



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 2

#### ACCOMMODATION CENTRES

##### *Establishment*

#### **16 Establishment of centres**

- (1) The Secretary of State may arrange for the provision of premises for the accommodation of persons in accordance with this Part.
- (2) A set of premises provided under this section is referred to in this Act as an “accommodation centre”.
- (3) The Secretary of State may arrange for—
  - (a) the provision of facilities at or near an accommodation centre for sittings of adjudicators appointed for the purpose of Part 5 in accordance with a determination of the Lord Chancellor under paragraph 2 of Schedule 4;
  - (b) the provision of facilities at an accommodation centre for the taking of steps in connection with the determination of claims for asylum (within the meaning of section 18(3)).

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VALID FROM 08/01/2003

### *Use of centres*

PROSPECTIVE

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

- (1) The Secretary of State may arrange for the provision of accommodation for a person in an accommodation centre if—
  - (a) the person is an asylum-seeker or the dependant of an asylum-seeker, and
  - (b) the Secretary of State thinks that the person is destitute or is likely to become destitute within a prescribed period.
- (2) The Secretary of State may make regulations about procedure to be followed in respect of the provision of accommodation under this section.
- (3) The regulations may, in particular, make provision—
  - (a) specifying procedure to be followed in applying for accommodation in an accommodation centre;
  - (b) providing for an application to be combined with an application under or in respect of another enactment;
  - (c) requiring an applicant to provide information;
  - (d) specifying circumstances in which an application may not be considered (which provision may, in particular, provide for an application not to be considered where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries under paragraph (e));
  - (e) about the making of enquiries by the Secretary of State;
  - (f) requiring a person to notify the Secretary of State of a change in circumstances.
- (4) Sections 18 to 20 define the following expressions for the purpose of this Part—
  - (a) asylum-seeker,
  - (b) dependant, and
  - (c) destitute.

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

- (1) For the purposes of this Part a person is an “asylum-seeker” if—
  - (a) he is at least 18 years old,
  - (b) he is in the United Kingdom,
  - (c) a claim for asylum has been made by him at a place designated by the Secretary of State,
  - (d) the Secretary of State has recorded the claim, and
  - (e) the claim has not been determined.

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- (2) A person shall continue to be treated as an asylum-seeker despite subsection (1)(e) while—
  - (a) his household includes a dependent child who is under 18, and
  - (b) he does not have leave to enter or remain in the United Kingdom.
- (3) A claim for asylum is a claim by a person that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under—
  - (a) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, or
  - (b) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.

#### Commencement Information

- II** [S. 18](#) partly in force; [s. 18](#) not in force at Royal Assent see [s. 162\(2\)](#); [s. 18](#) in force for certain purposes at 8.1.2003 and for further certain purposes at 10.2.2003 by [S.I. 2003/1](#), [art. 2](#), [Sch.](#)

PROSPECTIVE

## 19 Destitution: definition

- (1) Where a person has dependants, he and his dependants are destitute for the purpose of this Part if they do not have and cannot obtain both—
  - (a) adequate accommodation, and
  - (b) food and other essential items.
- (2) Where a person does not have dependants, he is destitute for the purpose of this Part if he does not have and cannot obtain both—
  - (a) adequate accommodation, and
  - (b) food and other essential items.
- (3) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
- (4) In determining whether accommodation is adequate for the purposes of subsection (1) or (2) the Secretary of State may not have regard to—
  - (a) whether a person has an enforceable right to occupy accommodation,
  - (b) whether a person shares all or part of accommodation,
  - (c) whether accommodation is temporary or permanent,
  - (d) the location of accommodation, or
  - (e) any other matter prescribed for the purposes of this subsection.
- (5) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (1) and (2).
- (6) The Secretary of State may by regulations—

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- (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
- (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;
- (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependant of his;
- (d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependant of his has or might reasonably be expected to have;
- (e) make provision as to the valuation of assets.

PROSPECTIVE

## 20 Dependant: definition

For the purposes of this Part a person is a “dependant” of an asylum-seeker if (and only if) that person—

- (a) is in the United Kingdom, and
- (b) is within a prescribed class.

PROSPECTIVE

## 21 Sections 17 to 20: supplementary

- (1) This section applies for the purposes of sections 17 to 20.
- (2) The Secretary of State may inquire into and decide a person’s age.
- (3) A claim for asylum shall be treated as determined at the end of such period as may be prescribed beginning with—
  - (a) the date on which the Secretary of State notifies the claimant of his decision on the claim [<sup>F1</sup>or (as the case may be) of the declaration of inadmissibility under section 80A or 80B], or
  - (b) if the claimant appeals against the Secretary of State’s decision, the date on which the appeal is disposed of.
- (4) A notice under subsection (3)(a)—
  - (a) must be in writing, and
  - (b) if sent by first class post to the claimant’s last known address or to the claimant’s representative, shall be treated as being received by the claimant on the second day after the day of posting.
- (5) An appeal is disposed of when it is no longer pending for the purpose of—
  - (a) Part 5 of this Act, or
  - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).

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### Textual Amendments

- F1** Words in s. 21(3)(a) inserted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), [ss. 17\(6\)](#), [87\(1\)](#); [S.I. 2022/590](#), reg. 2, [Sch. 1 para. 16](#)

PROSPECTIVE

## 22 Immigration and Asylum Act 1999, s. 95

The Secretary of State may provide support under section 95 of the Immigration and Asylum Act 1999 (c. 33) (destitute asylum-seeker) by arranging for the provision of accommodation in an accommodation centre.

PROSPECTIVE

## 23 Person subject to United Kingdom entrance control

- (1) A residence [<sup>F2</sup>condition] may include a requirement to reside at an accommodation centre.

[<sup>F3</sup>(2) In subsection (1) “residence condition” means a condition imposed under Schedule 10 to the Immigration Act 2016.]

- (3) Where a person is required to reside in an accommodation centre by virtue of subsection (1) the Secretary of State must arrange for the provision of accommodation for the person in an accommodation centre.
- (4) But if the person is required to leave an accommodation centre by virtue of section 26 or 30 he shall be treated as having broken the residence [<sup>F4</sup>condition] referred to in subsection (1).
- (5) The Secretary of State may provide support under section 4 of the Immigration and Asylum Act 1999 (persons subject to entrance control) (including that section as amended by section 49 of this Act) by arranging for the provision of accommodation in an accommodation centre.

### Textual Amendments

- F2** Word in s. 23(1) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 32\(2\)](#); [S.I. 2017/1241](#), reg. 2(c) (with [Sch.](#)) (as amended by [S.I. 2018/31](#), reg. 2)
- F3** S. 23(2) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 32\(3\)](#); [S.I. 2017/1241](#), reg. 2(c) (with [Sch.](#)) (as amended by [S.I. 2018/31](#), reg. 2)
- F4** Word in s. 23(4) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\)](#), s. 94(1), [Sch. 10 para. 32\(4\)](#); [S.I. 2017/1241](#), reg. 2(c) (with [Sch.](#)) (as amended by [S.I. 2018/31](#), reg. 2)

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## PROSPECTIVE

**24 Provisional assistance**

- (1) If the Secretary of State thinks that a person may be eligible for the provision of accommodation in an accommodation centre under section 17, he may arrange for the provision for the person, pending a decision about eligibility, of—
  - (a) accommodation in an accommodation centre, or
  - (b) other support or assistance (of any kind).
- (2) Section 99 of the Immigration and Asylum Act 1999 (c. 33) (provision of support by local authority) shall have effect in relation to the provision of support for persons under subsection (1) above as it has effect in relation to the provision of support for asylum-seekers under sections 95 and 98 of that Act.

## PROSPECTIVE

**25 Length of stay**

- (1) The Secretary of State may not arrange for the provision of accommodation for a person in an accommodation centre if he has been a resident of an accommodation centre for a continuous period of six months.
- (2) But—
  - (a) subsection (1) may be disapplied in respect of a person, generally or to a specified extent, by agreement between the Secretary of State and the person, and
  - (b) if the Secretary of State thinks it appropriate in relation to a person because of the circumstances of his case, the Secretary of State may direct that subsection (1) shall have effect in relation to the person as if the period specified in that subsection were the period of nine months.
- (3) Section 51 is subject to this section.
- (4) The Secretary of State may by order amend subsection (1) or (2)(b) so as to substitute a shorter period for a period specified.

## PROSPECTIVE

**26 Withdrawal of support**

- (1) The Secretary of State may stop providing support for a person under section 17 or 24 if—
  - (a) the Secretary of State suspects that the person or a dependant of his has committed an offence by virtue of section 35, or
  - (b) the person or a dependant of his has failed to comply with directions of the Secretary of State as to the time or manner of travel to accommodation provided under section 17 or 24.

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- (2) The Secretary of State may by regulations specify other circumstances in which he may stop providing support for a person under section 17 or 24.
- (3) In determining whether or not to provide a person with support or assistance under section 17 or 24 of this Act or section 4, 95 or 98 of the Immigration and Asylum Act 1999 (asylum-seeker) the Secretary of State may take into account the fact that—
  - (a) he has withdrawn support from the person by virtue of this section or section 30(4) or (5), or
  - (b) circumstances exist which would have enabled the Secretary of State to withdraw support from the person by virtue of this section had he been receiving support.
- (4) This section is without prejudice to section 103 of the Immigration and Asylum Act 1999 (c. 33) (appeal against refusal to support).

## PROSPECTIVE

### *Operation of centres*

#### **27 Resident of centre**

A reference in this Part to a resident of an accommodation centre is a reference to a person for whom accommodation in the centre is provided—

- (a) under section 17,
- (b) by virtue of section 22,
- (c) by virtue of section 23, or
- (d) under section 24.

#### **28 Manager of centre**

A reference in this Part to the manager of an accommodation centre is a reference to a person who agrees with the Secretary of State to be wholly or partly responsible for the management of the centre.

#### **29 Facilities**

- (1) The Secretary of State may arrange for the following to be provided to a resident of an accommodation centre—
  - (a) food and other essential items;
  - (b) money;
  - (c) assistance with transport for the purpose of proceedings under the Immigration Acts or in connection with a claim for asylum;
  - (d) transport to and from the centre;
  - (e) assistance with expenses incurred in connection with carrying out voluntary work or other activities;
  - (f) education and training;
  - (g) facilities relating to health;

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- (h) facilities for religious observance;
  - (i) anything which the Secretary of State thinks ought to be provided for the purpose of providing a resident with proper occupation and for the purpose of maintaining good order;
  - (j) anything which the Secretary of State thinks ought to be provided for a person because of his exceptional circumstances.
- (2) The Secretary of State may make regulations specifying the amount or maximum amount of money to be provided under subsection (1)(b).
- (3) The Secretary of State may arrange for the provision of facilities in an accommodation centre for the use of a person in providing legal advice to a resident of the centre.
- (4) The Secretary of State shall take reasonable steps to ensure that a resident of an accommodation centre has an opportunity to obtain legal advice before any appointment made by an immigration officer or an official of the Secretary of State for the purpose of obtaining information from the resident to be used in determining his claim for asylum.
- (5) The Secretary of State may by order amend subsection (1) so as to add a reference to facilities which may be provided.

### **30 Conditions of residence**

- (1) The Secretary of State may make regulations about conditions to be observed by residents of an accommodation centre.
- (2) Regulations under subsection (1) may, in particular, enable a condition to be imposed in accordance with the regulations by—
  - (a) the Secretary of State, or
  - (b) the manager of an accommodation centre.
- (3) A condition imposed by virtue of this section may, in particular—
  - (a) require a person not to be absent from the centre during specified hours without the permission of the Secretary of State or the manager;
  - (b) require a person to report to an immigration officer or the Secretary of State.
- (4) If a resident of an accommodation centre breaches a condition imposed by virtue of this section, the Secretary of State may—
  - (a) require the resident and any dependant of his to leave the centre;
  - (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.
- (5) If a dependant of a resident of an accommodation centre breaches a condition imposed by virtue of this section, the Secretary of State may—
  - (a) require the resident and any dependant of his to leave the centre;
  - (b) authorise the manager of the centre to require the resident and any dependant of his to leave the centre.
- (6) Regulations under this section must include provision for ensuring that a person subject to a condition is notified of the condition in writing.
- (7) A condition imposed by virtue of this section is in addition to any [<sup>F5</sup>condition imposed under Schedule 10 to the Immigration Act 2016.]



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- (8) A reference in this Part to a condition of residence is a reference to a condition imposed by virtue of this section.

#### Textual Amendments

- F5** Words in s. 30(7) substituted (15.1.2018) by [Immigration Act 2016 \(c. 19\), s. 94\(1\), Sch. 10 para. 33; S.I. 2017/1241, reg. 2\(c\)](#) (with [Sch.](#)) (as amended by [S.I. 2018/31, reg. 2](#))

### 31 Financial contribution by resident

- (1) A condition of residence may, in particular, require a resident of an accommodation centre to make payments to—
  - (a) the Secretary of State, or
  - (b) the manager of the centre.
- (2) The Secretary of State may make regulations enabling him to recover sums representing the whole or part of the value of accommodation and other facilities provided to a resident of an accommodation centre if—
  - (a) accommodation is provided for the resident in response to an application by him for support,
  - (b) when the application was made the applicant had assets which were not capable of being realised, and
  - (c) the assets have become realisable.
- (3) In subsection (2) “assets” includes assets outside the United Kingdom.
- (4) An amount recoverable by virtue of regulations made under subsection (2) may be recovered—
  - (a) as a debt due to the Secretary of State;
  - (b) by another prescribed method (which may include the imposition or variation of a residence condition).

### 32 Tenure

- (1) A resident of an accommodation centre shall not be treated as acquiring a tenancy of or other interest in any part of the centre (whether by virtue of an agreement between the resident and another person or otherwise).
- (2) Subsection (3) applies where—
  - (a) the Secretary of State decides to stop arranging for the provision of accommodation in an accommodation centre for a resident of the centre, or
  - (b) a resident of an accommodation centre is required to leave the centre in accordance with section 30.
- (3) Where this subsection applies—
  - (a) the Secretary of State or the manager of the centre may recover possession of the premises occupied by the resident, and
  - (b) the right under paragraph (a) shall be enforceable in accordance with procedure prescribed by regulations made by the Secretary of State.

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- (4) Any licence which a resident of an accommodation centre has to occupy premises in the centre shall be an excluded licence for the purposes of the Protection from Eviction Act 1977 (c. 43).
- (5) The following shall be inserted after section 3A(7A) of the Protection from Eviction Act 1977 (disapplication of section 3: Part VI of Immigration and Asylum Act 1999 (c. 33))—
  - “(7B) Section 32 of the Nationality, Immigration and Asylum Act 2002 (accommodation centre: tenure) provides for a resident’s licence to occupy an accommodation centre to be an excluded licence.”
- (6) The following shall be inserted after section 23A(5A) of the Rent (Scotland) Act 1984 (c. 58) (excluded tenancies and occupancy rights)—
  - “(5B) Nothing in section 23 of this Act applies to a resident’s occupancy of an accommodation centre provided under section 16 or 24(1)(b) of the Nationality, Immigration and Asylum Act 2002 (“resident” being construed in accordance with section 27 of that Act).”
- (7) In this section a reference to an accommodation centre includes a reference to premises in which accommodation is provided under section 24(1)(b).

### 33 Advisory Groups

- (1) The Secretary of State shall appoint a group (to be known as an Accommodation Centre Advisory Group) for each accommodation centre.
- (2) The Secretary of State may by regulations—
  - (a) confer functions on Advisory Groups;
  - (b) make provision about the constitution and proceedings of Advisory Groups.
- (3) Regulations under subsection (2)(a) must, in particular, provide for members of an accommodation centre’s Advisory Group—
  - (a) to visit the centre;
  - (b) to hear complaints made by residents of the centre;
  - (c) to report to the Secretary of State.
- (4) The manager of an accommodation centre must permit a member of the centre’s Advisory Group on request—
  - (a) to visit the centre at any time;
  - (b) to visit any resident of the centre at any time, provided that the resident consents.
- (5) A member of an Advisory Group shall hold and vacate office in accordance with the terms of his appointment (which may include provision about retirement, resignation or dismissal).
- (6) The Secretary of State may—
  - (a) defray expenses of members of an Advisory Group;
  - (b) make facilities available to members of an Advisory Group.

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## PROSPECTIVE

## General

**F<sup>6</sup>34 The Monitor of Accommodation Centres**

.....

**Textual Amendments**

**F6** 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),
  - (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**

**I2** 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>F7</sup>local authority]) a resident of an accommodation centre shall not be treated as part of the population of a [<sup>F7</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

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- (b) named in [<sup>F8</sup>an EHC plan maintained for the child under section 37 of the Children and Families Act 2014 or]<sup>F9</sup>a statement in respect of the child under section 324 of the Education Act 1996 (c. 56) (special educational needs)]<sup>F9</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>F10</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>F11</sup>or 19A] of the Education Act 1996 (education out of school),
  - (d) [<sup>F12</sup>section 316(2) and (3) of that Act (child with special educational needs to be educated in mainstream school), <sup>F13</sup>...]
  - (e) [<sup>F14</sup>paragraphs 3 and 8 of Schedule 27 to that Act (special education needs: making of statement: parental preference).]
  - [<sup>F15</sup>(f) sections 33 and 34 of the Children and Families Act 2014 (mainstream education for children with special educational needs), [<sup>F16</sup>and]
  - (g) sections 38 and 39 of that Act (EHC plan: request of parent for named school etc).]<sup>F17</sup>, and]
  - [<sup>F18</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>F19</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>F20</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>F23</sup>, Part 3 of the Children and Families Act 2014]<sup>F24</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>F24</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>F25</sup>called for by his special educational needs or] which his learning difficulty calls for,
  - [<sup>F26</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.

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- (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>F27</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>F28</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>F29</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>F30</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

- F7** 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)**
- F8** 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)
- F9** 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)**
- F10** 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)**
- F11** 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**
- F12** 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)**

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- F13** 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)
- F14** 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)**
- F15** 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)
- F16** 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)**
- F17** 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)**
- F18** 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)**
- F19** 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)
- F20** 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)**
- F21** 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)
- F22** 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**
- F23** 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)
- F24** 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)**
- F25** 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)
- F26** 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)**
- F27** 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
- F28** 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)
- F29** 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)**
- F30** 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>F31</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>F31</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.



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- (3) In determining whether to exercise a power under subsection (2) in respect of a child a [F31local 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 [F31local 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 [F31local 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 [F31local 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.

#### Textual Amendments

**F31** 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—

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- (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.



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#### Commencement Information

**I3** 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

**I4** S. 41(1) partly in force; s. 41(1) in force at Royal Assent see [s. 162\(2\)](#)

### 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.

**Status:**

Point in time view as at 07/11/2002. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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