

ORDER IN COUNCIL

VII

1976

ratifying a Projet de Loi

ENTITLED

The Nursing Homes and Residential Homes (Guernsey) Law, 1976

(Registered on the Records of the Island of Guernsey
on the 4th day of October, 1976.)



1976

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of October, 1976, before Sir John Loveridge, Kt., C.B.E., Bailiff; present:—D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Walter Francis Robin, Richard Alan Kinnersly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe, Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C. and Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Jurats.

The Bailiff having this day placed before the Court an Order dated the 23rd day of July, 1976, of the Counsellors of State in Council on behalf of Her Majesty, being authorised thereto by Letters Patent dated the 29th day of June, 1976, ratifying a *Projet de Loi* entitled "The Nursing Homes and Residential Homes (Guernsey) Law, 1976", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court of Saint James

The 23rd day of July 1976

PRESENT,

The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 29th day of June 1976, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 20th day of July 1976, in the words following, viz:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolutions of the 26th day of September 1973, and of the 24th day of September 1975, the States of Deliberation at a meeting held on the said 24th day of September 1975, approved a Bill or “Projet de Loi” entitled “The Nursing Homes and Residential Homes (Guernsey) Law, 1976” and requested the Bailiff to present a most

humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Nursing Homes and Residential Homes (Guernsey) Law, 1976" and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

NOW, THEREFORE, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf approve of and ratify the said Projet de Loi, and order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND do hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. E. Leigh.

Projet de Loi referred to in the foregoing
Order in Council

PROJET DE LOI

ENTITLED

The Nursing Homes and Residential Homes (Guernsey) Law, 1976

ARRANGEMENT OF SECTIONS

Section

1. Registration of homes.
2. Cancellation of registration.
3. Procedure where registration refused or cancelled.
4. Provisional registration of established homes.
5. Appeals.
6. Law not to apply to homes managed by the States.
7. Power of Board to exempt Christian Science nursing homes.
8. Decease or incapacity of person registered.
9. Inspection of homes.
10. Forms of notices, etc.
11. Service of notices, etc.
12. Ordinances.
13. Variation and repeal of Ordinances and orders.
14. Offences.
15. Penalties.
16. False statements.
17. Offences by bodies corporate.
18. Interpretation.
19. Citation and commencement.

PROJET DE LOI

ENTITLED

The Nursing Homes and Residential Homes (Guernsey) Law, 1976

THE STATES, in pursuance of their Resolutions of the twenty-sixth day of September, nineteen hundred and seventy-three and of the twenty-fourth day of September, nineteen hundred and seventy-five, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Registration
of homes.

1. (1) If any person carries on a nursing home or a residential home without being registered under the provisions of this Law in respect thereof, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or, in the case of a second or subsequent offence, to imprisonment for a term not exceeding three months or to a fine not exceeding two hundred pounds or to both such imprisonment and such fine.

(2) An application for registration under the provisions of this Law shall—

- (a) be made to the Board in writing and shall be in such form and contain such particulars as the Board may, from time to time, determine; and
- (b) be accompanied by such fee as the States may, from time to time, by Ordinance prescribe.

(3) Subject to the provisions of this Law, the Board shall, on receipt of an application under the

provisions of the last preceding subsection, register the applicant in respect of the home named in the application and issue to him a certificate of registration:

Provided that the Board may refuse to register the applicant if it is satisfied—

- (a) that he or any person employed or proposed to be employed by him at the home or in the management of the home or any part thereof, is not a fit person, whether by reason of age or otherwise, to carry on or to be so employed at a home of such a description as the home named in the application; or
- (b) that for reasons connected with situation, construction, state of repair, means of escape from fire, accommodation, staffing or equipment, the home or any premises used in connection therewith are not fit to be used for a home of such a description as aforesaid; or
- (c) in the case of a nursing home, that the home or premises are used or proposed to be used for purposes which are in any way improper or undesirable in the case of such a nursing home; or
- (d) in the case of a nursing home not being a maternity home, that the home is not, or will not be, under the charge of a person who is either an authorised medical practitioner or a qualified nurse and is or will be resident in the home, or that there is not, or will not be, a proper proportion of qualified nurses among the persons having the superintendence of, or employed in the nursing of the patients in, the home; or

- (e) in the case of a maternity home, that the person who has, or will have, the superintendence of the nursing of the patients in the home is not either a qualified nurse or a registered midwife, or that any person employed, or proposed to be employed, in attending any woman in the home in child-birth, or in nursing any patient in the home is not either an authorised medical practitioner, a registered midwife, a pupil midwife or a qualified nurse; or
- (f) that in the case of a residential home the way in which it is proposed to conduct the home is such as not to provide services or facilities reasonably required by persons resorting to such a home.

(4) 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 the person carrying on the home shall be liable to a fine not exceeding twenty pounds and to a further fine not exceeding ten pounds for each day on which the offence continues after conviction therefor.

(5) The Board shall cause to be compiled and kept up to date a register of homes for the purposes of this Law and such register shall be available for inspection by the public at the office of the Board on any week-day, other than a Saturday or a Bank Holiday, during such hours as the Board may, from time to time, determine.

Cancellation
of
registration.

2. Subject to the provisions of this Law, the Board may at any time cancel the registration of a person in respect of a home on any ground which would entitle it to refuse an application for the registration of that person in respect of that home or on the

ground that that person has been convicted of an offence against the provisions of this Law or against the provisions of any Ordinance made under this Law, or on the ground that any other person has been convicted of such an offence in respect of that home.

3. (1) The Board shall not refuse an application for registration or cancel a registration unless it has given to the applicant or the person registered, as the case may be, not less than fourteen days notice in writing of its intention so to do and of its reasons for so doing, and every such notice shall state that if, within fourteen days of the date of the notice, such person informs the Board in writing of his desire to show cause, in person or by a representative, why the Board should not refuse the application or cancel the registration, the Board will before making its decision afford him an opportunity to do so.

Procedure
where
registration
refused or
cancelled.

(2) If the Board, after giving the applicant or person registered, as the case may be, an opportunity of being heard by it, decides to refuse the application for registration, or to cancel the registration, it shall record such decision in writing and shall serve a notice of the decision upon the applicant or person registered, as the case may be, and any such notice shall contain the reasons for the decision and shall state the right of appeal to the Ordinary Court under the provisions of section five of this Law and the time within which such appeal may be brought.

4. (1) Where a person makes application to the Board for registration in respect of an established home in accordance with the provisions of section one of this Law and the Board is satisfied that for any of the reasons contained in the proviso to sub-section (3) of the said section one it should refuse

Provisional
registration
of
established
homes.

to register the applicant under the provisions of the said section one, the Board may provisionally register the applicant under the provisions of this section which registration shall however be operative only until it is confirmed upon an application being made to the Board in that behalf in accordance with the succeeding provisions of this section.

(2) On the registration of a person provisionally under the provisions of the last preceding subsection the Board may require the person concerned to do all such things to the established home concerned as may be necessary to ensure that the said person may be registered under the provisions of section one of this Law and the Board may specify the time within which such things shall be completed and the application for confirmation as aforesaid made.

(3) At least seven days prior to the making of an application for confirmation as aforesaid a notice of intention to make the same shall be sent to the Board.

(4) If at the hearing of any such application the Board is satisfied that there has been done to the established home, which is the subject of the application, all such things as were required by the Board under the provisions of subsection (2) of this section and that they have been done within the time required by the Board under the said subsection, the Board may register the applicant in respect of the established home under the provisions of section one of this Law.

(5) The registration of a person in respect of an established home provisionally as aforesaid shall be cancelled upon the confirmation of such provisional registration being refused.

(6) In this section the expression "established home" means any premises which were, immediately

before the date of the coming into force of this Law, in use as a home.

5. (1) Any person aggrieved by a decision of the Board made under the provisions of section three or section four of this Law may appeal therefrom to the Ordinary Court within the twenty-one days next following the date of the said decision. Appeals.

(2) An appeal under the provisions of this section shall be instituted by way of summons served on the President of the Board and such summons shall set out the grounds upon which the appellant relies.

(3) Where on appeal under the provisions of this section the Ordinary Court varies or reverses any decision of the Board, it shall be the duty of the Board to give effect to the order of the Ordinary Court and, in particular, to grant any necessary certificate and to make any necessary entry in the register.

(4) Any decision of the Ordinary Court under the provisions of this section shall be final.

6. The provisions of this Law shall not apply to a home managed by or on behalf of a Committee of the States. Law not to apply to homes managed by the States.

7. (1) The Board may grant exemption from the operation of the provisions of this Law relating to nursing homes in respect of any nursing home if the Board is satisfied that it is being, or will be, carried on in accordance with the practice and principles of the body known as the Church of Christ Scientist. Power of Board to exempt Christian Science nursing homes.

(2) It shall be a condition of any exemption granted in respect of a nursing home under this sec-

tion that the nursing home shall adopt and use the name Christian Science house.

(3) An exemption granted under this section in respect of a nursing home may at any time be withdrawn by the Board if it appears to the Board that the nursing home is no longer being carried on in accordance with the said principles.

Decease or
incapacity
of person
registered.

8. On the decease of a person registered or provisionally registered in respect of a home or on such a person being certified by a medical practitioner authorised to practise in this Island as incapable of personally carrying on the home the Board, may, on the application of the legal personal representative or the duly authorised representative of such person, as the case may be, register or provisionally register such representative in respect of the home for such period as may be necessary to enable application to be made under the provisions of section one of this Law for the registration of a person in respect of the home.

Inspection
of homes.

9. The Medical Officer of Health or, if authorised in writing in that behalf by the Board, a qualified nurse or any other person may, subject to such conditions as may be laid down by the Board, at all reasonable times 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 home and inspect any records required to be kept in accordance with the provisions of this Law:

Provided that nothing in this Law shall be deemed to authorise any such person other than the Medical Officer of Health to inspect any medical record relating to a patient in a home.

10. All notices and other documents authorised or required to be given, made or issued for the purposes of this Law shall be in writing and shall be in such form as the Board may, from time to time, determine. Forms of notices, etc.

11. Any notice or document which may be served for the purposes of this Law shall be validly served:— Service of notices, etc.

(a) on any person, if delivered to him, left or sent by registered post or recorded delivery service to him, at his usual or last known place of abode;

(b) on any firm, if delivered to any partner of the firm, or left at, or sent by registered post or recorded delivery service to, the principal or last known principal place of business of the firm;

(c) on any body corporate, if left at, or sent by registered post or recorded delivery service to, its registered office if situate in the Island of Guernsey or, if its registered office is not so situate, its principal or last known principal place of business in the Island.

12. (1) Subject to the provisions of this Law, the States may by Ordinance make such provisions as to the conduct of homes as may seem to them to be necessary or expedient. Ordinances.

(2) Without prejudice to the generality of the last preceding subsection, an Ordinance under this section may, in particular, make provision for all or any of the following matters:—

- (a) the facilities and services to be provided in nursing homes and residential homes;
- (b) empowering the Board to limit the number of persons, or persons of any description, who may be received into a home, and enabling registration of any such home to be made subject to the condition that persons shall not be received therein in excess of the number fixed for the home in accordance with the Ordinance;
- (c) the keeping of records relating to homes and the notification of events occurring therein;
- (d) empowering the Board to make such orders as may be necessary or expedient for the effectual operation of any such Ordinance;
- (e) such incidental or supplementary matters for which the States may deem it necessary or expedient for the purposes of any such Ordinance to provide.

Variation
and repeal of
Ordinances
and orders.

13. Any power conferred by this Law to make any Ordinance or order shall be construed as including a power exercisable in the like manner to vary or repeal the Ordinance or order.

Offences.

14. Save as expressly provided by that Ordinance, any person who contravenes or attempts to contravene or fails to comply with any of the provisions of any Ordinance made under this Law or any direction given or requirement imposed under or by virtue of that Ordinance shall be guilty of an offence against that Ordinance.

Penalties.

15. The States may, from time to time, by Ordinance prescribe the penalties which shall be incurred by any person guilty of any offence under any

Ordinance made under this Law and different penalties may be so prescribed for different offences.

16. Any person who—

False
statements.

- (a) in connection with an application for registration in respect of a home, knowingly makes any false statement or recklessly makes any statement which is false in a material particular or produces or furnishes any information which he knows to be false; or
- (b) who knowingly fails to produce or furnish any information which he is required to produce or furnish under the provisions of this Law or any Ordinance made thereunder;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred pounds.

17. Where a person convicted of an offence under this Law or any Ordinance made thereunder is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

Offences by
bodies
corporate.

18. (1) In this Law, unless the context otherwise requires—

Interpreta-
tion.

“authorised medical practitioner” means a person authorised to practise in the Island as a medical practitioner according to the law for the time being in force;

“the Board” means the States Board of Health;

“the Central Midwives Board” means the Central Midwives Board constituted by section one of the Midwives Act 1951;

“home” means a nursing home or a residential home;

“maternity home” means any premises used or intended to be used for the reception of pregnant women, or of women immediately after child-birth;

“Medical Officer of Health” means the States Medical Officer of Health and includes the Deputy States Medical Officer of Health;

“nursing home” means any premises used or intended to be used for the reception of, and the providing of nursing for, persons suffering from any sickness, injury or infirmity, and includes a maternity home, but does not include any hospital maintained in whole or in part by the States;

“the Ordinary Court” means the Royal Court sitting as an Ordinary Court;

“pupil midwife” means a person who is undergoing training with a view to becoming a certified midwife and for that purpose attending women in childbirth as part of a course of practical instruction in midwifery recognised by the Central Midwives Board;

“qualified nurse” means a person who is a registered nurse or an enrolled nurse within the meaning of the Nurses (Use of Title) Ordinance, 1973(a);

“the register” means the register of homes compiled under the provisions of subsection (5) of section one of this Law;

“registered midwife” means a person registered as a midwife in accordance with the provisions of the Midwives Ordinance, 1950, as amended^(b);

“registration” means the registration of a person in respect of a home in accordance with the provisions of section one of this Law;

“residential home” means any establishment the sole or main object of which is, or is held out to be, the provision of accommodation, whether for reward or not, for—

(a) persons who are blind, deaf or dumb or other persons who are substantially and permanently handicapped by illness, injury or congenital deformity; or

(b) the aged; or

(c) both:

Provided that the said expression does not include—

(i) any hospital maintained in whole or in part by the States; or

(ii) any nursing home.

(2) Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

19. (1) This Law may be cited as the Nursing Homes and Residential Homes (Guernsey) Law, 1976. Citation and commencement.

(b) Recueil d'Ordonnances Tome X, p. 68; Tome XI, p. 178; Tome XV, p. 385.

(2) This Law shall come into force on such day as shall be appointed in that behalf by Ordinance of the States.

R. H. VIDELO,
Her Majesty's Greffier.