

*These notes refer to the Nationality, Immigration and Asylum Act 2002 (c.41) which received Royal Assent on 7 November 2002*

# NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Accommodation Centres**

##### **General**

##### ***Section 34: The Monitor of Accommodation Centres***

100. **Section 34** requires the Secretary of State to appoint a Monitor of Accommodation Centres. The Monitor may not be a person who is employed within a government department. Subsection (2) requires the Monitor to monitor the operation of Part 2 of the Act and, in particular, to consider the quality and effectiveness of accommodation and other facilities provided, the nature and enforcement of conditions of residence, the treatment of residents, and whether the location of an accommodation centre prevents a need of its residents from being met. Subsection (3) requires the Monitor to consult the Secretary of State and such other persons as he considers appropriate. Subsections (4) and (5) require the Monitor to make an annual report to the Secretary of State, which will be laid before Parliament, and to report on such other occasions as the Secretary of State may request. Subsections (6), (7) and (8) make provision relating to the terms of appointment, the payment of fees and expenses and a power for the Secretary of State to appoint more than one person to act jointly as Monitor.

##### ***Section 35: Ancillary provisions***

101. This Section provides that specified provisions of the 1999 Act shall apply for the purposes of Part 2 of the Act as they do for Part VI of that Act. In particular, subsections (1)(a) to (d) of this section provide that certain criminal offences that apply to the provision of support for asylum-seekers under Part VI of the 1999 Act, shall also apply for the purposes of this Part.
102. Subsections (1)(f) and (1)(g) apply provisions in Part VI of the 1999 Act relating to recovery by the Secretary of State of monies provided to support asylum-seekers as a result of fraud or material non-disclosure of facts or where a sponsor has failed to maintain a person he undertook to maintain.
103. Section 124 of the 1999 Act, applied to Part 2 of the Act by subsection (1)(h), makes provision for the Secretary of State to be a corporation sole for the purpose of holding property. This will assist in conveyancing if the Secretary of State acquires property for the purposes of Part 2. Section 127 of the 1999 Act, applied to Part 2 of the Act by subsection (1)(i) relates to powers for the Secretary of State to require certain information from property owners about premises in which accommodation has been provided for the purposes of support.

**Section 36: Education: general**

104. **Section 36(1)** provides that residents of an accommodation centre shall not be treated as part of the population of a local education authority (“LEA”) for the purposes of section 13 of the Education Act 1996 (“the EA 1996”). Section 13 of the EA 1996 describes, in general terms, the duties of a LEA towards the population of its area. The LEA has a duty to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary and secondary education is available to meet the needs of the population of their area .
105. **Section 36(2)** prohibits a child who is a resident of an accommodation centre from attending a maintained school or nursery.
106. The prohibition on a child who is a resident of an accommodation centre attending a maintained school or nursery under subsection (2) is qualified by section 36(3) which enables such a child to attend a community special school or a foundation special school if it is named in a statement of special educational needs in respect of the child made under section 324 of the Education Act 1996.
107. For residents of accommodation centres, section 36(5)(a) removes the duties in section 86 of the School Standards and Framework Act 1998 Act requiring LEAs to enable the parents of children in their area to express a preference as to the school at which they want their children to be educated and to comply with any preference expressed.
108. For residents of accommodation centres, section 36(5)(e) removes the duties in paragraph 3 of Schedule 27 to the EA 1996 requiring LEAs to enable the parents of children with special educational needs to express a preference as to the school at which they want their children to be educated, and the duty to specify the name of such a school in a child’s statement of special educational needs.
109. **Section 36(6)** provides that the power of the Special Educational Needs Tribunal under section 326(3) of the EA 1996 to order an LEA to amend a child’s statement of special educational needs is subject to qualified prohibition on a child who is a resident of an accommodation centre attending a maintained school or nursery under section 36(2).
110. **Section 36(7)** provides that a child who is resident in an accommodation centre and who has special educational needs shall be educated in the accommodation centre unless it is incompatible with (a) his receiving the special educational provision which his learning difficulty calls for, (b) the provision of efficient education for other children who are residents of the centre, or (c) the efficient use of resources.
111. **Section 36(8)** provides that a person exercising functions under the Act cannot rely on section 36(7)(b) and claim that it is not compatible with the provision of efficient education for other children who are residents of the accommodation centre for a child with special educational needs to be educated in the centre, unless there is no action that could reasonably be taken by that person or by any other person who exercises functions in respect of the centre to make section 36(7)(b) not apply.
112. **Section 36(10)** provides that subsections (1), (2) and (5) above shall not apply in relation to an accommodation centre if education is not provided for children who are residents of the centre under section 29(1)(f).

**Section 37: Education: special cases**

113. This Section makes provision for a LEA to provide education for a child resident in an accommodation centre in certain circumstances.
114. **Section 37(1)** provides that this section applies if a person who provides education to residents of accommodation centres recommends in writing to the local education

authority for the area in which the centre is located that this section should apply to a particular child.

115. **Section 37(2)** provides that a LEA may arrange for the provision of education for a child to whom this section applies and disapply a provision of section 36 in respect of that child.
116. **Section 37(4)** requires the governing body of a maintained school to comply with a requirement of the LEA to admit a child to whom this section applies to the school. The duty imposed on the governing body of a maintained school is qualified by section 37(5) which provides that subsection (4) shall not apply where compliance with such a requirement would prejudice measures taken for the purpose of complying with a duty to comply with the limit on infant class sizes.
117. **Section 37(6)** requires the LEA to consult in accordance with regulations before imposing a requirement under subsection (4) for a school's governing body to admit a pupil.

### ***Section 38: Local authority***

118. **Section 38** enables local authorities in accordance with arrangements made by the Secretary of State, to arrange for the provision of an accommodation centre, to make premises available for an accommodation centre and to provide services in connection with an accommodation centre. Subsection (2) sets out a number of functions that a local authority may do under this section, including the provision of services outside its area and tendering for or entering into a contract.

### ***Section 39: "Prescribed": orders and regulations***

119. **Section 39** sets out the procedure to be used when making an order or regulations under this Part of the Act.

### ***Section 40: Scotland***

120. This section provides that the Secretary of State may not make arrangements for establishing an accommodation centre in Scotland unless he has consulted the Scottish Ministers. It also provides for the Secretary of State to make provision by order, subject to the negative resolution procedure, for the education of residents of accommodation centres in Scotland.

### ***Section 41: Northern Ireland***

121. **Section 41** makes equivalent provision to section 40 for Northern Ireland.

### ***Section 42: Wales***

122. **Section 42** requires the Secretary of State to consult the National Assembly for Wales before making arrangements for an accommodation centre in Wales.