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Report of the Responses to the Consultation on

THE SCHOOL ADMISSIONS (Exceptional Circumstances) REGULATIONS 2010



Introduction

1. On 18 September 2009 the Department of Education published the School Admissions (Exceptional Circumstances) Regulations 2010 for consultation. The regulations were accompanied by a consultation booklet and respondents were invited to make comments on both documents.
2. Under Section 75 the Department is required to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
3. As the equality screening of the regulations indicated neither significant/major implications for equality of opportunity, nor any additional measures to promote good relations, they were assessed as not requiring a full Equality Impact Assessment (EQIA). As part of the consultation the Department also welcomed comments on the Equality and Human Rights screening document associated with the regulations.
4. The consultation was advertised in the media, and members of the Department of Education; the five Education and Library Boards (ELBs); Council for Catholic Maintained Schools (CCMS); Council for Integrated Education; Comhairle na Gaelscolaíochta (CnaG); all schools; and equality and human rights stakeholders were also invited to submit comments. By the closing date of 23 October 2009 the Department received a total of 16 responses to this consultation. The list of organisations that responded is attached at Annex A.
5. At this point, the Department of Education must make clear that, as referred to in the consultation document, the regulations were drafted to fit closely with a set of amendments to the primary legislation which enables the Department to make the regulations. The enabling power to make the regulations lies in Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006). The amendments to this legislation were drafted by the Department to ensure that the legal responsibility for the Exceptional Circumstances Process would lie with the Education and Skills Authority (ESA); that the 'Body' referred to in the primary legislation would be known as the 'Tribunal' for clarity and; that ESA would be able to remunerate the members of the Tribunal. This remuneration would ensure that ESA would be able to appoint individuals with a suitable level of expertise in education and/or the welfare of children and solicitors or barristers to act as the chairperson for each Tribunal Panel.
6. These amendments are attached to the Education Bill currently under consideration by the Assembly. The Department has a legal duty to ensure that the Exceptional Circumstances Process will be available for applications for admission to secondary schools taking effect after 31 July 2010. This means that the Exceptional Circumstances regulations must be made in early 2010. After the consultation period on the Exceptional Circumstances regulations closed it became increasingly clear that the Education Bill would not become law in time for the regulations to be made in early 2010. The Department, therefore, has had no option but to re-draft the regulations assuming that no amendments to Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006) can be made at this point.

7. Unavoidably there has been no time to consult on the re-drafted regulations. This is extremely unfortunate. Many important elements of the regulations, however, have remained unchanged from those consulted upon. The definition and examples of Exceptional Circumstances and the general shape and substance of the Exceptional Circumstances procedure itself, including the timings of hearings, has remained unaltered. The 'Panel' and 'Tribunal' referred to in the regulations, however will now be known as the 'Panel' and 'Body' in order to align with the original format of Article 16A. This Body will be the legal responsibility of the Department of Education rather than ESA. When the Education Bill becomes law the Department will redraft and resubmit the regulations in line with those already consulted upon.
8. The rest of this document reports upon the comments received during the consultation process in relation to the original set of draft regulations, as the vast majority of these are relevant to both forms of the regulations. The Department's responses to these comments are in the 'Response to Consultation Respondents' document that the Department has produced to compliment this Report.

The Exceptional Circumstances Body

9. The Exceptional Circumstances Body will consider cases where parents feel that for exceptional reasons, there is only one post primary school that their child must attend and where their application to that post primary school using the normal route has not been successful. The Panels will consider cases relating to applications for admission to post-primary school, where admission is to take place after July 2010. The draft regulations provide for the definition of exceptional circumstances that will be used by the Panels to consider cases and for the procedure and constitution of the Exceptional Circumstances Body.

Summary of Main Comments Received

10. Of the sixteen responses received, ten respondents indicated broad support for the Exceptional Circumstances proposals. In the main, all other respondents provided constructive comment on the detail of how the Process will operate in practice.
11. All five ELBs provided useful and detailed responses to the consultation. The key comments from the ELBs included:
 - Broad support for the proposals;
 - Need for independence of the Body;
 - Need for adequate resourcing of the administration of the Process;
 - Need to consider communication with all parents, not just those with children transferring from primary to post-primary;

- Supportive of the need for remuneration of members to ensure an appropriate level of expertise in the Panels hearing cases;
- Suggestion that there should be an informal pre-hearing that would serve to filter cases that are obviously not exceptional;
- Suggestion that there should be a pre-hearing for the Panel to determine what information is required and from whom;
- Welcomed hearing timescales established in the regulations;
- Cases for single-sex schools should be excluded;
- Queried why the Process does not extend to primary schools;
- Appreciated the difficulty of tightly defining the nature of what would constitute a case of exceptional circumstances;
- Raised the possible need for a written refusal of admission from each school concerned;
- Stressed the urgency of recruitment of members;
- Concern over the impact on the system if a large number of pupils were successful in gaining a post primary place through the Exceptional Circumstances Process;
- Queried how the Article 101 Admission complaints process and the Independent Admissions Appeal Process fitted with the new Process;
- Stressed that schools would be placed under additional pressure to provide information to the Panels;
- Queried whether transport assistance would be provided in the case of a successful application to the Body;
- The Boards agreed with the Department's assessment that there are no significant/major implications for equality of opportunity within these proposals.

12. CCMS also provided some helpful and focussed comments on the Process:

- Broad support for the proposals;
- Suggested that as some exceptional circumstances are known before the Transfer Process begins these should be considered at that stage and where cases are approved the child should be awarded a place within the schools admissions number thereby reducing the need for supernumerary places;

- Suggested that the term "the parent of a child" possibly too narrow to cover all potential exceptional circumstances claims;
 - Additional examples of what might be considered to be cases of exceptional circumstances suggested;
 - Concern over the impact on the system if a large number of pupils were successful in gaining a post primary place through the Exceptional Circumstances Process.
13. Comhairle na Gaelscolaíochta suggested that linguistic rights should qualify for consideration as an exceptional circumstance stating that it is important that a child attending Irish-medium primary provision be facilitated to transfer to the nearest post-primary school with suitable Irish-language provision in instances where Irish-medium post –primary provision does not exist within a reasonable travelling distance of a pupil's home.
14. The Ulster Farmers Union suggested that the cases of rural dwellers should be considered as exceptional and rejected the proposal that a claim cannot be considered to be exceptional if the case is based on the availability of transport.
15. The Children's Commissioner (NICCY) made a number of points including the following;
- The Department was criticised for the short consultation period available;
 - Requested clarity on the Department's definition of the 'usual transfer route';
 - Expressed concern over the impact of a number of supernumerary admissions on the system if a large number of pupils were successful in gaining a post primary place through the Exceptional Circumstances Process;
 - Sought clarification of definition of 'parent';
 - Sought clarification in relation to the definition of what cases could be regarded to be cases of exceptional circumstances and which could not;
 - Sought clarification on cases involving non-statemented pupils who have special educational needs;
 - Welcomed the facility to allow the views of the child to be expressed within the Process but recommended that this be clarified and strengthened.
 - NICCY also made a number of comments linking the Exceptional Circumstances Process with the Special Circumstances Process. Historically, however, the Special Circumstances Process has been a process used by grammar schools relating to a pupil's circumstances during the time that they took the transfer test (up until

Transfer 2009). NICCY's queries, therefore, are based on the misunderstanding that these two processes are linked, which they are not. The Exceptional Circumstances Process is an entirely new process that has not existed before and is in no way linked to a pupil's academic ability. The regulations make clear that circumstances related to a pupil's academic ability cannot be considered to be exceptional. These queries and those listed above are answered in more detail in the 'Response to Consultation Respondents' document that the Department has published to compliment this Report.

16. Comments raised by other respondents mirrored many of those already described with multiple respondents expressing concern that a large number of successful appeals would have a detrimental impact on the system, that the members of the Panels should have appropriate levels of expertise and that the definition of parent needed to be examined. Respondents also expressed support for the broad aims of the Process, for the regulated hearing timescales, for the fact that facility for the views of the child to be expressed had been included in the Process and for the constitution of the Panels.

Department of Education

2 December 2009

CONSULTATION ON THE SCHOOL ADMISSIONS (EXCEPTIONAL CIRCUMSTANCES) REGULATIONS 2010 – INDEX OF RESPONSES

Consultation Response Number	Name of Respondent
1	Disability Action
2	The Teaching Council
3	Comhairle na Gaelscolaíochta
4	Stranmillis University College
5	North Eastern Education and Library Board
6	South Eastern Education and Library Board
7	Council for Catholic Maintained Schools
8	Belfast Education and Library Board
9	Newtownards Borough Council
10	Ulster Farmers' Union
11	Southern Education and Library Board
12	The Abbey Christian Brothers' Grammar School
13	Commissioner for Children and Young People
14	Western Education and Library Board
15	Antrim Grammar School
16	Lisburn City Council



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