

# NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Establishment**

##### *Section 16: Establishment of centres*

71. This section enables the Secretary of State to arrange for the provision of premises to be used as accommodation centres. Subsection (3) enables the Secretary of State to arrange for the provision of facilities for the hearing of appeals at or near an accommodation centre and for facilities to be provided at an accommodation centre in connection with casework to determine asylum claims.

##### **Use of centres**

##### *Section 17: Support for destitute asylum-seeker*

72. Subsection (1) of section 17 gives the Secretary of State power to provide accommodation in an accommodation centre, or to arrange for the provision of such accommodation through another party (for example a local authority or private sector contractor). Accommodation in an accommodation centre may be provided to asylum-seekers and their dependants who are destitute or likely to become destitute within a period to be prescribed by regulations - this will allow the Secretary of State to start making arrangements in anticipation of actual destitution. "Asylum-seeker" is defined in section 18, "dependant" in section 20 and "destitution" in section 19. Subsection (2) enables the Secretary of State to make regulations about the procedure to be followed in providing accommodation in an accommodation centre and subsection (3) gives examples of the particular provisions which may be included in the regulations.

##### *Section 18: Asylum-seeker: definition*

73. **Section 18** defines the term "asylum-seeker" as someone who is at least 18 years old, is in the UK and who has made a claim under the Refugee Convention or under article 3 ECHR, at a place designated by the Secretary of State, which has been recorded by the Secretary of State but which has not yet been determined. Once a person is no longer an asylum-seeker he will no longer be eligible for accommodation in an accommodation centre and will be expected to leave the accommodation centre, the period of time to be prescribed under section 21 (3) allowing him to make arrangements to do so. However, a person whose household includes a dependant child under the age of 18 will continue to be treated as an asylum-seeker whilst he and the child remain in the United Kingdom and will continue to be eligible for accommodation in an accommodation centre.

***Section 19: Destitution: definition***

74. **Section 19** defines “destitution”. This means a person, and his dependants if he has any, who is unable to obtain both adequate accommodation and food and other essential items. In deciding whether accommodation is adequate, the Secretary of State must have regard to any prescribed matter but may not have regard to whether a person has an enforceable right to occupy accommodation, whether a person shares all or part of the accommodation, the location of the accommodation, whether it is temporary or permanent or any other prescribed matter.
75. Subsection (5) enables the Secretary of State to make regulations specifying items which are or are not to be considered as essential items.
76. Subsection (6) allows the Secretary of State to make regulations specifying when a person is not to be treated as destitute, enabling the Secretary of State to have regard to any income which a person or his dependant might reasonably be expected to have, or support or particular assets which are or might be available and to make provision for the valuation of these assets.

***Section 20: Dependant: definition***

77. Section 20 defines a dependant of an asylum-seeker as someone who is in the United Kingdom and falls within a prescribed class.

***Section 21: Sections 17 to 20: supplementary***

78. This section makes supplementary provision including provision that a claim for asylum is treated as determined after a prescribed period of time beginning with when the Secretary of State notifies the person of his decision on the claim or, if the person appeals against the decision, when the appeal is disposed of. This section also gives the Secretary of State power to inquire into and decide a person’s age for the purposes of assessing whether they are eligible for support.

***Section 22: Immigration and Asylum Act 1999, s. 95***

79. Part VI of the 1999 Act sets out provisions for the support of asylum-seekers. Section 95 of that Act gives the Secretary of State the power to support destitute asylum-seekers and their dependants (if any) and section 96 sets out the ways in which support may be provided. Section 22 provides that the Secretary of State may provide support under section 95 of the 1999 Act by arranging for accommodation to be provided in an accommodation centre.

***Section 23: Person subject to United Kingdom entrance control***

80. Paragraph 21(2) of Schedule 2 to the Immigration Act 1971 (“1971 Act”) gives immigration officers the power to impose residence restrictions on people who are liable to detention under Schedule 2 to that Act. Paragraph 2(5) of Schedule 3 to the 1971 Act gives the Secretary of State the power to impose residence restrictions on people released from detention pending deportation. Subsections (1) and (2) of section 23 provide that these powers may be used to set a condition that a person must reside at an accommodation centre.
81. Subsection (4) provides that a person who is required to leave an accommodation centre by virtue of section 26 (withdrawal of support) or for breach of residence conditions under section 30, will also have breached the condition imposed under paragraph 21 (2) of Schedule 2 to the 1971 Act or paragraph 2(5) of Schedule 2 to that Act.
82. Section 4 of the 1999 Act gives the Secretary of State a power to provide facilities for the accommodation of certain people, including those granted temporary admission to the United Kingdom or released from detention on bail. Subsection (5) of section 23

provides that the Secretary of State may provide support under section 4 of the 1999 Act by arranging for accommodation in an accommodation centre.

#### ***Section 24 : Provisional assistance***

83. **Section 24** allows a person to be supported in an accommodation centre or provided with other support or assistance of any kind if the Secretary of State thinks that person might be eligible to be provided with accommodation in an accommodation centre pending a decision as to whether the person is in fact eligible for accommodation in an accommodation centre. Subsection (2) enables local authorities to provide support under this section in accordance with arrangements made by the Secretary of State.

#### ***Section 25: Length of stay***

84. Subsection (1) is subject to the provisions of subsection (2). Subsection (1) prevents the Secretary of State from requiring a person to reside in an accommodation centre if he has been a resident of an accommodation centre for a continuous period of six months. Subsection (2) enables the Secretary of State to require a person to remain in an accommodation centre for a maximum of 9 months if he thinks it appropriate in the particular circumstances of the case. Subsection (2) also makes clear that a person may choose to remain in an accommodation centre beyond the maximum periods contained in this section in agreement with the Secretary of State. Subsection (4) enables the Secretary of State to make an order to shorten the maximum periods.

#### ***Section 26: Withdrawal of support***

85. **Section 26(1)** sets out particular circumstances in which the Secretary of State may stop providing support to a person in an accommodation centre under section 17 or for whom provisional assistance under section 24 is being provided, namely: where the Secretary of State suspects a person or a dependant of his has committed an offence under the relevant provisions listed in section 35; and where the person or a dependant of his has failed to comply with the Secretary of State's directions as to the time and manner of travel to the accommodation centre or to other accommodation being provided under sections 17 or 24.
86. Subsection (2) enables regulations to be made specifying other circumstances in which support under sections 17 and 24 may be stopped. Subsection (3) allows the Secretary of State to take into account the fact he has withdrawn support under this section or section 30 (breach of conditions of residence), or that circumstances exist in which he would have withdrawn support, in deciding whether to provide support under sections 17 (support for destitute asylum seekers) or 24 (provisional assistance) of the Act or under sections 4 (accommodation for those temporarily released from detention), 95 (persons for whom support may be provided) or 98 (temporary support) of the 1999 Act. Subsection (4) makes clear that section 26 does not affect the right of appeal against refusal or withdrawal of support that is provided for in section 103 of the 1999 Act (as amended by Section 53).

### **Operation of centres**

#### ***Section 27: Resident of centre***

87. **Section 27** defines a resident of an accommodation centre for the purposes of Part 2.

#### ***Section 28: Manager of centre***

88. **Section 28** defines a manager of an accommodation centre for the purposes of Part 2.

### ***Section 29: Facilities***

89. **Section 29** gives the Secretary of State the power to provide residents of accommodation centres with a number of facilities and services, described in subsection (1).
90. Subsection (2) enables the Secretary of State by regulations to set the maximum amount of money that can be provided to the resident of an accommodation centre.
91. Subsection (3) enables the Secretary of State to arrange for the provision of facilities in an accommodation centre for the use of legal advisers and subsection (4) requires the Secretary of State to take reasonable steps to ensure that a resident has an opportunity to obtain legal advice before the appointment made for his substantive asylum interview.
92. Subsection (5) allows the Secretary of State to add by order to the list of items and facilities which may be provided to a resident of an accommodation centre set out in subsection (1). Orders and regulations under this section are subject to the negative resolution procedure under section 39.

### ***Section 30: Conditions of residence***

93. **Section 30** enables the Secretary of State to make regulations setting out conditions of residence that may be imposed on residents of accommodation centres. The powers to impose residence restrictions set out in paragraph 21 of Schedule 2 to the 1971 Act and paragraph 2 (5) of Schedule 3 to that Act are unaffected by this section.
94. Subsection (3) sets out two particular conditions that may be imposed; subsection (4) makes clear that a resident who breaches a condition may be required to leave the centre, with his dependants (if any); subsection (5) provides that a resident and his dependants may be required to leave the centre if a dependant breaches a condition; and subsection (6) provides that the regulations setting the conditions under this section must include a provision for making sure that residents are informed in writing of any condition imposed on them. Regulations under section 30 are subject to the affirmative resolution procedure under section 39.

### ***Section 31: Financial contribution by resident***

95. **Section 31** provides that conditions imposed under section 30 may require a resident of an accommodation centre to make payments to the Secretary of State or the manager of the centre where the resident applied to be supported and had assets (including assets outside the United Kingdom) at the time of the application which at that time were not capable of being realised but have since become realisable.
96. Subsection (4) provides the methods by which any amounts may be recovered.

### ***Section 32: Tenure***

97. **Section 32** provides that a resident of an accommodation centre is not to be treated as acquiring a tenancy of or other interest in any part of the centre. It allows the Secretary of State, or the manager of the centre if authorised to do so by the Secretary of State, to recover possession of the premises occupied by the resident where the resident is required to leave the centre or where the Secretary of State decides to stop providing accommodation in the centre for that resident.
98. Subsection (4) makes clear that any licence to occupy premises which a resident of an accommodation centre has will be an excluded licence for the purposes of the Protection from Eviction Act 1977. There is therefore no need to obtain a court order before recovering possession of the premises. The procedure to be followed in order to recover the premises is to be prescribed in regulations. Subsection (7) means that accommodation provided under Section 24 (1) (b) (i.e. provisional accommodation not in an accommodation centre) is to be treated as an accommodation centre for the purposes of Section 32.

### ***Section 33: Advisory Groups***

99. **Section 33** requires the Secretary of State to appoint an Advisory Group for each accommodation centre. Subsection (2) enables the Secretary of State to make regulations conferring functions on Advisory Groups and making provision about the constitution and proceedings of the Advisory Groups. Subsection (3) requires the regulations to provide for members of Advisory Groups to visit the accommodation centre, to hear complaints made by residents of the centre and to report to the Secretary of State. Subsection (4) requires the manager of an accommodation centre to permit a member of the Advisory Group to visit the centre at any time and to visit any resident of the centre at any time, provided the resident consents. Subsection (5) makes provision about the terms of appointments for members of the Advisory Groups and subsection (6) enables the Secretary of State to pay expenses of members and to make facilities available to them.

## **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.