, the Health Authority which pursuant to the National Health Service (Functions of Health Authorities and Administration Arrangements) (England) Regulations 2001(1) may exercise in relation to that home the functions of the Secretary of State under that Part of that Act specified in Schedule 1 to those Regulations;
- (c) in respect of a person who carries on a home that is registered under Part VIII of the 1989 Act, or has applied for registration of a home under paragraph 1 of Schedule 6 to that Act, the local authority which for the purposes of that Act is the local authority in which the home is situated;
- (d) in respect of a person who—
 - (i) carries on, or wishes to carry on, an agency for the supply of nurses within the meaning of the 1957 Act; and
 - (ii) is the holder of a licence which has been granted to him by a local authority under section 2 of that Act and which authorises him to carry on that agency from premises specified in the licence, or has applied for such a licence,

the local authority which for the purposes of that section is the licensing authority in whose area the premises are situated;

“effective date” has the meaning given to it in paragraph 2(1);

“existing care home manager” means an existing provider who—

- (a) is registered under Part I of the 1984 Act in respect of a residential care home; and
- (b) for the purposes of section 3 of that Act is a manager of the home but is not in control of it (whether as owner or otherwise);

(1) S.I. 2001/747.

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“existing home” means an existing undertaking, other than a licensed nurses agency, in respect of which the existing provider is to be treated, in accordance with paragraph 5(4) or (7), as having applied for and been granted registration as an establishment;

“existing home provider” means an existing provider other than a nurses agency provider;

“existing owner” means an existing provider other than an existing care home manager;

“existing provider” means—

- (a) a person who is registered under Part I of the 1984 Act in respect of a residential care home;
- (b) a person who is registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home;
- (c) a person who carries on a home that is registered in a register kept for the purposes of section 60 of the 1989 Act;
- (d) a person who carries on a home that is registered under Part VIII of the 1989 Act;
- (e) a nurses agency provider;

“existing undertaking” means—

- (a) a residential care home in respect of which a person is registered under Part I of the 1984 Act;
- (b) a nursing home or mental nursing home in respect of which a person is registered under Part II of the 1984 Act;
- (c) a voluntary home;
- (d) a home that is registered under Part VIII of the 1989 Act;
- (e) a licensed nurses agency;

“general medical practitioner” means a registered medical practitioner who—

- (a) provides general medical services under Part II of the National Health Service Act 1977⁽²⁾;
- (b) performs personal medical services in connection with a pilot scheme under the National Health Service (Primary Care) Act 1997⁽³⁾; or
- (c) provides services which correspond to services provided under Part II of the National Health Service Act 1977, otherwise than in pursuance of that Act;

“licensed nurses agency” means an agency for the supply of nurses within the meaning of the 1957 Act which a person is authorised to carry on by a licence which has been granted to him by a local authority under section 2 of that Act;

“mental nursing home” has the meaning given to it in section 22 of the 1984 Act;

“nurses agency provider” means a person who—

- (a) carries on an agency for the supply of nurses within the meaning of the 1957 Act; and
- (b) is the holder of a licence which has been granted to him by a local authority under section 2 of that Act and which authorises him to carry on that agency from premises specified in the licence;

“nursing home” has the meaning given to it in section 21 of the 1984 Act;

“old registration date” has the meaning given to it in paragraph 2(1);

(2) 1977 c. 49.

(3) 1997 c. 46.

“organisation” means a body corporate or any unincorporated association other than a partnership;

“Registered Homes Tribunal” means a tribunal constituted under Part III of the 1984 Act;

“registration commencement date” shall be construed in accordance with paragraph 2(6);

“regulator” means—

- (a) an authority; or
- (b) the Secretary of State in respect of a person who carries on a home that is registered in a register kept for the purposes of section 60 of the 1989 Act, or has applied for registration of a home under paragraph 1 of Schedule 5 to that Act;

“relevant authority” means the authority in respect of any relevant undertaking;

“relevant provider” means—

- (a) in the case of a residential care home in respect of which a person is registered under Part I of the 1984 Act—
 - (i) where the only existing provider is the existing care home manager, the existing care home manager;
 - (ii) in any other case, the existing owner;
- (b) in the case of any other existing undertaking, the existing provider;

“relevant undertaking” means an existing undertaking other than a voluntary home;

“residential care home” shall be construed in accordance with section 1(1) of the 1984 Act;

“responsible individual” means an individual who is a director, manager, secretary or other officer of an organisation and who for the purposes of that organisation is responsible for supervising the management of the existing undertaking;

“return date” shall be construed in accordance with paragraph 2(2);

“transfer of registration form” shall be construed in accordance with paragraph 3(1);

“voluntary home” means a home that is registered in a register kept for the purposes of section 60 of the 1989 Act.(2)

(2) In this Schedule, unless the context otherwise requires, a reference—

- (a) to a numbered paragraph is to the paragraph in this Schedule bearing that number;
- (b) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

Interpretation: dates

2.—(1) In this Schedule—

“effective date” means the date with effect from which an existing provider is for the purposes of Part II of the Act to be treated, in accordance with paragraph 5(4) or (7), as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency;

“old registration date” means the date on which the decision to grant—

- (a) in the case of an existing undertaking other than a licensed nurses agency, an application for registration in respect of that undertaking;
- (b) in the case of a licensed nurses agency, a licence in respect of that agency, takes effect.

(2) For the purposes of this Schedule the return date in respect of any existing undertaking is—

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- (a) in a case where sub-paragraph (4) applies, the day occurring thirty-five days after the decision referred to in that sub-paragraph takes effect in relation to the existing undertaking;
 - (b) in a case where sub-paragraph (5) applies, the day occurring thirty-five days after the regulator grants a licence to the nurses agency provider;
 - (c) in any other case, 21st January 2002 or, if later, the day occurring twenty-one days after the transfer of registration form was sent to the relevant provider.
- (3) The following date is specified for the purposes of paragraph 3(1)—
- (a) in a case where sub-paragraph (4) applies, the day occurring fourteen days after the decision referred to in that sub-paragraph takes effect in relation to the existing undertaking;
 - (b) in a case where sub-paragraph (5) applies, the day occurring fourteen days after the regulator grants a licence to the nurses agency provider;
 - (c) in any other case, 31st December 2001.
- (4) This sub-paragraph applies where the regulator decides to grant an application—
- (a) for registration in respect of a residential care home, nursing home or mental nursing home; or
 - (b) for a home to be registered in a register kept for the purposes of section 60 of the 1989 Act, or registered under Part VIII of that Act,
- and the decision takes effect on or after 17th December 2001.
- (5) This sub-paragraph applies where the regulator grants a licence to a nurses agency provider on or after 17th December 2001.
- (6) For the purposes of this Schedule the registration commencement date is—
- (a) in the case of an existing provider who under paragraph 5 is to be treated (whether or not with effect from the registration commencement date) as having applied for and been granted registration in respect of any establishment or agency other than a residential family centre, a domiciliary care agency, a nurses agency or a voluntary adoption agency, 1st April 2002;
 - (b) in the case of an existing provider who under paragraph 5 is to be treated (whether or not with effect from the registration commencement date) as having applied for and been granted registration in respect of a residential family centre, a domiciliary care agency, or a nurses agency, 1st July 2002.

Transfer of registration form

3.—(1) The relevant authority in respect of any relevant undertaking shall, subject to sub-paragraph (7), and the Secretary of State may in relation to a voluntary home, not later than the date specified in paragraph 2(3)—

- (a) complete a form (“the transfer of registration form”) which—
 - (i) shall be made available for this purpose by the Secretary of State;
 - (ii) may require, in respect of the existing undertaking or the existing provider, the information specified in paragraph 4;
- (b) send the relevant provider by recorded delivery—
 - (i) the transfer of registration form in respect of the existing undertaking;

- (ii) an explanation of the procedure whereby the existing provider may make representations to the Commission in respect of the information specified in paragraph 4;
 - (iii) details of any further information and documents that the existing provider is required to provide under paragraph 6;
 - (c) notify the relevant provider that if he does not make representations in accordance with sub-paragraph (3)—
 - (i) he may be treated as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description specified in the transfer of registration form;
 - (ii) if he is so treated, the registration will, subject to paragraph 5(5), be subject to the conditions (if any) specified by the regulator in the transfer of registration form as being the conditions to which the registration or licence is subject;
 - (d) notify the relevant provider of the provisions of section 11(1) of the Act (offence of carrying on or managing an establishment or agency without being registered under Part II of the Act).
- (2) The relevant provider shall, by not later than the return date—
- (a) complete that part of the transfer of registration form which is indicated to be completed by him;
 - (b) send a copy of the form so completed to the regulator.
- (3) The existing provider may, by not later than the return date, make representations in respect of the information specified in paragraph 4, by sending such representations to the Commission.
- (4) The relevant authority shall, not later than fourteen days after the return date in respect of the relevant undertaking, and the Secretary of State may in relation to the voluntary home at such time as he considers appropriate—
- (a) send the Commission—
 - (i) the transfer of registration form;
 - (ii) all the information or documents specified in sub-paragraph (6) which are in the possession of the regulator;
 - (b) notify the Commission if the regulator has not received the transfer of registration form by the return date; and
 - (c) notify the relevant provider that such information or documents have been passed to the Commission.
- (5) The relevant authority shall, and the Secretary of State may, on and after the return date in respect of the existing undertaking, send to the Commission any of the information or documents specified in the next following sub-paragraph which may from time to time come into the possession of the regulator.
- (6) The following information or documents are specified, namely any information or documents relating to the existing provider and the existing undertaking in respect of—
- (a) the registration granted under (as the case may be) the 1984 Act or the 1989 Act to the existing provider or the existing undertaking; or
 - (b) in the case of a nurses agency provider, the licence granted to him to carry on a licensed nurses agency.
- (7) Where an existing provider in relation to the existing undertaking is an existing care home manager, the existing owner in relation to that undertaking shall provide the existing care home

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manager with a copy of the information and documents sent to the existing owner under paragraph (b) to (d) of sub-paragraph (1).

Information that may be required by the transfer of registration form

4. The following information is specified—
 - (a) the full name, address and, if an individual, the date of birth of the existing provider in relation to the existing undertaking;
 - (b) in the case of an existing provider who is registered under Part I of the 1984 Act in respect of a residential care home, whether for the purposes of section 3 of that Act he is a manager of the home but is not in control of it (whether as owner or otherwise);
 - (c) where the existing provider is an organisation—
 - (i) the address of the registered office or principal office of the organisation;
 - (ii) the full name, date of birth and address of any individual who is a director, manager, secretary or other officer of the organisation and who for the purposes of the organisation is responsible for supervising the management of the existing undertaking;
 - (d) the full name, address and telephone number of the existing undertaking;
 - (e) the enactment under which (as the case may be) the existing provider or the existing undertaking has been registered or a licence has been granted;
 - (f) the conditions (if any) to which the registration or licence is subject at the date the form is completed;
 - (g) the applicable description of the existing undertaking;
 - (h) the information specified in Schedule 2 to this Order in relation to the applicable description of the existing undertaking;
 - (i) except in the case of a nurses agency provider—
 - (i) where it is a condition of registration of the existing undertaking that the number of persons for whom accommodation is provided does not exceed a specified number, that number;
 - (ii) the number of beds made available by the existing provider for use by persons other than the staff of the undertaking;
 - (iii) the date of the certificate originally issued to the existing provider in respect of the registration of the undertaking, and if any amended certificate has been issued, the date of that certificate or, if more than one, the most recent amended certificate;
 - (j) the old registration date where that date is on or after 17th December 2001;
 - (k) any other information that may reasonably be specified by the Commission.

Registration in respect of existing undertakings

5.—(1) This paragraph shall have effect subject to paragraphs 6 (supply of information) and 7 (pending decision as to cancellation).

(2) This sub-paragraph applies where, in the case of any existing provider, and whether or not the existing provider has made any representations in accordance with paragraph 3, the regulator has—

- (a) sent the Commission the transfer of registration form relating to the existing undertaking; and
- (b) specified in the form the applicable description in respect of the existing undertaking.

(3) This sub-paragraph applies where, in the case of any existing undertaking, the Commission has received, by not later than twenty-eight days after the return date, any representations made by the existing provider in accordance with paragraph 3 in respect of the information specified in paragraph 4.

(4) Where—

- (a) sub-paragraph (2) applies; and
- (b) sub-paragraph (3) does not apply,

the existing provider shall, with effect from the registration commencement date or, if later, twenty-eight days after the return date, be treated for the purposes of Part II of the Act as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description specified in the transfer of registration form.

(5) Where by virtue of sub-paragraph (4) an existing provider is treated as having been granted registration for the purposes of Part II of the Act, the conditions (if any) specified by the regulator in the transfer of registration form as being the conditions to which the registration or licence is subject shall, in so far as they are capable of being conditions to which the registration for the purposes of Part II of the Act is subject, have effect from the effective date—

- (a) as if they were conditions to which the registration for those purposes is subject; and
- (b) as if, for the purposes of section 19(1) of the Act, they had been agreed in writing between the existing provider and the Commission.

(6) Where sub-paragraphs (2) and (3) apply, the Commission shall, having regard to the representations referred to in sub-paragraph (3), determine—

- (a) the applicable description (if any) that applies to the existing undertaking;
- (b) the conditions (if any) to which the registration or licence was subject at the date of the latest representations made in accordance with paragraph 3;
- (c) in a case where the existing provider is registered under Part I of the 1984 Act in respect of a residential care home, whether for the purposes of section 3 of that Act he is a manager of the home but is not in control of it (whether as owner or otherwise);
- (d) any other matter in relation to the information specified in paragraph 4, so far as may be necessary to enable the existing provider, in accordance with sub-paragraph (7), to be treated for the purposes of Part II of the Act as having applied for and been granted registration in respect of the existing undertaking,

and any determination of the Commission under this sub-paragraph shall for the purposes of section 21 of the Act (appeals to the Tribunal) be treated as if it were a decision of the Commission under Part II of the Act.

(7) When the Commission has, for the purposes of sub-paragraph (6)(a), made a determination of the applicable description that applies to an existing undertaking, then with effect from the registration commencement date or, if the determination is made after the registration commencement date, with effect from the date on which the determination was made—

- (a) the existing provider shall, for the purposes of Part II of the Act, be treated as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description determined in accordance with sub-paragraph (6)(a);
- (b) the conditions (if any) determined in accordance with sub-paragraph (6)(b) shall, in so far as they are be capable of being conditions to which the registration for the purposes of Part II of the Act is subject, have effect—
 - (i) as if they were conditions to which the registration for those purposes is subject; and

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(ii) as if, for the purposes of section 19(1) of the Act, they had been agreed in writing between the existing provider and the Commission.

(8) Where, in accordance with this paragraph, a person who is not registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home is to be treated, for the purposes of Part II of the Act, as having applied for and been granted registration in respect of the existing undertaking as a care home—

- (a) the registration shall be treated as being subject to the condition that the care home shall not provide nursing to any person;
- (b) the condition mentioned in paragraph (a) of this sub-paragraph shall be treated, for the purposes of section 19(1) of the Act, as if it had been agreed in writing between the existing provider and the Commission.

(9) The provisions of sub-paragraphs (5) to (8) shall be without prejudice to the powers of the Commission to vary, remove or impose any conditions in accordance with Part II of the Act.

(10) In this paragraph, references to a person being treated as having applied for and been granted registration in respect of an undertaking shall be taken to refer—

- (a) in a case where—
 - (i) the person is treated as having applied for and been granted registration in respect of a care home, and
 - (ii) the Commission has determined in accordance with sub-paragraph (6)(c), or, if the Commission has not determined the matter, the regulator has specified in the transfer of registration form sent to the relevant provider, that—
 - (aa) the person is registered under Part I of the 1984 Act in respect of a residential care home; and
 - (bb) for the purposes of section 3 of that Act he is a manager of the home but is not in control of it (whether as owner or otherwise),
- to registration as a manager;
- (b) in any other case, to registration as a person who carries on the undertaking.

(11) This sub-paragraph applies where—

- (a) the existing provider (“the provider”) is to be treated, in accordance with sub-paragraph (4) or (7), as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of an applicable description; and
- (b) not more than twelve months after the effective date in respect of the provider the Commission is satisfied that, in relation to the existing undertaking, the applicable description is incorrect and was incorrect as at the effective date.

(12) Where sub-paragraph (11) applies—

- (a) the Commission shall determine, with effect from the date on which it is satisfied as to the matters referred to in sub-paragraph (11)(b), the applicable description that is to apply in the case of the provider;
- (b) the provider shall be treated, with effect from the date on which the Commission is so satisfied, as having applied for and been granted registration in respect of the existing undertaking as an establishment or agency of the applicable description so determined by the Commission;
- (c) the Commission shall—
 - (i) ensure that, in relation to the registration of the provider for the purposes of Part II of the Act, any particulars required to be kept by the Commission in accordance with

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regulations made under section 16 of the Act are recorded or varied consistently with that determination; and

- (ii) issue an amended certificate of registration to the provider.

Further information

6.—(1) Where the existing undertaking is a residential care home, a nursing home or a mental nursing home in respect of which the existing provider is registered under Part I or II of the 1984 Act, he shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of a care home unless sub-paragraph (2) applies.

(2) This sub-paragraph applies where—

- (a) the existing provider, or the responsible individual in respect of the existing undertaking, has by 1st June 2002 applied for—
 - (i) a criminal record certificate under section 113 of the Police Act 1997⁽⁴⁾, including the matters specified in 113(3A) (a) and (b) and (3C)(a) and (b); and
 - (ii) an enhanced criminal record certificate under section 115 of that Act; and
- (b) the application made by the existing provider or the responsible individual (as the case may be) has, for the purposes of section 113 or 115 (as the case may be) of that Act, been countersigned by the Commission.

(3) Where the existing undertaking is a licensed nurses agency (referred to in this sub-paragraph as “the agency”) in respect of which the existing provider is the nurses agency provider, he shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of a nurses agency unless—

- (a) sub-paragraph (2) applies;
- (b) the existing provider has by 1st July 2002 supplied to the Commission the following evidence, information or documents in respect of the existing provider, or of the responsible individual in respect of the agency—
 - (i) proof of his identity;
 - (ii) details of his professional or technical qualifications, and experience of carrying on a business or undertaking, so far as such qualifications and experience are relevant to carrying on a nurses agency;
 - (iii) details of his employment history, including the name and address of his present employer and of any previous employers;
 - (iv) details of any business the person carries on or has carried on;
 - (v) a report by a general medical practitioner as to whether he is physically and mentally fit to carry on a nurses agency; and
- (c) in respect of every person, other than the existing provider and the responsible individual (if any) in respect of the agency, who is supplied by the agency, the existing provider has by 1st July 2002—
 - (i) supplied to the Commission—
 - (aa) if the position in which the person works falls within section 115(4) of the Police Act 1997, evidence that the person has applied for an enhanced criminal record certificate under section 115 of that Act and that the

(4) 1997 c. 50. Sections 113(3A) and 115(6A) were added by section 8(1) and (2) of the Protection of Children Act 1999 (c. 14) and amended by section 116 of, and paragraph 25(1) and (2) of Schedule 4 to, the Care Standards Act 2000 (c. 14). Sections 113(3C) and 115(6B) were added by section 90(1) and (2) of the Care Standards Act 2000.

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- application is accompanied by a statement referred to in section 113(3C) of that Act; or
 - (bb) in any other case, evidence that the person has applied for a criminal record certificate issued to the person under section 113 of that Act and that the application is accompanied by a statement referred to in section 113(3C) of that Act; and
 - (ii) confirmed to the Commission in writing the matters specified in sub-paragraph (4).
- (4) The matters specified are that every such person has provided to the existing provider—
- (a) a declaration that the person has no criminal convictions; or
 - (b) details of the person’s criminal convictions and, in relation to each such conviction, a statement by the person as to—
 - (i) whether in his view the conviction is relevant to his suitability to care for, train, supervise or be in sole charge of any person; and
 - (ii) if so why he considers that he is suitable to perform the work in which he is to be employed.

Pending decision as to cancellation

7.—(1) Where the existing undertaking is a residential care home in respect of which the existing provider is registered under Part I of the 1984 Act, he shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking if—

- (a) the authority have decided to adopt a proposal under section 12(4) of the 1984 Act to cancel his registration and, in accordance with section 14(3) of that Act, their decision has not taken effect; or
- (b) the authority have applied to a justice of the peace for an order under section 11(1)(a)(i) of the 1984 Act cancelling the registration of the existing provider, and the application has not been determined.

(2) Where the existing undertaking is a nursing home or mental nursing home in respect of which the existing provider is registered under Part II of the 1984 Act, the existing provider shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking if—

- (a) the authority have decided to adopt a proposal under section 31(3) of the 1984 Act to cancel his registration and, in accordance with section 33(3) of the 1984 Act their decision has not taken effect; or
- (b) the authority have applied to a justice of the peace for an order under section 30(1)(a)(i) of the 1984 Act cancelling the registration of the existing provider, and the application has not been determined.

(3) Where—

- (a) the existing undertaking is a home that is registered in a register kept for the purposes of section 60 of the 1989 Act; and
- (b) the Secretary of State has decided to adopt a proposal under paragraph 2(4)(a) of Schedule 5 to the 1989 Act to cancel the registration and, in accordance with paragraph 4(3) of that Schedule his decision has not taken effect,

the existing provider shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking.

(4) Where—

- (a) the existing undertaking is a home that is registered under Part VIII of the 1989 Act; and

- (b) the authority have decided to adopt a proposal under paragraph 5(4)(a) of Schedule 6 to the 1989 Act to cancel the registration and, in accordance with paragraph 7(3) of that Schedule their decision has not taken effect,

the existing provider shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking.

(5) Where—

- (a) the existing undertaking is a licensed nurses agency;
- (b) the authority have revoked the licence of the existing provider in respect of the existing undertaking; and
- (c) either—
 - (i) the period for appealing against the revocation has not expired; or
 - (ii) the existing provider has appealed under section 2(4) of the 1957 Act and the appeal has not been determined or abandoned,

the existing provider shall not be treated, for the purposes of Part II of the Act, as having been granted registration in respect of that existing undertaking.

Pending proposal as to cancellation

8.—(1) This paragraph applies to a person who—

- (a) pursuant to paragraph 5 is treated, for the purposes of Part II of the Act, as having applied for and been granted registration in respect of an existing undertaking as an establishment or agency; and
- (b) was immediately before the effective date the existing provider in respect of that undertaking.

(2) This sub-paragraph applies where, immediately before the effective date—

- (a) the existing undertaking is a 1984 Act home;
- (b) the existing provider has been given notice of a proposal under (as the case may be) section 12(4) or 31(3) of the 1984 Act to cancel his registration in respect of the home; and
- (c) the existing provider has not been given notice under section 14(1) or 33(1) (as the case may be) of the 1984 Act of a decision to adopt the proposal.

(3) This sub-paragraph applies where, immediately before the effective date—

- (a) the existing undertaking is a 1989 Act home;
- (b) the existing provider has been given notice of a proposal under (as the case may be) paragraph 2(4) of Schedule 5 or paragraph 5(4) of Schedule 6 to the 1989 Act to cancel his registration in respect of the home; and
- (c) the existing provider has not been given notice under (as the case may be) paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 to the 1989 Act of a decision to adopt the proposal.

(4) Where sub-paragraph (2) or (3) applies—

- (a) subject to paragraph (b) of this sub-paragraph, any notice referred to in sub-paragraph (2) or (3) (as the case may be) shall, for the purposes of Part II of the Act, and notwithstanding that it does not comply with the requirements for such a notice under the Act, be treated with effect from the effective date as if it were a notice of a proposal given under section 17(4) of the Act to cancel his registration (otherwise than in accordance with an application under section 15(1)(b)), in respect of the existing home;
- (b) section 18(2) of the Act shall have effect as if—
 - (i) in paragraph (a) the word “written” were omitted;

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- (ii) for paragraph (c) the following paragraphs were substituted—
 - “(c) the person who is registered in respect of the establishment or agency has not, within fourteen days after notice of proposal to cancel his registration was given to him, required the Commission to give him an opportunity to make oral or written representations to it concerning the matter; or
 - (d) the following conditions are satisfied—
 - (i) the person who is registered in respect of the establishment or agency has required the Commission to give him an opportunity to make oral or written representations to it concerning the matter;
 - (ii) the Commission has allowed him a reasonable period to make his representations; and
 - (iii) he has failed to make them within that period.”.
- (5) This sub-paragraph applies where, immediately before the effective date—
 - (a) the existing undertaking is a licensed nurses agency;
 - (b) the authority or the Commission are considering whether to revoke the licence of the existing provider in respect of the existing undertaking;
 - (c) in pursuance of section 2(5) of the 1957 Act the existing provider has been informed that he is to be given an opportunity of being heard; and
 - (d) the authority or the Commission have not determined the matter.
- (6) Where sub-paragraph (5) applies—
 - (a) subject to paragraph (b) of this sub-paragraph, the notice informing the existing provider that he is to be given an opportunity of being heard shall, for the purposes of Part II of the Act, and notwithstanding that it does not comply with the requirements for such a notice under the Act, be treated with effect from the effective date as if it were a notice of a proposal given under section 17(4) of the Act to cancel his registration (otherwise than in accordance with an application under section 15(1)(b)), in respect of the existing undertaking;
 - (b) section 18(2) of the Act shall have effect as if—
 - (i) in paragraph (a) the word “written” were omitted;
 - (ii) for paragraph (c) the following paragraph were substituted—
 - “(c) the person who is registered in respect of the agency has been given an opportunity to make oral or written representations to the Commission concerning the matter within a reasonable period and has failed to make them within that period.”.

Pending application and notice in respect of condition of registration

- 9.—(1) This paragraph applies to a person who—
- (a) pursuant to paragraph 5 is treated, for the purposes of Part II of the Act, as having applied for and been granted registration in respect of an existing home as an establishment or agency; and
 - (b) was immediately before the effective date the existing provider in respect of that home.
- (2) Where an application by an existing home provider to vary a condition in force in respect of an existing home has not been determined before the effective date, the application shall for the purposes

of Part II of the Act be treated with effect from that date as an application under section 15(1)(a) of the Act for the variation of the condition in respect of that existing home.

(3) Where an application by an existing home provider to impose a condition in respect of an existing home, has not been determined before the effective date, the application shall be treated with effect from that date as a request to the Commission to consider imposing such a condition in respect of that existing home.

(4) This sub-paragraph applies where, immediately before the effective date—

- (a) the existing home provider has been given notice of a proposal under (as the case may be) section 12(4) or 31(3) of the 1984 Act to vary a condition in force in respect of a 1984 Act home, or to impose an additional condition in respect of that home; and
- (b) the existing home provider has not been given notice under section 14(1) or 33(1) (as the case may be) of the 1984 Act of a decision to adopt the proposal.

(5) This sub-paragraph applies where, immediately before the effective date—

- (a) the existing home provider has been given notice of a proposal under (as the case may be) paragraph 2(4) of Schedule 5 or paragraph 5(4) of Schedule 6 to the 1989 Act to vary a condition in force in respect of a 1989 Act home, or to impose an additional condition in respect of that home; and
- (b) the existing home provider has not been given notice under paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 (as the case may be) to the 1989 Act of a decision to adopt the proposal.

(6) Where sub-paragraph (4) or (5) applies—

- (a) subject to paragraph (b) of this sub-paragraph, any notice referred to in sub-paragraph (4) or (5) (as the case may be) shall, for the purposes of Part II of the Act, and notwithstanding that it does not comply with the requirements for such a notice under the Act, be treated with effect from the effective date as if it were a notice of a proposal given under section 17(4) of the Act to vary a condition, or to impose an additional condition (as the case may be), in respect of the existing home;
- (b) section 18(2) of the Act shall have effect as if—
 - (i) in paragraph (a) the word “written” were omitted;
 - (ii) for paragraph (c) the following paragraphs were substituted—

“(c) the person who is registered in respect of the establishment or agency has not, within fourteen days after notice of proposal to vary a condition, or to impose an additional condition, in relation to the registration was given to him, required the Commission to give him an opportunity to make oral or written representations to it concerning the matter; or

(d) the following conditions are satisfied—

- (i) the person who is registered in respect of the establishment or agency has required the Commission to give him an opportunity to make oral or written representations to it concerning the matter;
- (ii) the Commission has allowed him a reasonable period to make his representations; and
- (iii) he has failed to make them within that period.”.

(7) This sub-paragraph applies where—

- (a) before the effective date the existing home provider has been given notice under section 14(1) or 33(1) (as the case may be) of the 1984 Act of the decision to adopt a proposal under section 12 or 31 (as the case may be) of that Act to vary a condition in

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force in respect of an existing home, or to impose an additional condition in respect of that home; and

- (b) the decision has not taken effect, for the purposes of section 14(3) or 33(3) (as the case may be) of that Act, before the effective date.
- (8) Where sub-paragraph (7) applies—
- (a) the 1984 Act shall, subject to paragraph (b) of this sub-paragraph, continue in force in relation to any appeal against a decision referred to in sub-paragraph (7), and in particular shall continue in force so far as may be necessary for the purposes of—
 - (i) bringing an appeal against a decision referred to in sub-paragraph (7);
 - (ii) determining such an appeal;
 - (iii) giving effect to the decision of the tribunal that determines the appeal;
 - (b) the functions, powers and duties that immediately before 1st April 2002 the regulator had under the 1984 Act in relation to the matters mentioned in paragraph (a) of this sub-paragraph, shall apply to, and be exercisable by, the Commission instead of the regulator;
 - (c) the decision to adopt a proposal to vary a condition in force in respect of an existing home, or to impose an additional condition in respect of that home shall, with effect from the date on which it takes effect, be treated for the purposes of Part II of the Act—
 - (i) in the case of a proposal to vary a condition where the effect of the variation would be to remove the condition, as if it were a decision to adopt a proposal to remove a condition in respect of the establishment;
 - (ii) in the case of any other proposal to vary a condition, as if it were a decision to adopt a proposal to vary a condition in respect of the establishment;
 - (iii) in the case of a proposal to impose an additional condition, as if it were a decision to adopt a proposal to impose an additional condition in respect of the establishment;
 - (iv) in any case, as if it had taken effect in accordance with section 19(5) of the Act.
- (9) This sub-paragraph applies in relation to a 1984 Act home, where—
- (a) before the effective date an application was made to a justice of the peace for an order under section 11 or 30 of the 1984 Act varying a condition, or imposing an additional condition, in respect of the home; and
 - (b) as at the effective date either—
 - (i) the application to the justice of the peace has not been determined;
 - (ii) the justice of the peace has made the order but no appeal has been brought and the period for bringing an appeal has not expired; or
 - (iii) an appeal has been brought but has not been determined or abandoned.
- (10) Where sub-paragraph (9) applies—
- (a) the 1984 Act shall, subject to paragraph (b) of this sub-paragraph, continue in force in relation to any order referred to in sub-paragraph (9), and in particular shall continue in force so far as may be necessary for the purposes of—
 - (i) bringing or determining the application;
 - (ii) giving effect to any order made by the justice of the peace;
 - (b) the functions, powers and duties that immediately before 1st April 2002 the regulator had under the 1984 Act in relation to the matters mentioned in paragraph (a) of this sub-paragraph shall apply to, and be exercisable by, the Commission instead of the regulator;

- (c) where an order is made by the justice of the peace, the order shall, subject to sub-paragraph (14), be treated for the purposes of Part II of the Act as if it were an order made in respect of the existing home under section 20 of the Act.
- (11) This sub-paragraph applies where—
- (a) before the effective date the existing home provider has been given notice under paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 (as the case may be) to the 1989 Act of a decision to adopt a proposal under paragraph 2 of Schedule 5 or paragraph 5 of Schedule 6 (as the case may be) to that Act to vary a condition in force in respect of an existing home, or to impose an additional condition in respect of that home; and
 - (b) in accordance with paragraph 4(3) of Schedule 5 or paragraph 7(3) of Schedule 6 (as the case may be) to that Act the decision has not taken effect before the effective date.
- (12) Where sub-paragraph (11) applies—
- (a) the provisions of sections 60 and 63 of, and Schedules 5 and 6 to, the 1989 Act, and the definition of “registered children’s home” in section 105 of that Act, that are repealed under section 117(2) of, and Schedule 6 to, the Act shall, subject to the next following paragraph of this sub-paragraph, continue in force in relation to any appeal against a decision referred to in sub-paragraph (11), and in particular shall continue in force so far as may be necessary for the purposes of—
 - (i) bringing an appeal against a decision referred to in sub-paragraph (11);
 - (ii) determining such an appeal;
 - (iii) giving effect to the decision of the tribunal that determines the appeal;
 - (b) the functions, powers and duties (except for the purpose of making subordinate legislation) that immediately before 1st April 2002 the regulator had under Parts VII and VIII of, and Schedules 5 and 6 to, the 1989 Act in relation to the matters mentioned in the preceding paragraph of this sub-paragraph, shall apply to, and be exercisable by, the Commission instead of the regulator;
 - (c) the decision to adopt a proposal to vary a condition in force in respect of an existing home, or to impose an additional condition in respect of that home shall, with effect from the date on which it takes effect, be treated for the purposes of Part II of the Act—
 - (i) in the case of a proposal to vary a condition where the effect of the variation would be to remove the condition, as if it were a decision to adopt a proposal to remove a condition in respect of the establishment;
 - (ii) in the case of any other proposal to vary a condition, as if it were a decision to adopt a proposal to vary a condition in respect of the establishment;
 - (iii) in the case of a proposal to impose an additional condition, as if it were a decision to adopt a proposal to impose an additional condition in respect of the establishment;
 - (iv) in any case, as if it had taken effect in accordance with section 19(5) of the Act.
- (13) Where sub-paragraph (7), (10) or (11) applies and the Registered Homes Tribunal determines an appeal referred to in (as the case may be) sub-paragraph (8), (9) or (12), the determination shall, subject to sub-paragraph (14), be treated for the purposes of Part II of the Act as if it were a decision made by the Tribunal under section 21 of the Act in respect of the existing home.
- (14) For the purposes of sub-paragraphs (8), (10), (12) and (13), a condition shall not have effect as a condition to which registration for the purposes of Part II of the Act is subject except in so far as it is capable of being a condition for the purposes of that Part of the Act.

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Existing undertakings: transitory provisions

10.—(1) Sub-paragraph (2) shall have effect in relation to an existing undertaking from the date on which the transfer of registration form is sent by the regulator to the Commission until such time as the existing provider is treated, in accordance with paragraphs 5 to 7, as having been granted registration for the purposes of Part II of the Act.

(2) Where sub-paragraph (2) of paragraph 5 applies, the existing provider shall, for the purpose of enabling the Commission to consider or obtain information about any matter in relation to the existing undertaking, be treated as having applied for registration under Part II of the Act in respect of the undertaking as an establishment or agency of the applicable description specified in the transfer of registration form.

(3) The Commission may, until such time as the existing provider is treated, in accordance with paragraphs 5 to 7, as having been granted registration for the purposes of Part II of the Act in respect of the existing undertaking, request the existing provider or the regulator to supply to it any information or documents that, if the existing provider had made an application for registration under Part II of the Act in respect of the existing undertaking, would be relevant for the purpose of determining the application.

(4) Where the Commission requests the existing provider or a relevant authority to supply to it any information or documents in accordance with the preceding sub-paragraph, the existing provider or the relevant authority shall supply such information or documents within fourteen days of the request being made.

(5) This sub-paragraph applies to an existing provider—

- (a) in a case where sub-paragraph (2) of paragraph 5 applies to the existing provider, for the period (if any) between—
 - (i) 1st April 2002 and, if later, the registration commencement date; and
 - (ii) the registration commencement date and, if later, the effective date;
- (b) in a case where, in accordance with paragraph 6, the existing provider is for the time being not to be treated, for the purposes of Part II of the Act, as having been granted registration in respect of an existing undertaking, for the period ending on the latest date by which in accordance with that paragraph he is to apply for a certificate, or supply any evidence, document or information to the Commission for the purpose of being treated as having been granted registration in respect of the undertaking;
- (c) where and for the period in which, in accordance with paragraph 7, the existing provider is for the time being not to be treated, for the purposes of Part II of the Act, as having been granted registration in respect of an existing undertaking.

(6) Where, and for any period in which, sub-paragraph (5) applies to an existing provider—

- (a) in the case of a residential care home, nursing home or mental nursing home in respect of which the existing provider is registered under Part I or II of the 1984 Act immediately before 1st April 2002—
 - (i) the registration of the existing provider in respect of the undertaking shall continue in force subject to any conditions imposed by the regulator to which immediately before 1st April 2002 the registration was subject;
 - (ii) the 1984 Act shall, subject to head (iii) of this paragraph, continue in force in relation to the undertaking;
 - (iii) the functions, powers and duties that immediately before 1st April 2002 the regulator had under the 1984 Act in relation to the undertaking shall apply to, and be exercisable by, the Commission instead of the regulator;

- (b) in the case of a home that immediately before 1st April 2002 is registered in a register kept for the purposes of section 60 of the 1989 Act or registered under Part VIII of that Act—
 - (i) the registration of the undertaking shall continue in force subject to any conditions imposed by the regulator to which immediately before 1st April 2002 the registration was subject;
 - (ii) the provisions of sections 60 and 63 of, and Schedules 5 and 6 to, the 1989 Act, and the definition of “registered children’s home” in section 105 of that Act, that are repealed under section 117(2) of, and Schedule 6 to, the Act shall, subject to head (iii) of this paragraph, continue in force in relation to the undertaking;
 - (iii) the functions, powers and duties (except for the purpose of making subordinate legislation) that immediately before 1st April 2002 the regulator had under Parts VII and VIII of, and Schedules 5 and 6 to, the 1989 Act in relation to the undertaking shall apply to, and be exercisable by, the Commission instead of the regulator.
- (7) Where—
 - (a) the existing provider is authorised to carry on a licensed nurses agency immediately before 1st July 2002 by a licence granted to him by a local authority under section 2 of the 1957 Act; and
 - (b) sub-paragraph (5) of this paragraph applies for any period on or after 1st July 2002,sub-paragraph (8) shall apply for that period.
- (8) Where this sub-paragraph applies—
 - (a) the licence granted to the existing provider to carry on a licensed nurses agency shall continue in force subject to any conditions imposed by the regulator to which immediately before 1st July 2002 the licence was subject;
 - (b) the 1957 Act shall, subject to paragraph (c) of this sub-paragraph, continue in force in relation to that agency;
 - (c) the functions, powers and duties that immediately before 1st July 2002 the regulator had under the 1957 Act in relation to that agency shall apply to, and be exercisable by, the Commission instead of the regulator.
- (9) Where, and for any period in which, sub-paragraph (5) applies to an existing provider, section 11(1) to (3), (5) and (6) of the Act shall not apply to him in respect of the existing undertaking.
- (10) In sub-paragraphs (6) and (8), any reference to an Act, or a provision in an Act, shall be construed as including a reference to any regulations made under that Act or provision.

Care homes: transitory provisions

- 11.**—(1) This paragraph applies where—
 - (a) by virtue of sub-paragraph (4) or (7) of paragraph 5 an existing provider (in this paragraph referred to as “the registered person”) is treated as having been granted registration for the purposes of Part II of the Act in respect of a care home;
 - (b) the registered person was immediately before 1st April 2002 registered under Part I or II of the 1984 Act in respect of the care home.
- (2) Where this paragraph applies, the registration which the registered person is treated as having been granted shall have effect as if, for the period from 1st April 2002 to 31st March 2007—
 - (a) it were conditional on the condition specified in the next following sub-paragraph; and
 - (b) for the purposes of section 19(1) of the Act the condition had been agreed in writing between the registered person and the Commission.

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- (3) The condition specified in this sub-paragraph is that the registered person shall not make available for use by a service user as a private room any room—
- (a) in respect of which the relevant authority notified the registered person that it was of insufficient size to be used as a private room for the accommodation of any resident; or
 - (b) which was not used as a private room for a period of at least 7 days in the twelve months preceding 1st April 2002, unless the relevant authority notified the registered person that the authority approved the use of the room as a private room for the accommodation of any resident.
- (4) In sub-paragraph (3)—
- “service user” means any person in the care home who is in need of nursing or personal care by reason of disability, infirmity, past or present illness, past or present mental disorder or past or present dependence on alcohol or drugs;
- “resident” means a person who—
- (a) in the case of a care home in respect of which any person was immediately before 1st April 2002 registered under Part I of the 1984 Act, was for the purposes of the Residential Care Homes Regulations 1984⁽⁵⁾ a resident of the home; or
 - (b) in the case of a care home in respect of which any person was immediately before 1st April 2002 registered under Part II of the 1984 Act, was for the purposes of the Nursing Homes and Mental Nursing Homes Regulations 1984⁽⁶⁾ a patient in the home.
- (5) Sub-paragraphs (2) and (3) shall be without prejudice—
- (a) to any other conditions to which the registration of the registered person for the purposes of Part II of the Act is subject, or which under this Order have effect as if they were such conditions; and
 - (b) to the powers of the Commission to vary, remove or impose any conditions in accordance with Part II of the Act.

Functions of the Commission in relation to repealed enactments

12.—(1) Where by virtue of section 16 of the Interpretation Act 1978⁽⁷⁾, or by virtue of that section as applied by section 23 of that Act, any investigation, legal proceeding or remedy may at any time be instituted, continued or enforced by a regulator in relation to an existing provider or an existing undertaking as if section 117(2), in so far as it relates to the repealed enactments, had not been passed—

- (a) any such investigation, legal proceeding or remedy may be instituted, continued or enforced by the Commission as if the repealing enactments had not been passed;
- (b) any function, power or duty that applied to, or was exercisable by, the regulator for the purpose of instituting, continuing or enforcing any such investigation, legal proceeding or remedy shall also apply to, or be exercisable by, the Commission as if the repealing enactments had not been passed.

(2) The provisions of this paragraph are without prejudice to the operation of sections 16 and 23 of the Interpretation Act 1978.

(3) In this paragraph, “repealed enactments” means the 1957 Act, the 1984 Act, and the provisions of sections 60 and 63 of, and Schedules 5 and 6 to, the 1989 Act, and the definition of “registered children’s home” in section 105 of that Act, that are repealed under section 117(2) of, and Schedule 6 to, the Act.

(5) [S.I. 1984/1345](#).

(6) [S.I. 1984/1578](#).

(7) [1978 c. 30](#).

Transfer of applications for registration or a licence

- 13.—(1) This sub-paragraph applies to an application—
- (a) which is made before 1st April 2002—
 - (i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home;
 - (ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home;
 - (iii) to register a home under section 60 of the 1989 Act;
 - (iv) to register a home under Part VIII of the 1989 Act; and
 - (b) to which sub-paragraph (3) does not apply.
- (2) This sub-paragraph applies to an application—
- (a) which is made before 1st July 2002 for a licence under the 1957 Act to carry on an agency for the supply of nurses; and
 - (b) in respect of which the authority has not given the person who made the application—
 - (i) notice under section 2(4) of the 1957 Act of the refusal of a licence, or of the grant of a licence subject to conditions; or
 - (ii) the opportunity of being heard under section 2(5) of that Act in respect of any proposal to refuse to grant a licence.
- (3) This sub-paragraph applies to an application in respect of which the regulator has given to the person who made the application—
- (a) notice of a proposal under (as the case may be) section 12(1) or 31(1) of the 1984 Act or paragraph 2(1) of Schedule 5 or paragraph 5(1) of Schedule 6 to the 1989 Act, to grant the application; or
 - (b) notice of a proposal under (as the case may be) section 12(3) or 31(2) of the 1984 Act or paragraph 2(3) of Schedule 5 or paragraph 5(3) of Schedule 6 to the 1989 Act, to refuse the application.
- (4) Subject to the provisions of this paragraph, the authority shall give the Commission notice of transfer of an application to which sub-paragraph (1) applies—
- (a) in the case of an application which—
 - (i) is made before 1st January 2002; and
 - (ii) appears to the authority to be unlikely to be determined by the authority before 1st April 2002,by not later than 31st January 2002 or such later date as may be agreed by the authority and the Commission;
 - (b) in the case of an application which—
 - (i) is made on any date in January 2002 or February 2002; and
 - (ii) appears to the authority to be unlikely to be determined by the authority before 1st April 2002,by not later than 7th March 2002,
 - (c) in the case of any application which is made on any date in March 2002, forthwith on receiving the application.
- (5) Subject to the provisions of this paragraph, the authority shall give the Commission notice of transfer of an application to which sub-paragraph (2) applies—
- (a) in the case of an application which—

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- (i) is made before 1st June 2002; and
 - (ii) appears to the authority to be unlikely to be determined by the authority before 1st July 2002,
by not later than 7th June 2002,
- (b) in the case of an application which is made on any date in June 2002, forthwith on receiving the application.
- (6) The authority shall, and the Secretary of State may, give the Commission notice of transfer of an application by providing the Commission with the following information—
- (a) the name and address of the person making the application;
 - (b) the name and address of the undertaking to which the application relates;
 - (c) the enactment under which the application was made.
- (7) Where the authority has given the Commission notice of transfer of an application in accordance with sub-paragraph (6), it shall—
- (a) forthwith pass to the Commission all the information or documents relating to the application which are in the possession of the authority;
 - (b) as soon as practicable, pass to the Commission all such information or documents which come into the possession of the authority;
 - (c) forthwith notify the person who made the application that such information or documents have been or are to be passed to the Commission.
- (8) For the purposes of this paragraph—
- (a) in the case of an application to which sub-paragraph (1) applies—
 - (i) if, before 1st April 2002, notice of transfer is given to the Commission in respect of the application in accordance with sub-paragraph (6), the application transfer date is the date on which the notice of transfer was given;
 - (ii) if, as at 1st April 2002, the application has not been determined by the regulator, and notice of transfer has not been given to the Commission in respect of the application in accordance with sub-paragraph (6), the application transfer date is 1st April 2002;
 - (b) in the case of an application to which sub-paragraph (2) applies—
 - (i) if, before 1st July 2002, notice of transfer has been given to the Commission in respect of the application in accordance with sub-paragraph (6), the application transfer date is the date on which the notice of transfer was given;
 - (ii) if, as at 1st July 2002, the application has not been determined by the regulator, and notice of transfer has not been given to the Commission in respect of the application in accordance with sub-paragraph (6), the application transfer date is 1st July 2002.
- (9) Sub-paragraph (10) shall apply with effect from the application transfer date to an application where—
- (a) the application was made before 1st April 2002; and
 - (b) as at 1st April 2002, the regulator has not given the person who made the application notice under (as the case may be) section 14 or 33 of the 1984 Act of his decision to adopt a proposal to grant or refuse the application.
- (10) Where this sub-paragraph applies, an application—
- (i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home; or
 - (ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home,

shall be treated as an application for registration under Part II of the Act in respect of a care home.

(11) Sub-paragraph (12) shall apply with effect from the application transfer date to an application where—

- (a) the application was made before 1st April 2002; and
- (b) as at 1st April 2002, the regulator has not given the person who made the application notice under (as the case may be) paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 to the 1989 Act, of his decision to adopt a proposal to grant or refuse the application.

(12) Where this sub-paragraph applies, an application—

- (i) to register a home under section 60 of the 1989 Act; or
- (ii) to register a home under Part VIII of the 1989 Act,

shall be treated as an application for registration under Part II of the Act in respect of a children's home.

(13) An application to which sub-paragraph (2) applies shall be treated with effect from the application transfer date as an application for registration under Part II of the Act in respect of a nurses agency.

(14) The next following sub-paragraph shall have effect—

- (a) in relation to an application to which sub-paragraph (1) applies, and in respect of which notice of transfer is given to the Commission in accordance with sub-paragraph (6) before 1st April 2002, from the day on which such notice is given to 31st March 2002;
- (b) in relation to an application to which sub-paragraph (2) applies, and in respect of which notice of transfer is given to the Commission in accordance with sub-paragraph (6) before 1st July 2002, from the day on which notice is given to 30th June 2002.

(15) Any application—

- (a) in respect of which notice of transfer has been given to the Commission in respect of the application in accordance with sub-paragraph (6); and
- (b) which under sub-paragraph (10), (12) or (13) is to be treated with effect from the application transfer date as an application for registration under Part II of the Act in respect of an establishment or agency of any description,

shall, for the purpose of enabling the Commission to consider or obtain information in relation to that application, be treated as an application for registration under Part II of the Act in respect of an establishment or agency of that description.

Transfer of applications: further provisions

14.—(1) This sub-paragraph applies where—

- (a) an application is made before 1st April 2002—
 - (i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home;
 - (ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home;
- (b) the regulator has before 1st April 2002 given to the person who made the application—
 - (i) notice of a proposal under (as the case may be) section 12(1) or 31(1) of the 1984 Act, to grant the application; or
 - (ii) notice of a proposal under (as the case may be) section 12(3) or 31(2) of the 1984 Act to refuse the application; and

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- (c) as at 1st April 2002, the regulator has not given the person who made the application notice under (as the case may be) section 14 or 33 of the 1984 Act of his decision to adopt a proposal to grant or refuse the application.
- (2) This sub-paragraph applies where—
 - (a) an application is made before 1st April 2002—
 - (i) to register a home under section 60 of the 1989 Act;
 - (ii) to register a home under Part VIII of the 1989 Act;
 - (b) the regulator has before 1st April 2002 given to the person who made the application—
 - (i) notice of a proposal under (as the case may be) paragraph 2(1) of Schedule 5 or paragraph 5(1) of Schedule 6 to the 1989 Act, to grant the application; or
 - (ii) notice of a proposal under (as the case may be) paragraph 2(3) of Schedule 5 or paragraph 5(3) of Schedule 6 to the 1989 Act, to refuse the application; and
 - (c) as at 1st April 2002 the regulator has not given the person who made the application notice under (as the case may be) paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 to the 1989 Act, of his decision to adopt a proposal to grant or refuse the application.
- (3) Where sub-paragraph (1) or (2) applies—
 - (a) subject to paragraph (b) of this sub-paragraph, the notice referred to in sub-paragraph (1) (b) or (2)(b) shall, for the purposes of Part II of the Act, and notwithstanding that it does not comply with the requirements for such a notice under the Act, be treated with effect from 1st April 2002—
 - (i) in the case of a notice referred to in sub-paragraph (1)(b)(i) or (2)(b)(i), as if it were a notice of a proposal given under section 17(2) of the Act to grant the application in respect of the establishment to which the application relates;
 - (ii) in the case of a notice referred to in sub-paragraph (1)(b)(ii) or (2)(b)(ii), as if it were a notice of a proposal given under section 17(3) of the Act to refuse the application in respect of the establishment to which the application relates;
 - (b) section 18(2) of the Act shall have effect as if—
 - (i) in paragraph (a) the word “written” were omitted;
 - (ii) for paragraph (c) the following paragraphs were substituted—
 - “(c) the person who made the application has not, within fourteen days after notice of proposal to grant or refuse his application was given to him, required the Commission to give him an opportunity to make oral or written representations to it concerning the matter; or
 - (d) the following conditions are satisfied—
 - (i) the person who made the application in respect of the establishment or agency has required the Commission to give him an opportunity to make oral or written representations to it concerning the matter;
 - (ii) the Commission has allowed him a reasonable period to make his representations; and
 - (iii) he has failed to make them within that period.”.
- (4) This sub-paragraph applies where—
 - (a) an application is made before 1st April 2002—
 - (i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home;

- (ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home;
 - (b) paragraph 13(3) applies to the application; and
 - (c) as at 1st April 2002—
 - (i) the authority has given the person who made the application notice under (as the case may be) section 14 or 33 of the 1984 Act of its decision to adopt a proposal to grant or refuse the application; and
 - (ii) either—
 - (aa) the period for bringing an appeal against the decision has not expired; or
 - (bb) an appeal has been brought but has not been determined or abandoned.
- (5) Where the previous sub-paragraph applies—
- (a) the 1984 Act shall, subject to the next following paragraph of this sub-paragraph, continue in force in relation to the following matters—
 - (i) a decision referred to in sub-paragraph (4) of this paragraph;
 - (ii) an appeal against such a decision;
 - (b) the functions, powers and duties that immediately before 1st April 2002 the authority had under the 1984 Act in relation to the matters mentioned in the preceding paragraph of this sub-paragraph shall apply to, and be exercisable by, the Commission instead of the authority;
 - (c) the decision to adopt a proposal to grant an application, whether unconditionally or subject to any conditions, shall with effect from the date on which it takes effect, be treated for the purposes of Part II of the Act—
 - (i) as if it were a decision to adopt a proposal to grant, subject to any such conditions, an application for registration in respect of a care home;
 - (ii) as if it had taken effect in accordance with section 19(5) of the Act.
- (6) This sub-paragraph applies where—
- (a) an application is made before 1st April 2002—
 - (i) to register a home under section 60 of the 1989 Act;
 - (ii) to register a home under Part VIII of that Act;
 - (b) paragraph 13(3) applies to the application; and
 - (c) as at 1st April 2002—
 - (i) the regulator has given the person who made the application notice under (as the case may be) paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 to the 1989 Act, of his decision to adopt a proposal to grant or refuse the application; and
 - (ii) either—
 - (aa) the period for bringing an appeal against the decision has not expired; or
 - (bb) an appeal has been brought but has not been determined or abandoned.
- (7) Where the previous sub-paragraph applies—
- (a) the provisions of sections 60 and 63 of, and Schedules 5 and 6 to, the 1989 Act, and the definition of “registered children’s home” in section 105 of that Act, that are repealed under section 117(2) of, and Schedule 6 to, the Act shall, subject to the next following paragraph of this sub-paragraph, continue in force in relation to the following matters—
 - (i) a decision referred to in sub-paragraph (6) of this paragraph;

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- (ii) an appeal against such a decision;
- (b) the functions, powers and duties (except for the purpose of making subordinate legislation) that immediately before 1st April 2002 the regulator had under Parts VII and VIII of, and Schedules 5 and 6 to, the 1989 Act in relation to the matters mentioned in the preceding paragraph of this sub-paragraph, shall apply to, and be exercisable by, the Commission instead of the regulator;
- (c) the decision to adopt a proposal to grant an application, whether unconditionally or subject to any conditions shall, with effect from the date on which it takes effect, be treated for the purposes of Part II of the Act—
 - (i) as if it were a decision to adopt a proposal to grant, subject to any such conditions, an application for registration in respect of a children’s home;
 - (ii) as if it had taken effect in accordance with section 19(5) of the Act.
- (8) This sub-paragraph applies to an application which is made before 1st July 2002 for a licence under the 1957 Act to carry on an agency for the supply of nurses and either—
 - (a) the authority has given the person who made the application notice under section 2(4) of that Act of the refusal of a licence, or of the grant of a licence subject to conditions, and either—
 - (i) the period for appealing in respect of that notice has not expired; or
 - (ii) the person who made the application has appealed but the appeal has not been determined or abandoned; or
 - (b) the authority has given the person who made the application the opportunity of being heard under section 2(5) of that Act, unless—
 - (i) it has given notice of the refusal of a licence; or
 - (ii) it has decided not to give such notice.
- (9) Where the previous sub-paragraph applies—
 - (a) the 1957 Act shall, subject to the next following paragraph of this sub-paragraph, continue in force in relation to the following matters—
 - (i) the decision to grant or refuse a licence under section 2 of that Act;
 - (ii) an appeal against such a decision;
 - (b) the functions, powers and duties (except for the purpose of making subordinate legislation) that immediately before 1st July 2002 the authority had under that Act in relation to the matters mentioned in the preceding paragraph of this sub-paragraph shall apply to, and be exercisable by, the Commission instead of the authority;
 - (c) the decision to adopt a proposal to grant an application, whether unconditionally or subject to any conditions shall, with effect from the date on which it takes effect, be treated for the purposes of Part II of the Act—
 - (i) as if it were a decision to adopt a proposal to grant, subject to any such conditions, an application for registration in respect of a nurses agency;
 - (ii) as if it had taken effect in accordance with section 19(5) of the Act.
- (10) Where sub-paragraph (1), (2), (4), (6) or (8) applies—
 - (a) if the application was made to an authority, the authority shall as soon as practicable provide the Commission with the following information—
 - (i) the name and address of the person making the application;
 - (ii) the name and address of the undertaking to which the application relates;

- (iii) the enactment under which the application was made;
- (b) if the application was made to an authority, the authority shall—
 - (i) forthwith after providing the information referred to paragraph (a) of this sub-paragraph pass to the Commission all the information or documents relating to the application which are in the possession of the authority;
 - (ii) as soon as practicable, pass to the Commission all such information or documents which come into the possession of the authority after 1st April 2002;
- (c) the Commission shall as soon as practicable notify the person who made the application that the application is to be determined by the Commission instead of the regulator.

(11) Where the Registered Homes Tribunal determines an appeal against a decision referred to in sub-paragraph (4)(c)(i) or (6)(c)(i), or a court of summary jurisdiction determines an appeal against a decision referred to in sub-paragraph (9)(a)(i), the determination shall be treated for the purposes of Part II of the Act—

- (a) in the case of an application to which sub-paragraph (4) applies, as if it were a decision of the Tribunal in respect of an application for registration in respect of a care home;
- (b) in the case of an application to which sub-paragraph (6) applies, as if it were a decision of the Tribunal in respect of an application for registration in respect of a children's home;
- (c) in the case of an application to which sub-paragraph (9) applies, as if it were a decision of the Tribunal in respect of an application for registration in respect of a nurses agency.

Providers and managers not eligible for registration before commencement of the Act

15.—(1) This sub-paragraph applies to any person who—

- (a) carries on an establishment or agency other than—
 - (i) a residential care home, nursing home or mental nursing home in respect of which a person is required to be registered under Part I or II of the 1984 Act;
 - (ii) a children's home, other than a home that is required to be registered in a register kept for the purposes of section 60 of the 1989 Act or under Part VIII of that Act;
 - (iii) an agency for the supply of nurses within the meaning of the 1957 Act which the person is authorised to carry on from those premises under a licence granted to him under section 2 of that Act; and
- (b) duly makes an application—
 - (i) in the case of a residential family centre, nurses agency or domiciliary care agency, in the period commencing on 1st March 2002 and ending on 30th June 2002; or
 - (ii) in the case of any other description of establishment or agency, other than a voluntary adoption agency, in the period commencing on 1st January 2002 and ending on 31st March 2002,

for registration under Part II of the Act as a person who carries on the establishment or agency.

(2) This sub-paragraph applies to any person who—

- (a) manages an establishment or agency other than a residential care home in respect of which a person is required to be registered under Part I of the 1984 Act; and
- (b) duly makes an application—
 - (i) in the case of a residential family centre, nurses agency or domiciliary care agency, in the period commencing on 1st March 2002 and ending on 30th June 2002; or

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(ii) in the case of any other description of establishment or agency, in the period commencing on 1st January 2002 and ending on 31st March 2002,

for registration under Part II of the Act as a person who manages the establishment or agency.

(3) The following sub-paragraphs of this paragraph shall apply in relation to a person ("the unregistered provider") to whom sub-paragraph (1) or (2) applies.

(4) Section 11(1) to (3), (5) and (6) of the Act shall not apply to an unregistered provider in respect of the establishment or agency—

(a) until such time as the application is granted, either unconditionally or subject only to conditions which have been agreed in writing between him and the Commission; or

(b) if the application is granted subject to conditions which have not been so agreed, or refused—

(i) if no appeal is brought, until the expiration of the period of 28 days after service on him of notice of the Commission's decision; or

(ii) if an appeal is brought, until it is determined or abandoned.

(5) This sub-paragraph applies where—

(a) the Commission applies to a justice of the peace for an order that section 11 of the Act should apply to an unregistered provider and that sub-paragraph (4) of this paragraph should cease to apply to him; and

(b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being.

(6) Where sub-paragraph (5) applies—

(a) the justice may make the order referred to in that sub-paragraph;

(b) section 11 of the Act shall apply to the unregistered provider, and sub-paragraph (4) of this paragraph shall cease to apply to him, from the time when the order is made.

(7) Section 20(2), (4) and (5) of the Act shall apply to any application made to a justice of the peace under sub-paragraph (5), and to any order made under sub-paragraph (6), as if the application or order (as the case may be) were made under section 20(1) of the Act and applied to the unregistered provider.