



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 2

#### ACCOMMODATION CENTRES

PROSPECTIVE

#### *General*

#### <sup>F1</sup>34 The Monitor of Accommodation Centres

.....

#### **Textual Amendments**

**F1** S. 34 repealed (1.4.2008) by [UK Borders Act 2007 \(c. 30\)](#), [ss. 54\(b\), 59\(2\)](#); [S.I. 2008/309](#), art. 4(e)

#### 35 Ancillary provisions

- (1) The following provisions of the Immigration and Asylum Act 1999 (c. 33) shall apply for the purposes of this Part as they apply for the purposes of Part VI of that Act (support for asylum-seeker)—
- (a) section 105 (false representation),
  - (b) section 106 (dishonest representation),
  - (c) section 107 (delay or obstruction),
  - (d) section 108 (failure of sponsor to maintain),
  - (e) section 109 (offence committed by body),
  - (f) section 112 (recovery of expenditure),

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- (g) section 113 (recovery of expenditure from sponsor),
  - (h) section 124 (corporation sole), and
  - (i) section 127 (redirection of post).
- (2) In the application of section 112 a reference to something done under section 95 or 98 of that Act shall be treated as a reference to something done under section 17 or 24 of this Act.
- (3) In the application of section 113 a reference to section 95 of that Act shall be treated as a reference to section 17 of this Act.

#### Commencement Information

- II** S. 35 partly in force; s. 35(1)(h) in force at Royal Assent see s. 162(2)

### 36 Education: general

- (1) For the purposes of section 13 of the Education Act 1996 (c. 56) (general responsibility of [<sup>F2</sup>local authority]) a resident of an accommodation centre shall not be treated as part of the population of a [<sup>F2</sup>local authority] area.
- (2) A child who is a resident of an accommodation centre may not be admitted to a maintained school or a maintained nursery (subject to section 37).
- (3) But subsection (2) does not prevent a child’s admission to a school which is—
- (a) a community special school or a foundation special school, and
  - (b) named in [<sup>F3</sup>an EHC plan maintained for the child under section 37 of the Children and Families Act 2014 or][<sup>F4</sup>a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs)][<sup>F4</sup>an individual development plan maintained for the child under section 14 or 19 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018].
- (4) In subsections (2) and (3)—
- (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c. 31) (definition), and
  - (b) “maintained nursery” means a facility for nursery education, within the meaning of section 117 of that Act, provided by a [<sup>F5</sup>local authority].
- (5) The following shall not apply in relation to a child who is a resident of an accommodation centre (subject to section 37)—
- (a) section 86(1) and (2) of the School Standards and Framework Act 1998 (parental preference),
  - (b) section 94 of that Act (appeal),
  - (c) section 19 [<sup>F6</sup>or 19A] of the Education Act 1996 (education out of school),
  - (d) [<sup>F7</sup>section 316(2) and (3) of that Act (child with special educational needs to be educated in mainstream school), <sup>F8</sup>...]
  - (e) [<sup>F9</sup>paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).]
  - [<sup>F10</sup>(f) sections 33 and 34 of the Children and Families Act 2014 (mainstream education for children with special educational needs), [<sup>F11</sup>and]

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- (g) sections 38 and 39 of that Act (EHC plan: request of parent for named school etc).]<sup>[F12]</sup>, and
- <sup>[F13]</sup>(h) section 51 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (duty to favour education for children at mainstream maintained schools).]
- <sup>[F14]</sup>(5A) The powers of the First-tier Tribunal on determining an appeal under section 51(2)(c) of the Children and Families Act 2014 (appeals against certain aspects of content of EHC plan) are subject to subsection (2) above.]
- (6) <sup>[F15]</sup>The power of the Education Tribunal for Wales under section 71(1) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (decisions on appeals under section 70) is subject to subsection (2) above.]
- (7) A person exercising a function under this Act <sup>[F18]</sup>, Part 3 of the Children and Families Act 2014]<sup>[F19]</sup>, Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018] or the Education Act 1996 shall (subject to section 37) secure that a child who is a resident of an accommodation centre and who has special educational needs <sup>[F19]</sup>or additional learning needs] shall be educated by way of facilities provided under section 29(1)(f) of this Act unless that is incompatible with—
  - (a) his receiving the special educational provision <sup>[F20]</sup>called for by his special educational needs or] which his learning difficulty calls for,
  - <sup>[F21]</sup>(aa) the child receiving the additional learning provision called for by the child's additional learning needs,]
  - (b) the provision of efficient education for other children who are residents of the centre, or
  - (c) the efficient use of resources.
- (8) A person may rely on subsection (7)(b) only where there is no action—
  - (a) which could reasonably be taken by that person or by another person who exercises functions, or could exercise functions, in respect of the accommodation centre concerned, and
  - (b) as a result of which subsection (7)(b) would not apply.
- (9) An accommodation centre is not a school within the meaning of section 4 of the Education Act 1996 (definition); but—
  - (a) <sup>[F22]</sup>Part 1 of the Education Act 2005 (school inspections)] shall apply to educational facilities provided at an accommodation centre as if the centre were a school (for which purpose a reference to the appropriate authority shall be taken as a reference to the person (or persons) responsible for the provision of education at the accommodation centre),
  - <sup>[F23]</sup>(aa) section 36 of the Children and Families Act 2014 (assessment of education, health and care needs: England) shall have effect as if an accommodation centre were a school,]
  - (b) <sup>[F24]</sup>the person responsible for education at an accommodation centre may refer a case to a local authority under section 12(2)(a) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 as though—
    - (i) a child for whom education is provided at the centre under section 29(1)(f) were a child who is a registered pupil at a school, and
    - (ii) that person were the governing body of the school.]

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(c) [<sup>F25</sup>section 140 of the Learning and Skills Act 2000 (c. 21) (learning difficulties: assessment of post-16 needs) shall have effect as if an accommodation centre were a school.]

(10) Subsections (1), (2) and (5) 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).

(11) An expression used in this section and in the Education Act 1996 (c. 56) shall have the same meaning in this section as in that Act.

### Textual Amendments

- F2** Words in s. 36(1) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 51(2)(a)**
- F3** Words in s. 36(3)(b) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(2)**; S.I. 2014/889, art. 7(a)
- F4** Words in s. 36(3)(b) substituted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(a)**
- F5** Words in s. 36(4)(b) substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 51(2)(b)**
- F6** Words in s. 36(5)(c) inserted (1.9.2022 for specified purposes) by [The Curriculum and Assessment \(Wales\) Act 2021 \(Consequential Amendments\) \(Primary Legislation\) Regulations 2022 \(S.I. 2022/744\)](#), reg. 1(3), **Sch. 2 para. 7**
- F7** S. 36(5)(d) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(b)**
- F8** Word in s. 36(5)(d) omitted (1.9.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(3)**; S.I. 2014/889, art. 7(a)
- F9** S. 36(5)(e) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(b)**
- F10** S. 36(5)(f)(g) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(3)**; S.I. 2014/889, art. 7(a)
- F11** Word in s. 36(5) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(c)**
- F12** Word in s. 36(5) inserted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(d)**
- F13** S. 36(5)(h) inserted (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(e)**
- F14** S. 36(5A) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(4)**; S.I. 2014/889, art. 7(a)
- F15** S. 36(6) substituted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, **6(2)(f)**
- F16** Words in s. 36(6) omitted (1.9.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(5)**; S.I. 2014/889, art. 7(a)
- F17** Words in s. 36(6) substituted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 197**
- F18** Words in s. 36(7) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 79(6)(a)**; S.I. 2014/889, art. 7(a)

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- F19** Words in s. 36(7) inserted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, [6\(2\)\(g\)\(i\)](#)
- F20** Words in s. 36(7)(a) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 3 para. 79\(6\)\(b\)](#); [S.I. 2014/889](#), art. 7(a)
- F21** S. 36(7)(aa) inserted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, [6\(2\)\(g\)\(ii\)](#)
- F22** Words in s. 36(9)(a) substituted (1.9.2005 for E. and otherwise prosp.) by [Education Act 2005 \(c. 18\)](#), ss. 61, 125, [Sch. 9 para. 30](#); [S.I. 2005/2034](#), [art. 4](#)
- F23** S. 36(9)(aa) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 3 para. 79\(7\)](#); [S.I. 2014/889](#), art. 7(a)
- F24** S. 36(9)(b) substituted (W.) (1.9.2021) by [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, [6\(2\)\(h\)](#)
- F25** S. 36(9)(c) omitted (W.) (1.9.2021) by virtue of [The Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(Consequential Amendments\) Regulations 2021 \(S.I. 2021/861\)](#), regs. 1, [6\(2\)\(i\)](#)

### 37 Education: special cases

- (1) This section applies to a child if a person who provides education to residents of an accommodation centre recommends in writing to the [<sup>F26</sup>local authority] for the area in which the centre is that this section should apply to the child on the grounds that his special circumstances call for provision that can only or best be arranged by the authority.
- (2) A [<sup>F26</sup>local authority] may—
  - (a) arrange for the provision of education for a child to whom this section applies;
  - (b) disapply a provision of section 36 in respect of a child to whom this section applies.
- (3) In determining whether to exercise a power under subsection (2) in respect of a child a [<sup>F26</sup>local authority] shall have regard to any relevant guidance issued by the Secretary of State.
- (4) The governing body of a maintained school shall comply with a requirement of the [<sup>F26</sup>local authority] to admit to the school a child to whom this section applies.
- (5) Subsection (4) shall not apply where compliance with a requirement would prejudice measures taken for the purpose of complying with a duty arising under section 1(6) of the School Standards and Framework Act 1998 (c. 31) (limit on infant class size).
- (6) A [<sup>F26</sup>local authority] may not impose a requirement under subsection (4) in respect of a school unless the authority has consulted the school in accordance with regulations made by the Secretary of State.
- (7) In the case of a maintained school for which the [<sup>F26</sup>local authority] are the admission authority, the authority may not arrange for the admission of a child to whom this section applies unless the authority has notified the school in accordance with regulations made by the Secretary of State.
- (8) In this section—
  - (a) “maintained school” means a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (definition), and

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- (b) an expression which is also used in the Education Act 1996 (c. 56) shall have the same meaning as it has in that Act.

#### Textual Amendments

**F26** Words in s. 37 substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, [Sch. 2 para. 51\(3\)](#)

### 38 Local authority

- (1) A local authority may in accordance with arrangements made by the Secretary of State—
- (a) assist in arranging for the provision of an accommodation centre;
  - (b) make premises available for an accommodation centre;
  - (c) provide services in connection with an accommodation centre.
- (2) In particular, a local authority may—
- (a) incur reasonable expenditure;
  - (b) provide services outside its area;
  - (c) provide services jointly with another body;
  - (d) form a company;
  - (e) tender for or enter into a contract;
  - (f) do anything (including anything listed in paragraphs (a) to (e)) for a preparatory purpose.
- (3) In this section “local authority” means—
- (a) a local authority within the meaning of section 94 of the Immigration and Asylum Act 1999 (c. 33), and
  - (b) a Northern Ireland authority within the meaning of section 110 of that Act and an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/ 594 (N.I. 3)).

### 39 “Prescribed”: orders and regulations

- (1) In this Part “prescribed” means prescribed by the Secretary of State by order or regulations.
- (2) An order or regulations under this Part may—
- (a) make provision which applies generally or only in specified cases or circumstances (which may be determined wholly or partly by reference to location);
  - (b) make different provision for different cases or circumstances;
  - (c) include consequential, transitional or incidental provision.
- (3) An order or regulations under this Part must be made by statutory instrument.
- (4) An order or regulations under any of the following provisions of this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament—
- (a) section 17,
  - (b) section 19,

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- (c) section 20,
- (d) section 21,
- (e) section 26,
- (f) section 29,
- (g) section 31,
- (h) section 32,
- (i) section 33,
- (j) section 37,
- (k) section 40, and
- (l) section 41.

- (5) An order under section 25 or regulations under section 30 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### **40 Scotland**

- (1) The Secretary of State may not make arrangements under section 16 for the provision of premises in Scotland unless he has consulted the Scottish Ministers.
- (2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Scotland.
- (3) An order under subsection (2) may, in particular—
- (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under an Act of the Scottish Parliament);
  - (b) make provision having an effect similar to the effect of a provision of section 36 or 37.

##### **Commencement Information**

**I2** S. 40(1) partly in force; s. 40(1) in force at Royal Assent see [s. 162\(2\)](#)

#### **41 Northern Ireland**

- (1) The Secretary of State may not make arrangements under section 16 for the provision of premises in Northern Ireland unless he has consulted the First Minister and the deputy First Minister.
- (2) The Secretary of State may by order make provision in relation to the education of residents of accommodation centres in Northern Ireland.
- (3) An order under subsection (2) may, in particular—
- (a) apply, disapply or modify the effect of an enactment (which may include a provision made by or under Northern Ireland legislation);
  - (b) make provision having an effect similar to the effect of a provision of section 36 or 37.

##### **Commencement Information**

**I3** S. 41(1) partly in force; s. 41(1) in force at Royal Assent see [s. 162\(2\)](#)

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## 42 Wales

The Secretary of State may not make arrangements under section 16 for the provision of premises in Wales unless he has consulted the National Assembly for Wales.



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