



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 2

#### ACCOMMODATION CENTRES

##### *General*

PROSPECTIVE

### **36 Education: general**

- (1) For the purposes of section 13 of the Education Act 1996 (c. 56) (general responsibility of [<sup>F1</sup>local authority]) a resident of an accommodation centre shall not be treated as part of the population of a [<sup>F1</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>F2</sup>an EHC plan maintained for the child under section 37 of the Children and Families Act 2014 or][<sup>F3</sup>a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs)][<sup>F3</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

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- (b) “maintained nursery” means a facility for nursery education, within the meaning of section 117 of that Act, provided by a [<sup>F4</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>F5</sup>or 19A] of the Education Act 1996 (education out of school),
  - (d) [<sup>F6</sup>section 316(2) and (3) of that Act (child with special educational needs to be educated in mainstream school), <sup>F7</sup>...]
  - (e) [<sup>F8</sup>paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).]
  - [<sup>F9</sup>(f) sections 33 and 34 of the Children and Families Act 2014 (mainstream education for children with special educational needs), [<sup>F10</sup>and]
  - (g) sections 38 and 39 of that Act (EHC plan: request of parent for named school etc).][<sup>F11</sup>, and]
  - [<sup>F12</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>F13</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>F14</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>F17</sup>, Part 3 of the Children and Families Act 2014][<sup>F18</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>F18</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>F19</sup>called for by his special educational needs or] which his learning difficulty calls for,
  - [<sup>F20</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—

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- (a) [<sup>F21</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>F22</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>F23</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.]
- (c) [<sup>F24</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

- F1** 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)**
- F2** 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)
- F3** 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)**
- F4** 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)**
- F5** 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**
- F6** 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)**
- F7** 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)
- F8** 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)**
- F9** 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)

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- F10** 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)**
- F11** 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)**
- F12** 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)**
- F13** 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)
- F14** 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)**
- F15** 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)
- F16** 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**
- F17** 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)
- F18** 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)**
- F19** 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)
- F20** 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)**
- F21** 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**
- F22** 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)
- F23** 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)**
- F24** 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)**

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