CHAPTER 73.

An Act to provide for the registration and inspection of nursing homes in Scotland and for purposes connected therewith. [29th July 1938.] A.D. 1938.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Registration of nursing homes.

1.—(1) If any person carries on a nursing home without being duly registered in respect thereof, he shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine not exceeding fifty pounds or, in the case of a second or subsequent offence, to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

(2) Application for registration shall be made in writing to the local authority in whose area the home is situate in the form prescribed by the Department, and shall be accompanied by a fee of five shillings.

(3) Subject as provided in this Act, the local authority shall, on the receipt of an application for registration, register the applicant in respect of the nursing home named in the application and issue to him a certificate of registration:

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Provided that the authority may by order refuse to register the applicant if they are satisfied—

(*a*) that he or any person employed or proposed to be employed by him at the home is not a fit person, whether by reason of age, conduct or otherwise, to carry on or to be employed at a nursing home of such a description as the nursing home named in the application; or

(*b*) that for reasons connected with situation, construction, state of repair, accommodation, staffing or equipment, the home or any premises used or to be used in connection therewith are not fit to be used for a nursing home of such a description as the nursing home named in the application, or that the home or premises are used or to be used for purposes which are in any way improper or undesirable in the case of such a nursing home; or

(*c*) in the case of a nursing home (other than a maternity home), that the home is not or will not be under the charge of a person who is either a registered medical practitioner or a qualified nurse and who is or will be resident in the home, or that there is not or will not be a proper proportion of qualified nurses among the persons having the superintendence of, or employed in, the nursing of the patients in the home; or

(*d*) in the case of a maternity home, that the person having the superintendence of the nursing of the patients in the home is not a qualified nurse and a certified midwife, or that any person employed in attending any woman in the home in childbirth or in nursing any patient in the home is not a registered medical practitioner, a certified midwife, a pupil midwife or a qualified nurse.

(4) The certificate of registration issued in respect of a nursing home shall be kept affixed in a conspicuous place in the home, and, if default is made in complying with the foregoing requirement, the person carrying on the home shall be guilty of an offence against this Act.

Cancellation of registration.

2.—(1) Subject as provided in this Act, a local authority may by order at any time cancel the registration of a person in respect of any nursing home on any ground which would entitle them to refuse an application for the registration of that person in respect of that home, or on the ground that that person has been convicted of an offence against this Act or against Part II of the Midwives and Maternity Homes (Scotland) Act, 1927, or that any other person has been convicted of such an offence in respect of that home:

17 & 18 Geo. 5. c. 17.

Provided that, in the case of a person registered in respect of a maternity home under any enactment repealed by this Act, the local authority shall not cancel the registration of that person in respect of that home on the ground that it does not comply with the provisions of paragraph (*d*) of subsection (3) of section one of this Act until the expiration of three months after the authority have given him notice in writing requiring that the provisions of the said paragraph shall be complied with.

(2) Upon the registration of any person in respect of any home being cancelled, the holder of the certificate of registration shall forthwith deliver up the certificate to the local authority.

Notice of refusal or of cancellation of registration.

3.—(1) Before making an order refusing an application for registration or an order cancelling any registration, the local authority shall give to the applicant or to the person registered, as the case may be, not less than fourteen days' notice of their intention to make such an order, and every such notice shall state the grounds on which the authority intend to make the order and shall contain an intimation that, if within fourteen days after the receipt of the notice the applicant or person registered informs the authority in writing that he desires so to do, the authority will, before making the order, give him an opportunity of showing cause, in person or by a representative, why the order should not be made.

(2) Where a local authority have made an order refusing an application for registration or cancelling any registration, they shall cause a copy of the order to be sent to the applicant or the person registered.

(3) Any person aggrieved by an order refusing an application for registration or cancelling any registration

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may, within fourteen days after the date on which the copy of the order was sent to him, appeal against it to the sheriff, whose decision shall be final and shall be given effect to by the local authority.

(4) No such order shall come into force until the expiration of fourteen days from the date on which it was made, or, where notice of appeal is given against it, until the appeal has been decided or withdrawn.

Regulations.

4.—(1) The Department may make regulations prescribing anything which under this Act is to be or may be prescribed and prescribing the records to be kept in respect of every nursing home and, in particular, without prejudice to the foregoing generality—

(*a*) with respect to every nursing home, the records to be kept of—

(i) the patients admitted to the home, and

(ii) the persons engaged or employed at the home;

(*b*) with respect to every maternity home, the records to be kept of—

(i) the infant children in the home;

(ii) the births, still-births, premature births and abortions or miscarriages occurring in the home; and

(iii) every child born in the home who is removed from the home otherwise than to the custody or care of a parent, guardian or relative of the child; and

(*c*) with respect to every nursing home, the notices to be given when any death occurs therein.

(2) Regulations made under this section shall be laid before both Houses of Parliament as soon as may be after they are made:

Provided that, if an address is presented to His Majesty by either House within the next subsequent twenty-one days on which that House has sat after regulations are laid before it praying that the regulations may be annulled, the regulations shall thenceforth be void, without prejudice to the validity of anything

previously done thereunder, or to the making of new regulations.

(3) Any person who acts in contravention of or fails to comply with the provisions of any regulations made under this Act, shall be guilty of an offence against this Act.

Inspection of nursing homes.

5.—(1) The medical officer of health of the local authority or a qualified nurse or other officer duly authorised by the authority may, subject to such regulations as may be made by the authority, and an officer duly authorised by the Department may, at all reasonable times enter and inspect any premises which are used, or which that officer has reasonable cause to believe to be used, for the purposes of a nursing home, and may inspect any records required to be kept in accordance with the provisions of this Act:

Provided that nothing in this Act shall be deemed to authorise any such officer to inspect any medical record relating to any patient in a nursing home.

(2) Any person who refuses to allow any such officer to enter or inspect any such premises as aforesaid, or obstructs any such officer in the execution of his powers under this section, shall be guilty of an offence against this Act.

Power to exempt certain institutions.

6.—(1) A local authority may grant exemption from the operation of this Act in respect of any hospital or similar institution not carried on for profit and may attach conditions to any exemption granted by them.

(2) Any exemption granted, or deemed to have been granted, under this section, in respect of any hospital or institution may be withdrawn at any time and, unless previously withdrawn, shall cease to have effect on the expiration of one year from the date on which it is granted, without prejudice to the power of the local authority to grant a further exemption:

Provided that, if the authority deem it convenient that all such exemptions should expire on the same date in any year, they may, for the purpose of securing that object, grant exemptions for any period not being less than six months and not exceeding eighteen months.

(3) Any person who is aggrieved by the refusal of a local authority to grant exemption under this section

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in respect of any hospital or institution, or by any conditions attached to an exemption, or by the withdrawal by the authority of any exemption, may appeal against the refusal or conditions or withdrawal to the Department, and the Department, after considering the matter, shall give such directions therein as they think proper, and the authority shall comply with any directions so given.

Power to exempt Christian Science Homes.

7.—(1) The Department may, in respect of any nursing home which they are satisfied is being, or will be, carried on in accordance with the practice and principles of the body known as the Church of Christ Scientist, grant exemption from the operation of any requirement of paragraph (*c*) of subsection (3) of section one of this Act which is inconsistent with such practice or principles.

(2) It shall be a condition of any exemption granted in respect of a nursing home under this section that the nursing home shall adopt and use the name of Christian Science house.

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

Penalty for offences against Act and provision as to offences by companies.

8.—(1) If any person is guilty of an offence against this Act (other than an offence in respect of which some other penalty is specifically provided by this Act), he shall be liable on summary conviction to a fine not exceeding five pounds, and, in the case of a continuing offence, to a further fine not exceeding two pounds in respect of each day on which the offence continues after conviction.

(2) Where a person convicted of an offence against this Act is a company, the chairman and every director of the company and every officer of the company concerned in the management thereof shall be guilty of the like offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Expenses of local authority. 60 & 61 Vict. c. 38.

9. Any expenses incurred under this Act by a local authority shall be defrayed in like manner as expenses incurred by the authority under the Public Health (Scotland) Act, 1897.

10. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:— Interpretation.

"Department" means the Department of Health for Scotland;

"local authority" means—

(*a*) in the case of a large burgh within the meaning of the Local Government (Scotland) Act, 1929, the town council; 19 & 20 Geo. 5. c. 25.

(*b*) in the case of counties combined for the purposes mentioned in subsection (7) of section ten of the last-mentioned Act, the joint county council; and

(*c*) in the case of any other county, the county council;

"county" means a county inclusive of any small burgh within the meaning of the Local Government (Scotland) Act, 1929, situate in the county;

"register" and "registration" mean register and registration under this Act;

"nursing home" means any premises used or intended to be used for the reception of and the providing of nursing for persons suffering from any sickness, injury, or infirmity, and includes a maternity home but does not include—

(i) any hospital or other premises maintained or controlled by a Government department or local authority or by any other body of persons constituted by special Act of Parliament or incorporated by Royal Charter;

(ii) any institution for lunatics within the meaning of the Lunacy (Scotland) Act, 1857; 20 & 21 Vict. c. 71.

(iii) any certified institution, certified house or approved home within the meaning of the Mental Deficiency and Lunacy (Scotland) Act, 1913; 3 & 4 Geo. 5. c. 38.

"maternity home" means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth;

"qualified nurse" means a person registered in the general part of the register of nurses required to

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9 & 10 Geo. 5. c. 95.

be kept under the Nurses Registration (Scotland) Act, 1919, or a person who had before the commencement of this Act completed a three years' course of training in a hospital which before such commencement, became a training school approved by the General Nursing Council for Scotland, or the General Nursing Council for England and Wales, or the General Nursing Council for Northern Ireland, for the purpose of admission to the general part of the said register;

"certified midwife" means a woman certified under the Midwives (Scotland) Act, 1915;

5 & 6 Geo. 5. c. 91.

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

Short title, extent, repeal and commencement.

11.—(1) This Act may be cited as the Nursing Homes Registration (Scotland) Act, 1938.

(2) Subject as hereinafter provided, the enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that—

(i) any person who was, immediately before the commencement of this Act, registered under any enactment repealed by this Act in respect of any maternity home, shall be deemed for all the purposes of this Act to be as from the commencement of this Act a person duly registered thereunder in respect of that home; and

(ii) any exemption of a hospital or institution granted under paragraph (*a*) of subsection (1) of section fifteen of the Midwives and Maternity Homes (Scotland) Act, 1927, which was in force immediately before the commencement of this Act, shall be deemed to have been granted under section six of this Act.

(3) This Act shall come into operation on the first day of January nineteen hundred and thirty-nine.

(4) This Act shall apply to Scotland only.

SCHEDULE.

ENACTMENTS REPEALED.

Section 11.

Session and Chapter.	Short Title.	Extent of Repeal.
17 & 18 Geo. 5. c. 17.	The Midwives and Maternity Homes (Scotland) Act, 1927.	Part II; subsection (1) of section sixteen, in subsection (2) of section sixteen the words "Part II as well as of", and in subsection (1) of section seventeen the words "and Maternity Homes" in both places where they occur.

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SIR WILLIAM RICHARD CODLING, C.B., C.V.O., C.B.E., the King's Printer of Acts of Parliament