

ToC/MD/3

Commissioner's File: CSB/1085/1986

C A O File: AO 2993/SB/86

Region: London South

**SUPPLEMENTARY BENEFITS ACT 1976  
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION  
OF LAW  
DECISION OF A TRIBUNAL OF COMMISSIONERS**

**Name:** Mrs Ann Marie Turner  
Appointee for Mrs Ivy Turner

**Social Security Appeal Tribunal:** Slough

**Case No:** 16/22-10

**[ORAL HEARING]**

1. Our decision is that the decision of the social security appeal tribunal dated 5 August 1986 is erroneous in law and we set it aside.

Our decision is

- (1) the weekly amount applicable to the claimant for board and lodging in Bridge House Nursing home
  - (a) from 22 July 1985 to 24 November 1985 is £198.60
  - (b) from 25 November 1985 to 21 January 1987 is £230
- (2) any assessments or revised assessments that may be required to give effect to this decision should now be made by the adjudication officer
- (3) the adjudication officer and the claimant's representative are to be at liberty to apply in the event of dispute in carrying out the terms of this decision

**Representation**

2. The representation in this appeal was the same as in the associated appeal the reference to which on Commissioner's file is CSB/842/86 (Tyler). The definitions in paragraph 7 of Tyler are adopted.

**Nature of the appeal**

3. This is the second of the group of six appeals referred to in Tyler and is the second

appeal relating to a nursing home. As with the other appeals, the present appeal is concerned with the extent to which the charges for board and lodging in the home are allowable in calculating the claimant's supplementary benefit and are to be met out of her supplementary benefit entitlement. The present appeal differs from Tyler in that the "protected amount" does not exceed the amount which would otherwise be appropriate under regulation 9(6) of the Cotton or the Camden Regulations. It is accordingly irrelevant: see paragraph 43 of Tyler. The issue in the present appeal related to the proper method of determining, on the true construction of paragraph 2 of Schedule 1A of the Cotton Regulations (which we have held in Tyler to be valid), of the Camden Regulations and of those regulations as amended by the 1986 Regulations "the appropriate amount", that is to say the financial limit of the allowable board and lodging charges. As explained in paragraph 43 of Tyler, the weekly amount for board and lodging authorised by regulation 9(1)(a) of the Cotton and, in paragraph 46, of the Camden Regulations must not exceed the maximum amount referred to in regulation 9(6) and the maximum amount is determined by reference (in the case of persons over the age of 11 years) to the appropriate amount in Schedule 1A. The question at issue is accordingly the category of care in paragraph 2 of Schedule 1A in to which the claimant's case falls.

#### The period in issue

4. This is not in dispute. The claimant entered the Bridge House Nursing Home on 22 July 1985 and died there on 21 January 1987. The representatives of the claimant and of the adjudication officer both wish us to consider the whole of this period.

#### The relevant law

5. The relevant provisions of the Cotton Regulations, the Camden Regulations and the 1986 Regulations are respectively set out in the Second, Third, and Fourth Appendices to Tyler. The Fifth Appendix to that decision sets out the rates from time to time applicable under paragraphs 1 and 2 of Schedule 1A.

6. The relevant provisions of the Registered Homes Act 1984, the Residential Care Homes Regulations 1984 [SI 1984 No.1345] and the Nursing Homes and Mental Homes Regulations 1984 [SI 1984 No.1578] are set out in the Appendix to this decision.

#### The adjudication officer's decision

7. By a decision issued on an unknown date, but which was the subject of a notice of appeal dated 27 January 1986, an adjudication officer decided, according to form AT2 (which was before the appeal tribunal) as follows:

"[The claimant] is entitled to a Supplementary Pension of £180.55 per week".

8. The claimant appealed against this decision through her appointee (her daughter in law). The appointee wrote that the claimant had been the responsibility of the DHSS since 1984 and had no money whatever. She was transferred from Wokingham Hospital to Bridge House without her knowledge and consent. When the appointee and her husband queried the cost they were told quite categorically that all fees would be paid. They had paid the difference between the benefit received and the fees in good faith on behalf of the claimant and the Department could not seven months later decide to change their minds and call it an "official error" and expect them to pay for the DHSS error. The transfer was not made by them and they were absolutely unable to fund the exercise. The claimant was the responsibility of the DHSS, they were not responsible for her costs. They were now owed up to 26 January 1986 the sum of £484.75 which they would be glad if it would be reimbursed by return. Meantime all payments to the nursing home had been suspended.

9. In the written submission on the appeal the adjudication officer stated that the facts before him were that the claimant was a widow aged 82 years who was entitled to a

supplementary pension and also received a retirement pension which was paid with her supplementary pension. She received attendance allowance which was awarded from 5 August 1985. Her capital was less than £500. She was resident in a residential care home from 9 July 1984 until she was admitted to hospital on 6 May 1985. On discharge from hospital she moved into Bridge House Nursing Home on 22 July 1985. The fees at Bridge House were £238 per week. Bridge House was registered as a nursing home.

10. In giving reasons for his decision, the adjudication officer set out paragraph 2 of Schedule 1A of the Camden Regulations (This is reproduced in the Third Appendix to Tyler). He stated that he considered that paragraph (1)(f) was applicable to the claimant's circumstances, that is to say the sum of £170 a week. The claimant had previously to 29 April 1985 been in a residential care home and by virtue of regulation 9(17)(a) and (b) of the regulations if the protected amount (i.e. the weekly amount determined to be appropriate prior to 29 April 1985) exceeded the amount which would otherwise be appropriate under regulation 9(6) then the weekly amount should be the protected amount. Regulation 9(17)(a) made it clear that a claimant who changed his accommodation should be deemed to be in the same accommodation if the accommodation that the claimant moved to was a residential care home or a nursing home or both. Since, however, the protected amount was less than £170 a week, the adjudication officer had decided that the claimant was not entitled to a protected amount.

11. A letter dated 13 July 1984, which is in the case papers, shows that the residential care home in question (Lovat House Private Rest Home) was charging the claimant £135 a week at the date of her admission on 9 July 1984 and there is no suggestion that it was increased during her term there (which ended on her admission to hospital on 6 May 1985). It is accordingly not in dispute that the adjudication officer was correct in considering the protected amount is not relevant to this appeal. It is less than any sum specified in paragraph 2 of the Cotton Regulations and considerably less than any sum specified in paragraph 2 of the Camden Regulations: see the Fifth Appendix to Tyler.

12. It is also not in dispute that the assessment of £180.55 a week in the adjudication officer's decision was incorrect. The assessment exhibited to the adjudication officer's written submission on the appeal to the social security appeal tribunal shows that this sum includes £30.60 Attendance Allowance, which is a separate benefit and not a part of supplementary benefit at all.

#### The social security appeal tribunal's decision

13. Before the appeal tribunal, who heard the appeal on 5 August 1986, the claimant's son gave evidence (the chairman's note is in error in describing him as the appointee - that was the son's wife). His evidence was that his mother was suffering (inter alia) from senile dementia and incontinence and in the words of the matron of the home terminally ill.

14. The appeal tribunal's decision, which was unanimous, was:

"That [the claimant's] supplementary pension should be assessed on the basis that the maximum amount appropriate for nursing home fees be as at 25/11/85 i.e. £230 pw (with the equivalent current rate extant during the period being applied). The period above referred to shall be from the date of leaving hospital and entering Bridge House Nursing Home until the date of this tribunal hearing and thereafter. In the event of further disagreement about the above re-assessment decided by the tribunal, either party can return to the tribunal for further decision"

15. The tribunal's recorded findings of fact were:

"1. [The claimant] is 82 in a nursing home and suffers from senile dementia, double incontinence etc and is in the view of the tribunal in the light of the evidence

suffering from a terminal illness.

2. Prior to May 1985 when [the claimant] entered hospital she was in a Residential Care Home.
  3. After a stay in hospital it was considered she was too ill to re-enter a residential care home and was admitted to a nursing home.
  4. The fees at the time were £238 pw. The fees at the residential care Home £135.
  5. The assessments by DHSS have changed in this case so many times (at least 12 times in 6 months with admitted errors) that it is difficult to say what assessment is correct at date of hearing".
16. The tribunal's recorded reasons for decision were;

"Although AO was correct under the 'protected rights' regulations that amount allowable before 29.4.85 exceeded the maximum that was being paid in a residential care home. This is not the point in this case.

After leaving hospital with what the tribunal considered to be a terminal illness due to senile dementia, incontinence etc and entering a nursing home in July 1985 she was entitled to receive up to a maximum of £198.60 until 25/11/85 when the amount became £230 pw. This is the maximum amount for care of those receiving care for a terminal illness and is authorised under Paragraph 2(1) of Schedule 1A to Reg.9(6)(b) of the Requirements Regulations.

Although the tribunal cannot deal with the treatment of [the claimant's son] and his mother by the DHSS it should be noted that no less than 12 revised assessments (with 3 admitted errors) were supplied to [the claimant's son] from August 1985 to 3/3/86 which makes it difficult for an appellant to present a case and for the tribunal to arrive at a decision."

17. Leave to appeal against the tribunal's decision was granted to the adjudication officer by the chairman of the tribunal.

Was the tribunal's decision erroneous in law?

18. Yes, it was. The tribunal approached the case on the basis that because the claimant was in a nursing home with a terminal illness she was, for that reason, entitled to receive the rate specified in sub-paragraph (e) of paragraph 2 of Schedule 1A of the Cotton or Camden Regulations. They did not consider, or if they did consider failed to explain, the application of paragraph 3 of that Schedule to the facts of the case before them. In the absence of a clear finding that the nursing home provided only one type of care, namely care for the terminally ill, it was necessary to consider paragraph 3, in conjunction with paragraph 2. Failure to do so was an error of law; for paragraph 3 applies to every case where more than one type of care is provided by the home in question.

19. In view of the complexity of this case and the delay that has already occurred, we consider it desirable in this case to give the decision ourselves, after finding further facts and accordingly we directed the adjudication officer to obtain further evidence. This evidence is now exhibited to further written submissions by the adjudication officer which are dated 14 September and 14 October 1987. The certificate of registration of the proprietors of the Bridge House Nursing Home is dated 15 April 1985 and states that "it is a condition of the said registration that the number of persons kept at any one time in the home (excluding persons carrying on or employed in the home and their families) shall not exceed 32". The West Berkshire Health Authority stated on 7 October 1987 that they

maintain a register summarising the basic details of each home and its status and they enclosed a copy. This shows the Bridge House has 32 registered beds and that its classification is "General Medicine".

20. Mr. Stocker, on behalf of the adjudication officer, adopted his written submission of 28 October 1987, which was to the effect that the documentary evidence, obtained and submitted at our direction, showed that Bridge House Nursing Home was not one established to meet the needs of a person suffering from a particular ailment included in those mentioned in sub-paragraphs (a) to (e) of paragraph 2(1) of Schedule 1A to the Regulations. It was described by West Berkshire Health Authority (one of whose officers exercises the Secretary of State's registration functions under section 23 of the Registered Homes Act 1984) as a "General Medicine" nursing home. It was a nursing home providing care for the generality of persons in need of care in such homes. The adjudication officer had rightly applied paragraph 2(1)(f) of Schedule 1A.

21. Mr. Drabble's primary argument on the appeal was that Schedule 1A of the Cotton Regulations was invalid. We have rejected this argument in Tyler and it is not necessary to repeat our reasoning here. In the alternative, Mr. Drabble, on behalf of the claimant, submitted that in paragraph 3(1) of Schedule 1A, the expressions "a home registered under the Registered Homes Act 1984 being a home for" meant for what the home could lawfully do. Section 29(1) of the Registered Homes Act 1984 made the number of persons specified in the certificate of registration of a nursing home (or mental nursing home) a legal condition. Section 29(2) provided that further conditions could be specified in the certificate of registration. There was nothing else of relevance in the Act relating to nursing homes. Residential Care Homes (Part 1 of the Act - nursing homes are Part 2) are subject to a provision that the register shall be open to inspection (section 7). There are no provisions as to the contents of the register kept by (or on behalf of) the Secretary of State under the Nursing Homes and Mental Nursing Homes Regulations 1984 [SI 1984 No.1578]. Under the Residential Care Homes Regulations 1984 [SI 1984 No 1384] regulation 7 required the register kept by the registration authority to maintain the particulars set out in the Third Schedule, and paragraph 4 of that Schedule provided that the number, sex and categories of residents should be kept by reference to a code [see the Appendix for its terms]. It was Mr. Drabble's submission that nothing in the register of a nursing home, or of a residential care home had any effect in determining the category of care unless conditions were imposed under section 29 of the Act. There was no provision for a register in the Nursing Homes regulations or for any record to be kept of the categories for which the home was registered or as to the nature of the register or access or categories. The categories could - and did - vary from one Health Authority to another. Thus Mr. Drabble's submission was that in the case of nursing homes one looked first at the registration. The registration in this case had no description and no condition and the home was therefore registered for every category. One then applied paragraph 3(2) that is the corresponding category of care enjoyed by the claimant. If there is a description as regards a nursing home, that would not affect the matter because the registration is issued by the Health Authority some of which devise their own categories. A description cannot make a 2(1)(f) case or any other case. If, for example, a home is for mentally handicapped persons in fact and even if it is "registered" with the description "25 mentally handicapped persons" (category 2(b) of Schedule 1A) and a person with past mental disorder is admitted he gets the 2(1)(b) (lower) rate. Failing acceptance of this submission, Mr. Drabble accepted the approach adopted by the Commissioners, and set out below. In his submission, on either approach £198.60 a week was the Cotton figure. There was no suggestion that there was any condition or category in the register so on either approach the tribunal was right to find for terminal illness and, on the basis that paragraph 2 of Schedule 1A, was valid the tribunal's decision was not erroneous in law.

#### Construction of paragraphs 1,2 and 3 of Schedule 1A

22. (1) For reasons set out at paragraph 32 below, it is not necessary for the determination of this appeal to accept or reject Mr. Drabble's "Is it unlawful?"

submission. The appeal can be determined on other grounds. (We consider that test in Nicholas (CSB/480/1986) and reject it).

- (2) In our judgment, the approach to paragraphs 1 and 2 turns on the construction of paragraph 3 of Schedule 1A because it is crucial to determine, in the first instance, whether or not the home, whether a nursing home or a residential care

home, is single or multi-purpose in respect of the accommodation for persons in need of personal care by virtue of physical or mental conditions falling within the categories listed in paragraph 1 in the case of residential care homes or paragraph 2 in the case of nursing homes (as defined in paragraph 7 of the Cotton Regulations and paragraph 6 of the Camden Regulations).

23. If the residential care or nursing home provides accommodation only for persons in need of personal care by virtue of only one physical or mental condition falling within the categories listed in paragraph 1 or 2 (as the case may be) then the maximum amount to be allowed by way of board and lodging charges is the sum set out in relation to that category. It does not matter what type of care the claimant is actually receiving. The question is simply what sort of physical or mental condition for persons in need of personal care is the accommodation provided by the home for, not what sort of personal care is the claimant receiving: see the wording of paragraphs 1 and 2 of Schedule 1A (set out in full in the Second and Third Appendices to Tyler, a copy of which accompanies this decision).

24. Apart from cases of dual registration (i.e. both as a residential care home and a nursing home), none of which arise in any of the appeals before us, paragraph 3 is concerned with multi-purpose homes, that is to say homes which provide accommodation for persons in need of personal care by virtue of two or more physical or mental conditions, and not with single purpose homes. The reason for these special provisions is that in the case of multi-purpose homes, as above defined, there are two categories in paragraph 1 or 2 carrying (usually) different maximum rates and it is necessary to know in which particular category the claimant's case is to be treated as falling in order to arrive at the maximum allowable rate for his board and lodging charges.

25. Now there is a fundamental distinction in relation to the registration of persons in respect of residential care homes and of nursing homes (as defined in Schedule 1A). While both must be registered and it is an offence to exceed the numbers for which they are registered or to break any additional conditions that may be imposed, it is only in respect of residential care homes that there are any provisions requiring categories of care for which the home caters to be specified in the register at all. As regards residential care homes, the provisions in this respect are imposed by regulation 7 of the Residential Care Homes Regulations 1984 and are specified in Schedule 3, paragraph 4 which, under the heading "particulars to be recorded" provides as follows

"4. The number, sex and categories of residents (excluding persons registered or persons employed at the home and their relatives) indicating the various categories by reference to the following code-

Old age	I
mental disorder, other than mental handicap, past or present	MP
Mental handicap	MH
Alcohol dependence, past or present	A
Drug dependence, past or present	D
Physical disablement	PH
Add, if the resident is-	
(i) over 65 years of age	E
(ii) a child	C

Paragraph 6 requires;

"6. The details of any conditions imposed on registration and of any addition to those conditions or variation thereof"

26. Neither in regard to mental nursing homes nor in respect of other nursing homes is there any requirement in the Registered Homes Act 1984, or in the Nursing Homes and Mental Nursing Homes Regulations 1984 made thereunder, for categories of care provided to be specified. The Health Authority does in practice keep some particulars and has its own categories, which appear to vary from authority to authority, but these, unlike those specified in the Residential Care Homes regulations set out above, which correspond with letters (a) to (e) inclusive of sub-paragraph (1) of paragraph 1 of Schedule 1A, do not correspond with the categories in the Requirements Regulations or, where they do, that is purely fortuitous. This can be illustrated by the particulars obtained in connection with the present six appeals, three of which relate to nursing homes and three to residential care homes (the relevant particulars are set out in each appeal).

27. (1) Nursing homes can not, in our judgment, be regarded as, in terms of paragraph 3 of Schedule 1A, "registered under the Registered Homes Act 1984 for [our underlining] persons in need of personal care by virtue of two or more of the physical or mental conditions referred to in paragraph 1 or 2" of Schedule 1A. Only residential care homes are registered under that Act for persons in need of personal care by virtue of two or more such physical or mental conditions.

(2) Two types of nursing home fall within the definition of "nursing home" in paragraph 7 of Schedule 1A. First, those falling within the definition of nursing home in section 21 of the Registered Homes Act 1984. The nursing homes in all three appeals before us fall in to this class. Neither the Act nor the Nursing Homes and Mental Nursing Homes Regulations 1984 contain any provisions providing for registration for care by virtue of any particular physical or mental conditions. Secondly, there are those nursing homes falling within the definition of mental nursing home in section 22 of the Act. By definition those homes must be for the mentally disordered but also by definition can provide for them "exclusively or in common with other persons". But there is no provision either in the Act or the Regulations for entry of categories of personal care by virtue of second or further physical or mental conditions.

(3) None of the present appeals is concerned with a case of dual registration, both as a nursing home and as a residential care home. We have heard no argument on such cases and we express no view on the questions involved in such registration.

(4) The Registered Homes Act 1984 does not apply to Scotland. None of the present appeals is concerned with such a case and having heard no argument we express no view thereon.

28. Since nursing homes registered under the Act are not registered for persons in need of personal care by virtue of two or more physical or mental conditions referred to in paragraph 1 or 2 of Schedule 1A, sub-paragraphs (2) and (3) of paragraph 3 of Schedule 1A can not apply to them, since those sub-paragraphs refer to a home "so registered". (The reference in the Requirements Regulations to registration of the home, when it is in fact the proprietor, not the home, who is registered under the Act appears to have no practical effect except where the proprietor changes)

The tests for determining the relevant category of care and "the appropriate amount" in nursing home cases

29. The following tests should be applied:

- (1) does the home fall within the definition of "nursing home" in paragraph 7 of Schedule 1A of the Cotton (or paragraph 6 Camden, depending on the period in issue) Regulations? (See the second and third Appendices to Tyler for that definition). If the answer is Yes, and there is no dual registration both as nursing home and residential care home (where different considerations apply) then
- (2) consider what sort of physical or mental conditions or conditions for persons in need of personal care the nursing home is for: see paragraph 3(1) of Schedule 1A, the full terms of which are set out in the Second and Third Appendices to Tyler. This is a question of fact to be determined by evidence in the usual way. The facilities and accommodation provided, the certificates of registration (which are publicly available), and the informal contents of any register kept by the Area Health Authority are relevant. The fact that a claimant is being treated by the nursing home for a particular physical or mental condition is prima facie evidence that the home is for persons in need of personal care by virtue of that condition but not as to whether or not there are other conditions for which the home provides such care.

30. If the home is found as fact to be for persons in need of personal care by virtue of only one physical or mental condition specified in paragraph 2 and the claimant is being so cared for, the amount specified in the relevant sub-paragraph of paragraph 2 of Schedule 1A of the Cotton or Camden Regulations in force at the time applies and there is no difficulty. (The relevant rates from time to time in force are set out in the Fifth Appendix to Tyler).

31. If the home is found as fact to be for persons in need of personal care by virtue of any two or more physical or mental conditions, then paragraph 3(4) of Schedule 1A applies. . (Where the Cotton Regulations cover the period in issue, the reference to paragraph 5, which is invalid, should be disregarded: see our decision in Tyler). This provides that the appropriate amount shall be that amount in paragraph 2, having regard to the nature of the personal care provided, as is consistent or reasonably consistent with the personal care that the claimant is receiving in the accommodation.

32. It is not necessary, in nursing home cases, to consider the construction and purpose of paragraph 3(3) of Schedule 1A, to which Mr. Drabble made submissions in detail, and which he suggested applied only to cases where the care provided is unlawful; because, in our judgment, paragraph 3(3) only applies to homes which are "so registered" and we have already held (paragraph 28) that nursing homes are not "so registered".

33. We reject the submission made on behalf on the adjudication officer (paragraph 20 above) that a nursing home providing care for the generality of persons in need of care in such homes falls within paragraph 2(1)(f) of Schedule 1A (i.e. "any other condition not falling within sub-paragraphs (a) to (e)"). The description of the conditions in the sub-paragraphs is described in paragraph 3(1) of Schedule 1A as "physical or mental conditions". Care for the generality of persons requiring care is not another physical or mental condition. Care for the generality of persons covers all the conditions listed in paragraph 2.

## CONCLUSION

34. There is no doubt in the present case that Bridge House is a nursing home in terms of paragraph 7 of Schedule 1A of The Cotton and paragraph 6 of Schedule 1A of The Camden Regulations. The West Berkshire Health Authority has confirmed that Bridge House Nursing Home is registered with 32 registered beds and is classified as a nursing home for general medicine. A certificate of registration (albeit it relates to registration under the Nursing Homes Act 1975, not the Registered Homes Act 1984) has been provided.

35. The classification of "general medicine" and the certificate of registration neither impose, nor imply, any restriction on the categories of care for which the Bridge House

nursing home could cater during the period in issue. It is simply a nursing home providing nursing care within the meaning of section 21 of the Registered Homes Act 1984 (see the Appendix for the wording of the section). As such, it is "for" persons in need of nursing (which is a form of personal care) by virtue of any physical or mental condition (though not for the primary purpose of mentally disordered persons, as that would make it a mental nursing home under section 22 of the Act). Paragraph 3(1) accordingly applies. But, for the reasons already given, paragraphs 3(2) and 3(3) do not. Applying paragraph 3(4), to the facts, which were found by the appeal tribunal and have not been disputed, the claimant was throughout her time in the nursing home receiving care for terminal illness.

36. Our conclusion is that having regard to the nature of the personal care which the home provides, the amount consistent with the care that the claimant was receiving in her accommodation in the nursing home was that specified for terminal illness in paragraph 2(e) of Schedule 1A. The appropriate amount is accordingly £198.60 from 22 July 1985 to 24 November 1985 and £230 from 25 November 1985 to 21 January 1987: see the Fifth Appendix to Tyler, which lists the rates from time to time in force under the Cotton and Camden Regulations.

37. The actual supplementary benefit entitlement of the claimant during the period in issue is complex and we do not have sufficient information before us to consider how existing assessments should be revised or fresh assessments made. This should be done by the adjudication officer. If there is any dispute, either party is to be at liberty to apply.

38. Our decision is set out in paragraph 1. Before parting with this appeal, we draw attention to the complaints of the claimant's representative to which we have referred in paragraph 8 above and to the letter from the West Berkshire Health Authority dated 31 January 1986 a copy of which is in the case papers. Her contention is that the claimant was transferred to Bridge House without the representative's knowledge or consent and was then assured by the DHSS that the actual fees would be paid. They were not, and she found herself out of pocket to the tune of £484.75 having met the difference herself. These are matters which do not fall within the jurisdiction of the statutory authorities (who include the Commissioners) who can only apply the statutory provisions enacted by Parliament. The position of a claimant who suffers loss through wrong advice is considered in Finch (CSB/1162/1986) a copy of which accompanies the case papers and apply equally to the present appeal.

**(Signed)**

V G H Hallett  
Commissioner

**(Signed)**

R F M Heggs  
Commissioner

**(Signed)**

R A Sanders  
Commissioner

**Date:** 11 February 1988

THE APPENDIX (see para 5 of this decision)

The Registered Homes Act 1984 provides:

**PART I**

**RESIDENTIAL CARE HOMES**

**Registration and conduct of residential care homes**

1. (1) Subject to the following provisions of this section, registration under this Part of this Act is required in respect of any establishment which provides or is intended to provide whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs, or past or present mental disorder.

(2) Such an establishment is referred to in this Part of this Act as a "residential care home".

(3) Registration under this Part of this Act does not affect any requirement to register under Part II of this Act.

(4) Registration under this Part of this Act is not required in respect of an establishment which provides or is intended to provide residential accommodation with both board and personal care for fewer than 4 persons, excluding persons carrying on or intending to carry on the home or employed or intended to be employed there and their relatives.

(5) Registration under this Part of this Act is not required in respect of any of the following -

- (a) any establishment which is used, or is intended to be used, solely as a nursing home or mental nursing home;
- (b) any hospital as defined in section 128 of the National Health Service Act 1977 which is maintained in pursuance of an Act of Parliament;
- (c) any hospital as defined in section 145(1) of the Mental Health Act 1983;
- (d) any voluntary home or community home within the meaning of the Child Care Act 1980;
- (e) any children's home to which the Children's Homes Act 1982 applies;
- (f) subject to subsection (6) below, any school, as defined in section 114 of the Education Act 1944;
- (g) subject to subsection (7) below, any establishment to which the Secretary of State has made a payment of maintenance grant under regulations made by virtue of section 100(1)(b) of the Education Act 1944;
- (h) any university or university college or college, school or hall of a university;

(i) any establishment managed or provided by a government department or local authority or by any authority or body constituted by an Act of Parliament or incorporated by Royal Charter.

(6) An independent school within the meaning of the Education Act 1944 is not excluded by subsection (5) above if the school provides accommodation for 50 or less children under the age of 18 years and is not for the time being approved by the Secretary of State under section 11(3)(a) of the Education Act 1981.

(7) An establishment to which the Secretary of State has made a payment of maintenance grant under regulations made by virtue of section 100(1)(b) of the Education Act 1944 is only excluded by subsection (5) above until the end of the period of 12 months from the date on which the Secretary of State made the payment.

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#### Registration - general

5.-(1) An application for registration under this Part of this Act shall be made to the registration authority and shall be accompanied by a registration fee of such amount as the Secretary of State may by regulations prescribe.

(2) Subject to sections 9, 12 and 13 below, on receipt of an application for registration and of the registration fee the registration authority shall register the applicant in respect of the home named in the application and issue to him a certificate of registration.

(3) It shall be a condition of the registration of any person in respect of a residential care home that the number of persons for whom residential accommodation with both board and personal care is provided in the home at any one time (excluding persons carrying on or employed at the home and their relatives) does not exceed such number as may be specified in the certificate of registration; and the registration may also be subject to such other conditions (to be specified in the certificate) as the registration authority consider appropriate for regulating the age, sex or category of persons who may be received in the home.

(4) The registration authority may from time to time -

(a) vary any condition for the time being in force in respect of a home by virtue of this Part of this Act; or

(b) impose an additional condition, either on the application of a person registered in respect of it or without such an application.

(5) If any such condition for the time being in force in respect of a home by virtue of this Part of this Act is not complied with, any person registered in respect of the home shall be guilty of an offence.

(6) The certificate of registration issued in respect of any home shall be kept affixed in a conspicuous place in the home; and if default is made in complying with this subsection, any person registered in respect of the home

shall be guilty of an offence.

### **Inspection of registers**

The registers kept by a registration authority for the purposes of this Part of this Act shall be available for inspection at all reasonable times, and any person inspecting any such register shall be entitled to make copies of entries in the register on payment of such reasonable fee as the registration authority may determine.

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### **Meaning of "nursing home"**

21.-(1) In this Act "nursing home" means, subject to subsection (3) below -

- (a) any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity;
- (b) any premises used, or intended to be used, for the reception of pregnant women, or of women immediately after childbirth (in this Act referred to as a "maternity home"); and
- (c) any premises not falling within either of the preceding paragraphs which are used, or intended to be used, for the provision of all or any of the following services, namely-
  - (i) the carrying out of surgical procedures under anaesthesia;
  - (ii) the termination of pregnancies;
  - (iii) endoscopy;
  - (iv) haemodialysis or peritoneal dialysis;
  - (v) treatment by specially controlled techniques.

(2) In subsection (1) above "specially controlled techniques" means techniques specified under subsection (4) below as subject to control for the purposes of this Part of this Act.

(3) The definition in subsection (1) above does not include -

- (a) any hospital or other premises maintained or controlled by a government department or local authority or any other authority or body instituted by special Act of Parliament or incorporated by Royal Charter;
- (b) any mental nursing home;
- (c) any sanatorium provided at a school or educational establishment and used, or intended to be used, solely by persons in attendance at, or members of the staff of, that school or establishment or members of their families;
- (d) any first aid or treatment room provided at factory premises at premises to which the Offices, Shops and Railway Premises Act 1963 applies or at a sports ground, show ground or place of public entertainment;
- (e) any premises used, or intended to be used, wholly or mainly -
  - (i) by a medical practitioner for the purpose of consultations with his patients;
  - (ii) by a dental practitioner or chiropodist for the purpose of

(iii) treating his patients; or  
for the provision of occupational health facilities unless they are used, or intended to be used, for the provision of treatment by specially controlled techniques and are not excepted by regulations under paragraph (g) below;

(f) any premises used, or intended to be used, wholly or mainly as a private dwelling; or

(g) any other premises excepted from that definition by regulations made by the Secretary of State.

(4) The Secretary of State may by regulations specify as subject to control for the purposes of this Part of this Act any technique of medicine or surgery (including cosmetic surgery) as to which he is satisfied that its use may create a hazard for persons treated by means of it or for the staff of any premises where the technique is used.

(5) Without prejudice to the generality of section 56 below, regulations under subsection (4) above may define a technique by reference to any criteria which the Secretary of State considers appropriate.

(6) In this section "treatment" includes diagnosis and "treated" shall be construed accordingly.

#### **Meaning of "mental nursing home"**

22.- (1) In this Act "mental nursing home" means, subject to subsection (2) below, 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 (meaning person suffering, or appearing to be suffering, from mental disorder), whether exclusively or in common with other persons.

(2) In this Act "mental nursing home" does not include any hospital as defined in subsection (3) below, or any other premises managed by a government department or provided by a local authority.

(3) In subsection (2) above, "hospital" means -

(a) any health service hospital within the meaning of the National Health Service Act 1977, and

(b) any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act.

23.(1) Any person who carries on a nursing home or a mental nursing home without being registered under this Part of this Act in respect of that home shall be guilty of an offence

(2) Registration under this Part of this Act does not affect any requirement to register under Part I of this Act.

(3) An application for registration under this Part of this Act -

(a) shall be made to the Secretary of State:

- (b) shall be accompanied by a fee of such amount as the Secretary of State may by regulations prescribe;
- (c) in the case of a mental nursing home, shall specify whether or not it is proposed to receive in the home patients who are liable to be detained under the provisions of the Mental Health Act 1983.

(4) Subject to section 25 below, the Secretary of State shall, on receiving an application under subsection (3) above, register the applicant in respect of the home named in the application, and shall issue to the applicant a certificate of registration.

(5) Where a person is registered in pursuance of an application stating that it is proposed to receive in the home such patients as are described in subsection (3)(c) above-

- (a) that fact shall be specified in the certificate of registration; and
- (b) the particulars of the registration shall be entered by the Secretary of State in a separate part of the register.

(6) The certificate of registration issued under this Part of this Act in respect of any nursing home or mental nursing home shall be kept affixed in a conspicuous place in the home, and if default is made in complying with this subsection, the person carrying on the home shall be guilty of an offence.

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#### **Additional registration conditions**

29.-(1) it shall be a condition of the registration of any person in respect of a nursing home or mental nursing home that the number of persons kept at any one time in the home (excluding persons carrying on, or employed in, the home, together with their families) does not exceed such number as may be specified in the certificate of registration.

(2) Without prejudice to subsection (1) above, any such registration may be effected subject to such conditions (to be specified in the certificate of registration) as the Secretary of State may consider appropriate for regulating the age, sex or other category of persons who may be received in the home in question.

(3) The Secretary of State may make regulations -

- (a) as to the variation of any condition for the time being in force in respect of a nursing home or mental nursing home by virtue of this Part of this Act; and
- (b) as to the imposition of additional conditions.

(4) If any condition for the time being in force in respect of a home by virtue of this Part of this Act is not complied with, the person carrying on the home shall be guilty of an offence.

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**Extent**

58.- (1) This Act does not extend to Scotland or Northern Ireland.

(2) The Secretary of State may by order direct that so much of this Act as relates to nursing homes and mental nursing homes shall extend to the Isles of Scilly, subject to such exceptions, adaptations and modifications as may be specified in the order, but except as so directed so much of this Act as relates to nursing home and mental nursing homes shall not extend to the Isles.

(3) Subject to subsection (2) above, this Act shall, in its application to the Isles of Scilly, have effect subject to such extensions, adaptations and modifications as the Secretary of State may by order prescribe.

.....

The Residential Care Homes Regulations 1984 [SI 1984 No. 1345] includes the following provisions:

**Particulars to be supplied on application for registration**

2. On any application for registration made under section 5 of the Act. the applicant shall supply in writing to the registration authority information in regard to the matters mentioned in Schedule 1 to these regulations, and such other information as the registration authority may reasonably require.

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**Registers**

7. The registers kept by a registration authority for the purposes of Part I of the Act shall contain the particulars specified in Schedule 3 to these regulations.

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**SCHEDULE 1**

**Regulation 2**

**INFORMATION TO BE SUPPLIED ON AN APPLICATION FOR REGISTRATION**

**[Only para.31g) is relevant. This provides:-]**

3. An applicant to whom paragraph 2 of this Schedule applies shall also supply to the registration authority the following information -

- (g) the number, sex and categories of resident for whom the home is proposed to be used indicating the various categories by reference to the following code -

Old age	I
mental disorder, other than mental handicap, past or present	MP
mental handicap	MH
alcohol dependence, past or present	A
drug dependence, past or present	D
physical disablement	PH
add if the resident is	
(i) over 65 years of age	E
(ii) a child	C

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**SCHEDULE 3**

**Regulation 7**

**PARTICULARS TO BE RECORDED IN THE REGISTERS KEPT BY REGISTRATION AUTHORITIES**

1. The full name and address of the person registered in respect of the home and where both the manager and person in control of the home are registered in respect of it, their full names and addresses.

2. Where the person registered is a company, society, association or other body or firm the address of its registered office or principal office and the full names and addresses of the directors, or other persons responsible for the management of that body or the partners of the firm.

3. The name, address and telephone number of the home.

4. The number, sex and categories of residents (excluding persons registered or persons employed at the home and their relatives) indicating the various categories by reference to the following code:-

Old age	I
mental disorder, other than mental handicap, past or present	MP
mental handicap	MH
alcohol dependence, past or present	A
drug dependence, past or present	D
physical disablement	PH
add if the resident is	
(i) over 65 years of age	E
(ii) a child	C

5. The date of registration and of the issue of the certificate of registration and, where applicable, the date of any cancelation of registration.

6. The details of any conditions imposed on registration and of any addition to those conditions or variation thereof.

The Nursing Homes and Mental Nursing Homes Regulations 1984 [SI 1984 No. 1578] contains no provisions as to the contents of the register to be kept. As to the particulars to be provided on application for registration it provides:-

### Registration

4.- (1) An application shall be made to the Secretary of State in writing and sent or delivered to the health authority and shall be accompanied by a fee provided for in Schedule 1.

(2) In making an application an applicant shall furnish the particulars specified in Schedule 2 and such other information including details of any comments made by the fire authority in relation to the home as the Secretary of State may reasonably require.

Regulation 4(2)

## SCHEDULE 2

### PARTICULARS REQUIRED TO BE FURNISHED BY AN APPLICANT

Only paragraphs 9 and 10 have any relevance. they provide:

9. The type of home (i.e. mental nursing home, maternity home, catering for day-patients only, acute hospital etc.).

10. The number of patients for whom the home is proposed to be distinguishing between different categories of patients and indicating the range of patients in each category.