



Department of
Education
www.deni.gov.uk

AN RINN
Oideachais
MIONSTRE O
Lear

EQUALITY AND HUMAN RIGHTS SCREENING TEMPLATE

Equality Guidance and Co-Ordination Unit
Room G2, Rathgael House
Ext 59686/59472
equality@deni.gov.uk

SCREENING TEMPLATE

See the Screening Template Guidance Notes for further information on the 'why' 'what' 'when', and 'who' in relation screening, for background information on the relevant legislation and for help in answering the questions on this template (follow the links).

(1) INFORMATION ABOUT THE POLICY/DECISION

1.1 Title of policy/decision

The Exceptional Circumstances Regulations (draft)

1.2 Description of policy/decision

- **what is it trying to achieve? (aims/objectives)**
- **how will this be achieved? (key elements)**
- **what are the key constraints? (e.g. financial, legislative)**

Children who have a statement of Special Educational Need are placed in a post-primary school deemed as suitable for them through a review of their statement and their educational needs. Currently, all other children effectively compete for places at post-primary schools through the standard process of application and admissions criteria. This standard process, for non-statemented children, is for children whose educational needs are considered not to require the securing of a particular post-primary placement.

This means that there is a deficiency in the current post-primary admissions process: non-statemented children may be considered to have educational needs that do not require the securing of a particular post-primary placement, but they can, exceptionally, have a compelling need of another nature for a place at a particular post-primary school. Such children can currently only compete for a place at this particular post-primary school through the standard admissions process. This means they can fail to be admitted to this particular school and this failure cannot be addressed. The creation of the exceptional circumstances process seeks to rectify this. It will be a way of ensuring that a specific post-primary school can admit non-statemented children who, whilst they have educational needs that do not require the securing of a particular post-primary placement, still present an exceptional need of another nature to be admitted to that specific post-primary school.

Under Article 16A of the Education (NI) Order 1997 (as amended) the Department of Education has the duty to establish a process by which parents can apply to a Exceptional Circumstances Tribunal for a direction for their child to be admitted to the particular post primary school that they must attend for exceptional reasons. The Department also has the duty to make Regulations to govern the procedure and constitution of these Tribunals and to define 'exceptional circumstances'. In drafting the School Admissions (Exceptional Circumstances) Regulations (NI) 2010 the Department is fulfilling these duties. The Department is responsible for regulating the process but in practice ESA will have been established by the time the Regulations are made and will be responsible for making the arrangements which will allow parents to apply to an Exceptional Circumstances Tribunal. Under law the facility to apply to an Exceptional Circumstances Tribunal must be established and ready to hear applications relating to admissions to take effect after July 2010. The Department has a duty to ensure that the Regulations which allow the Tribunals to be established are made as soon as possible, and no later than December 2009 (cont. overleaf).

The Exceptional Circumstances Tribunals are likely to have to manage a large volume of applications. Many of these applications will ultimately not be successful but this volume may hinder the timely processing of all applications. The Tribunals must be able to make fair and transparent decisions in this climate.

There will be cost implications for ESA with respect to the costs of establishing a new process and the recurrent costs of managing the Exceptional Circumstances Tribunals. The Department will ensure that sufficient funding is provided to ESA to ensure that the service can be maintained.

1.3 Main stakeholders affected (e.g. staff, actual or potential service users, other public sector organisations, voluntary and community groups, trade unions/professional organisations or private sector organisations)

The main stakeholders are the Department of Education, Education and Library Boards (at present), ESA, Schools and families. Many other organisations, however, could be involved in the periphery of the process including, but not limited to, Social Services, Medical Professionals and citizen advice groups.

1.4 Who is responsible for (a) devising and (b) delivering the policy i.e. is it DE, a

Whitehall department, EU etc

- **What is the relationship?**
- **Have they considered this issue any equality issues?**

The Department of Education is responsible for regulating the procedure and constitution of the Exceptional Circumstances Tribunals, and, the definition of exceptional circumstances. The Department will issue and revise guidance in respect of the discharge of the Tribunals' duties as appropriate. ESA will be responsible for the day to day running of the Tribunals. A full Equality Impact Assessment may be completed by ESA with respect to how the process will be managed.

1.5 Other policies/decisions with a bearing on this policy/decision

- **what are they?**
- **who owns them?**
- **Are there any linkages to other NI departments/NDPBs**

The Exceptional Circumstances Process is an entirely new process which will compliment the other two routes to post primary school; the standard transfer route, and, the statementing process. It provides a service that neither of the alternative routes can provide. The Department is responsible for both of these policies. The Education and Library Boards (soon to be ESA) are responsible for the operation of these policies in practice.

The Department of Health, Social Services and Public Safety may have linkages with the process as applications to the Tribunals could involve the input of medical professionals, Social Services and other Welfare Agencies.

2) SCREENING THE POLICY/DECISION

2.1 In terms of groupings under Section 75, what is the make up of those affected by the policy/decision?

The exceptional circumstances process will provide pupils, who previously would have not been able to be admitted to the school they must attend, with a new route in to that school. The ESA will be responsible for the arrangements through which parents and children will access the exceptional circumstances process and may complete an EQIA on these. The Department will ensure that ESA designs these arrangements with particular relevance to the Section 75 groups.

All relevant Section 75 groups, however, will have an equal and unfettered opportunity to apply to an Exceptional Circumstances Tribunal and have their case considered by it. The Tribunal, made up of a panel of qualified professionals, with advice, as necessary from a wide range of persons with additional expertise, and within the confines placed upon it by the Regulations established by the Department, will have the discretion to consider each case on its own merits and decide whether or not that particular pupil should be admitted to the school they have identified as being the only suitable school in the exceptional circumstances in which they find themselves.

In this context, and due to the very nature of the circumstances which are exceptional and therefore difficult to define in advance, it is very difficult for the Department to determine the breakdown of types of pupils who might apply to the Tribunals. Stringent monitoring of the applications successful and otherwise, however, will be made and the Department and ESA will pay particular attention to the experience of the Section 75 groups in order to ensure that if adjustments must be made to the process, these can be made as quickly as is possible.

Group	Please provide details
Gender	At this point it is unknown what the gender breakdown of applications to the Tribunal will be. There is no evidence to suggest that one gender would be more likely to apply than the other.
Age	The process is open to all pupils who fall within the upper limit of compulsory school age and who are of secondary school age. In practice this means that most applications will be made on behalf of pupils aged 11-16.
Religion	It is unknown what the religious breakdown of applications to the Tribunal will be. There is no evidence to suggest that families of one particular religion would be more likely to apply than the other.
Political Opinion	It is unknown what the breakdown of political opinion of applications to the Tribunal will be. There is no evidence to suggest that families of one particular political opinion would be more likely to apply than the other.
Marital Status	Applications on behalf of the small number of pupils who are married at age 16 could be received.
Dependent Status	It is likely that a number of young carers may want to apply to the Tribunal.
Disability	Applications on behalf of pupils who have a disability and who are Statemented cannot be made to the Tribunal as they are outside the normal Open Enrolment and Transfer Procedures and have an entirely separate route in to post primary school. There may be a small number of pupils with

	a registered disability who are not Statemented and their cases can be considered by the Tribunal. It is impossible to predict the numbers of these pupils or what the nature of their disability might be as the vast majority of disabled pupils are Statemented.
Ethnicity	It is unknown what the breakdown of ethnicity of applications to the Tribunal will be. There is no evidence to suggest that families of one particular ethnicity would be more likely to apply than the other.
Sexual Orientation	Applications may be received on behalf of pupils irrespective of sexual orientation.

2.2 Is there any indication or evidence of higher or lower participation or uptake by different groups?

Group	Yes/No/ Don't Know	Please provide details
Gender	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available. There is no evidence to suggest that participation will vary across gender.
Age	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake within the specified age range of applicants are not available. Most applicants will be between the ages of 11-16. It is likely that most applications to the Tribunals will be on behalf of pupils who are aged 11 and are taking part in the primary to post primary transfer procedure.
Religion	Not	This is an entirely new process which has not existed

	known	before and so statistics on participation or uptake are not available. There is no evidence to suggest that participation will vary according to religion.
Political Opinion	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available. There is no evidence to suggest that participation will vary according to political opinion.
Marital Status	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available. Applications on behalf of the small number of pupils who are married at age 16 could be received but the vast majority of applications are likely to be on behalf of pupils who are not married.
Dependent Status	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available although it is likely that all applicants will be dependents. A small number of applicants are likely to be young carers.
Disability	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available. The vast majority of disabled pupils are Statemented but a small number are not Statemented and could make application.
Ethnicity	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available. There is no evidence to suggest that there will be higher rates of participation according to ethnicity although it is likely that applications will be received from all the ethnic groups represented in the education system.

Sexual Orientation	Not known	This is an entirely new process which has not existed before and so statistics on participation or uptake are not available. There is no evidence to suggest that participation rates will vary according to sexual orientation.
--------------------	-----------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2.3 Is there any indication or evidence that different groups have different needs, experiences, issues and priorities in relation to the policy/decision?

There is no evidence to suggest that different groups will experience negative differentiation as a result of the process. The consultation responses from the Costello Report and the Transfer 2010 Guidance indicated that many respondents were supportive of the Exceptional Circumstances process and indicated that it provided a positive addition to the Transfer arrangements for all pupils. Some respondents sought assurances that particular groups would be included in the process. The Regulations, as drafted by the Department, allow all of these groups to make application to the process on an equal basis with all other applicants.

Group	Yes/No/ Don't Know	Please provide details
Gender	Not known	This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between genders.
Age	Not known	This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to age. Pupils will have the opportunity to express their own views. Their parent or guardian and a representative of their parent or guardian's own choosing will be able to attend the Tribunal hearings if they wish.
Religion	Not known	This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to religion.

Political Opinion	Not known	This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to political opinion.
Marital Status	Not known	This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to marital status. Pupils will have the opportunity to express their own views. Their parent or guardian and a representative of their parent or guardian's own choosing will be able to attend the Tribunal hearings if they wish; this could include the pupil's spouse, if appropriate.
Dependent Status	Not known	This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to dependent status. Pupils will have the opportunity to express their own views. Their parent or guardian and a representative of their parent or guardian's own choosing will be able to attend the Tribunal hearings if they wish, this could include a person who has been nominated to attend on behalf of the pupil's parent or guardian if that person is unable to attend. If the parent or guardian does want to attend the hearing, and special access arrangements need to be made, these will be put in place.

Disability	Not known	<p>This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to disability. Pupils will have the opportunity to express their own views. Their parent or guardian and a representative of their parent or guardian's own choosing will be able to attend the Tribunal hearings if they wish. If special access arrangements need to be made, these will be put in place.</p>
Ethnicity	Not known	<p>This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to ethnicity. Pupils will have the opportunity to express their own views. Their parent or guardian and a representative of their parent or guardian's own choosing will be able to attend the Tribunal hearings if they wish. This could include an interpreter if English is not the family's first language, or a person who is familiar with the needs of their community if the family is a member of the traveller community.</p>
Sexual Orientation	Not known	<p>This is an entirely new process which has not existed before and so evidence relating to the differing needs of applicants is not available. There is no evidence to suggest that the process will negatively differentiate between applicants according to sexual orientation. Pupils will have the opportunity to express their own views.</p>

2.4 Is it likely that the policy/decision will meet those needs?

Group	Yes/No/Don't Know	Please briefly give details
All relevant Section 75 Groups	Yes	There is no evidence to suggest that the Exceptional Circumstances Tribunals will not be able to meet the needs of all families who fall under the section 75 groups. The arrangements made by ESA and through which parents and children will access the exceptional circumstances process may be subject to an EQIA as appropriate. The Department will ensure that ESA designs these arrangements with particular relevance to the Section 75 groups. Applications made will be monitored with respect to the section 75 groups. The process will be reviewed and adjustments will be made as they become necessary.
<i>N.B. continue as appropriate</i>		

2.5 What other feedback, complaints, statistics, surveys, research reports, previous consultations or additional information is available to assess and screen the impact of this policy/function.

The responses to the Costello consultation and the recommendations of the Costello Report, the responses to the Transfer 2010 consultation and the responses to the EQIA consultation on the Transfer 2010 process, general working knowledge held by School Access Team.

2.6 Is there an opportunity to better promote equality of opportunity or good relations by altering the policy/decision

or working with others in government or in the larger community?

Group	Suggestions
Age	The Regulations already ensure that the views of the child may be considered by the Tribunal.
Ethnicity	<p>Newcomer Children: there are around 7,000 newcomer children recorded in the 2008 School Census. DE will advise ESA that consideration will therefore be given to translation and interpreting services for parents of newcomer children wishing to access the service. In addition, DE recommends that ESA includes the Inclusion and Diversity Service in promoting this route to new arrivals where exceptional circumstances may exist.</p> <p>Travellers: there is anecdotal evidence that the illiteracy rate among Travellers is very high, as stated in the Equality Commission report: Mainstreaming Equality of Opportunity for Travellers in Education (April 2006). DE will advise ESA that consideration should be given as to how illiterate parents can access the service. In addition, the service should be promoted in the Traveller community - this could be done via the Traveller Support Groups in each area or the board Traveller services/ ESA Traveller service.</p> <p>In general: DE would recommend that Tribunals hearing cases for ethnic minority children including Travellers or newcomers should ensure that individuals who are trained in cultural awareness are present to help inform the decision fairly.</p>
<i>N.B. continue as appropriate</i>	

2.7 What changes to the policy/decision – if any – or what additional measures would you suggest to ensure that it promotes good relations?

Group	Suggestions
Religion	All applications to the Exceptional Circumstances Tribunals will be monitored with respect to the Section 75 groups. Feedback from all service users will be sought. This evidence will be used to ensure that the process is fair, easily accessible by all groups and ensures equality of outcome for all applicants.

Political Opinion	All applications to the Exceptional Circumstances Tribunals will be monitored with respect to the Section 75 groups. Feedback from all service users will be sought. This evidence will be used to ensure that the process is fair, easily accessible by all groups and ensures equality of outcome for all applicants.
Ethnicity	All applications to the Exceptional Circumstances Tribunals will be monitored with respect to the Section 75 groups. Feedback from all service users will be sought. This evidence will be used to ensure that the process is fair, easily accessible by all groups and ensures equality of outcome for all applicants.

2.8 Is there any evidence or have previous consultations with relevant groups, organisations or individuals indicated that particular policies create problems that are specific to them?

There is no evidence to suggest that different groups will experience particular problems as a result of the process. The consultation responses from the Costello Report and the Transfer 2010 Guidance indicated that many respondents were supportive of the Exceptional Circumstances process and indicated that the process provided a positive additional transfer route for all pupils. Some respondents sought assurances that particular groups would be included in the process. The Regulations, as drafted by the Department, allow all of these groups to make application to the process on an equal basis with all other applicants.

2.9 Please detail what data you will collect in the future in order to monitor the effect of the policy/decision on any of the groups under Section 75?

The Department of Education will advise ESA to collect data relating to the relevant Section 75 groups with respect to both all applications to the service and with respect to successful and unsuccessful applications to the Service so that this information can be monitored in detail and used to inform future review of the policy and regulations. It is likely that this monitoring will include seeking information from applicants regarding their religion, political opinion, racial group, disability and dependent status. Information regarding the pupil's gender and age will also be gathered as a matter of course.

(3) SHOULD THE POLICY/DECISION BE SUBJECT TO EQUALITY IMPACT ASSESSMENT?

Equality impact assessment procedures are confined to those policies/decisions considered likely to have significant/major implications for equality of opportunity.

If your screening has indicated that a policy/decision is likely to have an adverse differential impact, how would you categorise it?

Our screening has identified that there is likely to be no differential impact.

Please tick.

Significant/major impact	N/A
Low impact	N/A

Do you consider that this policy/decision needs to be subjected to a full equality impact assessment?

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>

Please give reasons for your decision.

At this stage the Department is consulting on the draft regulations that define exceptional circumstances and regulate the procedure and constitution of the Tribunals. It would not appear to the Department that any of these arrangements will have an adverse differential impact on one particular group over another. Indeed, insofar as some children will now have a route into the post-primary school for which their circumstances may compel attendance, the impact of these regulations can only be positive.

In previous consultation responses various groups identified the need for the closest possible definition of the nature of exceptional circumstances. The Department has determined that the regulations should permit Exceptional Circumstances Tribunals to have as much discretion as possible. The regulations define exceptional circumstances in a way that recognise that, ultimately, these circumstances cannot

completely be anticipated and may exist according to the judgment of a Tribunal. This means that beyond anticipating the fact that the Exceptional Circumstances Procedure may present a form of post-primary transfer particularly appropriate for children within 2 Section 75 Groups (children who are carers and children who have a non-stated disability), the actual impact of the new procedure cannot be anticipated. Once again, however, given that the new procedure will augment post-primary transfer with a procedure focussed on sympathetically responding to exceptional needs, that impact can only be positive.

As well as defining the nature of exceptional circumstances, the Regulations specify that the Tribunals appointed to consider exceptional circumstances applications will be drawn from a panel of experts in the field of welfare of children and qualified legal experts. This expertise should help to ensure that decisions are fair and well informed.

Should an application be successful this will result in the Tribunal directing the school to admit the pupil. The pupil will be supernumerary. In previous consultations various groups were concerned about this element of the process. The Department, however, has determined that this is the only fair way to ensure that these pupils can always be admitted to the school they need to attend. It is the Department's view that the number of successful cases should be very small as should be the nature of exceptional circumstances.

The Department will work alongside ESA to ensure that all further arrangements put in place by ESA will be embedded with consideration for equality for the Section 75 groups and will be the subject of an EQIA as appropriate.

(4) DISABILITY DISCRIMINATION

4.1 Does the policy/decision in any way discourage disabled people from participating in public life or does it fail to promote positive attitudes towards disabled people?

No. As 1.2 explains, whilst the existing post-primary admissions system has an established procedure for responding to the educational needs of children with a statement of Special Educational Need, it lacks a procedure that, in terms of placement in a post-primary school, can respond to the exceptionally compelling requirements of non-statemented children. The new exceptional circumstances process will provide this. Non-statemented children with and without a disability will have equal access to this process. The draft regulations that DE intends will govern the decisions of Exceptional Circumstances Tribunals will permit them the same discretion across the cases of all such children: the compelling judgment the regulations will require such Tribunals to make will be – this child's circumstances do or do not exceptionally require their attendance at a specific school. One such example of this, for a non-statemented disabled child might be that the school is physically close to a medical centre the child must attend on a regular basis.

4.2 Is there an opportunity to better promote positive attitudes towards disabled people or encourage their participation in public life by making changes to the policy/decision or introducing additional measures?

No such opportunity is evident at this stage. The positive potential of the procedure in this respect is realised in the way that the regulations give discretion to the Exceptional Circumstances Tribunals.

4.3 Please detail what data you will collect in the future in order to monitor the effect of the policy/decision with reference to the disability duties?

The Department will advise ESA to collect data from all applicants to the process and with respect to successful and unsuccessful applications with respect to whether or not the applicant is disabled, the nature of their disability and seek the applicant's comment with respect to their evaluation of the service they have received.

(5) CONSIDERATION OF HUMAN RIGHTS

5.1 Does the policy/decision affect anyone's Human Rights? [PLEASE COMPLETE THE TABLE BELOW]

ARTICLE	POSITIVE IMPACT	NEGATIVE IMPACT = human right interfered with or restricted	NEUTRAL IMPACT
Article 2 – Right to life			✓
Article 3 – Right to freedom from torture, inhuman or degrading treatment or punishment	✓		
Article 4 – Right to freedom from slavery, servitude & forced or compulsory labour			✓
Article 5 – Right to liberty & security of person	✓		
Article 6 – Right to a fair & public trial within a reasonable time			✓
Article 7 – Right to freedom from retrospective criminal law & no punishment without law.			✓
Article 8 – Right to respect for private & family life, home and correspondence.			✓
Article 9 – Right to freedom of thought, conscience & religion	✓		
Article 10 – Right to freedom of expression	✓		
Article 11 – Right to freedom of assembly & association			✓
Article 12 – Right to marry & found a family			✓

Article 14 – Prohibition of discrimination in the enjoyment of the convention rights			✓
1 st protocol Article 1 – Right to a peaceful enjoyment of possessions & protection of property			✓
1 st protocol Article 2 – Right of access to education	✓		

*If the effect you have identified is positive or neutral please move on to **Question 5.3**.*

5.2 If you have identified a likely negative impact who is affected and how?

At this stage we would recommend that you consult with your line manager to determine whether to seek legal advice and to refer to Equality Guidance and Co-ordination Unit to consider:

- *whether there is a law which allows you to interfere with or restrict rights*
- *whether this interference or restriction is necessary and proportionate*
- *what action would be required to reduce the level of interference or restriction in order to comply with the Human Rights Act (1998).*

5.3 Outline any actions which could be taken to promote or raise awareness of human rights or to ensure compliance with the legislation in relation to the policy/decision.

Applications can be made to the Tribunal on behalf of pupils who can reasonably prove that they must attend a particular post primary school in order to avoid an infringement of their human rights and this case can be considered within the parameters of the exceptional circumstances process.

Policy/Decision Screened by*: PAUL PRICE (Head of Branch)

Date: 14 September 2009

FOR COMPLETION BY EQUALITY GUIDANCE AND CO-ORDINATION UNIT

Quality Assured by: Richard Magowan Date: 14/09/09

Screening Out Agreed

Comments: Nil

Date Branch Informed: 14/09/09

If Screened Out:

Start of Consultation: _____ End of Consultation:* _____

Placed on Internet by: _____ Date: _____

Main Groups Relevant to the Section 75 Categories	
<u>Category</u>	<u>Main Groups</u>
Religious belief	Protestants; Catholics; people of non-Christian faiths; people of no religious belief
Political opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Black Caribbean people; people with mixed ethnic group
“Men and women generally”	Men (including boys); women (including girls); transgendered people
Marital status	Married people; unmarried people; divorced or separated people; widowed people
Age	For most purposes, the main categories are: children under 18, people aged between 18-65, and people over 65. However, the definition of age groups will need to be sensitive to the policy under consideration
“Persons with a disability”	Disability is defined as: A physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities as defined in Sections 1 and 2 and Schedules 1 and 2 of the Disability Discrimination Act 1995
“Persons with dependants”	Persons with personal responsibility for the care of a child; persons with personal responsibility for the care of a person with an incapacitating disability; persons with personal responsibility for the care of a dependant elderly person
Sexual orientation	Heterosexuals; bi-sexuals; gays; lesbians

Please forward a copy of the completed Screening Form to:-

Equality Guidance and Co-Ordination Unit
Room G2, Rathgael House
Ext 59686/59472
equality@deni.gov.uk