

Chapter 5

INDEPENDENT SECTOR CARE AND TREATMENT

- | | |
|------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 5.01 <i>Introduction</i> | B. RESIDENTIAL CARE HOMES |
| A. MENTAL NURSING HOMES | 5.10 <i>Definition</i> |
| 5.02 <i>Definition</i> | 5.11 <i>Registration</i> |
| 5.03 <i>Registration</i> | 5.12 <i>Review Process</i> |
| 5.04 <i>Prohibition of Holding Out
 Premises as a Mental Nursing
 Home</i> | 5.13 <i>Regulations as to Conduct of
 Residential Care Homes</i> |
| 5.05 <i>Regulations</i> | 5.14 <i>Inspection of Homes</i> |
| 5.06 <i>Review Process</i> | 5.15 <i>Offences</i> |
| 5.07 <i>Inspection of Mental Nursing
 Homes and Visiting Patients</i> | C. REGISTERED
HOMES TRIBUNALS |
| 5.08 <i>Effect of Cancellation or Death on
 Registration</i> | 5.16 <i>Constitution</i> |
| 5.09 <i>Ancillary provisions of the Mental
 Health Act 1983</i> | 5.17 <i>Procedure</i> |

5.01 Introduction

The law relating to the registration and inspection of mental nursing homes and residential care homes has been consolidated into the Registered Homes Act 1984.¹ Unless otherwise specified all references to section numbers in this chapter are to that Act. There are also two new sets of regulations made in pursuance of the 1984 Act: the Nursing Homes and Mental Nursing Homes Regulations 1984, S.I. 1984, No. 1578 (As amended by S.I. 1986, No. 456, S.I. 1988, No. 1191, S.I. 1990, No. 2164 and S.I. 1991, No. 2532), and the Residential Care Homes Regulations 1984, S.I. 1984, No. 1345 (As amended by S.I. 1986, No. 457, S.I. 1988, No. 1192, S.I. 1991, No. 2502, S.I. 1992, No. 2007, and S.I. 1992, No. 2241).² The Act and regulations should be

¹ As amended by the Registered Homes (Amendment) Act 1991. As to the background, see Law Com. No. 128 (1984) *Registered Homes Bill: Report on the Consolidation of Certain Enactments Relating to Residential Care Homes and Registered Homes Tribunals* Cmnd. 9115. See generally R. M. Jones, *Registered Homes Act Manual* (2nd ed) London, Sweet and Maxwell 1993.

² For explanatory circulars, see HC(84)21 and LAC(92)10.

read in conjunction with the codes of practice published by the Centre for Policy on Ageing on residential care homes¹ and by the National Association of Health Authorities on nursing homes and mental nursing homes.²

The intention of these provisions is carefully to regulate the non-statutory sector (*i.e.*, private and charitable concerns) in providing residential accommodation with personal care, treatment and/or nursing for mentally disordered and other vulnerable people. Careful regulation is necessary to ensure that high standards are set and enforced. This need for regulation becomes increasingly important with the expansion of care provided by the non-statutory sector.

The 1984 Act excluded from the requirement of registration any establishment which provided board and personal care for fewer than four people, excluding the proprietors and staff and their families. Concern that these homes were beyond the reach of local authorities' regulatory powers was heightened by evidence of people declared unsuitable to be registered in respect of large homes, staying in business by reducing the number of residents to three per home and spreading them over a large number of homes. The response to this was the Registered Homes (Amendment) Act 1991 which makes homes with less than four residents subject to a modified form of regulation.³ Guidance on the registration of small homes is found in Department of Health Circular LAC(92)10.

5.01.1 *Dual Registration*

A feature of the Registered Homes Act 1984 is that for the first time a home has, in certain circumstances, to be registered as both a residential care home and a mental nursing home (ss. 1(3), 1(5)(a), 23(2)). The main objective is to avoid the need for transfers between different types of homes when a resident's condition changes after admission, by enabling the widest possible range of care to be provided in a single establishment with the statutory safeguards attaching to registration for both types of home. However, for this to be successfully accomplished there will be a need within the legal framework for as much flexibility as possible to meet as far as practicable the particular need for care of individuals in the homes.

A mental nursing home used *solely* as a mental nursing home is not registerable as a residential care home (s. 1(5)(a)). However, a mental nursing home *must* be registered as a residential care home as well if

¹ The Centre for Policy on Ageing (1984) *Home Life: A Code of Practice for Residential Care*.

² National Association of Health Authorities (1985) *Registration and Inspection of Nursing Homes: A Handbook for Health Authorities*.

³ Registered Homes Act 1984, as amended by the Registered Homes (Amendment) Act 1991, ss. 1(4), (4A), (4B), 5(2A), 8(2), 8A, 9(2) and 10(DD).

it has four or more persons requiring care of the type characteristic of a residential care home (see paras. 5.10–5.11 below), which is not incidental to care calling for registration as a nursing home. Nursing homes with fewer than four persons needing care characteristic of a residential care home *may* be registered as a small home or, if it is contemplated that the numbers of residents might at times exceed four, full registration as a residential care home may be sought under section 4. A residential care home with *one or more* residents requiring the type of care calling for registration under Part II of the Act (see paras. 5.02–5.03 below) will also have to be registered as a nursing home.

A. MENTAL NURSING HOMES

5.02 Definition

A “mental nursing home” means any premises used, or intended to be used, for the reception of, and the provision of nursing or other medical treatment (including care, habilitation and rehabilitation under medical supervision) for, one or more mentally disordered patients, whether exclusively or in common with other persons (s. 22(1)).¹ The definition excludes NHS hospitals (as to the definition of “hospital” see para. 3.02 *ante*) and any other premises managed by a government department or provided by a local authority (s. 22(2)). Under this definition, for example, **private hospitals** used for the care or treatment of mentally disordered persons would be classified as mental nursing homes. Each District Health Authority has been directed to ensure that all premises in their district are inspected which are not registered as a mental nursing home and which the authority has reason to believe should be registered.²

5.02.1 *For the purposes of Part II or III of the Mental Health Act 1983*

Except where otherwise expressly provided, any reference to a “hospital” in Part II (compulsory admission to hospital) or Part III (patients concerned in criminal proceedings or under sentence) of the Mental Health Act 1983 applies to mental nursing homes.³ In applying for registration of a mental nursing home (see next para.), it must be specified whether it is proposed to receive in the home patients who

¹ “Mental nursing home” in the Mental Health Act 1983 takes on the same meaning as in the Registered Homes Act 1984. See s. 145(1) of the 1983 Act as amended by s. 57, Sch. 1, para. 9 of the 1984 Act.

² Registered Homes Act 1984, s. 27(d). In 1984 the Secretary of State for Social Services issued a direction (circular HC(84)21, Annex C) under s. 17 of the National Health Service Act 1977 requiring such premises to be inspected.

³ Mental Health Act 1983, ss. 34(2), 55(5); Residential Homes Act 1984, s. 57, Sch. 1, para. 10.

are liable to be detained under the Mental Health Act (s. 23(3)(c)). Where an application states that it is proposed to receive such patients that fact must be specified on the certificate of registration and the particulars of the registration must be entered in a separate part of the register (s. 23(5)). Patients cannot be compulsorily admitted to or detained in a mental nursing home in pursuance of Part II or Part III of the Mental Health Act unless the home is currently entered in the separate part of the register kept for the purposes of section 23(5) of the 1984 Act.

5.03 Registration

5.03.1 Requirement for Registration

Any person who carries on a mental nursing home without being registered¹ in respect of that home commits an offence (s. 23(1)).² An application to register a mental nursing home under Part II of the Registered Homes Act 1984 is made to the district health authority.³ The application must be accompanied by the prescribed fee and must specify whether it is proposed to receive in the home patients who are liable to detention under the Mental Health Act (s. 23(3)). (As to the registration of homes in which patients may be detained, see the preceding para.). Unless the district health authority refuses the application in accordance with the criteria listed in section 25 (see next para.), it must register the applicant and issue a certificate of registration (s. 23(4)). The certificate must be kept affixed in a conspicuous place in the mental nursing home; and failure to do so is an offence (s. 23(6)).⁴

5.03.2 Refusal of registration

The district health authority may refuse to register an applicant in respect of a mental nursing home if satisfied that any of the criteria listed in section 25 are met. These include that the applicant or any person to be employed at the home is not a fit person (whether by age or otherwise); that because of the situation, construction, staffing,

¹ Registration of a mental nursing home under Part II of the 1984 Act does not affect any requirement to register a residential care home under Part I (s. 23(2)).

² A person guilty of an offence under s. 23(1) is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine (s. 46(2)). But the Secretary of State may exempt from the requirement to register Christian Science homes (s. 37).

³ The Secretary of State delegates his function as the registration authority to Regional Health Authorities who delegate by written direction to district health authorities. National Health Service Functions (Directions to Authorities and Administrative Arrangements) Regulations 1991. (S.I. 1991, No. 554)

⁴ A person found guilty of an offence under s. 23(6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale (s. 47(2)(a)). The court can fix a reasonable period for compliance with directions to affix a certificate (s. 47(3)). After that time (if any is specified by the court) there is to be a further fine of £5 for each day on which the offence continues (s. 47(2)(b)).

accommodation or equipment, the home is not fit to be used as a home; that the home is to be used in an improper or undesirable way; the home is not in the charge of a registered medical practitioner or a qualified nurse¹ (s. 25(1)). The district health authority is entitled to specify by notice that nurses possessing certain qualifications must be on duty at the home at certain times (s. 25(3), (4)).

5.03.3 *Additional registration conditions*

It is a condition of registration that the number of persons kept at any one time in the mental nursing home (excluding persons carrying on or employed in the home, together with their families) does not exceed such number as may be specified in the certificate of registration (s. 29(1)). The district health authority may also specify in the certificate of registration such conditions as it considers appropriate for regulating the age, sex or other category of persons who may be received in the home (s. 29(2)).² If any condition currently in force is not complied with, the person carrying on the home is guilty of an offence (s. 29(4)).³

5.03.4 *Cancellation of registration*

The district health authority may at any time cancel the registration on any ground which would entitle it to refuse an application (s. 28(a)) (see para. 5.03.2 above). The registration can also be cancelled on the ground that there has been a conviction of an offence in respect of that home, that any condition of registration has not been complied with or that the annual fee has not been paid (s. 28(b)-(e)). If the registration authority cancels the registration of a mental nursing home which is registered to take detained patients, section 36 of the 1984 Act provides for the temporary continuation of the registration if the home is at the time caring for one or more detained patients. The cancellation will be suspended for up to two months or until every detained patient in the home has ceased to be liable to be detained, whichever is the sooner.

5.03.5 *Urgent procedure for cancellation of registration*

The district health authority can apply to a justice of the peace for an order cancelling the registration, varying any condition of registration or imposing an additional condition. The justice may make a written order if it appears to the justice that there will be a serious risk

¹ "Qualified nurse" means a nurse possessing such qualifications as the district health authority may specify by notice (s. 25(2)).

² For the limits to a registration authority's power to impose conditions on an initial registration see *Warwickshire County Council v. McSweeney* (unreported, December 8, 1988, per Roch J) and *Isle of Wight County Council v. Humphreys* (1991) 8 BMLR 119.

³ A person guilty of an offence under s. 29(4) is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale (s. 48).

to the life, health or well-being of the patient unless the order is made (s. 30(1), (3)).¹

5.04 Prohibition of Holding Out Premises as a Mental Nursing Home

A person who, with intent to deceive, applies a name to a premises or in any way describes the premises or holds such premises out as to indicate that it is a mental nursing home is guilty of an offence unless the premises are registered (s. 24(2)).²

5.05 Regulations

5.05.1 *As to conduct of mental nursing homes*

The Secretary of State for Social Services may make regulations³ as to the conduct of mental nursing homes which may, in particular, make provision as to the facilities and services to be provided; make provision as to the giving of notice (and the information to be provided in the notice) of periods during which the person in charge of the home proposes to be absent from the home; provide for the making of adequate arrangements for the running of a home during a period when the person in charge is absent; and provide that a contravention of or a failure to comply with any specified provision of the regulations is an offence against the regulations (s. 26).⁴

5.05.2 *Supplementary regulations*

The Secretary of State may make regulations⁵ with respect to the registration of persons in respect of mental nursing homes and, in particular, with respect to the making of applications for, and the refusal and cancellation of, registration; the keeping of records including records relating to detention and treatment of persons detained under the Mental Health Act 1983; the notification of events occurring in the home; entry into and inspection of premises; to require the payment of an annual fee and when it is to be paid; and to provide that contravention of or failure to comply with any provision is an offence against the regulations (s. 27).⁶

¹ The application may be made *ex parte* and must be supported by a written statement of reasons for making the application (s. 30(2)).

² A person guilty of an offence under s. 24 is liable on summary conviction to a fine not exceeding level 3 on the standard scale (s. 50).

³ See the Nursing Homes and Mental Nursing Homes Regulations 1984, S.I. 1984, No. 1578.

⁴ As to the making of regulations, see s. 56. A person found guilty of an offence against the regulations made under s. 16, 26 or 27 is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale (s. 49).

⁵ See note 3 above.

⁶ See note 3 to para 5.05.1. above.

5.06 Review Process

5.06.1 *Notice of conditions, or refusal, of registration*

The district health authority has a duty to give notice¹ to the applicant for registration in respect of a mental nursing home where the authority proposes to refuse the application or where it proposes to grant the application subject to conditions (s. 31(1), (2)). Except where the district health authority makes an application to a justice under section 30 for urgent cancellation of registration (see para. 5.03.5 above), the district health authority must give notice of a proposal to cancel the registration, to vary any condition or to impose any additional condition (s. 31(3)). Any notice given under section 31 must give reasons for the proposal (s. 31(4)).

5.06.2 *Right to make representations*

A notice given under section 31 (see preceding para.) must state that within fourteen days of service of the notice the person may in writing require the district health authority to give him an opportunity to make representations concerning any matter which he wishes to dispute (s. 32(1)). The representations may be made either in writing or orally (s. 32(4)). If he informs the authority that he desires to make oral representations, the authority must give him the opportunity of appearing before a person appointed by it (s. 32(5)).

If the district health authority decides to adopt its original proposal, it must serve written notice of its decision, including an explanation of the right of appeal in section 34 (s. 33) (see next para).

5.06.3 *Appeal*

An appeal against a decision taken by the district health authority or an order made for urgent cancellation of registration under section 30 (see para. 5.03.5 above) lies to a Registered Homes Tribunal (s. 34(1)) (see Part III of the 1984 Act and paras. 5.16.–5.17 below). An appeal is brought by written notice given to the authority within 28 days after receiving notice of the decision or order (s. 34(2), (3)). The decision of the tribunal is binding on the authority (s. 34(7)). The tribunal has the power to confirm or set aside the decision or order, or to vary, add or delete any condition (s. 34(4)–(6)). A registered person is not entitled to seek judicial review of a decision to cancel registration until the appeals procedure before the Registered Homes Tribunal has been exhausted *R. v. Birmingham City Council ex parte Ferrero*.²

¹ As to service of any notice or other document, see s. 54.

² (1991) 89 L.G.R. 977.

5.07 Inspection of Mental Nursing Homes and Visiting Patients**5.07.1 Inspection of homes and records**

Any person authorised by the district health authority may at any time 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 mental nursing home. Such an authorised person may also inspect any records required to be kept in pursuance of section 27(b) (see para. 5.05.2 above), including records relating to the detention and treatment of detained patients. The authorised person must, if asked to do so, first produce some duly authenticated document showing he is so authorised (s. 35(1)).

5.07.2 Interviewing patients

A person authorised by the district health authority to inspect a mental nursing home (see preceding para.) may visit and interview in private any mentally disordered patient residing there. Such an interview can take place for the purpose of investigating any complaint as to his treatment made by him or on his behalf; or in any case where the authorised person has reasonable cause to believe that the patient is not receiving proper care. Where the authorised person is a doctor, he may examine the patient in private, and may require the production of his treatment records (s. 35(2)). (As to the powers and duties of the Mental Health Act Commission to visit, interview and examine patients in mental nursing homes see para. 22.12 *post*). As to powers to interview detained patients for the purpose of exercising a discharge order, see para. 17.04 *post*.)

5.07.3 Frequency of visiting

The Secretary of State may make regulations requiring the inspection of mental nursing homes under section 35(1) to be carried out on specified occasions or intervals (s. 35(3)).¹

5.07.4 Obstruction

Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person by an authorised person or to produce for inspection any document or record which he is required to produce, or otherwise obstructs any authorised person in the exercise of his functions, is guilty of an offence (s. 35(5)). Further, any person who insists on being present when requested to leave by a person authorised

¹ The registration authority may inspect any home on such occasions and at such intervals as it may decide. Residential Care Homes Regulations 1984. But it must make at least two inspections each year. Residential Care Homes (Amendment) Regulations 1988, SI 1988 No. 1192, reg. 5.

to interview or examine a person in private is guilty of an offence (s. 35(6)).¹

5.08 Effect of Cancellation or Death on Registration

Section 36 applies to any mental nursing home which is registered to receive patients liable to detention under the Mental Health Act 1983 (s. 36(1)) (see para. 5.02.1 above). If the registration of any such home is cancelled under section 28 (see para. 5.03.4 above) at a time when any patient is liable to be detained in the home, the registration continues in force for two months after the date of cancellation or until every patient ceases to be liable to be detained, whichever occurs first (s. 36(2)). There are similar provisions for extension of registration in cases where the sole person registered dies. In such cases the registration continues for two months, or until every patient ceases to be liable to be detained or until a new person has been registered, whichever first occurs (s. 36(3)).

5.09 Ancillary Provisions of the Mental Health Act 1983

Sections 125 (inquiries, see para. 22.19 *post*), 126 (forgery, false statements, etc., see para. 25.02 *post*) and 139 (protection of acts done, see paras. 21.25–21.33 *post*) all to some extent refer to acts performed or matters arising under the Mental Health Act. It is a matter for construction in each individual case whether they apply to acts performed or matters which arise in mental nursing homes. Section 38 of the Registered Homes Act 1984 provides that to the extent that these provisions applied immediately before the commencement of Part II of the 1984 Act they will continue to apply. Clearly, for example, if a nurse restrained a patient detained in a mental nursing home, he would be entitled to the protection afforded by section 139.

B. RESIDENTIAL CARE HOMES

5.10 Definition

The definition of “residential care home” within the meaning of Part I of the Registered Homes Act 1984 is any establishment which provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care² for persons in

¹ A person guilty of an offence under s. 35(5) or (6) is liable on summary conviction to imprisonment for a term not exceeding three months and/or to a fine not exceeding level 4 on the standard scale (s. 51(2)). A local social services authority may institute proceedings for such an offence (s. 53(2)).

² “Personal care” means care which includes assistance with bodily functions where such assistance is required (s. 20(1)). See also *Harrison v Cornwall County Council* (1991) 11 BMLR 75.

need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder (s. 1(1), (2)). This definition includes charitable as well as private homes which must not only provide accommodation but also board and personal care.

5.11 Registration

5.11.1 Requirement for registration

Registration¹ under Part I of the 1984 Act is required in respect of any residential care home (s. 1(1))² except in the cases specified in section 1(4), (5). These exceptions include any establishment where the only residents are persons carrying on or employed in the home or their relatives;³ an establishment used or intended to be used solely as a nursing home or mental nursing home (see definition at para. 5.02 above); and any health service hospital.⁴ Any person who carries on a residential care home who is required to register it and does not is guilty of an offence (s. 2). Since the Registered Homes (Amendment) Act 1991 came into force on 1 April 1993, it has been an offence to operate an unregistered small home which is not exempt from the duty to register. "Small home" means an establishment which provides or is intended to provide residential accommodation with both board and personal care for fewer than four persons, excluding persons carrying on or intending to carry on or employed or intended to be employed there and their relatives (s. 1(4A)). This definition includes premises caring for people under adult placement schemes if board and personal care are provided (Health Circular No. LAC(92)10, Annex A, paras. 15-17). The registration procedure for small homes is a modified version of that applicable to residential care homes. The modifications are described below.

5.11.2 Registration procedure

An application for registration of a residential care home or a small home must be made to the registration authority, which is the local social services authority⁵ for the area in which the home is situated

¹ Where the manager is not in control of the home (whether as owner or otherwise) both the manager and the person in control are treated as if carrying on the home and must register (s. 3).

² Registration under Part I of the 1984 Act does not affect any requirement to register as a nursing home or a mental nursing home under Part II of the Act (s. 1(3)).

³ If a person is already registered in respect of a mental nursing home under Part II, he has the option of also registering in respect of a residential care home under Part I even though he is not required to register because he has less than four residents as provided for in s. 1(4), (s. 4).

⁴ The other establishments which are also excused from the requirement to register include voluntary homes, community homes and children's homes and under the Children Act 1989, and most schools, colleges and universities (s. 1(5), (6), (7)).

⁵ "Local social services authority" means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 (s. 55).

(s. 20(1)). The application must be accompanied by a fee of an amount specified by the Secretary of State for Social Services (s. 5(1)).¹ In the case of a small home the registration authority may waive the whole or part of the registration fee or the annual fee (ss. 5(2A), 8(2)). Unless the local authority refuses the application or gives notice that it will be given subject to certain conditions, it must register the applicant (s. 5(2)).

5.11.3 *Refusal of Registration*

The local social services authority may refuse to register an applicant in respect of a residential care home if it is satisfied that he or any other person concerned in carrying on the home is not a fit person;² that for reasons connected with their situation, construction, state of repair, accommodation, staffing or equipment, the premises are not fit; or that it will not provide the services or facilities reasonably required (s. 9(1)). The registration authority may refuse to register an applicant in respect of a small home only if they are satisfied that he or any other person concerned or intended to be concerned in carrying on the home is not a fit person to be concerned in carrying on a residential care home (s. 9(2)).

5.11.4 *Conditions of registration*

It is a condition of registration that the number of residents who receive personal care does not exceed the number specified in the certificate of registration. The local social services authority may also specify other conditions which it considers appropriate for regulating the age, sex or category of persons who may be received in the home (s. 5(3)). The authority may from time to time vary any condition or impose an additional condition (s. 5(4)). If any condition is not complied with, any person registered is guilty of an offence (s. 5(5)).³ The certificate of registration of a residential care home must be kept affixed in a conspicuous place in the home, and failure to do so is an offence

¹ The Secretary of State can by regulation set an annual fee to be paid for registration (s. 8).

² As to "fit person" see *R v Humberside County Council ex parte Bogdal* (1992) 11 BMLR 46. Department of Health Circular No. LAC(91)4 details the procedure for checking with the police on the criminal background of applicants for registration as owners or managers of residential care homes. The Rehabilitation of Offenders Act 1974 does not apply to applicants for registration under the 1984 Act (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (S.I. 1975, No. 1023), arts 3(a)(iii), 4(b) and 5, Schedule 1, Part III, paras. 6(b), 7 and Schedule 3, paras 11(b), 12). The Department of Health keeps a list of persons and companies whose registration under the 1984 Act has been refused or cancelled. This is sent to registration authorities on a regular basis (Department of Health Circular No. LAC(89)12, para. 7).

³ A person guilty of an offence under s. 5(5) is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale (s. 48).

(s. 5(6)).¹ Small homes are exempt from the requirement to put the certificate on public display. They must make an annual return to the registration authority detailing the age, sex and category (e.g. mental disorder, mental handicap, old age, physical disablement) of the residents (s. 8A and Circular No. LAC(92)10, Annex A, paras. 11 and 12). Failure to submit this annual return is a ground on which registration may be cancelled (s. 10(bb)).

5.11.5 *Inspection of registers*

The registers kept by a local social services authority must be made available for inspection at all reasonable times, and any person making an inspection is entitled to make copies of entries in the register upon payment of a reasonable fee determined by the authority (s. 7).

5.11.6 *Cancellation of registration*

The local social services authority may cancel the registration on any ground which would entitle them to refuse an application for registration (see para. 5.11.3 above); on the ground that the annual fee has not been paid on time; on the ground that any person has been convicted of an offence under Part I of the Act or regulations made under it in respect of that home or, in the case of the person carrying on the home, an offence in respect of any other residential care home²; or that any condition in respect of the registration of the home (see para. 5.11.4 above) has not been complied with (s. 10).

5.11.7 *Urgent procedure for cancellation of registration*

The local social services authority may apply to a justice of the peace for an order cancelling the registration, varying a condition, or imposing an additional condition. The justice may make such an order, which must be in writing (s. 11(3)), if it appears to him that there will be a serious risk to the life, health or well-being of the residents of the home (s. 11(1))³. The application may be made *ex parte* and must be supported by a written statement of the reasons for making the application (s. 11(2)). The authority must serve on the person registered, as

¹ A person guilty of an offence under s. 5(6) is 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 (s. 47(1)).

² The Registered Homes Tribunal in *Love v. Wiltshire County Council* (1988) Decision No. 88, decided that the mere conviction of an owner when she was employed as a nurse at another home was insufficient in itself to cancel the registration on the home she currently owned. The county council must inquire into the circumstances of the offence and the owner's past history to assess her fitness to run the home.

³ See *Abbott-Hull v. Lancashire County Council* (1989) Decision No. 98. Registered Homes Tribunal.

soon as practicable, notice of the order and its terms and a copy of the authority's reasons given in support of the application (s. 11(4)).

5.12 Review Process

5.12.1 *Notice of conditions, or refusal, of registration*

The local social services authority must give notice¹ to an applicant for registration where the authority proposes to refuse the application, or where it proposes to grant the application subject to certain conditions (s. 12(1), (3)). (The authority need not give notice if the conditions are those specified in the application or those agreed between the authority and the applicant (s. 12(2)). Except where the local social services authority makes an application to a justice under section 11 for urgent cancellation of registration (see para. 5.11.7 above), the authority must give notice of a proposal to cancel the registration, vary a condition or to impose an additional condition (s. 12(4)). Any notice given under section 12 must give reasons for the proposal (s. 12(5)).

5.12.2 *Right to make representations*

A notice given under section 12 (see preceding para.) must state that within fourteen days of service of the notice the person may in writing require the local social services authority to give him an opportunity to make representations (s. 13(1)). The representations may be made, at the option of the person making them, either in writing or orally (s. 13(4)). If he informs the authority that he wishes to make oral representations, the authority must give him the opportunity of appearing before, and being heard by, a committee or sub-committee of the authority (s. 13(5)).

If the local social services authority decides to adopt its original proposal, they must serve written notice of its decision, including an explanation of the right of appeal in section 15 (see next para.) (s. 14).

5.12.3 *Appeals*

An appeal against a decision of a local social services authority or an order made by a justice of the peace under section 11 (see para. 5.11.7 above) lies to a Registered Homes Tribunal (s. 15(1)) (as to which see paras. 5.16–5.17 below). An appeal must be brought by written notice to the authority made within 28 days after service of the notice of the decision or order (s. 15(2), (3)). The decision of the tribunal is binding on the authority (s. 15(7)). The tribunal has the power to confirm or set aside the decision or order or to vary, add or delete any condition of registration (s. 15(4)–(6)).

¹ As to service of notice and other documents, see s. 54.

5.13 Regulations as to Conduct of Residential Care Homes

The Secretary of State for Social Services may make regulations¹ as to the conduct of residential care homes and, in particular as to the facilities and services to be provided; the numbers and qualifications of staff to be employed and to be on duty; the records to be kept and notices to be given in respect of the residents; the notification of events occurring; the giving of notice (and the information to be provided in the notice) of periods during which specified persons propose to be absent from the home; the form of registers to be kept and the particulars to be contained in them; and the information to be supplied on an application for registration (s. 16(1)). The regulations may provide that contravention or failure to comply with any specified provision is an offence against the regulations (s. 16(2)).²

5.14 Inspection of Homes

5.14.1 *Persons authorised by the Secretary of State*

Any person authorised by the Secretary of State for Social Services may at all times enter and inspect any premises which are used, or which the person has reasonable cause to believe to be used, for the purposes of a residential care home (s. 17(1)). The person must, if requested, produce some duly authenticated document showing his authority to exercise the power (s. 17(5)). This is a widely sweeping provision for it allows entry and inspection at **any** time day or night and not only at reasonable times. Further, there is no territorial limitation within England and Wales as to the homes an authorised person can enter or inspect.

5.14.2 *Persons authorised by the local social services authority*

Any person authorised by a local social services authority may at all times enter and inspect any premises in the area of the authority which are used, or which he has reasonable cause to believe to be used for the purposes of a residential care home (s. 17(2)). If asked to do so, the person must produce some duly authenticated document showing his authority to exercise the power (s. 17(5)). This gives the local authority the same power as the Secretary of State to authorise persons to inspect residential care homes; but only homes in the authority's area may be inspected. In view of the single registration criterion of whether the person applying for registration is fit, and in view of the "family atmosphere" of small homes, authorities are neither required nor expected to inspect small homes either on registration or regularly

¹ See the Residential Care Homes Regulations 1984, S.I. 1984, No. 1345 as amended, see para. 5.0.1 above.

² As to the making of regulations, see s. 56. A person found guilty of an offence against the regulations under s. 16, 26 or 27 is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale (s. 49).

thereafter. However, the power of inspection under section 17 apply equally to small homes and authorities may use them if they consider it appropriate, for example on receipt of a complaint (LAC(92)10, Annex A paras. 8 and 9).

5.14.3 *Inspection of records*

The powers given to persons authorised by the Secretary of State and the local social services authority (see paras. 5.14.1–5.14.2 above) extend to the inspection of records required to be kept under the regulations (s. 17(3)) (as to which see para. 5.13 above).

5.14.4 *Times when homes must be inspected*

The Secretary of State may by regulations require that residential care homes must be inspected on such occasions or at such intervals as the regulations may prescribe (s. 17(4)). Any person who obstructs the exercise of any power of inspection is guilty of an offence (s. 17(6)).¹

5.15 Offences

5.15.1 *Penalties*

The penalties for offences under Parts I and II of the Registered Homes Act 1984 are provided for in Part IV of the Act.

5.15.2 *Defences*

It is a defence in respect of any offence under Part I of the 1984 Act for the person charged to prove 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** that he took all reasonable precautions and exercised all diligence to avoid the commission of the offence by himself or any person under his control (s. 18(1)).²

¹ A person guilty of an offence under s. 17(6) is liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale (s. 51(1)).

² Seven days notice must be given to the prosecutor if certain allegations are to be relied upon in putting forward a defence under s. 18(1) (see s. 18(2)).

C. REGISTERED HOMES TRIBUNALS**5.16 Constitution**

Tribunals constituted under Part III of the Registered Homes Act 1984 to hear appeals under Part I or II of the Act are known as Registered Homes Tribunals. Such tribunals comprise a legal member (chairman) from the "legal panel" appointed by the Lord Chancellor of persons possessing such legal qualifications as the Lord Chancellor considers suitable; and two members from the "panel of experts" appointed by the Lord President of the Council of persons with experience in social work, medicine, nursing or midwifery or such other experience as the Lord President of the Council considers suitable. No officer of a government department may be appointed (ss. 40, 41).

5.16.1 Constitution for appeals relating to mental nursing homes

A Registered Homes Tribunal to hear an appeal relating to registration of a mental nursing home under Part II of the 1984 Act must include a registered medical practitioner and a qualified nurse¹ (s. 42).

5.17 Procedure

The Secretary of State may by statutory instrument make rules as to the practice and procedure to be followed with respect to the constitution of Registered Homes Tribunals, and as to their proceedings.²

¹ As to the meaning of "qualified nurse" see s. 42(4).

² See the Registered Homes Tribunals Rules 1984, S.I. 1984, No. 1346 as amended, see para. 5.01 above.