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# THE SCHOOL ADMISSIONS (Exceptional Circumstances) REGULATIONS (NI) 2010



## PREFACE

The draft School Admissions (Exceptional Circumstances) Regulations (NI) 2010 are issued for consultation. Responses to their content are requested by 23 October, 2009.

In addition, an Equality and Human Rights screening document is also available for comment. The policy has been screened out of requiring a full Equality Impact Assessment. Responses to this document are requested by 23 October 2009.

You can read and download the consultation document, the School Admissions (Exceptional Circumstances) Regulations (NI) 2010 and the Equality and Human Rights screening document from our website at [www.deni.gov.uk](http://www.deni.gov.uk).

All Responses should be sent to School Access Team, Department of Education, Rathgael House, Balloo Road, Bangor, BT19 7PR or [Alison.Thompson@deni.gov.uk](mailto:Alison.Thompson@deni.gov.uk). In line with the Freedom of Information Act, we may publish the information you provide. A summary of contributions and the Department's response to these will be published when the consultation period has concluded.

If you require these documents in other formats (such as large print, Braille, on audio cassette, easy read or on computer disk) and/or other languages, or have any other queries, please contact School Access Team using the address or e-mail address above or by any of the following methods;

By phone: 028 9127 9605

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## SUMMARY OF THE EXCEPTIONAL CIRCUMSTANCES PROCESS

1. Some children (excluding those with a Statement of Special Educational Need) have an exceptionally compelling individual need to seek a place at a particular post-primary school, but cannot be admitted to that school through the usual Transfer route. The current system of **transfer** from primary to post primary school, and from post primary to post primary school, does not address this need. The creation of the exceptional circumstances process seeks to rectify this situation.
2. In line with the recommendations of the Costello Report, the Department of Education recognises that a small group of children with exceptional circumstances will require admission to a specific post-primary school and that this cannot always be determined by the application of admissions criteria by the Board of Governors of a particular school. Rather, the parent of a child from this small group should have recourse to a separate route into a post primary school for their child, if the current Transfer system has not been able to address that child's exceptional and individual need to attend one particular school.
3. Article 16A of the Education (NI) Order 1997<sup>1</sup> gives the Department a duty to make regulations that establish, for admissions taking place after July 2010, an exceptional circumstances process for post-primary transfer. Article 16A prescribes some aspects of the process as follows:
  - The Education and Skills Authority (ESA) will make arrangements to ensure that the parent of a child may apply to an Exceptional Circumstances Tribunal and the Tribunal must provide a hearing for this application.
  - If the Exceptional Circumstances Tribunal is satisfied that the application presents exceptional circumstances that require the admission of the child to the specified post primary school, the Tribunal will direct the school to admit the child.
  - Any child admitted to a school on the direction of an Exceptional Circumstances Tribunal will be over and above the approved admissions and enrolment numbers of the school. That is to say, the Exceptional Circumstances Tribunals will have the power to create extra places at post-primary schools where they consider these are needed in order to respond to an applicant's exceptional circumstances.
  - Children in receipt of a Statement of Special Educational Needs cannot make an exceptional circumstances application (there is an alternative process available to them).
4. Article 16A also places legal responsibility on the Department of Education to provide further detail (on the operation of the exceptional circumstances process and the definition of exceptional circumstances) through regulations. To respond to this obligation the Department has developed the draft regulations attached.

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*1 As amended by Article 29 of the Education (NI) Order 2006 and by Schedule 7 of the Education Bill currently under consideration by the Committee for Education at the Assembly*

The regulations envisage an exceptional circumstances process that would work as follows:

■ **Who will be responsible for the Exceptional Circumstances Tribunals?**

The ESA will be responsible for making arrangements to ensure that the parent of a child may apply to an Exceptional Circumstances Tribunal. In effect this means that the ESA will manage the day-to-day administration of the Exceptional Circumstances Tribunals. The Department of Education will be responsible for regulating the procedure and constitution of the Exceptional Circumstances Tribunals.

■ **How often will the Exceptional Circumstances Tribunals sit? How many Exceptional Circumstances Tribunals will there be?**

The Tribunals will sit as often as is necessary to respond to the numbers of cases that they receive. There will be as many Tribunals as ESA deems necessary to meet this demand. Two or more Tribunals may sit at any one time in order to hear as many cases as possible within the tight timescales available.

■ **Who will sit on the Exceptional Circumstances Tribunals?**

Exceptional Circumstances Tribunals will be chosen from a panel of qualified professionals appointed by the ESA to consider applications from parents. Each Tribunal will consist of three persons. Among the three persons there must be at least one solicitor or barrister. Otherwise these individuals will be persons who, in the opinion of the ESA, have "relevant experience in education of the welfare of children". Members will be remunerated. Decisions will be based on simple majority of the Tribunal.

■ **When can parents apply to the new Exceptional Circumstances Tribunals?**

Parents will be able to make application to the Exceptional Circumstances Tribunals for a direction to have their child admitted to one specific post primary school from spring 2010, with respect to application for admissions that will take effect after July 31, 2010.

■ **How can parents apply?**

Parents will apply to an Exceptional Circumstances Tribunal in writing and will set out the grounds for their application. The Exceptional Circumstances Tribunal may request further information from parents by a deadline and will offer parents the opportunity to make written representations or to appear before the Tribunal in person to make oral representations. The Exceptional Circumstances Tribunal may request further information from any source relevant to the determination of an application. The hearing of a case must take place within 4 weeks of receipt of application or as soon as possible thereafter.

## ■ How will the Exceptional Circumstances Tribunals define the phrase 'exceptional circumstances'?

Exceptional Circumstances Tribunals will use the following definition of exceptional circumstances in order to determine whether or not the circumstances presented in an application are exceptional: **"circumstances which are both exceptional and personal to the child in question and relate to admission to a specified school only"**.

## ■ What kinds of cases could be considered to be exceptional?

Cases that the Exceptional Circumstances Tribunals **may** consider as examples of "exceptional circumstances" requiring admission to a specified post-primary school could include but are not limited to:

- cases where, in the opinion of a registered medical practitioner, a child has been subject to **sexual abuse**;
- cases where a child is a **looked-after child**.

## ■ What kinds of cases could not be considered to be exceptional?

Exceptional Circumstances Tribunals **may not** consider the following as examples of exceptional circumstances:

- cases that mainly consist of an argument for access to a preferred kind of **educational environment or category of school**;
- cases that mainly consist of an argument for access to a particular kind of **educational provision including a preference for a particular subject or course**;
- cases that mainly consist of a child's **academic ability**;
- cases that mainly consist of the **availability of transport** to a school.

## ■ What happens if a parent has not applied to the school in question using the usual Transfer route?

Exceptional Circumstances Tribunals will not be able to consider any application for a child to be admitted to a specified school, under the exceptional circumstances process, unless that school has already considered an application from the child and not agreed to admit the child.

6. In summary, the School Admissions (Exceptional Circumstances) Regulations (NI) 2010 will govern the actions of the Exceptional Circumstances Tribunals, and the practical application of the exceptional circumstances process. The Regulations must ensure that;
  - The Tribunals respond only to cases where truly exceptional circumstances exist;
  - The Tribunals do not direct the admission of a child to a particular school where a reasonable alternative post primary placement option exists for that child;
  - The views of the child concerned can be heard;
  - The Tribunals are able to make timely and reasonable decisions with respect to every case they consider;
  - The exceptional circumstances process does not duplicate or contradict the two other routes by which children gain admission to post-primary schools: the standard applications process and the process for children in receipt of a Statement of Special Educational Needs.
  
7. The Exceptional Circumstances Tribunals must be established and available to hear their first applications in Spring 2010, as part of the Transfer 2010 process. Your views with respect to the Draft Regulations attached are welcomed.

**DEPARTMENT OF EDUCATION**  
**SEPTEMBER 2009**