

**EXPLANATORY MEMORANDUM TO**  
**School Admissions (Exceptional Circumstances) Regulations**  
**(Northern Ireland) 2010**

**SR 2010 No. 19**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Education to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006) and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. The Statutory Rule will make Regulations to provide for the constitution and procedure of a Body, and the Panels of that Body, to determine applications of Exceptional Circumstances. The Regulations will also define the nature of Exceptional Circumstances and provide examples of cases which may and may not be considered to be exceptional.
- 2.2. 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 Body will consider cases relating to applications for admission to post-primary school, where admission is to take place after July 2010.

**3. Background**

- 3.1. The need for Regulations to provide for the establishment of a new Exceptional Circumstances process and a Body to hear applications under that process stems from a recommendation contained within the report of the Post-Primary Review Working Group (The Costello report).
- 3.2. The Costello Report stated at paragraph 7.23; "No admissions criteria can deal with every eventuality and it will be important to have arrangements that are able to take account of 'compelling individual circumstances'. We believe that such arrangements should be restricted to the most exceptional circumstances and that these will require careful definition. To ensure consistency of approach, a central independent body with the necessary expertise (i.e. educational, medical, social) should consider these cases. 'Compelling individual circumstances' should not be included in schools' admissions criteria."
- 3.3. Legislation was drafted in response to this recommendation. Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006), placed a duty upon the Department of Education to make Regulations that establish, for applications for admissions to take place after July 2010, an exceptional circumstances process for post-primary admissions and a Body to operate that process.

- 3.4. For the parents/guardians of non-statemented children who have failed through the normal applications process to gain a place in a specific post-primary school, but who consider that their child's exceptional circumstances require admission to that specific post-primary school, there must, from May 2010, be a Body and a process to which they can apply, in writing, stating their case.
- 3.5. This Body will be obliged, by the primary legislation, to provide a hearing in respect of each application. The Regulations provide for these hearings by requiring them to convene before panels of 3 persons, drawn from the membership of the Body, and appointed to this role. There is no limit to the number of panels that may be established for this purpose, and multiple panels will be able to operate at the same time as each other. Hearings should take place within 4 weeks of an application being submitted and decisions made within 3 weeks of hearings taking place.
- 3.6. Panel members will be appointed by the Department and will be people appearing to it to have the necessary expertise (legal, educational, child-welfare).
- 3.7. The Department had proposed, by way of amendments to the Primary legislation (Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006)), to ensure that the legal responsibility for the Exceptional Circumstances process, including arrangements to recruit suitably qualified individuals to hear cases, would lie with the Education and Skills Authority (ESA). These amendments were attached to the Education Bill passing through the Assembly in 2009 and the Regulations were originally drafted to fit closely with the amendments.
- 3.8. However, as it became clear that the Education Bill would not become law in time to allow the Exceptional Circumstances process and Body to be operational by May 2010, the Department had to re-draft the Regulations assuming no amendment to Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006). Unavoidably there was no time to consult on the re-drafted Regulations. However, many important elements of the Regulations have remained unchanged, including the definition and examples of Exceptional Circumstances and the general shape and substance of the Exceptional Circumstances procedure itself. The Body will be the legal responsibility of the Department rather than the ESA.

#### **4. Consultation**

- 4.1. Consultation on the previous draft of the Regulations took place between 18 September 2009 and 23 October 2009 and was advertised in the media. Members of the Department of Education; the five Education and Library Boards; Council for Catholic Maintained Schools ; Council for Integrated Education; Comhairle na Gaelscolaíochta; all schools; and equality and human rights stakeholders were also invited to submit comments. By the closing date the Department received a total of sixteen responses to this consultation.

- 4.2. Ten out of sixteen respondents indicated broad support for the proposals and all other comments related to constructive suggestions on the detail of how the process will operate in practice. The Department's report on the Consultation Responses and the Department's responses to questions raised during the process have been published on the Department's website.

## **5. Equality Impact**

- 5.1. 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.
- 5.2. 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.
- 5.3. The only comments made by respondents in relation to the Equality and Human Rights screening document were made in support of the Department's assessment that screening of the regulations indicated neither significant/major implications for equality of opportunity, nor any additional measures to promote good relations.

## **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not required in relation to the regulations as they will have no impact on businesses, charities, social economy enterprises or voluntary bodies.

## **7. Financial Implications**

- 7.1. The main financial implication associated with the Exceptional Circumstances Body relates to the remuneration of its members.
- 7.2. In the absence of the amendments to Article 16A of the Education Order 1997 (as amended by Article 29 of the Education Order 2006) the Department has no statutory authority to remunerate members of the Body. As remuneration may be key to securing the appointment of suitably qualified persons, and this will in turn be key to the effectiveness of the Body, the Department is exploring whether any remuneration options remain.
- 7.3. If there are options, it is anticipated that the Body will incur recurrent running costs of around £500k per annum. If there are not it is anticipated that costs would relate to the administrative support required for the Body and would be in the region of £75k per annum based on one senior administrator and two part-time junior staff. Costs are extremely difficult to estimate at this time as there is no similar process in operation on which to base these estimates.

**8. Section 24 of the Northern Ireland Act 1998**

8.1. The Departmental Solicitors Office has confirmed that the Rule complies with section 24.

**9. EU Implications**

9.1. Not applicable.

**10. Parity or Replicatory Measure**

10.1. There is no process corresponding to the Exceptional Circumstances process in Great Britain.

**11. Additional Information**

11.1. Not applicable.