

Jersey Law 12/1994

NURSING AND RESIDENTIAL HOMES (JERSEY) LAW 1994

ARRANGEMENT OF ARTICLES

Introductory

1. Interpretation.
2. Meaning of “relative”.
3. Homes to which Law applies.

Registration of homes

4. Registration of homes.
5. Optional registration.
6. Registration conditions.
7. Refusal of registration.
8. Cancellation of registration.

Procedure

9. Ordinary procedure for registration, etc.
10. Decision of Committee.
11. Urgent procedure for cancellation, etc.
12. Appeals.
13. Effect of death or cancellation.
14. Inspection of registers.
15. Orders.

Offences

16. Prohibition of holding out premises as homes.

17. Liability of officers of bodies corporate; accessories and abettors, etc.
18. Defences.

Miscellaneous and supplemental

19. Inspection of homes and visiting of patients.
20. Service of documents.
21. Transitional provisions, consequential amendments, savings and repeals.
22. Short title and commencement.

Schedules

First Schedule – Transitional provisions and savings.

Second Schedule – Amendment of enactments.

Third Schedule – Enactments repealed.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

NURSING AND RESIDENTIAL HOMES (JERSEY) LAW 1994

A LAW to make new provision for the registration and regulation of nursing homes and residential care homes and for connected purposes sanctioned by Order of Her Majesty in Council of the

13th day of APRIL 1994

(Registered on the 27th day of May 1994)

STATES OF JERSEY

The 29th day of September 1993

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

INTRODUCTORY

ARTICLE 1

Interpretation

(1) In this Law –

“the appropriate register”, in relation to a home of any class, means the register maintained for homes of that class under paragraph (1) of Article 4;

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

“certified” in relation to a midwife, means a person authorised to exercise the profession of midwife in the Island under the ‘Loi (1922) sur la santé publique (Sage-Femmes)’¹;

“the Committee” means the Public Health Committee;

“disabled” means blind, deaf or dumb or substantially and permanently handicapped by illness, injury or congenital deformity or any other prescribed disability, and “disablement” shall be construed accordingly;

“maternity home” has the meaning given by sub-paragraph (c) of paragraph (1) of Article 3;

“mental disorder” and “mentally disordered” have the same meanings as in the Mental Health (Jersey) Law 1969²;

“mental nursing home ” has the meaning given by sub-paragraph (b) of paragraph (1) of Article 3;

“notice” means a notice in writing;

“nursing home” has the meaning given by sub-paragraph (c) of paragraph (1) of Article 3;

“personal care” means care which includes assistance with bodily functions where such assistance is required;

“prescribed” means prescribed by Order of the Committee;

“relative” has the meaning given by Article 2;

“registered dentist” has the same meaning as in the Dentists (Registration) (Jersey) Law 1961³;

¹ Tomes IV–VI, page 556.

² Volume 1968–1969, page 345, Volume 1970–1972, page 549, and R & O 5838.

³ Volume 1961–1962, page 135, and Volume 1982–1983, pages 143 and 144.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

“registered medical practitioner” has the same meaning as in the Medical Practitioners (Registration) (Jersey) Law 1960⁴;

“residential care home” has the meaning given by sub-paragraph (a) of paragraph (1) of Article 3.

(2) A reference in this Law to an enactment is a reference to that enactment as amended from time to time.

(3) A reference in this Law to an Article or a Schedule by number only and without further identification is a reference to the Article or Schedule of that number contained in this Law.

(4) A reference in any Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that letter or number contained in the Article or other division of this Law in which the reference occurs.

ARTICLE 2

Meaning of “relative”

(1) In this Law “relative” means any of the following –

- (a) husband or wife;
- (b) son or daughter;
- (c) father or mother;
- (d) brother or sister;
- (e) grandparent or other ascendant;
- (f) grandchild or other descendant;

⁴ Tome VIII, page 829.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

(g) uncle or aunt;

(h) nephew or niece.

(2) In deducing any relationship for the purposes of paragraph

(a) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half-blood as a relationship of the whole blood, and the stepchild of any person as his child; and

(b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(3) In this Article “husband” and “wife” include a person who is living with a person carrying on or intending to carry on a residential care home as that person’s husband or wife, as the case may be, and who has been so living for a period of not less than six months.

(4) A person, other than a relative, with whom a person carrying on or intending to carry on a residential care home ordinarily resides, and with whom that person has been ordinarily residing for a period of not less than five years shall be treated for the purposes of this Law as if he were a relative.

ARTICLE 3

Homes to which Law applies

(1) Subject to paragraphs (2) to (5) inclusive, this Law applies to the following classes of premises (in this Law referred to as “homes to which this Law applies”)—

(a) any premises which provide or are intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of old age, disablement, past or

present dependence on alcohol or drugs, or past or present mental disorder (in this Law referred to as a “residential care home”);

- (b) any premises used or intended to be used for the reception of, and the provision of nursing or other medical treatment (including care, habilitation or rehabilitation under medical supervision) for, one or more mentally disordered persons, (meaning persons suffering, or appearing to be suffering, from mental disorder) whether exclusively or in common with other persons (in this Law referred to as a “mental nursing home”);
- (c) any premises, not being a mental nursing home, which are used or intended to be used –
 - (i) for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity; or
 - (ii) for the reception of pregnant women or of women immediately after childbirth; or
 - (iii) for the provision of all or any of the services specified in paragraph (6);(any of which premises are in this Law referred to as a “nursing home”, and premises falling within clause (ii) are in this Law referred to as a “maternity home”).

- (2) This Law does not apply to –
 - (a) any hospital maintained or controlled by the States or any administration thereof;

- (b) any school (within the meaning of the ‘Loi (1912) sur l’Instruction Primaire⁵’ or the ‘Loi (1920) sur Instruction Publique⁶’) or any school or class of school to which the Committee may by Order declare that this Law shall not apply; or
 - (c) any other establishment or premises maintained or controlled by a Committee of the States.
- (3) The definition of “residential care home” in sub-paragraph (a) of paragraph (1) does not include –
- (a) premises which provide or are intended to provide residential accommodation with both board and personal care, otherwise than for reward, for fewer than four persons; and in determining whether premises fall within that definition, no account shall be taken of anyone provided with such accommodation there who is a person –
 - (i) carrying on or intending to carry on the home, or
 - (ii) employed or intended to be employed there,
 or a relative of such a person; or
 - (b) any other premises which may be prescribed for the purposes of this paragraph.
- (4) For the purposes of paragraph (3) –
- (a) “reward”, subject to sub-paragraph (c), includes any benefit or thing tangible or intangible given or received wholly or partly in connexion with the provision of any accommodation, or of board or personal care provided with

⁵ Tomes IV–VI, page 292, Volume 1970–1972, page 377, Volume 1979–1981, page 181, and Volume 1992–1993, page 79.

⁶ Tomes IV–VI, page 533, Tome VII, page 336, and Volume 1970–1972, page 153.

any accommodation, irrespective of the person by whom it is given or received; and

- (b) accommodation with board and personal care shall be taken as provided for reward even though a person provides them, or any part of them, otherwise than for profit; and
- (c) the Committee may prescribe any type of reward as a reward to which paragraph (3) does not apply.

(5) The definition of “nursing home” in sub-paragraph (c) of paragraph (1) does not include –

- (a) any sanatorium provided at a school or educational establishment and used or intended to be used solely by persons in attendance at, or members of the staff of, that school or establishment or members of their families;
- (b) any first aid or treatment room provided at a factory, office, shop premises or at a sports ground, show ground or place of public entertainment;
- (c) any premises used or intended to be used wholly or mainly –
 - (i) by a registered medical practitioner for the purpose of consultations with his patients;
 - (ii) by a registered dental practitioner or chiropodist for the purpose of treating his patients; or
 - (iii) for the provision of occupational health facilities,

unless they are used or intended to be used for the provision of any of the services specified in paragraph (6), not being premises prescribed under sub-paragraph (e);

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

- (d) any premises used or intended to be used wholly or mainly as a private dwelling;
 - (e) any other premises which may be prescribed for the purposes of this paragraph.
- (6) The services mentioned in clause (iii) of sub-paragraph (c) of paragraph (1) and sub-paragraph(c) of paragraph (5) are –
- (a) the carrying out of surgical procedures under anaesthesia;
 - (b) endoscopy;
 - (c) haemodialysis or peritoneal dialysis;
 - (d) treatment by laser and diagnosis or treatment by radiation, including X-ray; and
 - (e) any other technique of medicine or surgery (including cosmetic surgery) as to which the Committee is satisfied that its use may create a hazard for persons treated by means of it or for the staff of any premises where the technique is used, and which is prescribed for the purposes of this paragraph.

REGISTRATION OF HOMES

ARTICLE 4

Requirement of registration

- (1) The Committee shall maintain a register for each class of home to which this Law applies, namely –
- (a) residential care homes;
 - (b) mental nursing homes; and

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

(c) nursing homes.

(2) Any person who carries on a home to which this Law applies without being registered in the appropriate register or registers in respect of that home shall be guilty of an offence and liable to a fine.

(3) Where any premises fall within more than one class of homes to which this Law applies, the requirement to be registered under this Law is a requirement to be registered in each of the appropriate registers under this Law.

(4) Where the person carrying on or intending to carry on a home to which this Law applies is not the person who is or is intended to be in charge of the premises, both of those persons are to be treated as carrying on or intending to carry on the home, and accordingly as requiring to be registered under this Law.

(5) An application for registration under this Law –

(a) shall be made to the Committee in such form as may be prescribed;

(b) shall be accompanied by a fee of such amount as may be prescribed;

(c) in the case of a mental nursing home, shall state whether or not it is proposed to receive in the home patients who are liable to be detained under the provisions of the Mental Health (Jersey) Law 1969⁷; and

(d) in the case of a nursing home, shall state whether or not it is proposed to receive in the home pregnant women or women immediately after childbirth.

(6) Subject to Article 7, the Committee shall, on receiving an application under paragraph (5), register the applicant in respect of the

⁷ Volume 1968–1969, page 345, Volume 1970–1972, page 549, and R & O 5838.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

home named in the application, and shall issue to the applicant a certificate of registration.

(7) Where a person is registered in pursuance of an application stating that it is proposed to receive in the home such patients as are described in sub-paragraph (c) of paragraph (5)–

- (a) that fact shall be specified in the certificate of registration; and
- (b) the particulars of the registration shall be entered by the Committee in a separate part of the register of mental nursing homes.

(8) Where a person is registered in pursuance of an application stating that it is proposed to receive in the home pregnant women or women immediately after childbirth –

- (a) that fact shall be specified in the certificate of registration; and
- (b) the particulars of the registration shall be entered by the Committee in a separate part of the register of nursing homes.

(9) The certificate of registration issued under this Law in respect of any home to which this Law applies shall be kept affixed in a conspicuous place in the home, and if default is made in complying with this paragraph, the person carrying on the home shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

(10) The Committee may issue a duplicate certificate of registration in such circumstances, and on payment of such fee, as may be prescribed.

ARTICLE 5

Optional registration

- (1) A person who –
 - (a) is registered under this Law in respect of any nursing home or mental nursing home; and
 - (b) would be required to be registered in the register maintained for residential care homes in respect of them under this Law but for paragraph (3) of Article 3,

may apply to be registered in the said register in respect of those premises.

(2) If such a person does so apply, this Law shall have effect in relation to him as if those premises were a residential care home.

ARTICLE 6

Registration conditions

- (1) It shall be a condition of the registration of any person in respect of a home to which this Law applies that –
 - (a) in the case of a residential care home, the number of persons for whom residential accommodation with board and personal care is provided, or
 - (b) in any other case, the number of persons kept,

at any one time in the home (excluding persons carrying on or employed at the home and their relatives) does not exceed such number as may be specified in the certificate of registration.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

(2) Without prejudice to paragraph (1), any such registration may be effected subject to such conditions as the Committee may consider appropriate –

- (a) for regulating the age, sex or other category of persons who may be received in the home in question; or
- (b) for restricting the number of persons who may be accommodated in any particular room or rooms in the home,

and any condition imposed by virtue of sub-paragraph (a) shall be specified in the certificate of registration.

(3) The Committee may from time to time –

- (a) vary or remove any condition for the time being in force in respect of a home by virtue of this Article, or
- (b) impose an additional condition,

either on the application of a person registered in respect of it or without such an application.

(4) If any condition for the time being in force in respect of a home by virtue of this Article is not complied with, the person registered in respect of that home or any person carrying on the home or both of them shall be guilty of an offence and liable to a fine not exceeding two thousand pounds.

ARTICLE 7

Refusal of registration

(1) The Committee may refuse to register an applicant in respect of a home to which this Law applies if it is satisfied –

- (a) that the applicant, or any person employed or proposed to be employed by the applicant at the home, is not a fit person (whether by reason of age or otherwise) to carry on or be employed at a home of such a class as that named in the application;
- (b) that, for reasons concerned with situation, construction, state of repair, accommodation, staffing or equipment (but subject to the provisions of any Order under either paragraph (1) or sub-paragraph (b) of paragraph (2) of Article 15), the home is not, or any premises used in connection with the home are not, fit to be used for a home of that class;
- (c) that the home is, or any premises used in connection with the home are, used, or proposed to be used, for purposes which are in any way improper or undesirable in the case of a home of that class;
- (d) that the way in which it is intended to carry on the home is such as not to provide services or facilities reasonably required;
- (e) in the case of a nursing home or a mental nursing home, that the home is not, or will not be, in the charge of a person who is either a registered medical practitioner or a qualified nurse or, in the case of a maternity home, a certified midwife; or
- (f) in the case of a nursing home or a mental nursing home, that the following condition is not, or will not be, fulfilled in relation to the home, namely that such number of nurses possessing such qualifications, and in the case of a maternity home, such number of certified midwives, as may be specified in a notice served by the Committee on the person carrying on or proposing to carry on the home are on duty in the home at such times as may be so specified.

(2) In sub-paragraph (e) of paragraph (1) “qualified nurse”, in relation to a home, means a nurse possessing such qualifications as may be specified in a notice served by the Committee on the person carrying on or proposing to carry on the home.

ARTICLE 8

Cancellation of registration

(1) The Committee may at any time cancel the registration of a person in respect of a home to which this Law applies –

- (a) on any ground which would entitle it to refuse an application for the registration of that person in respect of that home;
- (b) on the ground that that person has been convicted of an offence against this Law, or that any other person has been convicted of such an offence in respect of that home;
- (c) on the ground that any condition for the time being in force in respect of the home by virtue of this Law has not been complied with;
- (d) on the ground that that person has been convicted of an offence against an Order made under Article 15;
- (e) on the ground that the annual fee in respect of the home has not been paid on or before the due date; or
- (f) at the request of that person.

(2) Where an Order under paragraph (1) or sub-paragraph (b) of paragraph (2) of Article 15 has come into force with respect to any class of homes to which this Law applies since the date of registration of any person in respect of a home within that class, the registration may be cancelled on the ground specified in sub-paragraph (b) of paragraph (1) of Article 7 by reason that the home does not comply with any standard

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

specified in that Order, notwithstanding that the construction, accommodation or equipment of the home or the staffing of the home, as the case may be, has not changed since the date of registration.

PROCEDURE

ARTICLE 9

Ordinary procedure for registration, etc.

- (1) Where –
 - (a) a person applies for registration in respect of a home to which this Law applies; and
 - (b) the Committee proposes to grant his application,

the Committee shall give him notice of its proposal and of the conditions subject to which they propose to grant his application.

- (2) The Committee shall give an applicant notice of a proposal to refuse his application.

- (3) Except where it applies to the Bailiff under Article 11, the Committee shall give any person registered in respect of a home to which this Law applies notice of a proposal –

- (a) to cancel the registration;
 - (b) to vary any condition for the time being in force in respect of the home by virtue of this Law; or
 - (c) to impose any additional condition.
- (4) A notice under this Article shall –
 - (a) give the Committee's reasons for its proposal; and

- (b) state that within such period as may be specified in the notice (not being less than 21 days beginning with the date of service of the notice) any person on whom it is served may make objections or representations in writing to the Committee concerning the proposal.
- (5) In relation to any proposal mentioned in paragraph (1), (2) or (3) the Committee –
 - (a) shall not make a decision on the proposal before the expiration of the period specified under sub-paragraph (b) of paragraph (4); and
 - (b) shall before making such a decision consider any objections or representations made in accordance with the notice.

ARTICLE 10

Decision of Committee

- (1) If the Committee decides to adopt a proposal mentioned in paragraph (1), (2) or (3) of Article 9, it shall serve notice of its decision on any person on whom it was required to serve notice of the proposal.
- (2) A notice under this Article shall include an explanation of the right of appeal conferred by Article 12.
- (3) A decision of the Committee, other than a decision –
 - (a) to grant an application for registration subject only to conditions agreed between the applicant and the Committee; or
 - (b) to refuse an application for registration,
 shall not take effect –

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

- (i) if no appeal is brought, until the expiration of the period of 28 days referred to in paragraph (2) of Article 12; and
- (ii) if an appeal is brought, until it is determined or abandoned.

ARTICLE 11

Urgent procedure for cancellation, etc.

(1) The Committee may apply to the Bailiff *ex parte* for a provisional order –

- (a) cancelling the registration of a person in respect of a home to which this Law applies;
- (b) varying any condition for the time being in force in respect of such a home by virtue of this Law; or
- (c) imposing an additional condition.

(2) If upon an application under paragraph (1) it appears to the Bailiff that there is *prima facie* evidence that there will be serious risk to the life, health or well being of any person resident, or as the case may be, a patient, in the home unless an order is made, he may make a provisional order in accordance with the application of the Committee.

(3) An application under paragraph (1) shall be supported by an affidavit stating the reasons for the Committee's application.

(4) As soon as practicable after the making of a provisional order under this Article –

- (a) notice of the making of the order and its terms; and
- (b) a copy of the affidavit which supported the application for the order,

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

shall be served upon any person registered in respect of the home concerned.

(5) A provisional order under this Article shall take effect upon service in accordance with paragraph (4).

(6) The Committee shall, as soon as may be after the service of a provisional order, summons the person served to appear before the Royal Court to witness the confirmation of the provisional order and the Court may confirm, vary or cancel the provisional order or make such other order as it thinks fit in the interests of any person resident, or as the case may be, any patient, in the home concerned.

ARTICLE 12

Appeals

(1) An appeal against a decision of the Committee under this Law shall lie to the Royal Court.

(2) No appeal against a decision of the Committee may be brought by a person more than 28 days after service on him of notice of the decision.

(3) On an appeal against a decision of the Committee the Court may confirm the decision or direct that it shall not have effect.

ARTICLE 13

Effect of death or cancellation

- (1) Where –
- (a) one person only is registered under this Law in respect of a home to which this Law applies, other than a home to which paragraphs (3) to (5) apply; and
 - (b) that person dies,

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

his executor, administrator or surviving spouse or any other relative of his may for a period not exceeding four weeks from his death, or such longer period as the Committee may sanction, carry on the home without being registered in respect of it.

(2) Paragraphs (3) to (5) apply to any mental nursing home the particulars of the registration of which are entered in the separate part of the register referred to in sub-paragraph (b) of paragraph (7) of Article 4, and in those paragraphs “patient” means a person suffering or appearing to be suffering from mental disorder.

(3) If the registration of any such home is cancelled under Article 8 at a time when any patient is liable to be detained in the home under the provisions of the Mental Health (Jersey) Law 1969⁸, the registration shall, notwithstanding the cancellation, continue in force –

- (a) until the expiry of the period of two months beginning with the date of the cancellation, or
- (b) until every such patient has ceased to be so liable,

whichever first occurs.

(4) If one person only is registered in respect of any such home, and that person dies at a time when any patient is liable to be so detained, the registration shall continue in force –

- (a) until the expiry of the period of two months beginning with the death, or
- (b) until every patient has ceased to be so liable, or
- (c) until a person other than the deceased has been registered in respect of the home,

whichever first occurs.

⁸ Volume 1968–1969, page 345, Volume 1970–1972, page 549, and R & O 5838.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

(5) A registration continued in force by virtue of paragraph (4) shall continue in force –

- (a) as from the grant of representation to the estate of the deceased, for the benefit of the personal representative of the deceased; and
- (b) pending the grant of probate or administration, for the benefit of any person approved for the purpose by the Committee.

(6) For the purposes of this Law, a person for whose benefit the registration continues in force by virtue of paragraph (4) shall be treated as registered in respect of the home.

ARTICLE 14

Inspection of registers

The registers kept by the Committee for the purposes of this Law shall be available for inspection at all reasonable times, and any person inspecting any such register shall be entitled to make copies of entries in the register on payment of such fee as may be prescribed.

ARTICLE 15

Orders

(1) The Committee may make Orders specifying standards of construction, accommodation and equipment which are to be complied with by any class of homes to which this Law applies.

(2) The Committee may make Orders as to the conduct of homes or any class of homes to which this Law applies, and in particular –

- (a) as to the facilities and services to be provided in such homes;

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

- (b) as to the numbers and qualifications of staff to be employed in such homes;
- (c) as to the numbers of suitably qualified and competent staff to be on duty in such homes;
- (d) with respect to entry into and the inspection of premises used or reasonably believed to be used as a home to which this Law applies, and the exercise on behalf of the Committee of the powers conferred by Article 19;
- (e) with respect to the visiting and examination of persons detained under the Mental Health (Jersey) Law 1969⁹;
- (f) with respect to the keeping of records and notices in respect of persons received into such homes, including records relating to the detention and treatment of persons detained under the Mental Health (Jersey) Law 1969⁷ in a mental nursing home;
- (g) with respect to the notification of events occurring in such homes;
- (h) as to the giving of notice by a person of a description specified in the Order of periods during which any person of a description so specified proposes to be absent from a nursing home and as to the information to be supplied in such a notice;
- (j) as to any information required to be provided to the Committee in respect of the conduct of such homes;
- (k) making provision for children under the age of 20 years who are resident in residential care homes to receive a religious upbringing appropriate to the religious persuasion to which they belong;

⁹ Volume 1968–1969, page 345, Volume 1970–1972, page 549, and R & O 5838.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

- (l) providing for the making of adequate arrangements for the running of a home to which this Law applies during a period when the person in charge of it is absent from it;
 - (m) requiring a notice stating the effect of any condition imposed by virtue of sub-paragraph (b) of paragraph (2) of Article 6 to be displayed in any room to which the condition relates.
- (3) The Committee may make Orders as to registration under this Law, and in particular –
- (a) requiring persons registered under this Law to pay an annual fee;
 - (b) specifying when the fee is to be paid;
 - (c) as to the form of registers to be kept for the purposes of this Law and the particulars to be contained in them; and
 - (d) as to the information to be supplied on an application for registration.
- (4) An Order under this Article may provide that a contravention of or failure to comply with any specified provision thereof shall be an offence and that a person guilty of such an offence shall be liable to a fine not exceeding two thousand pounds.
- (5) The Subordinate Legislation (Jersey) Law 1960¹⁰ shall apply to Orders made under this Law.

OFFENCES

¹⁰ Tome VIII, page 849.

ARTICLE 16

Prohibition on holding out premises as homes

- (1) A person who –
 - (a) applies any name to premises in the Island; or
 - (b) in any way describes such premises or holds such premises out,

so as to indicate, or so as reasonably to be understood to indicate, that the premises are a home to which this Law applies, or within any class of such homes, shall be guilty of an offence unless registration has been effected in the appropriate register in respect of the premises as a residential care home, mental nursing home or nursing home, as the case may be.

(2) A person guilty of an offence under this Article shall be liable to a fine not exceeding five hundred pounds.

ARTICLE 17

Liability of officers of body corporate; accessories and abettors, etc.

(1) Where an offence under this Law or any Order made under it which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Without prejudice to paragraph (1), any person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of any offence under this Law or any order

made under it shall be liable to be dealt with, tried and punished as a principal offender.

ARTICLE 18

Defences

(1) In any proceedings for an offence under this Law, subject to paragraph (2), it shall be a defence for the person charged to prove –

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any such case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the Connétable in whose name the proceedings have been instituted or, if the case is before the Royal Court, the Attorney General, a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

MISCELLANEOUS AND SUPPLEMENTAL

ARTICLE 19

Inspection of homes and visiting of patients

(1) Subject to the provisions of this Article, any person authorised in that behalf by the Committee may at any time, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, 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 to which this Law applies, and may inspect any records kept in pursuance of any Order under sub-paragraph (e) of paragraph (2) of Article 15.

(2) A person authorised under paragraph (1) to inspect a home to which this Law applies may visit and interview in private any person who is a patient, or is residing, in the home –

- (a) for the purpose of investigating any complaint as to his treatment made by or on behalf of the patient or resident; or
- (b) in any case where the person so authorised has reasonable cause to believe that the patient or resident is not receiving proper care,

and where the person so authorised is a registered medical practitioner, he may examine the patient or resident in private, and may require the production of, and inspect, any medical records relating to the patient's or resident's treatment in that home.

(3) Any person who refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person by a person authorised in that behalf under this Article or the visiting or examination of a patient who is liable to be detained by a registered medical practitioner authorised under Article 26 of the Mental Health (Jersey) Law 1969¹¹ or to produce for the inspection of any person so authorised any document or record the

¹¹ Volume 1968–1969, page 374.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

production of which is duly required by him, or otherwise obstructs any such person in the exercise of this powers under this Article, shall be guilty of an offence.

(4) Without prejudice to the generality of paragraph (3), any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private shall be guilty of an offence.

(5) A person guilty of an offence under this Article shall be liable to a fine not exceeding two thousand pounds.

(6) The provisions of this Article are without prejudice to the provisions of Article 26 or 47 of the Mental Health (Jersey) Law 1969¹² (visiting and examination of patients).

ARTICLE 20

Service of documents

Any notice or other document required under this Law to be served on a person carrying on, or intending to carry on, a home to which this Law applies, may be served on him by delivering it personally to him or by post and shall be deemed to be properly addresses to him if it is addressed to his usual place of residence or his last known place of business or to the home in question.

ARTICLE 21

Transitional provisions, consequential amendments, savings and repeals

(1) The savings and transitional provisions contained in the First Schedule shall have effect.

¹² Volume 1968–1969, pages 374 and 397.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

(2) The enactments specified in the Second Schedule shall be amended in accordance with that Schedule.

(3) The enactments specified in column 1 of the Third Schedule are repealed to the extent specified in column 2 of that Schedule.

(4) References in any enactment, instrument or document to a provision of any of the enactments repealed by this Law which is replaced by a corresponding provision of this Law are to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the enactment of this Law, as, or as including, a reference to the corresponding provision by which it is replaced in this Law.

(5) The generality of paragraph (4) is not affected by any specific conversion of references made by this Law, nor by the inclusion in any provision of this Law of a reference to the provision of the enactment repealed by this Law which is replaced by a corresponding provision of this Law.

ARTICLE 22

Short title and commencement

(1) This Law may be cited as the Nursing and Residential Homes (Jersey) Law 1994.

(2) This Law shall come into operation on such day or days as the States may by Act appoint, and different days may be so appointed as respects different classes of homes to which this Law applies.

G.H.C. COPPOCK

Greffier of the States.

FIRST SCHEDULE**(Article 21(1))****TRANSITIONAL PROVISIONS AND SAVINGS****Nursing homes**

1.-(1) Where any person is immediately before the appointed day registered under Article 2 of the 1950¹³ Law in respect of any premises, he shall not, until he is registered under sub-paragraph (2), be required to be registered in the register of nursing homes in respect of those premises.

(2) The Committee shall, not later than three months after the appointed day, register each such person as is mentioned in sub-paragraph (1) in the register of nursing homes in respect of those premises, as if he had applied for registration under this Law.

(3) Before the Committee registers any person in respect of any premises under sub-paragraph (2), the Committee shall in writing request that person to state whether or not the premises are used or intended to be used for the reception of pregnant women or women immediately after childbirth.

(4) Where a statement in reply to a request under sub-paragraph (3) is in the affirmative, Article 4(8) shall apply as if the statement had been made in an application for such registration.

(5) Any records kept in respect of a nursing home in pursuance of Orders under Article 5(1)(a) of the 1950 Law¹⁴ shall be treated for the purposes of this Law as records kept in respect of that home in pursuance of Orders under Article 15(2)(f).

Old persons' homes and mental nursing homes

¹³ Tome VII, page 654, and Volume 1982–1983, pages 147 and 148.

¹⁴ Tome VII, page 657, and Volume 1982–1983, page 148.

2.-(1) Where any person is immediately before the appointed day registered under Article 2 of the 1964 Law¹⁵ in respect of any premises, he shall not, until he is registered under sub-paragraph (3) or the Committee has declined to register him under sub-paragraph (3), be required to be registered in the register of residential care homes in respect of those premises.

(2) The Committee shall, not later than three months after the appointed day –

- (a) determine whether or not premises in respect of which a person is registered as mentioned in sub-paragraph (1) are, in their opinion, a residential care home; and
- (b) pursuant to that determination, serve on that person a notice stating whether or not it proposes to register him in respect of the premises in the register of residential care homes.

(3) On the expiration of 28 days from the service on any such person of a notice of the Committee's decision on a proposal under sub-paragraph (2) or, if an appeal is made against the decision, on the determination or abandonment of the appeal, the Committee shall, subject to any direction made on appeal, either register or decline to register him in accordance with that decision, as if he had applied for such registration under this Law.

Mental nursing homes

3.-(1) Where any person is immediately before the appointed day registered under Article 5 of the 1969 Law¹⁶ in respect of any premises, he shall not, until he has been registered under sub-paragraph (2), be required to be registered in the register of mental nursing homes in respect of those premises.

¹⁵ Volume 1963–1965, page 342, Volume 1975–1978, page 93, and Volume 1982–1983, page 152.

¹⁶ Volume 1968–1969, page 351.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

(2) The Committee shall, not later than three months after the appointed day, register each such person as is mentioned in sub-paragraph (1) in the register of mental nursing homes in respect of those premises, as if he had applied for such registration under this Law.

(3) Before the Committee registers any person in respect of any premises under sub-paragraph (2), the Committee shall in writing request that person to state whether or not there are kept, or it is proposed to receive, in the premises patients who are liable to be detained under the provisions of the 1969 Law¹⁷.

(4) Where a statement in reply to a request under sub-paragraph (3) is in the affirmative, Article 4(7) shall apply as if the statement had been made in an application for such registration.

(5) Any records kept in respect of a mental nursing home in pursuance of Orders under Article 7 of the 1969 Law¹⁸ shall be treated for the purposes of this Law as records kept in respect of that home in pursuance of Orders under Article 15(1)(f).

Conditions, etc

4.-(1) Article 6 shall not apply to a registration effected under paragraph 1(2), 2(3) or 3(2) until –

- (a) the number of persons to be specified in the certificate of registration under Article 6(1); and
- (b) any conditions subject to which the registration is to be effected under Article 6(2);

have been determined in accordance with this paragraph.

(2) The Committee shall, as soon as may be after the appointed day, serve on each person registered or proposed to be

¹⁷ Volume 1968–1969, page 345, Volume 1970–1972, page 549, and R & O 5838.

¹⁸ Volume 1968–1969, page 354.

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

registered under this Schedule in respect of any premises a notice specifying its proposals as to the said matters.

- (3) On the happening of the last of the following events –
- (a) the expiration of 28 days from the service on such a person of the Committee’s decision on its proposals under subparagraph (2); or
 - (b) if an appeal is made against the decision, the determination or abandonment of the appeal; or
 - (c) the registration of that person under paragraph 1(2), 2(3) or 3(2),

the Committee shall, subject to any direction made on appeal, issue a certificate of registration specifying the said matters decided upon, and any certificate of registration previously issued shall cease to have effect.

Representations, appeals, etc

5. Articles 9(4) and (5), 10 and 12 apply to a proposal under paragraph 2(2) or 4(2) as they apply to a proposal mentioned in Article 9(1), (2) or (3).

Application of Article 16

6. Article 16 shall not apply to any premises in respect of which a person is not required to be registered by virtue of paragraph 1(1), 2(1) or 3(1).

Pending applications

7. An Act under Article 22(2) may contain such transitional provisions in relation to an application which is pending on the appointed day for –

*Jersey Law 12/1994 Nursing and Residential Homes (Jersey) Law
1994*

- (a) registration under Article 2 of the 1950 Law¹⁹ or Article 2 of the 1964 Law²⁰; or
- (b) registration under Article 5 of the 1969 Law²¹ for a mental nursing home;

as appear to the Committee to be necessary or expedient for the purposes of the Act.

Interpretation

8.-(1) In this Schedule –

“the 1950 Law” means the Nursing Homes (Registration) (Jersey) Law 1950²²;

“the 1964 Law” means the Old Persons’ Homes (Registration) (Jersey) Law 1964²³;

“the 1969 Law” means the Mental Health (Jersey) Law 1969²⁴;

“the appointed day”, as respects any class of home to which this Law applies, means the day appointed by Act under Article 22(2) for the coming into operation of Article 4 as respects that class of home.

(2) Where any person other than the person registered as mentioned in paragraph 1(1), 2(1) or 3(1) would by virtue of Article 4 be required to be registered in respect of a home, any reference in this Schedule to the person so registered or licensed shall be construed as, or as including, a reference to that person.

¹⁹ Tome VII, page 654, and Volume 1982–1983, pages 147 and 148.

²⁰ Volume 1963–1964, page 342, Volume 1975–1978, page 93, and Volume 1982–1983, page 153.

²¹ Volume 1968–1969, page 351.

²² Tome VII, page 653, Volume 1982–1983, pages 147 and 148, and R & O 7967.

²³ Volume 1963–1964, page 341, Volume 1975–1978, page 93, and Volume 1982–1983, pages 151 and 152.

²⁴ Volume 1968–1969, page 341, Volume 1975–1978, page 93, Volume 1982–1983, pages 151 and 152, and R & O 7106.

SECOND SCHEDULE**Article 21(2)****AMENDMENT OF ENACTMENTS****Children (Jersey) Law 1969²⁵**

1. In Article 1(1) for the definitions of “mental home” and “nursing home” substitute the following definitions, respectively –

“mental nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994²⁶;

“nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994²⁶.”

National Service (Jersey) Law 1954²⁷

2. In paragraph (1) of Article 42 after the definition of “mandated territory” insert the following definition –

“mental nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994²⁶.”

Adoption (Jersey) Law 1961²⁸

3. In paragraph (1) of Article 1 after the definition of “infant” insert the following definition –

“mental nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994²⁶.”

²⁵ Volume 1968–1969, page 249, Volume 1970–1972, page 511 and Volume 1979–1981, page 25.

²⁶ Volume 1994–199 , page 90.

²⁷ Tome VIII, page 427.

²⁸ Volume 1961–1962, page 363.

Franchise (Jersey) Law 1968²⁹

4. In paragraph (1) of Article 1 after the definition of “electoral register” insert the following definition –

“mental nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994³⁰.”

Mental Health (Jersey) Law 1969³¹

5. In paragraph (1) of Article 1 for the definition of “mental nursing home” substitute the following definition –

“mental nursing home” has the same meaning as in the Nursing and Residential Homes (Jersey) Law 1994³⁰.”

²⁹ Volume 1968–1969, page 83.

³⁰ Volume 1994–199 , page 90.

³¹ Volume 1968–1969, page 347.

*Jersey Law 12/1994**Nursing and Residential Homes (Jersey) Law
1994***THIRD SCHEDULE****(Article 21(3))****ENACTMENTS REPEALED**

<i>Short title</i>	<i>Extent of repeal</i>
Mental Health (Jersey) Law 1969 ³²	Part II
Nursing Homes (Registration) (Jersey) Law 1950 ³³	The whole Law
Nursing Homes (Registration) (Amendment) (Jersey) Law 1951 ³³	The whole Law
Nursing Homes (Registration) (Amendment No. 2) (Jersey) Law 1976 ³³	The whole Law
Nursing Homes (Registration) (Amendment No. 3) (Jersey) Law 1983 ³⁴	The whole Law
Old Persons' Homes Registration (Jersey) Law 1964 ³⁵	The whole Law
Old Persons' Homes Registration (Amendment) (Jersey) Law 1976 ³⁶	The whole Law
Old Persons' Homes Registration (Amendment No. 2) (Jersey) Law 1983 ³⁷	The whole Law

³² Volume 1968–1969, page 351.

³³ Tome VII, page 653.

³⁴ Volume 1982–1983, page 147.

³⁵ Volume 1963–1965, page 341.

³⁶ Volume 1975–1978, page 93.

³⁷ Volume 1982–1983, page 151.