

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXVI, p. 71; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Nursing Homes and Residential Homes (Guernsey) (Amendment) Law, 2006 (No. VI of 2007); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Bills of Exchange (Guernsey) Law, 1958 (Ordres en Conseil Vol. XVII, p. 384); the Nursing Homes Ordinance, 1977 (Recueil d'Ordonnances Tome XXI, p. 82); the Residential Homes Ordinance, 1977 (Recueil d'Ordonnances Tome XXI, p. 89); the Fees, Charges and Penalties (Guernsey) Law, 2007 (No. VII of 2008).

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

ARRANGEMENT OF SECTIONS

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. Ordinances and orders.
14. Offences.
15. Penalties.
16. False statements.
17. Offences by bodies corporate.
18. Interpretation.
19. Citation and commencement.

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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 [level 2 on the uniform scale] 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 [level 3 on the uniform scale] 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 Committee] in writing and shall be in such form and contain such particulars as [the Committee] 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 Committee] 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 Committee] 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 childbirth, 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 [level 1 on the uniform scale] and to a further fine not exceeding ten pounds for each day on which the offence continues after conviction therefor.

(5) [The Committee] 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 Committee] on any week-day, other than a Saturday or a Bank Holiday, during such hours as [the Committee] may, from time to time, determine.

[(6) Subject to subsection (7), there shall be payable in respect of a registration such annual renewal fee, payable on or before such date, as the States may, from time to time, by Ordinance prescribe.

(7) The Committee may grant exemption from the requirement of subsection (6) in respect of any home which is funded primarily by charitable means.]

NOTES

In section 1,

the words and figures in square brackets in subsection (1) and subsection (4) were substituted by the Uniform Scale of Fines (Bailiwick of

Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989;

the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016;

subsection (6) and subsection (7) were inserted by the Nursing Homes and Residential Homes (Guernsey) (Amendment) Law 2006, section 1(a), with effect from 23rd April, 2007.

The following case has referred to this Law:

Villa del Sol Management Co. (Guernsey) Limited v. Board of Health (1990) 10.GLJ.50.

In accordance with the provisions of the Fees, Charges and Penalties (Guernsey) Law, 2007, section 1, Schedule, the power to prescribe by Ordinance the fees therein referred to and payable under this Law may be exercised by Regulation, with effect from 19th May, 2008.

In accordance with the provisions of the Bills of Exchange (Guernsey) Law, 1958, section 1B, the reference in this section to a bank holiday shall be construed as a reference to a public holiday within the meaning of section 1(1) of the 1958 Law, with effect from 27th July, 1993.

In accordance with the provisions of, first, the Nursing Homes Ordinance, 1977, section 5 and, second, the Residential Homes Ordinance, 1977, section 5, with effect from 1st February, 1978, the prescribed fee for the purposes of this section is £1.00.

Cancellation of registration.

2. Subject to the provisions of this Law, [the Committee] 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[, or on the ground that any annual renewal fee payable under subsection 1(6) has not been paid on or before the due date].

NOTES

In section 2,

the words in the first pair of square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016;

the words in the second pair of square brackets were inserted by the Nursing Homes and Residential Homes (Guernsey) (Amendment) Law 2006, section 1(b), with effect from 23rd April, 2007.

Procedure where registration refused or cancelled.

3. (1) [The Committee] 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 Committee] in writing of his desire to show cause, in person or by a representative, why [the Committee] should not refuse the application or cancel the registration, [the Committee] will before making its decision afford him an opportunity to do so.

(2) If [the Committee], 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.

NOTE

In section 3, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Provisional registration of established homes.

4. (1) Where a person makes application to [the Committee] for registration in respect of an established home in accordance with the provisions of section one of this Law and [the Committee] is satisfied that for any of the reasons contained in the proviso to subsection (3) of the said section one it should refuse to register the applicant under the provisions of the said section one, [the Committee] 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 Committee] 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 Committee] 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 Committee] 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 Committee].

(4) If at the hearing of any such application [the Committee] 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 Committee] under the provisions of subsection (2) of this section and that they have been done within the time required by [the Committee] under the said subsection, [the Committee] 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.

NOTE

In section 4, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with

effect from 1st May, 2016.

Appeals.

5. (1) Any person aggrieved by a decision of [the Committee] 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.

(2) An appeal under the provisions of this section shall be instituted by way of summons served on the [the President] of [the Committee] 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 Committee], it shall be the duty of [the Committee] 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.

NOTE

In section 5, the words "the Committee" and "the President" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.¹

Law not to apply to homes managed by the States.

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

Power of Board to exempt Christian Science nursing homes.

7. (1) [The Committee] may grant exemption from the operation of the provisions of this Law relating to nursing homes in respect of any nursing home if [the Committee] 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.

(2) It shall be a condition of any exemption granted in respect of a nursing home under this section 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 Committee] if it appears to [the Committee] that the nursing home is no longer being carried on in accordance with the said principles.

NOTE

In section 7, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

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 Committee], 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.

NOTE

In section 8, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Inspection of homes.

9. The Medical Officer of Health or, if authorised in writing in that

behalf by [the Committee], a qualified nurse or any other person may, subject to such conditions as may be laid down by [the Committee], 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.

NOTE

In section 9, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Forms of notices, etc.

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 Committee] may, from time to time, determine.

NOTE

In section 10, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Service of notices, etc.

11. Any notice or document which may be served for the purposes of this Law shall be validly served –

- (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.

Ordinances.

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.

(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 Committee] 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 Committee] 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.

NOTES

In section 12, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

The following Ordinances have been made under section 12:

*Nursing Homes Ordinance, 1977;
Residential Homes Ordinance, 1977.*

[Ordinances and orders.]

- 13.** (1) An Ordinance or order under this Law –
- (a) may be amended or repealed by a subsequent Ordinance or order hereunder, and
 - (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States or [Committee], as the case may be, think fit.
- (2) Any power conferred by this Law to make an Ordinance or order may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, and
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any order made under this Law shall be laid before a meeting of the States as soon as may be after being made and if at that meeting or the next subsequent meeting the States resolve that the order be annulled, the order shall cease to have effect but without prejudice to anything done under the order or to the making of a new order.]

NOTES

Section 13 was substituted by the Nursing Homes and Residential Homes (Guernsey) (Amendment) Law 2006, section 1(c), with effect from 23rd April, 2007.

In section 13, the word in square brackets in subsection (1) was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

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.

False statements.

16. Any person who –

- (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 [level 2 on the uniform scale].

NOTE

In section 16, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

Offences by bodies corporate.

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.

Interpretation.

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

"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 Committee]" means the States [Committee for Health & Social Care],

"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 childbirth,

"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,

^a Ordinance No. XLVI of 1973.

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

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.

NOTES

In section 18, the words in the first and second pairs of square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.²

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.³

The following case has referred to section 18:

Villa del Sol Management Co. (Guernsey) Limited v. Board of Health (1990) 10.GLJ.50.

The Nurses (Use of Title) Ordinance, 1973 and the Midwives Ordinance, 1950 have both since been repealed by the Nurses, Midwives and Health Visitors Ordinance, 1987, section 15(1), Schedule, Part I, with effect from 26th November, 1987.

Citation and commencement.

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

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

NOTE

The Law was brought into force on 1st February, 1978 by the Nursing Homes and Residential Homes (Guernsey) Law, 1976 (Commencement) Ordinance, 1977, section 1.

¹ The words "the President" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

² The words "Committee for Health & Social Care" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

³ The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Board of Health and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.