STATUTORY RULES OF NORTHERN IRELAND

2005 No. 44 (C. 4)

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Quality, Improvement and Regulation) (2003 Order) (Commencement No. 3 & Transitional Provisions) Order (Northern Ireland) 2005

Made - - - - 17th February 2005

The Department of Health, Social Services and Public Safety, in exercise of the powers conferred on it by Article 1(3) and 48(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(**1**), and of all other powers enabling it in that behalf, hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Health and Personal Social Services (Quality, Improvement and Regulation) (2003 Order) (Commencement No. 3 & Transitional Provisions) Order (Northern Ireland) 2005.

(2) In this Order, unless the context otherwise requires –

"Board" means the Health and Social Services Board;

"Childrens home" has the same meaning as in Article 9 of the 2003 Order;

"Voluntary home" has the same meaning as in Article 74(1) of the Children (Northern Ireland) Order 1995(**2**);

"the 2003 Order" means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

"the 1992 Order" means the Registered Homes (Northern Ireland) Order 1992(**3**);

"the 1971 Act" means the Nursing Homes and Nursing Agencies Act (Northern Ireland) 1971(**4**);

"the 1995 Order" means the Children (Northern Ireland) Order 1995.

(**1**) S.I.2003/431 (N.I. 9)
(**2**) S.I. 1995/755 (N.I. 2)
(**3**) 1992/3204 (N.I. 20)
(**4**) 1971 c. 32

Appointed day

2. Subject to the remaining provisions of this Order, 1st March 2005 is the appointed day for the coming into operation of the provisions of the 2003 Order specified in Schedule 2, for the purposes only of authorising the making of regulations.

3. 1st April 2005 is the appointed day for the coming into operation of the provisions of the 2003 Order as described in Schedule 1, in so far as they are not already in operation.

Deemed registration of certain establishments and agencies

4. Where on the commencement date a person who carries on or manages an establishment or agency to which any of the paragraphs of Article 5 applies, that person is to be treated for all purposes as if he had been registered under Part III of the 2003 Order on that date.

Persons who carry on or manage an establishment or agency are deemed to be registered

5.—(1) This Article applies to:

(a) a person who carries on or manages a residential care home in respect of which he was immediately before the commencement date registered under the 1992 Order;

(b) a person who carries on or manages a nursing home in respect of which he was immediately before the commencement date registered under the 1992 Order;

(c) a person who carries on or manages an establishment which was immediately before the commencement date registered under the 1995 Order as a childrens home or a voluntary home;

(d) a person carrying on an establishment which was at any time before the commencement date inspected by a person authorised to do so by –

(i) the Department, as if the establishment was, or formed part of a residential care home in respect of which the person was required to be registered under the 1992 Order; or

(ii) the Department, as if the establishment was or formed part of a nursing home in respect of which the person was required to be registered under the 1992 Order; or

(iii) the Department as if the establishment was, or formed part of a children's home or voluntary home which was required to be registered under the 1995 Order.

(2) This paragraph applies to a person carrying on an independent hospital or an independent clinic, which is substantially the same as a nursing home, in respect of which he was, immediately before the commencement date, registered under the 1992 Order as a person carrying on a nursing home and on the commencement date will be carrying on or managing an independent hospital or clinic.

(3) This paragraph applies to a person carrying on a nursing agency in respect of which he was, immediately before the commencement date, the holder of a licence issued under the 1971 Act.

Duration of Deeming

6. Where a person is deemed to be registered under Article 4, registration shall cease to have effect –

(a) where the person carrying on or managing an establishment or agency has before 1st October 2005 made an application for registration under Article 13(1) of the 2003 Order, on 1st April 2006; or

(b) in any other case, on 1st October 2005.

Certificates, Notices and Licences

7.—(1) Where a person who carries on or manages an establishment or agency is, by virtue of Article 4, to be treated as if he had been registered under the 2003 Order, and –

(a) a certificate has been issued to him under Article 6(4) or 19(4) of the 1992 Order; or

(b) a notice has been given to him under Articles 80(6) or 96(6) of the 1995 Order; or

(c) a licence has been issued to him under section 12 of the 1971 Act,

that certificate, notice or licence shall be treated for the purposes of the 2003 Order as if it was the certificate issued under Article 14 of that Order.

(2) Where no such certificate, notice or licence has been issued as specified in paragraph (1), Article 28 of the 2003 Order shall not apply to a person who carries on or manages an establishment or agency, until the Regulation and Improvement Authority has issued a certificate of registration under that Order.

Continuation of existing conditions

8. Where a person carrying on or managing an establishment or agency is treated as having been registered by virtue of Article 4, any conditions –

(a) attached to registration of the establishment or agency specified in Article 5 (1)(a), (b), (c) or (2); or

(b) attached to the licence in respect of a nursing agency specified in Article 5(3),

as the case may be shall, so far as they are capable of being conditions to which registration under the 2003 Order is subject, have effect from the commencement date as if they were such conditions which had for the purposes of Article 20 of that Order been agreed in writing between the Regulation and Improvement Authority and the person who carries on or manages the establishment or agency.

Notices of Cancellation, Variation or Additional Condition under the 1992 Order [Residential Care Homes]

9.—(1) This Article applies –

(a) where a person who carries on or manages an establishment or agency which is a residential care home to which Article 5(1)(a) applies and

(b) where the Board with which the person was immediately before the commencement date registered, has before that date given that person notice –

(i) under Article 11(4)(a) of the 1992 Order of a proposal to cancel the registration; or,

(ii) under Article 11(4)(b) or (c) of that Order of a proposal to impose an additional condition or to vary an existing condition,

and that imposition, variation or cancellation as the case may be has not taken effect before that date.

(2) Where this Article applies –

(a) the 1992 Order shall continue in force for the purpose of determining whether the condition is to be imposed or varied or the registration is to be cancelled as the case may be;

(b) where a condition is imposed or varied as provided for by this paragraph it shall, so far as it is capable of being a condition to which registration under the 2003 Order is subject, have effect, in relation to the residential care home to which paragraph (1)(a) applies, from the date on which it was imposed or varied as the case may be, as if it were a condition specified in a notice given under Article 18(4) of the 2003 Order and the period of 28

days referred to in Article 19 of the 2003 Order has elapsed on that date without written representations having been made as provided for in that Article; and

(c) where the person's registration is cancelled, registration under the 2003 Order by virtue of Article 4 of this Order, shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies, has before the commencement date, applied to the Board specified in paragraph (1)(b) under Article 7(4) of the 1992 Order to impose an additional condition or to vary an existing condition and the Board has not by that date given notice under Article 11(4)(b) of the 1992 Order, the application shall be treated as an application to the Regulation and Improvement Authority, made on that date in accordance with the requirements of Article 16 of the 2003 Order.

Notices of Cancellation, Variation or Additional Condition under the 1992 Order [Nursing Homes]

10.—(1) This Article applies where –

(a) a person carries on or manages a nursing home –

(i) to which Article 5(1)(b) applies; or

(ii) an independent hospital or independent clinic to which Article 5 (2) applies; and

(b) the Board, with which the person was immediately before the commencement date registered under the 1992 Order, has sent that person notice –

(i) under Article 24(4)(a) of the 1992 Order of a proposal under Article 24(4)(a) to cancel that registration; or

(ii) under Article 24(4)(b) or (c) of the 1992 Order of a proposal to vary an existing condition or impose an additional condition,

and that cancellation, variation or imposition, as the case may be has not taken effect before that date.

(2) Where this Article applies –

(a) the 1992 Order shall continue in force for the purpose of determining whether the condition is to be imposed or varied or the registration is to be cancelled as the case may be;

(b) where a condition is imposed or varied as provided for by this paragraph it shall, so far as it is capable of being a condition to which registration under the 2003 Order is subject, have effect, in relation to the nursing home to which paragraph (1)(a) applies, from the date on which it was imposed or varied as the case may be, as if it were a condition specified in a notice given under Article 18(4) of the 2003 Order and the period of 28 days referred to in Article 19 of the 2003 Order has elapsed on that date without written representations having been made as provided for in that section; and

(c) where the person's registration is cancelled, registration under the 2003 Order by virtue of Article 4 of this Order shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies has before the commencement date applied to the Board, specified in paragraph (1)(b) under Article 20(4) of the 1992 Order to impose an additional condition or to vary an existing condition and the Board has not by that date, given notice under Article 24 (4) of the 1992 Order, the application shall be treated as an application to the Regulation and Improvement Authority, made on that date in accordance with Article 16 of the 2003 Order.

Notices of Cancellation, Variation or Additional Condition under the 1995 Order [Children's Homes]

11.—(1) This Article applies –

(a) where a person who carries on or manages an establishment which is a children's home to which Article 5(1)(c) applies;

(b) where the Board with which the establishment was registered immediately before the commencement date, has before that date, given that person notice –

(i) under Article 83(4)(a) or 99(4)(a) of the 1995 Order of a proposal to cancel the registration; or

(ii) under Article 83(4)(b) or 99(4)(c) of that Order of a proposal to vary or cancel any existing condition or impose an additional condition;

and that imposition, variation or cancellation as the case may be has not taken effect before that date.

(2) Where this Article applies –

(a) the 1995 Order shall continue in force for the purpose of determining whether the condition is to be imposed or varied or the registration is to be cancelled as the case may be;

(b) where a condition is imposed or varied as provided for by this paragraph it shall, so far as it is capable of being a condition to which registration under the 2003 Order is subject, have effect in relation to the children's home to which paragraph (1)(a) applies from the date on which it was imposed or varied as the case may be as if it were a condition specified in a notice given under Article 18(4) of the 2003 Order and the period of 28 days referred to in Article 19 of the 2003 Order has elapsed on that date without written representations having been made as provided for in that Article; and

(c) where the person's registration is cancelled, registration under the 2003 Order by virtue of Article 4 shall cease to have effect.

(3) Where a person to whom paragraph (1)(a) applies has before the commencement date applied to the Board specified in paragraph (1)(b), under Article 81(2) or 97(2) of the 1995 Order, to impose an additional condition or to vary an existing condition and the Board has not by that date given notice under Article 83 or 99 of the 1995 Order, the application shall be treated as an application to the Regulation and Improvement Authority made on that date, in accordance with Article 16 of the 2003 Order.

Proposals under the 1971 Act [Nursing Agencies]

12.—(1) This Article applies where –

(a) a person who carries on or manages a nursing agency to which Article 5(3) applies, and

(b) immediately before the commencement date held a licence under Section 12 of the 1971 Act and the Department has, before that date, given notice of its intention to revoke that licence; and

before that date the period of 14 days referred to in Section 13(2) has not expired.

(2) Where this Article applies –

(a) the 1971 Act shall continue in force for the purpose of determining whether the licence is to be revoked; and

(b) where the licence is so revoked, registration under the 2003 Order by virtue of Article 4 shall cease to have effect.