



# The Law Commission

(LAW COM. No. 128)

REGISTERED HOMES BILL REPORT ON THE CONSOLIDATION  
OF CERTAIN ENACTMENTS RELATING TO RESIDENTIAL CARE  
HOMES AND NURSING HOMES AND REGISTERED HOMES  
TRIBUNALS

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## REGISTERED HOMES BILL

### REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO RESIDENTIAL CARE HOMES AND NURSING HOMES AND REGISTERED HOMES TRIBUNALS

*To the Right Honourable the Lord Hailsham of St. Marylebone, C.H.,  
Lord High Chancellor of Great Britain.*

The Registered Homes Bill which is the subject of this Report seeks to consolidate Schedule 4 to the Health and Social Services and Social Security Adjudications Act 1983, the Nursing Homes Act 1975 and certain related provisions. In order to produce a satisfactory consolidation it is necessary to make a number of recommendations which are set out in the Appendix to this Report.

The Department of Health and Social Security have been consulted in connection with the recommendations and agree with them.

RALPH GIBSON

*Chairman of the Law Commission.*

7th November 1983

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are—

The Honourable Mr. Justice Ralph Gibson, *Chairman*

Mr. Stephen M. Creney

Mr. Brian J. Davenport, Q.C.

Dr. Peter M. North

The Secretary of the Law Commission is Mr. J. G. H. Gibson and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

## APPENDIX

### RECOMMENDATIONS

1. In Schedule 4 to the Health and Social Services and Social Security Adjudications Act 1983 ("the 1983 Act"), paragraph 21 (relating to residential care homes) provides that where an offence under Part I of the Schedule, or any regulations under it, is proved to have been committed by a body corporate with the consent or connivance, or in consequence of the neglect, of an officer of that body, both the body corporate and the officer shall be guilty of the offence and liable to prosecution for it.

In the Nursing Homes Act 1975 ("the 1975 Act"), section 17 makes similar provision in relation to nursing and mental nursing homes, but with the omission of any express reference to offences under regulations made under the 1975 Act. In its present form, section 17 is the result of a substitution made by paragraph 36 of Schedule 4 to the 1983 Act. In its original form, before the substitution, the section referred expressly to offences under the 1975 Act and to offences under regulations made under it.

One of the principal purposes of the 1983 Act was to assimilate, so far as practicable, the legislation relating to residential care homes and the legislation relating to nursing and mental nursing homes. The new section 17 of the 1975 Act substituted by Schedule 4 to the 1983 Act exactly follows the wording of the equivalent provision for residential care homes contained in paragraph 21 of that Schedule, but for the omission of an express reference to offences under regulations.

Provision is now made for registration of the same premises, in appropriate cases, both as a residential care home and as a nursing or mental nursing home (see paragraphs 1(3) and 4 of Schedule 4 to the 1983 Act and section 2(1A) of the 1975 Act, which was inserted by paragraph 25 of that Schedule). A corporation may therefore be found guilty of offences under regulations relating to the same premises though made under different powers. We do not believe that Parliament can have intended to treat the officers of such a corporation differently, depending on the Act under which the regulations were made.

We therefore recommend that the reference to an offence in section 17 of the 1975 Act should include an express reference to an offence under regulations made under that Act.

Effect is given to this recommendation in clause 52 of the Bill.

2. Section 23(2) of the 1975 Act confers power on the Secretary of State to extend the Act to the Isles of Scilly by order, subject to such exceptions, adaptations and modifications as may be specified in the order. The 1975 Act does not provide for such an order to be made by statutory instrument or to be laid before Parliament. No such order has yet been made.

Apart from an order under section 23(2), all orders and regulations made by the Secretary of State under provisions of the 1975 Act are to be made by statutory instrument subject to negative resolution. So are orders and

regulations under the 1983 Act which relate to registered homes, including any order made in exercise of the power to make exceptions, adaptations and modifications in relation to the Scilly Isles contained in section 33. This is so by virtue of section 19(1) of the 1975 Act and paragraph 23(1) of Schedule 4 to the 1983 Act (both relating to regulations), together with section 31(3) of the 1983 Act (in so far as it relates to the order-making power conferred by section 31(1)(a) and (b) of that Act).

We therefore recommend that an order under section 23(2) of the 1975 Act should also be a statutory instrument subject to annulment.

Effect is given to this recommendation in clause 56(1) of the Bill.

3. Section 19(3)(b) of the 1975 Act and paragraph 23(2)(b) of Schedule 4 to the 1983 Act relate to powers to make regulations. The former provides that a power may be exercised so as to make "the full provision to which the power extends or any less provision (whether by way of exception or otherwise)". Paragraph 23(2)(b) does not include such express provision.

In our view the powers to make regulations conferred by the 1975 Act are powers which by their terms can be exercised either fully or to a lesser extent. There is no need therefore to spell this out. We consider therefore that the words cited from section 19(3)(b) are superfluous. We accordingly recommend that they should not be reproduced.

Effect is given to this recommendation in clause 56(3)(b) of the Bill.