NATIONAL ASSEMBLY FOR WALES

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order commences certain provisions of the Care Standards Act 2000 ('the Act') and makes transitional, consequential and savings provisions in connection with the commencement of those provisions.

The Order commences, in article 3, those provisions of Part II of the Act that provide for a new regime for the registration and inspection of children's homes, care homes, independent hospitals and clinics in Wales by the National Assembly for Wales ('the Assembly') in place of the old registration regimes provided for under the Registered Homes Act 1984 and the Children Act 1989. It also commences the provisions in Part VI of the Act that insert a new Part XA into the Children Act 1989 which introduces a new regime for the registration and inspection by the Assembly of child minders and day care providers.

The Order also commences those provisions of the Act that amend or repeal other primary legislation as a consequence of the provisions contained in Part II of the Act commenced by this Order. The commencement of these amending and repealing provisions is subject to savings provisions made in article 3 of the Order. The effect of these savings provisions is to maintain the legislation that is to be repealed or amended in respect of certain homes whilst those homes continue to be subject to their old registration and inspection regime for transitional purposes under Schedule 1 to the Order. The Order also commences provisions of the Act that amend or repeal other primary legislation as a consequence of the provisions in Part VI of the Act commenced by this Order.

Schedule 1 makes transitional provision in respect of the commencement of provisions of Part II of the Act by the Order. Paragraphs 2 and 4 of the Schedule provide for the Assembly to exercise functions under the old registration regimes in relation to persons and homes that were registered under those regimes, until the Assembly has made determinations under paragraph 6 as to the application to those homes and persons of Part II of the Act. Paragraph 5 provides for the making of applications by persons who were not eligible for registration before the Order commenced provisions of Part II of the Act. Paragraphs 7 to 9 provide for outstanding applications for registration in respect of homes under the old registration regimes to be treated as if they were applications for registration under the Act. Paragraph 10 requires the registration authorities under the old registration regimes to pass to the Assembly their information and documentation about those registrations that were current at the coming into force of the Order.

Schedule 2 makes transitional provision in respect of the commencement of provisions of Part VI of the Order.

Paragraph 2 contains general savings so that in the absence of specific provision to the contrary, action taken under the Children Act 1989 prior to 1st April 2002 by or in relation to child minders or day care providers is unaffected by the insertion of a new Part XA into that Act. It also provides, subject to exceptions, for matters to be treated after 1st April 2002 as if done under the new Part XA regime. Paragraph 3 deems registrations under Part X of the Children Act 1989 which exist at 1st April 2002 to be registrations under the new Part XA regime from that date and makes appropriate provision about conditions attaching to the deemed registration. Paragraph 4 makes provision about certificates of registration where there is a deemed registration under the new Part XA regime. Paragraph 5 requires the registration authorities under the old registration regime to pass to the Assembly documents and records about registration which are deemed to be made under the new Part XA regime. Paragraph 6 provides for outstanding applications for registration for child minding or as a day care provider to be treated as if they were applications under the new Part XA regime and for documents and records relating to the application to be passed to the Assembly.

Schedule 3 makes transitional provision in relation to the commencement of provisions of the Act that amend section 65 of the Children Act 1989. Paragraph 2 of the Schedule provides that consents given under the Children Act 1989 allowing persons to care for children, who would otherwise have been disqualified from caring for children, shall continue to have effect notwithstanding the amendments made by the Act to section 65. Paragraphs 3 and 4 provide transitional arrangements in relation to appeals against refusals to give consent under section 65 that were underway at the coming into force of the Order.

"NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The provisions of the Care Standards Act 2000 ('the Act') in respect of which an entry is made in the Table below have been brought into force in relation to Wales on the date specified alongside their entry. Those provisions whose entry is followed by '(**a**)' were brought into force by S.I. 2000/2992 (W.192) (C.93); those followed by '(**b**)' were brought into force by S.I. 2001/139 (W.5) (C.7); those followed by '(**c**)' were brought into force by S.I. 2001/2190 (W.152) (C.70); those followed by '(**d**)' were brought into force by S.I. 2001/2354 (W.192) (C.80); those followed by '(**e**)' were brought into force by S.I. 2001/2504 (W.205) (C.82); those followed by '(**f**)' were brought into force by S.I. 2001/2538 (W.213) (C.83) and those followed by '(**g**)' were brought into force by S.I. 2001/2782 (W.235) (C.92).

Provision	*Date of Commencement*
Sections 1-5 (**c**)	18th June 2001
Section 7(7) (**c**)	18th June 2001
Section 8 (partially) (**c**)	18th June 2001
Section 9(3)-(5) (**c**)	18th June 2001
Sections 11-12 (partially) (**c**)	18th June 2001
Sections 14-15 (partially) (**c**)	18th June 2001
Section 16 (**c**)	18th June 2001
Sections 22-23 (**c**)	18th June 2001
Section 25 (**c**)	18th June 2001
Sections 33-35 (**c**)	18th June 2001
Section 36 (partially) (**c**)	18th June 2001
Section 38 (**c**)	18th June 2001
Section 39 (partially) (**e**)	31st July 2001
Section 39 (remainder) (**e**)	31st August 2001
Section 40 (partially) (**b**)	1st February 2001
Section 40 (remainder) (**b**)	28th February 2001

Section 41 (**b**)	28th February 2001
Sections 42-43 (**c**)	18th June 2001
Sections 48-52 (**c**)	18th June 2001
Section 54(1), (3)-(7) (**a**)	1st April 2001
Section 55 & Schedule 1 (**a**)	1st April 2001
Section 63 (**f**)	31st July 2001
Section 66 (**f**)	31st July 2001
Section 67 (**f**)	1st October 2001
Section 70(1) (**f**)	1st October 2001
Section 71 (**f**)	31st July 2001
Section 72 & Schedule 2 (**a**)	13th November 2000
Section 72A (**g**)	26th August 2001
Section 72B & Schedule 2A (**g**)	26th August 2001
Section 73 (as amended) & Schedule 2B (**g**)	26th August 2001
Section 75 (as amended) (**g**)	26th August 2001
Section 75A (**g**)	26th August 2001
Sections 76 to 78 (as amended) (**g**)	26th August 2001
Section 79(1) (partially) (**c**)	18th June 2001
Section 79(2) & Schedule 3 (partially) (**c**)	18th June 2001
Section 79(3),(4) (**c**)	18th June 2001
Section 98 (d)	1st July 2001
Sections 107-108 (**c**)	18th June 2001
Section 112 (**c**)	18th June 2001
Section 113 (2)-(4) (**a**)	1st April 2001
Section 114 (partially) (**a**)	1st April 2001
Section 114 (remainder) (**c**)	18th June 2001
Section 115 (**c**)	18th June 2001
Section 116 & Schedule 4 (partially) (**b**)	28th February 2001
Section 116 & Schedule 4 (partially) (**c**)	18th June 2001
Section 117(1) & Schedule 5 (partially) (**c**)	18th June 2001
Section 117(1) & Schedule 5 (partially) (**g**)	26th August 2001

The provisions of the Act in respect of which an entry is made in the Table below have been brought into force by S.I. 2000/2544 (C.72) in relation to Wales, as well as in relation to England, on the date specified alongside their entry.

Provision	*Date of Commencement*
Section 80(8)	2nd October 2000
Section 94	2nd October 2000
Section 96 (partially)	15th September 2000
Section 96 (remainder)	2nd October 2000
Section 99	15th September 2000
Section 100	2nd October 2000
Section 101	2nd October 2000
Section 103	2nd October 2000
Section 116 & Schedule 4 (partially)	2nd October 2000
Section 117(2) & Schedule 6 (partially)	2nd October 2000

In addition various other provisions of the Act have been brought into force in relation to England by the following Statutory Instruments: S.I. 2000/2795 (C.79); S.I. 2001/290 (C.17); S.I. 2001/731 (C.26); S.I. 2001/952 (C.35); S.I. 2001/1210 (C.41); S.I. 2001/1536 (C.55); S.I. 2001/2041 (C.68); S.I. 2001/3331 (C.109); S.I. 2001/3852 (C.125); S.I. 2001/4150 (C.134)."

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*

ARRANGEMENT OF ORDER

1. Citation, interpretation and application
2. Schedules
3. Appointed days and transitional provisions
4. Consequential amendment

SCHEDULE 1

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

1. Interpretation
2. Transitional savings in respect of the 1984 Act
3. Transitory provisions about room sizes in 1984 Act homes
4. Transitional savings in respect of the 1989 Act
5. Providers and managers not eligible for registration before commencement of the 2000 Act
6. Transition from registration under the 1984 and 1989 Acts to registration under the 2000 Act
7. Transfer of outstanding applications for registration under the 1984 or 1989 Acts: applications in respect of which the authority has not made a proposal to grant or refuse the application
8. Transfer of outstanding applications for registration under the 1984 or 1989 Acts: applications in respect of which the authority has made a proposal to grant or refuse the application
9. Transfer of outstanding applications for registration under the 1984 or 1989 Acts: applications in respect of which the authority has made a decision to adopt a proposal to grant or refuse the application
10. Transfer of information and documents

SCHEDULE 2

TRANSITIONAL PROVISIONS IN RELATION TO CHILD MINDING AND PROVISION OF DAY CARE

1. Interpretation

2. General savings for things done before the operational date and transitional provisions

3. Transfer of registration

4. Certificates of registration in respect of transferred registration

5. Duties of local authorities in relation to transfer

6. Section 71 applications in progress at the operational date

SCHEDULE 3

TRANSITIONAL PROVISIONS IN RELATION TO CERTAIN PERSONS DISQUALIFIED FROM CARING FROM CHILDREN

1. Interpretation

2. Continuation of consents given under section 65 of the 1989 Act or the 1991 Regulations

3. Transitional provision in respect of appeals against refusals to give consent under section 65 of the 1989 Act or the 1991 Regulations

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(**a**) 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(**b**);

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

"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;

"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(**d**);

"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.

(a) 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.

(b) 1984 c.23.

(c) 1989 c. 41.

(d) S.I. 2001/139.

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")(**a**);

(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-

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

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

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

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

(v) the 1984 Act;

(vi) the 1989 Act;

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

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

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

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

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

(a) 1999 c.14.

(b) 1948 c.29.

(c) 1970 c.42.

(d) 1970 c.44.

(e) 1983 c.20.

(f) 1990 c.19.

(g) 1991 c.20.

(h) 1996 c.23.

(i) 1996 c.56.

(j) 1997 c.24.

(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-

(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(**a**);

(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).

(a) 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.

Consequential amendment

4.-(1) In Schedule 1 to the National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996(**a**) 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(**b**)

28 March 2002

Rhodri Morgan

Assembly First Minister

(a) 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).

(b) 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;

"voluntary children's home" means a home that immediately before 1st April 2002 was registered in a register kept for the purposes of section 60 of the 1989 Act

(2) In this Schedule, unless the contrary intention appears, a reference-

(a) to a numbered paragraph is to the paragraph in this Schedule bearing that number;

(b) in a paragraph to a numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that number.

Transitional savings in respect of the 1984 Act

2.-(1) This sub-paragraph applies in relation to a Part I or Part II 1984 Act registered person when, in accordance with paragraph 6(3), he or she is treated as having applied for and been granted registration under Part II of the 2000 Act in respect of the home that he or she was registered in respect of under the 1984 Act.

(2) The 1984 Act shall continue in force for the purpose of giving effect to the following provisions of this paragraph.

(3) Until such time as sub-paragraph (1) applies in relation to a Part I 1984 Act registered person, and subject to sub-paragraph (5), the provisions of, and under, Part I of the 1984 Act shall continue in force in relation to, and in respect of, the person as if any reference in Part I of the 1984 Act to the registration authority is a reference to the National Assembly.

(4) Sub-paragraph (3) shall, in particular, have effect in relation to a person there referred to so that-

(a) any application made by an authority under section 11 of the 1984 Act shall be treated as made by the Assembly, and any thing done in relation to the authority in response to the application shall be treated as done in relation to the Assembly;

(b) any notice given by an authority of a proposal under section 12(4) of the 1984 Act shall be treated as given by the Assembly in respect of a proposal made by it, and any thing done in relation to the authority in response to the proposal shall be treated as done in relation to the Assembly;

(c) any notice of a decision of an authority to adopt a proposal given under section 14 shall be treated as given by the Assembly in respect of a decision made by it, and any thing done in relation to the authority in response to the notice shall be treated as done in relation to the National Assembly.

(5) Without prejudice to section 63 of the Government of Wales Act 1998(**a**) (Exercise of functions by Assembly staff), sub-paragraph (3) shall not have effect in relation to section 13(5) of the 1984 Act.

(6) In so far as the preceding sub-paragraphs of this paragraph do not apply, where by virtue of section 16 of the Interpretation Act 1978(**b**) (General savings), or by virtue of that section as applied by section 23 of that Act (Application to other instruments), any investigation, legal proceeding or remedy may at any time be instituted, continued or enforced by an authority in relation to a Part I 1984 Act registered person as if section 117(2) of the 2000 Act, in so far as it relates to the 1984 Act, had not been passed-

(a) any such investigation, legal proceeding or remedy may be instituted, continued or enforced by the National Assembly as if section 117(2), as just described, had not been passed; and

(b) any function, power or duty that applied to, or was exercisable by, an authority for the purpose of instituting, continuing or enforcing any such investigation, legal proceeding or remedy shall also apply to, and be exercisable by, the National Assembly as if section 117(2) had not, as just described, been passed.

(7) Until such time as sub-paragraph (1) applies in relation to a Part II 1984 Act registered person, the provisions of, and under, Part II of the 1984 Act shall continue in force in relation to, and in respect of, that person as they would have applied if it were not for the provisions of article 3 of this Order.

(8) The provisions of, under, and in connection with, the 1984 Act about the functions, powers and duties of the Registered Homes Tribunal shall continue to apply in relation to a Part I or Part II 1984 Act registered person for the purposes of any application which was commenced before the coming into force of this Order or which is made under this paragraph.

(9) So far as is possible, notwithstanding the application of sub-paragraph (1) to a person, any investigation, legal proceeding or remedy in respect of such a person may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed in respect of the person as if sub-paragraph (1) had not applied to the person.

(10) Until such time as sub-paragraph (1) applies in relation to a Part I or Part II 1984 Act registered person, section 11(1), (5) and (6) of the 2000 Act shall not apply to the person in respect of the 1984 Act home that he or she was registered in respect of immediately before 1st April 2002.

(11) The provisions of this paragraph are without prejudice to the operation of sections 16 and 23 of the Interpretation Act 1978.

Transitory provision about room sizes in 1984 Act homes

3.-(1) This paragraph applies where by virtue of paragraph 6(3) an existing registered provider of a 1984 Act home is treated as having been granted registration for the purposes of Part II of the 2000 Act in respect of a care home (in this paragraph referred to as "the registered person").

(2) Where this paragraph applies, the registration which the registered person is treated as having been granted

(a) 1998 c.38.

(b) 1978 c.30.

shall have effect as if, for the period beginning with the date on which the person is treated as having applied for and been granted registration for the purposes of Part II of the 2000 Act in accordance with paragraph (6)(3) and ending on 31st March 2007-

(a) it is conditional on the condition specified in sub-paragraph (3); and

(b) for the purposes of section 19(1) of the 2000 Act the condition had been agreed in writing between the registered person and the National Assembly.

(3) The specified condition is that the registered person shall not make available for use by a service user as a private room any room-

(a) in respect of which the authority in respect of the home notified the registered person that it was of insufficient size to be used as a private room for the accommodation of any resident; or

(b) which was not used as a private room for a period of at least seven days in the twelve months preceding 1st April 2002, unless the authority in respect of the home notified the registered person that the authority approved the use of the room for the accommodation of any resident.

(4) In sub-paragraph (3)-

"service user" means any person in the care home who is in need of nursing or personal care by reason of disability, infirmity, past or present illness, past or present mental disorder or past or present dependence on alcohol or drugs;

"resident" means a person who-

(a) in the case of a care home in respect of which any person was immediately before 1st April 2002 registered under Part I of the 1984 Act, was for the purposes of the Residential Care Homes Regulations 1984(**a**) a resident of the home; or

(b) in the case of a care home in respect of which any person was immediately before 1st April 2002 registered under Part II of the 1984 Act, was for the purposes of the Nursing Homes and Mental Nursing Homes Regulations 1984(**b**) a patient in the home.

(5) Sub-paragraphs (2) and (3) shall be without prejudice-

(a) to any other conditions to which the registration of the registered person for the purposes of Part II of the 2000 Act is subject, or which under this Order have effect as if they were such conditions; and

(b) to the powers of the National Assembly to vary, remove or impose any conditions in accordance with Part II of the 2000 Act.

Transitional savings in respect of the 1989 Act

4.-(1) This sub-paragraph applies in relation to a 1989 Act home when, in accordance with paragraph 6(3), the person carrying on the home is treated as having applied for and been granted registration under Part II of the 2000 Act in respect of the home.

(2) The provisions of sections 60 and 63 of, and Schedules 5 and 6 to, the 1989 Act and the definition of "registered children's home" in section 105 of that Act, that are repealed under section 117(2) of, and Schedule 6 to, the 2000 Act shall continue in force for the purpose of giving effect to the following provisions of this paragraph.

(3) Until such time as sub-paragraph (1) applies in relation to a registered children's home, and subject to sub-paragraph (5), the provisions of, and under, the 1989 Act referred to in sub-paragraph (2) which are about registered children's homes shall continue in force in relation to, and in respect of, the home as if any reference in those provisions to the responsible or local authority is a reference to the National Assembly.

(4) Sub-paragraph (3) shall, in particular, have effect in relation to a home referred to in that sub-paragraph so that-

(a) any notice of a proposal given by an authority under paragraph 5(4) of Schedule 6 to the 1989 Act shall be treated as given by the National Assembly in respect of a proposal made by it, and any thing done in relation to the authority in response to the notice shall be treated as done in relation to the National Assembly;

(b) any decision of an authority referred to in paragraph 7(3) of Schedule 6 to the 1989 Act, and any notice

(a) S.I. 1984/1345

(b) S.I. 1984/1578

given about that decision, shall be treated as made or given by the National Assembly, and anything done in relation to the authority in response to that decision or notice shall be treated as done in relation to the National Assembly.

(5) Sub-paragraph (3) shall not have effect in relation to-

(a) paragraph 3(2) to (5) of Schedule 6 to the 1989 Act; and

(b) without prejudice to section 63 of the Government of Wales Act 1998 (Exercise of functions by Assembly staff), paragraph 6(5) of Schedule 6 to the 1989 Act.

(6) In so far as the preceding sub-paragraphs of this paragraph do not apply, where by virtue of section 16 of the Interpretation Act 1978, or by virtue of that section as applied by section 23 of that Act, any investigation, legal proceeding or remedy may at any time be instituted, continued or enforced by an authority in relation to a registered children's home as if section 117(2) of the 2000 Act, in so far as it relates to the provisions of the 1989 Act referred to in sub-paragraph (2), had not been passed-

(a) any such investigation, legal proceeding or remedy may be instituted, continued or enforced by the National Assembly as if section 117(2), as just described, had not been passed; and

(b) any function, power or duty that applied to, or was exercisable by, an authority for the purpose of instituting, continuing or enforcing any such investigation, legal proceeding or remedy shall also apply to, and be exercisable by, the National Assembly as if section 117(2) had not, as just described, been passed.

(7) Until such time as sub-paragraph (1) applies in relation to a voluntary children's home the provisions of, and under, the 1989 Act referred to in sub-paragraph (2) which are about voluntary children's homes shall continue in force in relation to, and in respect of, the home as they would have applied if section 117(2) of the 2000 Act had not been passed.

(8) The provisions of, under, and in connection with, the 1989 Act about the functions, powers and duties of the Registered Homes Tribunal in respect of a 1989 Act home shall continue to apply for the purposes of any application which was commenced before the coming into force of this Order in relation to a voluntary or registered children's home or which is made under this paragraph.

(9) So far as is possible, notwithstanding the application of sub-paragraph (1) to a home, any investigation, legal proceeding or remedy in respect of the home may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed in respect of the person as if sub-paragraph (1) had not applied to that person.

(10) Until such time as sub-paragraph (1) applies in relation to a person carrying on a 1989 Act home, section 11(1), (5) and (6) of the 2000 Act shall not apply to the person in respect of the home.

(11) The provisions of this paragraph are without prejudice to the operation of sections 16 and 23 of the Interpretation Act 1978.

Providers and managers not eligible for registration before commencement of the 2000 Act

5.-(1) This sub-paragraph applies to any person who-

(a) carries on an establishment other than-

(i) a residential care home, nursing home or mental nursing home in respect of which a person was required to be registered under Part I or Part II of the 1984 Act;

(ii) a children's home that was required to be registered in a register kept for the purposes of section 60 of the 1989 Act or under Part VIII of that Act; and

(b) duly makes an application for registration before 1st July 2002 under Part II of the 2000 Act as a person who carries on the establishment.

(2) This sub-paragraph applies to any person who-

(a) manages an establishment other than a residential care home in respect of which a person is required to be registered under section 3 of the 1984 Act; and

(b) duly makes an application for registration before 1st July 2002 under Part II of the 2000 Act as a person who manages the establishment.

(3) The following sub-paragraphs shall apply in relation to a person ("the unregistered provider") to whom sub-paragraphs (1) or (2) apply.

(4) Section 11(1), (5) and (6) of the 2000 Act shall not apply to an unregistered provider in respect of the

establishment-

(a) until such time as the application is granted, either unconditionally or subject only to conditions which have been agreed in writing between him or her and the National Assembly; or

(b) if the application is granted subject to conditions which have not been so agreed, or refused-

(i) if no appeal is brought, until the expiration of the period of 28 days after service on him or her of the National Assembly's decision; or

(ii) if an appeal is brought, until it is determined or abandoned.

(5) This sub-paragraph applies where-

(a) the National Assembly applies to a justice of the peace for an order that section 11(1), (5) and (6) of the 2000 Act should apply to an unregistered provider and that sub-paragraph (4) of this paragraph should cease to apply to him; and

(b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being.

(6) Where sub-paragraph (5) applies-

(a) the justice may make the order referred to in that sub-paragraph;

(b) section 11 of the 2000 Act shall apply to the unregistered provider, and sub-paragraph (4) of this paragraph shall cease to apply to him, from the time when the order is made.

(7) Section 20(2), (4) and (5) of the 2000 Act shall apply to any application made to a justice under sub-paragraph (5), and to any order made under sub-paragraph (6), as if the application or order (as the case may be) were made under section 20(1) of the 2000 Act and applied to the unregistered provider.

Transition from registration under the 1984 and 1989 Acts to registration under the 2000 Act

6.-(1) The National Assembly, having regard to any representations made by the existing registered provider (referred to as 'the provider' in the following provisions of this paragraph) under sub-paragraph (10), shall determine, at such time as it thinks fit, the matters described in sub-paragraph (2) in relation to an existing registered home, and serve notice of its determination upon the provider.

(2) The matters are-

(a) the applicable description (if any) that applies to the existing registered home;

(b) the conditions (if any) to which-

(i) in the case of a 1984 Act home, the registration of the provider under that Act was subject;

(ii) in the case of a 1989 Act home, the registration of the home under that Act was subject;

(c) in a case where the provider was registered under Part I of the 1984 Act in respect of a residential care home, whether for the purposes of section 3 of that Act he or she was a manager of the home but not in control of it (whether as owner or otherwise);

(d) any other matter in so far as the determination of that matter is necessary to enable the provider, in accordance with sub-paragraph (3), to be treated for the purposes of Part II of the 2000 Act as having applied for and been granted registration in respect of the establishment;

and any determination of the National Assembly under this sub-paragraph shall for the purposes of section 21 of the 2000 Act (appeals to the Tribunal) be treated as if it were a decision of the National Assembly under Part II of that Act.

(3) When the National Assembly has, for the purposes of sub-paragraph (2)(a) made a determination of the applicable description that applies to an existing registered home, then with effect from a date specified by the National Assembly ('the effective date') (which may be specified by reference to the determination of an application under paragraph 5 in respect of the existing registered home, or to some other event)-

(a) the provider shall, for the purposes of Part II of the 2000 Act, be treated as having applied for and been granted registration in respect of the existing registered home as an establishment of the applicable description determined in accordance with sub-paragraph 2(a);

(b) the conditions (if any) determined in accordance with sub-paragraph (2)(b) shall, in so far as they are capable of being conditions to which the registration for the purposes of Part II of the 2000 Act is subject, have effect-

(i) as if they were conditions to which the registration for those purposes is subject; and

(ii) as if, for the purposes of section 19(1) of the 2000 Act, they had been agreed in writing between the provider and the National Assembly.

(4) On, or before, the effective date in respect of a determination under this paragraph the National Assembly shall issue a certificate to the provider-

(a) whose contents shall be in accordance with any regulations made under section 16(1)(b) of the 2000 Act about the contents of certificates issued under Part II of that Act(**a**); and

(b) which shall be treated as if it were a certificate in respect of the existing registered home issued by the National Assembly under Part II of the 2000 Act.

(5) Where, in accordance with this paragraph, a provider who is not registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home is to be treated, for the purposes of Part II of the 2000 Act, as having applied for and been granted registration in respect of an existing registered home as a care home-

(a) the registration shall be treated as being subject to the condition that the care home shall not provide nursing to any person;

(b) the condition mentioned in paragraph (a) above shall be treated, for the purposes of Part II of the 2000 Act, as if it had been agreed in writing between the existing provider and the National Assembly.

(6) The provisions of sub-paragraphs (2), (3) and (5) shall be without prejudice to the powers of the National Assembly to vary, remove or impose any condition in accordance with Part II of the 2000 Act.

(7) In this paragraph, references to a provider being treated as having applied for and been granted registration in respect of an existing registered home shall be taken to refer-

(a) in a case where-

(i) the provider is treated as having applied for and been granted registration in respect of a care home; and

(ii) the National Assembly has determined in accordance with sub-paragraph (2)(c) that-

(aa) the provider is registered under Part I of the 1984 Act in respect of a residential care home; and

(bb) for the purposes of section 3 of that Act he is a manager of the home but is not in control of it (whether as owner or otherwise)

to registration as a manager in respect of the care home; and

(b) in any other case, to registration as a person who carries on the establishment in question.

(8) This sub-paragraph applies where-

(a) the provider is to be treated, in accordance with sub-paragraph (3), as having applied for and been granted registration in respect of the existing registered home as an establishment of an applicable description; and

(b) not more than twelve months after the date upon which such treatment became effective, the National Assembly is satisfied that, in relation to the existing registered home, the applicable description is incorrect and was incorrect at the date just mentioned.

(9) Where sub-paragraph (8) applies-

(a) the National Assembly shall, having regard to any representations made under sub-paragraph (10), determine, with effect from the date specified in the determination, the applicable description that is to instead apply in the case of the provider, and serve notice of its determination upon the provider;

(b) the provider shall be treated, with effect from the date on which the determination takes effect, as having applied for and been granted registration in respect of the existing registered home as an establishment of the applicable description determined under paragraph (a) above;

(c) the National Assembly shall-

(i) ensure that, in relation to the registration of the provider for the purposes of Part II of the 2000 Act, any particulars required to be kept by the National Assembly are recorded or varied consistently with that determination; and

(ii) issue an amended certificate of registration to the provider;

and any determination of the National Assembly under this sub-paragraph shall for the purposes of section

(a) Regulation 9 of the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 (S.I. 2002/919) makes provision under section 16(1)(b) of the 2000 Act about the contents of certificates of registration issued under Part II of the 2000 Act.

21 of the 2000 Act (appeals to the Tribunal) be treated as if it were a decision of the National Assembly under Part II of that Act.

(10) Before making a determination as to the matters described in sub-paragraph (2) or (as the case may be) a determination under sub-paragraph (9)(a) in relation to an existing registered home the National Assembly shall give notice in writing to the provider informing the provider that he or she may, within twenty eight days of the receipt of that notice, make written representations about the determination, and that no determination will be made before the expiry of those twenty eight days.

(11) Sections 31 and 32 of the 2000 Act shall have effect for the purposes of this paragraph as if the words ", or for the purposes of the functions of the National Assembly under paragraph 6 of Schedule 1 to the Care Standards Act 2000 (Commencement No.8 (Wales) and Transitional and Savings Provisions) Order 2002." were inserted at the end of section 31(1).

Transfer of outstanding applications for registration under the 1984 or 1989 Acts: applications in respect of which the authority has not made a proposal to grant or refuse the application

7.-(1) Sub-paragraph (3) applies to an application-

(a) which has been made to an authority before 1st April 2002 and which has not been granted at that date-

(i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home;

(ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home;

(iii) to register a home under section 60 of the 1989 Act;

(iv) to register a home under Part VIII of the 1989 Act; and

(b) to which sub-paragraph (2) does not apply.

(2) This sub-paragraph applies to an application in respect of which the authority has given to the person who made the application-

(a) notice of a proposal under (as the case may be) section 12(1) or 31(1) of the 1984 Act or paragraph 2(1) of Schedule 5 or paragraph 5(1) of Schedule 6 of the 1989 Act, to grant the application; or

(b) notice of a proposal under (as the case may be) section 12(3) or 31(2) of the 1984 Act or paragraph 2(3) of Schedule 5 or paragraph 5(3) of Schedule 6 to the 1989 Act, to refuse the application

(3) Where this sub-paragraph applies in relation to an application-

(a) it has effect in relation to an application of a type described in sub-paragraph (1)(a)(i) or (ii) so that the application shall be treated as an application for registration under Part II of the 2000 Act in respect of a care home;

(b) it has effect in relation to an application of a type described in sub-paragraph 1(a)(iii) or (iv) so that the application shall be treated as an application for registration under Part II of the 2000 Act in respect of a children's home.

(4) Where sub-paragraph (3) applies to an application to register a home under Part VIII of the 1989 Act which was duly made in accordance with article 3(1) of the No.2 Commencement Order section 11(1), (5) and (6) of the 2000 Act shall not apply to the person carrying on the home-

(a) until such time as the application is granted, either unconditionally or subject only to conditions which have been agreed in writing between him or her and the National Assembly; or

(b) if the application is granted subject to conditions which have not been so agreed, or refused-

(i) if no appeal is brought, until the expiration of the period of 28 days after service on him or her of the National Assembly's decision; or

(ii) if an appeal is brought, until it is determined or abandoned.

Transfer of outstanding applications for registration under the 1984 or 1989 Acts: applications in respect of which the authority has made a proposal to grant or refuse the application

8.-(1) This sub-paragraph applies where-

(a) an application was made before 1st April 2002-

(i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home;

(ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or mental nursing home;

(b) the authority has before 1st April 2002 given to the person who made the application-

(i) notice of a proposal under (as the case may be) section 12(1) or 31(1) of the 1984 Act, to grant the application; or

(ii) notice of a proposal under (as the case may be) section 12(3) or 31(2) of the 1984 Act to refuse the application; and

(c) as at 1st April 2002, the authority has not given the person who made the application notice under (as the case may be) section 14 or 33 of the 1984 Act of their decision to adopt a proposal to grant or refuse the application.

(2) This sub-paragraph applies where-

(a) an application is made before 1st April 2002-

(i) to register a home under section 60 of the 1989 Act;

(ii) to register a home under Part VIII of the 1989 Act;

(b) the authority has before 1st April 2002 given to the person who made the application-

(i) notice of a proposal under (as the case may be) paragraph 2(1) of Schedule 5 or paragraph 5(1) of Schedule 6 to the 1989 Act, to grant the application; or

(ii) notice of a proposal under (as the case may be) paragraph 2(3) of Schedule 5 or paragraph 5(3) of Schedule 6 to the 1989 Act, to refuse the application; and

(c) as at 1st April 2002 the authority has not given the person who made the application notice under (as the case may be) paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 to the 1989 Act, of their decision to adopt a proposal.

(3) Where sub-paragraphs (1) or (2) apply-

(a) subject to paragraph (b) of this sub-paragraph, the notice referred to in sub-paragraph (1)(b) or (2)(b) shall, for the purposes of Part II of the 2000 Act, and notwithstanding that it does not comply with the requirements for such a notice under that Act, be treated with effect from 1st April 2002-

(i) in the case of a notice referred to in sub-paragraph (1)(b)(i) or (2)(b)(i), as if it were a notice of a proposal given under section 17(2) of the 2000 Act to grant the application in respect of the establishment to which the application relates;

(ii) in the case of a notice referred to in sub-paragraph (1)(b)(ii) or (2)(b)(ii), as if it were a notice of a proposal given under section 17(3) of the 2000 Act to refuse the application in respect of the establishment to which the application relates;

(b) section 18(2) of the 2000 Act shall have effect as if for paragraph (c) the following paragraphs were substituted-

(i) in paragraph (a) the word "written" were omitted;

(ii) for paragraph (c) the following paragraphs were substituted-

"(c) the person who made the application has not, within fourteen days after notice of proposal to grant or refuse his application was given to him or her, required the Assembly to give him or her an opportunity to make oral or written representations to it concerning the matter; or

(d) the following conditions are satisfied-

(i) the person who made the application in respect of the establishment has required the Assembly to give him or her an opportunity to make oral or written representations to it concerning the matter;

(ii) the Assembly has allowed him or her a reasonable period to make the representations; and

(iii) he or she has failed to make them within that period.".

(4) Where sub-paragraph (2) applies to an application to register a home under Part VIII of the 1989 Act which was duly made in accordance with article 3(1) of the No.2 Commencement Order section 11(1), (5) and (6) of the 2000 Act shall not apply to the person carrying on the home-

(a) until such time as the application is granted, either unconditionally or subject only to conditions which have been agreed in writing between him or her and the National Assembly; or

(b) if the application is granted subject to conditions which have not been so agreed, or refused-

(i) if no appeal is brought, until the expiration of the period of 28 days after service on him or her of the

National Assembly's decision; or

(ii) if an appeal is brought, until it is determined or abandoned.

Transfer of outstanding applications for registration under the 1984 or 1989 Acts: applications in respect of which the authority has made a decision to adopt a proposal to grant or refuse the application

9.-(1) This sub-paragraph applies where-

(a) an application is made before 1st April 2002-

(i) for a person to be registered under Part I of the 1984 Act in respect of a residential care home;

(ii) for a person to be registered under Part II of the 1984 Act in respect of a nursing home or a mental nursing home;

(b) paragraph 8(1)(b) applies to the application; and

(c) as at 1st April 2002-

(i) the authority has given the person who made the application notice under (as the case may be) section 14 or 33 of the 1984 Act of its decision to adopt a proposal to grant or refuse the application; and

(ii) either-

(aa) the period for bringing an appeal against the decision has not expired; or

(bb) an appeal has been brought but has not been determined or abandoned.

(2) Where sub-paragraph (1) applies-

(a) the 1984 Act shall, subject to paragraph (b) below, continue in force in relation to the following matters-

(i) a decision referred to in sub-paragraph (1);

(ii) an appeal against such a decision;

(b) the functions, powers and duties that immediately before 1st April 2002 the authority had under the 1984 Act in relation to the matters mentioned in (a) above shall (as the case may be) apply to, or continue to apply to, and be exercisable by, the National Assembly;

(c) the decision to adopt a proposal to grant an application, whether unconditionally or subject to any conditions, shall with effect from the date on which it takes effect, be treated for the purposes of Part II of the 2000 Act-

(i) as if it were a decision to adopt a proposal to grant, subject to any such conditions, an application for registration in respect of a care home;

(ii) as if it had taken effect in accordance with section 19(5) of the 2000 Act.

(3) This sub-paragraph applies where-

(a) an application is made before 1st April 2002-

(i) to register a home under section 60 of the 1989 Act;

(ii) to register a home under Part VIII of that Act;

(b) paragraph 8(2)(b) applies to the application; and

(c) as at 1st April 2002-

(i) the authority has given the person who made the application notice under (as the case may be) paragraph 4 of Schedule 5 or paragraph 7 of Schedule 6 to the 1989 Act, of their decision to adopt a proposal to grant or refuse the application; and

(ii) either-

(aa) the period for bringing an appeal against the decision has not expired; or

(bb) an appeal has been brought but has not been determined or abandoned.

(4) Where paragraph (3) applies-

(a) the provisions of sections 60 and 63 of, and Schedules 5 and 6 to, the 1989 Act, and the definition of "registered children's home" in section 105 of that Act, that are repealed under section 117(2) of, and Schedule 6 to, the Act shall, subject to paragraph (b) below, continue in force in relation to the following matters-

(i) a decision referred to in sub-paragraph (3);

(ii) an appeal against such a decision;

(b) the functions, powers and duties that immediately before 1st April 2002 the authority had under Parts VII and VIII of, and Schedules 5 and 6 to, the 1989 Act in relation to the matters mentioned (a) above shall (as the case may be) apply to, or continue to apply to, and be exercisable by, the National Assembly;

(c) the decision to adopt a proposal to grant an application, whether unconditionally or subject to any conditions shall, with effect from the date on which it takes effect, be treated for the purposes of Part II of the 2000 Act-

(i) as if it were a decision to adopt a proposal to grant, subject to any such conditions, an application in respect of a children's home;

(ii) as if it had taken effect in accordance with section 19(5) of the 2000 Act.

(5) Where the Registered Homes Tribunal determines an appeal against a decision referred to in sub-paragraph (1)(c)(i) or (3)(c)(i), the determination shall be treated for the purposes of Part II of the 2000 Act-

(a) in the case of an application to which sub-paragraph (1) applies, as if it were a decision of the Tribunal in respect of an application for registration in respect of a care home;

(b) in the case of an application to which sub-paragraph (3) applies, as if it were a decision of the Tribunal in respect of an application for registration in respect of a children's home.

(6) Where sub-paragraph (3) applies to an application to register a home under Part VIII of the 1989 Act which was duly made in accordance with article 3(1) of the No.2 Commencement Order section 11(1), (5) and (6) of the 2000 Act shall not apply to the person carrying on the home-

(a) if no appeal is brought by virtue of sub-paragraph (4), until the expiration of the period of 28 days after service on him or her of the authority's decision; or

(b) if an appeal is brought by virtue of sub-paragraph (4), until it is determined or abandoned.

Transfer of information and documents

10.-(1) An authority referred to in sub-paragraph (2) shall pass to the National Assembly-

(a) forthwith at the coming into force of this Order, all information or documents which are in their possession relating to the registration of, or an application for registration in respect of-

(i) any person under Part I or Part II of the 1984 Act which is in force at the coming into force of this Order;

(ii) any registered children's home;

(b) as soon as practicable, all such information or documents which come into their possession after the coming into force of this Order.

(2) The authorities are-

(a) in relation to a Part I 1984 Act registered person, or an application under that Part, the local authority which immediately before the coming into force of this Order is exercising the functions of the registration authority under Part I of the 1984 Act in relation to the person or the application;

(b) in relation to a Part II 1984 Act registered person, or an application under that Part, the health authority which immediately before the coming into force of this Order is exercising, on its behalf, the functions of the National Assembly under Part II of the 1984 Act in relation to the person or the application;

(c) in relation to a registered children's home, or an application for registration as such, the local authority which immediately before the coming into force of this Order is exercising functions under Schedule 6 of the 1989 Act in relation to the home or the application.

SCHEDULE 2

Article 2

TRANSITIONAL PROVISIONS IN RELATION TO CHILD MINDING AND PROVISION OF DAY CARE

Interpretation

1.-(1) In this Schedule-

"the operational date" means 1st April 2002;

"the original registration" refers to a registration under Part X;

"transfer" in relation to registration refers to the process for which provision is made in paragraph 3(1) and "transferred" shall be construed accordingly;

(2) In this Schedule, unless the contrary intention appears, a reference_

(a) to a numbered paragraph is to the paragraph in this Schedule bearing that number;

(b) in a paragraph to a numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that number;

(c) to a Part, section or Schedule is to a Part or section of or a Schedule to the 1989 Act, as the case may be.

General savings for things done before the operational date and transitional provisions

2.-(1) Unless in this Schedule the contrary intention appears, the coming into force of section 79(5) of the 2000 Act shall not affect:

(a) any act done, any notice served, any application made, any decision taken, any authorisation or consent given or any grant; or

(b) any requirements or limitations of time; or

(c) any legal proceedings commenced; or

(d) any order made by a court;

under or in relation to Part X or Schedule 9 before the operational date.

(2) Unless in this Schedule the contrary intention appears, in so far as any thing done under or in relation to Part X or Schedule 9 could have been done under Part XA or Schedule 9A, it shall have effect from the operational date as if done under Part XA or Schedule 9A, as the case may be.

(3) For the purposes of paragraph (2)_

(a) where an appeal under Part X was to a court, and the court has not considered the appeal before the operational date, such appeal (except for an appeal against refusal of consent under paragraph 2 of Schedule 9 which shall continue before a court) shall be continued after the operational date before the Tribunal (as defined in section 79B(8)) in accordance with section 79M as if it were an appeal against the taking of any step mentioned in section 79L(1) or against an order under section 79K as the case may be, and

(b) "requirements" for the purposes of sections 72 and 73 shall be treated after the operational date as conditions which may be imposed under section 79F(3).

(4) Where an appeal against refusal of consent under paragraph 2 of Schedule 9 is upheld by a court after the operational date, the appellant shall be treated as if such consent applied immediately before the operational date for the purposes of the Disqualification from Caring for Children (Wales) Regulations 2002.

Transfer of registration

3.-(1) A person who, immediately before the operational date, was registered under section 71 shall, for the purposes of Part XA , be treated with effect from the operational date as having applied for and having been granted registration.

(2) The registration under sub-paragraph (1) shall be for child minding or for providing day care on specified premises according to the purpose of the original registration under section 71.

(3) Where a person's registration is transferred pursuant to sub-paragraph (1), any requirements that were imposed upon the person under section 72 or, as the case may be, section 73, in relation to the registration and that

were extant immediately before the operational date shall, in so far as they would be capable of being imposed by the National Assembly as conditions to which the registration is subject, have effect from the operational date as if they were such conditions and had been duly imposed by the National Assembly on that date.

(4) The treatment of -

(a) a person as registered under Part XA , pursuant to sub-paragraph (1), and

(b) requirements imposed by local authorities as conditions imposed by the National Assembly, pursuant to sub-paragraph (3)

shall be without prejudice to any opinion subsequently formed by the National Assembly as to whether the person is or will continue to be a person qualified for registration as a child minder or as a provider of day care, as the case may be, or to any decision which the National Assembly may subsequently take as to the imposition, removal or variation of conditions upon the registration.

Certificates of registration in respect of transferred registrations

4.-(1) This paragraph applies in relation to any person whose registration is transferred under paragraph 3(1).

(2) The transfer shall not constitute a grant of registration for the purposes of paragraph 6(1) of Schedule 9A.

(3) A certificate issued by a local authority to that person in relation to the original registration under section 71 which was current immediately before the operational date shall, subject to sub-paragraphs (4) and (5) of this paragraph, have effect for all purposes as if it was issued on the operational date pursuant to paragraph 6(1) of Schedule 9A.

(4) Paragraph 6(2) of Schedule 9A shall not have effect in relation to a certificate to which sub-paragraph (3) refers.

(5) For the purposes of paragraph 6(3) of Schedule 9A (providing for the issue of amended certificates due to change of circumstances) and without prejudice to its effect otherwise, the occasion of the first inspection following the operational date by an authorised inspector of-

(a) child minding, or

(b) day care on any premises

provided by a person to whom this paragraph applies shall be taken to constitute a change of circumstances for the purposes of that paragraph in relation to the registration concerned.

Duties of local authorities in relation to transfer

5.- (1) All documents and records relating to the registration of any person whose registration is transferred under paragraph 3(1) which are in the possession of a local authority immediately before the operational date shall be passed to the National Assembly upon the operational date.

(2) Any documents or records relating to the registration of a person mentioned in sub-paragraph (1) which come into the possession of a local authority on or after the operational date (other than documents or records sent to the authority by the National Assembly) shall be provided to the National Assembly as soon as practicable after their receipt.

Section 71 applications in progress at the operational date

6.- (1) This paragraph applies where an application for registration made to a local authority under section 71 prior to the operational date has neither been granted nor refused by the local authority by that date.

(2) With effect from the operational date and subject to sub-paragraph (5), the application shall be treated as having been duly made under section 79E.

(3) All documents and records relating to the application which are in the possession of the local authority immediately before the operational date shall be provided to the National Assembly upon the operational date.

(4) Any documents or records relating to the application which come into the possession of the local authority on or after the operational date (other than information or documents sent to the authority by the National Assembly) shall be provided to the National Assembly as soon as reasonably practicable after their receipt.

(5) The National Assembly may make any enquiry, and require the applicant to produce any information that it

considers reasonably necessary, having regard in particular to any prescribed requirements as to the contents of applications under section 79E.

(6) Payment by the applicant to the local authority before the operational date of any fee required under paragraph 1(3) of Schedule 9 to accompany the application shall be taken to discharge in full any requirement to pay a fee under section 79F in relation to such an application.

SCHEDULE 3

Article 2

TRANSITIONAL PROVISIONS IN RELATION TO CERTAIN PERSONS DISQUALIFIED FROM CARING FROM CHILDREN

Interpretation

1.-(1) In this schedule-

"the 1991 Regulations" means the Disqualification for Caring for Children Regulations 1991(**a**);

"responsible authority" has the meaning given to it in paragraph 3(1) of Schedule 6 to the 1989 Act.

(2) Any reference to a numbered paragraph is to the paragraph in this schedule bearing that number, and any reference in a paragraph to a numbered sub-paragraph is to the sub-paragraph bearing that number in that paragraph

Continuation of consents given under section 65 of the 1989 Act or the 1991 Regulations

2.-(1) This paragraph applies to any written consent obtained before 1st April 2002-

(a) for the purposes of section 65 of the 1989 Act from a responsible authority;

(b) for the purposes of regulation 3 of the 1991 Regulations from the National Assembly(**b**).

(2) Section 65 of the 1989 Act shall have effect from 1st April 2002 in relation to any written consent to which sub-paragraph (1) applies as if the consent had been obtained from the National Assembly.

Transitional provision in respect of appeals against refusals to give consent under section 65 of the 1989 Act

3. Where before 1st April 2002, a responsible authority made a decision refusing to give their consent under section 65 of the 1989 Act-

(1) if an appeal was brought against the decision before 1st April 2002-

(a) sub-paragraphs (1) to (4) and (6) of paragraph 8 of Schedule 6 to the 1989 Act shall continue in force in relation to the decision and the appeal notwithstanding the repeal of the provisions of Schedule 6 to the 1989 Act specified in Schedule 6 to the 2000 Act;

(b) the functions, powers and duties that immediately before 1st April 2002 the responsible authority had under the 1989 Act in relation to the decision and the appeal shall apply to, and be exercisable by, the National Assembly instead of the responsible authority;

(c) any determination of the Registered Homes Tribunal in relation to the decision shall be in accordance with, and have effect as if it were made by the Tribunal under, section 65A of the 1989 Act;

(2) if an appeal was not brought against the refusal and the period within which an appeal against the decision could be brought under sub-paragraph (3) of paragraph (8) of Schedule 6 to the Act has not expired immediately before 1st April 2002, section 65A of the 1989 Act shall apply to the decision as if it were a decision of the National Assembly.

(a) S.I. 1991/2094. The Regulations are revoked on 1st April 2002 by S.I.2002/896.

(b) The functions of the Secretary of State under regulation 3 of the 1991 Regulations are exercisable by the National Assembly in relation to Wales: see articles 2(a) and 3 of the National Assembly for Wales (Transfer of Functions) Order 1999, and the entry relating to the 1989 Act in Schedule 1 to that Order.

Transitional Provisions in respect of Appeals against refusals to give consent under the 1991 regulations

4. Where before 1st April 2002, the National Assembly made a decision refusing to give its consent under regulation 3 of the 1991 Regulations-

(1) if an appeal was brought against the decision before 1st April 2002-

(a) sub-paragraphs (1) to (4) of paragraph 5 of Schedule 5 to the 1989 Act shall continue in force in relation to the decision and the appeal notwithstanding the repeal of the provisions of Schedule 5 specified in Schedule 6 to the 2000 Act;

(b) the functions, powers and duties that immediately before 1st April 2002 the National Assembly had in relation to the decision and the appeal shall continue to apply to, and be exercisable by, the National Assembly;

(c) any determination of the Registered Homes Tribunal in relation to the decision shall be in accordance with, and have effect as if made by the Tribunal under, section 65A of the 1989 Act;

(2) if an appeal was not brought against the refusal and the period within which an appeal against the decision could be brought under sub-paragraph (3) of paragraph (5) of Schedule 5 to the Act has not expired immediately before 1st April 2002, section 65A of the 1989 Act shall apply to the decision as if it were a decision of the National Assembly.

STATUTORY INSTRUMENTS

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

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

PUBLIC HEALTH, WALES

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