WELSH STATUTORY INSTRUMENTS

2002 No. 920 (W.108) (C.24)

SOCIAL CARE, WALES
CHILDREN AND YOUNG PERSONS, WALES
PUBLIC HEALTH, WALES

The Care Standards Act 2000 (Commencement No. 8 (Wales) and Transitional, Savings and Consequential Provisions) Order 2002

Made - - - - 28th March 2002

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 118(5) to (7), 119 and 122 of the Care Standards Act 2000(**1**) hereby makes the following Order:

Citation, interpretation and application

1.—(1) This Order may be cited as the Care Standards Act 2000 (Commencement No. 8 (Wales) and Transitional, Savings and Consequential Provisions) Order 2002.

(2) In this Order—

"the 2000 Act" means the Care Standards Act 2000;

"the 1984 Act" means the Registered Homes Act 1984(**2**);

"the 1989 Act" means the Children Act 1989(**3**);

"community home" means a home that was a community home within the meaning of section 53 of the 1989 Act immediately before 1st April 2002;

"existing registered home" means—

(a) a residential care home, nursing home or mental nursing home in respect of which immediately before 1st April 2002 a person was registered under Part I or Part II of the 1984 Act;

(b) a home that immediately before 1st April 2002 was registered under Part VIII of the 1989 Act or in a register kept for the purposes of section 60 of the 1989 Act;

(**1**) 2000 c. 14. The powers are exercisable by the appropriate Minister. The "appropriate Minister" is defined in s.121(1) of the 2000 Act. It means the Assembly in relation to Wales: s.5(b) of the Act defines "the Assembly" as the National Assembly for Wales. It means the Secretary of State in relation to Scotland, England and Northern Ireland.

(**2**) 1984 c. 23.

(**3**) 1989 c. 41.

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

"No. 2 Commencement Order" means the Care Standards Act 2000 (Commencement No. 2 and Transitional Provisions) (Wales) Order 2001(**4**);

"National Assembly" means the National Assembly for Wales;

"nursing home" has the meaning given to it in section 21 of the 1984 Act

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

(3) In this Order a reference in an article to a numbered paragraph is a reference to the paragraph in that article bearing that number.

(4) This Order applies in relation to Wales.

Schedules

2. Schedules 1 to 3 to this Order, which make transitional provision, shall have effect and shall come into force on 1st April 2002.

Appointed days and transitional provisions

3.—(1) In this article, unless the contrary intention appears, a reference to a section is a reference to a section of the 2000 Act, and a reference to a schedule is a reference to a schedule to the 2000 Act.

(2) This article shall have effect subject to Schedules 1 to 3 to this Order.

(3) Subject to paragraphs (4) and (5), 1st April 2002 is the day appointed for the coming into force of the following provisions of the 2000 Act—

(a) sections 8, 9, 10(2) to (7), 11 to 15, 17 to 21, 24, 26 to 32, 36 and 37 in so far as their provisions—

(i) relate to children's homes, independent hospitals, independent clinics or care homes; and

(ii) are not already in force;

(b) section 79(1), (2) and Schedule 3, and (5) in so far as their provisions are not already in force;

(c) sections 95 and 110;

(d) section 116 and Schedule 4, in so far as their provisions relate to paragraphs 1 to 4, 5(1), (3) and (8), 7 to 9, 11, 13, 14(1) to (3), (7) to (9), (10)(a), (11) to (14), (16) to (20), (22) to (29), 15 to 20, 24(1) and (2), 25 and 28 of that Schedule;

(e) section 116 and Schedule 4, in so far as their provisions relate to paragraph 21 of that Schedule, except for the words "and vulnerable adults" in that paragraph;

(f) section 116 and Schedule 4, in so far as their provisions relate to sub-paragraph (3) of paragraph 26, except in so far as—

(i) that sub-paragraph inserts section 9(2)(b) in the Protection of Children Act 1999 ("the 1999 Act")(**5**);

(ii) section 9(2)(d) of the 1999 Act inserted by that sub-paragraph relates to sections 68, 87 and 88 of the 2000 Act;

(iii) that sub-paragraph inserts section 9(3A) in the 1999 Act;

(g) section 117 and Schedule 6, in so far as their provisions relate to—

(**4**) S.I. 2001/139.
(**5**) 1999 c. 14.

(i) the National Assistance Act 1948(**6**);

(ii) the Local Authority Social Services Act 1970(**7**);

(iii) section 18(1) and (3) of the Chronically Sick and Disabled Persons Act 1970(**8**);

(iv) the Mental Health Act 1983(**9**);

(v) the 1984 Act;

(vi) the 1989 Act;

(vii) the National Health Service and Community Care Act 1990(**10**);

(viii) the Registered Homes (Amendment) Act 1991(**11**);

(ix) the Arbitration Act 1996(**12**);

(x) the Education Act 1996(**13**);

(xi) the Nurses, Midwives and Health Visitors Act 1997(**14**).

(4) An enactment which is amended by virtue of any provision in Schedule 4 to the 2000 Act brought into force under paragraph 3(d) shall, in so far as the enactment relates to a home to which paragraph (6) applies, a community home to which paragraph (7) applies or a care home to which paragraph (8) applies, have effect in relation to that home as if the amendment had not been made.

(5) An enactment which is repealed to any extent by virtue of any entry in Schedule 6 to the 2000 Act brought into force under paragraph 3(g) shall, in so far as it relates to a home to which paragraph (6) applies, a community home to which paragraph (7) applies or a care home to which paragraph (8) applies, have effect in relation to that home as if the enactment had not been repealed.

(6) This paragraph applies to any existing registered home in respect of which for the time being —

(a) by virtue of Paragraph 2 of Schedule 1 to this Order, the 1984 Act continues in force in relation to, and in respect of, a person who immediately before 1st April 2002 was registered under the 1984 Act in respect of the home;

(b) by virtue of Paragraph 4 of Schedule 1 to this Order, the 1989 Act continues in force.

(7) This paragraph applies to—

(a) before 1st July 2002, any community home;

(b) from 1st July 2002, a community home—

(i) in relation to which a person has applied under paragraph 5 of Schedule 1 to this Order for registration under Part II of the Act as a person who carries on or manages a children's home; and

(ii) in respect of which, section 11(1), (5) and (6) of the Act does not apply to that person in accordance with paragraph 5(4) of Schedule 1 to this Order.

(8) This paragraph applies to—

(a) before 1st July 2002, any care home which was being carried on immediately before 1st April 2002 and is not an existing registered home;

(b) from 1st July 2002, such a care home—

(**6**) 1948 c. 29.
(**7**) 1970 c. 42.
(**8**) 1970 c. 44.
(**9**) 1983 c. 20.
(**10**) 1990 c. 19.
(**11**) 1991 c. 20.
(**12**) 1996 c. 23.
(**13**) 1996 c. 56.
(**14**) 1997 c. 24.

(i) in relation to which a person has applied under paragraph 5 of Schedule 1 to this Order for registration under Part II of the Act as a person who carries on or manages a care home; and

(ii) in respect of which, section 11(1), (5) and (6) of the Act does not apply to that person in accordance with paragraph 5(4) of Schedule 1 to this Order.

(9) This paragraph applies to a home in relation to which the following conditions are satisfied—

(a) the person carrying the home on has duly made an application for its registration in accordance with article 3(1) of the No. 2 Commencement Order(**15**);

(b) the application has not been determined immediately before the coming into force of this Order; and

(c) section 11(1), (5) and (6) of the 2000 Act do not apply to the person carrying on the home by virtue of paragraph 7, 8 or 9 of Schedule 1 to this Order.

(10) For the purposes of this article, and the enactments amended or repealed by virtue of paragraph (3), a home to which paragraph (9) applies shall be treated as if it were an existing registered home that satisfies the conditions set out in paragraph (6).

Consequential amendment

4.—(1) In Schedule 1 to the National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996(**16**) the entries in respect of the 1984 Act are omitted.

(2) This article shall come into force on 1st April 2002.

Signed on behalf of the National Assembly under section 66(1) of the Government of Wales Act 1998(**17**)

Rhodri Morgan
28 March 2002 Assembly First Minister

(**15**) Article 3(1) is about applications for registration under the 1989 Act in respect of small children's homes that have been made before 28th February 2001. If the application is duly made by that date article 3(2) provides that the home in question is not to be treated as an unregistered children's home. Article 3 made transitional provisions in connection with the commencement of section 40 of the 2000 Act (temporary extension of meaning of "children's home"), which amended the 1989 Act so that children's homes that accommodated three or fewer children and were not voluntary or community homes were required to be registered for the first time.

(**16**) S.I. 1996/708. The Regulations have been revoked in relation to England (see: S.I. 2001/747). They have effect in relation to Wales as if made by the National Assembly by virtue of section 23(3) of the Government of Wales Act 1998 (c. 38).

(**17**) 1998 c. 38.

SCHEDULE 1 Article 2

TRANSITIONAL PROVISIONS IN RESPECT OF THE COMMENCEMENT OF PART II OF THE 2000 ACT

Interpretation

1.—(1) In this Schedule, unless the contrary intention appears—

"1984 Act home" means a residential care home, nursing home or mental nursing home in respect of which immediately before 1st April 2002 a person was registered under Part I or Part II of the 1984 Act;

"1989 Act home" means a registered children's home or a voluntary children's home;

"applicable description" means, in respect of an existing registered home, the category of establishment within which that home falls;

"authority" means—

(a) in relation to a Part I 1984 Act registered person, or a person who has applied to be registered under that Part of that Act, the local authority which is the registration authority for the purposes of that Part of that Act in relation to that home or (as the case may be) that application;

(b) in relation to a Part II 1984 Act registered person, or a person who has applied to be registered under that Part of that Act, the National Assembly;

(c) in relation to a registered children's home, or a person who has made an application in respect of a home under that Part of that Act, the local authority which is the registration authority for the purposes of that Part of that Act in relation to that home or (as the case may be) that application;

(d) in relation to a voluntary children's home, or a person who has made an application in respect of a home under Part VII of that Act, the National Assembly;

"establishment" means a children's home, care home, independent hospital or independent clinic within the meaning of the 2000 Act;

"existing registered home" means a 1984 Act home or a 1989 Act home;

"existing registered provider" in relation to an existing registered home means—

(a) in relation to a 1989 Act home, the person carrying on the home immediately before 1st April 2002;

(b) in relation to 1984 Act home, a Part I or Part II (as the case may be) registered person in respect of the home;

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

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

"Part I 1984 Act registered person" means a person who immediately before 1st April 2002 was registered in respect of a residential care home under Part I of the 1984 Act;

"Part II 1984 Act registered person" means a person who immediately before 1st April 2002 was registered in respect of a nursing home or mental nursing home under Part II of the 1984 Act;

"registered children's home" means a home that immediately before 1st April 2002 was registered under Part VIII of the 1989 Act;

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