

NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Accommodation Centres

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 3 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).