



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 2

ACCOMMODATION CENTRES

General

34 The Monitor of Accommodation Centres

- (1) The Secretary of State shall appoint a person as Monitor of Accommodation Centres.
- (2) The Monitor shall monitor the operation of this Part of this Act and shall, in particular, consider—
 - (a) the quality and effectiveness of accommodation and other facilities provided in accommodation centres,
 - (b) the nature and enforcement of conditions of residence,
 - (c) the treatment of residents, and
 - (d) whether, in the case of any accommodation centre, its location prevents a need of its residents from being met.
- (3) In exercising his functions the Monitor shall consult—
 - (a) the Secretary of State, and
 - (b) such other persons as he considers appropriate.
- (4) The Monitor shall report to the Secretary of State about the matters considered by the Monitor in the course of the exercise of his functions—
 - (a) at least once in each calendar year, and
 - (b) on such occasions as the Secretary of State may request.
- (5) Where the Secretary of State receives a report under subsection (4)(a) he shall lay a copy before Parliament as soon as is reasonably practicable.

- (6) The Monitor shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).
- (7) The Secretary of State may—
 - (a) pay fees and allowances to the Monitor;
 - (b) defray expenses of the Monitor;
 - (c) make staff and other facilities available to the Monitor.
- (8) The Secretary of State may appoint more than one person to act jointly as Monitor (in which case they shall divide or share functions in accordance with the terms of their appointment and, subject to that, by agreement between them).
- (9) A person who is employed within a government department may not be appointed as Monitor of Accommodation Centres.

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),
 - (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.

36 Education: general

- (1) For the purposes of section 13 of the Education Act 1996 (c. 56) (general responsibility of local education authority) a resident of an accommodation centre shall not be treated as part of the population of a local education authority's 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 a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs).
- (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 local education 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 of the Education Act 1996 (education out of school),
 - (d) section 316(2) and (3) of that Act (child with special educational needs to be educated in mainstream school), and
 - (e) paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).
- (6) The power of the Special Educational Needs Tribunal under section 326(3) of the Education Act 1996 (appeal against content of statement) is subject to subsection (2) above.
- (7) A person exercising a function under this Act 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 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 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.
- (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) the School Inspections Act 1996 (c. 57) 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),
 - (b) section 329A of the Education Act 1996 (review or assessment of educational needs at request of responsible body) shall have effect as if—
 - (i) an accommodation centre were a relevant school for the purposes of that section,
 - (ii) a child for whom education is provided at an accommodation centre under section 29(1)(f) were a registered pupil at the centre, and

Status: This is the original version (as it was originally enacted).

- (iii) a reference in section 329A to the responsible body in relation to an accommodation centre were a reference to any person providing education at the centre under section 29(1)(f), and
 - (c) 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.

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 local education 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 local education 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 local education 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 local education 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 local education 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 local education 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
 - (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.

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,
 - (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.

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.

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.