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POST-PRIMARY TRANSFER POLICY

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**GUIDANCE TO PRIMARY SCHOOL PRINCIPALS, POST-PRIMARY SCHOOLS'
BOARDS OF GOVERNORS AND PRINCIPALS, AND
THE EDUCATION AUTHORITY ON THE PROCESS OF TRANSFER FROM
PRIMARY TO POST-PRIMARY SCHOOL
FROM SEPTEMBER 2015**

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PURPOSE OF THIS GUIDANCE

1. This guidance sets out a framework for the procedure for the transfer of children from primary to post-primary school from September 2015. The aims and objectives of the arrangements for the admission of these pupils to post-primary schools, as set out in this guidance, will be:
 - that admissions decisions are fair and give each child the opportunity to reach his/her full potential;
 - that the overall arrangements for admissions, and within that the respective roles of the Department, the Education Authority and primary and post-primary schools' Boards of Governors are clear and understood; and
 - that post-primary schools' Boards of Governors achieve robust and accurate admissions decisions.

THE LEGAL STATUS OF THIS GUIDANCE

2. This guidance is issued by the Department of Education under Article 16B of the Education (NI) Order 1997 – as amended by Article 30 of the Education (NI) Order 2006 and Schedule 3 to the Education (NI) Act 2014 – which states:

- (1) *The Department may issue, and from time to time revise, such guidance as it thinks appropriate in respect of the arrangements for the admission of pupils to grant-aided schools and the discharge by:*
 - i. *Boards;*
 - ii. *The Boards of Governors of grant-aided schools;*
 - iii. *Appeal tribunals constituted in accordance with regulations under Article 15(8); and*
 - iv. *The body established by regulations under Article 16A(6),**of their respective functions under this Part.*
- (2) *The guidance may in particular set out aims, objectives and other matters in relation to the discharge of those functions.*
- (3) *It shall be the duty of*
 - v. *Each of the bodies mentioned in paragraph (1); and*
 - vi. *Any other person exercising any function for the purposes of the discharge by such a body of functions under this Part,***to have regard to any relevant guidance for the time being in force under this Article.**

3. Primary schools, the principals and Boards of Governors of post-primary schools and the Education Authority will, therefore, be required to have regard to this guidance. Boards of Governors and others addressed by this guidance should understand that the duty to have regard to this guidance is a legal one. In practical terms this duty, for a post-primary school's Board of Governors, means that in drawing up admissions criteria they should give active and receptive consideration to the guidance's recommendations on admissions criteria and record this consideration.
4. Excepted from this, of course, will be the parts of this guidance describing duties and responsibilities of post-primary school Boards of Governors and the Education Authority that have a legislative basis in their own right. Also excepted from this guidance is the transfer of children in possession of a statement of special educational needs. The transfer of such children is provided for in legislation and lies outside of open enrolment procedures in order to ensure that such children are provided with the most appropriate school placement and that their needs are met.

THE TRANSFER PROCESS

5. The roles and responsibilities of the Department, the Education Authority, primary schools and post-primary schools and their Boards of Governors are set out in the most recent version of the Department's operational circular on post-primary transfer.

LEGAL CONSIDERATIONS IN SETTING ADMISSIONS CRITERIA

6. There is a duty upon the Board of Governors of every school to ensure any admissions criteria they use are legally based and compliant with equality legislation.
7. Where schools are not oversubscribed, they all have the same obligations to admit applicants to all available places – the only exception being where, for year groups other than Year 8, a post-primary school's Board of Governors can demonstrate "that the admission of the child to the school would prejudice the efficient use of resources" (Article 13 of the Education (NI) Order 1997).
8. Notwithstanding all of the above considerations, this guidance makes recommendations to all post-primary schools' Boards of Governors on the admissions criteria they should and should not use. All schools are obliged to have regard to these recommendations.

RATIONALE BEHIND DE POLICY ON POST-PRIMARY TRANSFER

9. Decisions on admission to post-primary schools should not be based on the perceived academic ability of an applicant however defined or assessed. The appropriate time to assess the academic ability of a child is after they are admitted to a school. This will enable the school to determine how they can best meet the educational needs of each child and ensure that they achieve their full potential. Academic assessment for streaming/banding purposes after a child has been admitted to a school correctly puts the focus on meeting the needs of the child, not the institution.
10. The Department considers that admissions decisions based on the outcome of unregulated academic testing are not consistent with the objective of treating children fairly and giving each child the opportunity to reach his/her full potential. This is consistent with views expressed by the Human Rights Commission and the United Nations Convention on the Rights of the Child. Research suggests that our socially divisive, two-tier, selective system is hampering efforts to raise standards across the whole education system. International evidence shows that all children can benefit from being educated within a mixed ability environment.
11. The results of the 2013 Programme for International Student Assessment (PISA) – an international comparison of school systems for 15 year olds – highlighted the remarkably wide gap between high achievers and low achievers in our education system. The use of academic selection contributes to the maintenance of that gap, resulting in our system being at best average in the PISA rankings. This gap cannot be adequately addressed while academic selection persists.
12. Furthermore, in a report on our education system published in December 2013, international experts from the Organisation for Economic Co-operation and Development highlighted the extent to which the unregulated tests are penalising pupils, impeding the effective implementation of the curriculum and creating unnecessary stress and duplication of work for teachers in many primary schools. Their conclusion was that “it is unclear what the educational argument is to keep these tests”.
13. The Department wants to move to a system where every child has an equal opportunity of gaining access to the most appropriate school to meet their needs and enhance their life chances.
14. A well educated workforce underpins the development of any economy. It is vital, therefore, in order to support the Executive’s economic strategy, that we have an education system that values every child and ensures that every child is given the opportunity to reach his/her full potential.

15. The Department does recognise, however, that schools committed to moving away from the use of academic admissions criteria may need a period of adjustment. In such circumstances, where a school makes a clear commitment to make the transition away from the use of academic selection for admission purposes over a period of time, a practical approach to making the transition may be for the school to continue to use academic admissions criteria but at a reducing rate over this transition period.

RECOMMENDED ADMISSIONS CRITERIA

16. For the admission of all children of compulsory school age, the Department recommends that Boards of Governors of post-primary schools draw up their admissions criteria from the following menu of recommended criteria (all schools are obliged to have regard to these recommendations):

Recommended first criterion:

- Applicants who are entitled to Free School Meals (FSME): priority to be given so that the proportion of such children admitted is not less than the proportion of first preference FSME applications received within the total number of first preference applications received.

Other recommended criteria:

- Applicants who have a sibling currently attending the school;
 - Applicants who are the eldest child;
 - Applicants from a feeder/named primary school;
 - Applicants residing in a named parish (with nearest suitable school);
 - Applicants residing in a geographically defined catchment area (with nearest suitable school);
 - Applicants for whom the school is the nearest suitable school;
 - Tie-breaker criteria.
17. Further detailed information in relation to each of the recommended criteria is provided in the most recent version of the Department's operational circular for post-primary transfer.

ADMISSIONS CRITERIA THAT ARE NOT RECOMMENDED

18. The Department recommends that schools do not use any of the following criteria:
- **Criteria related to academic ability:** on equality grounds, and in the interests of raising standards across the whole education system, the Department strongly recommends that schools do not use entry criteria related to academic ability. Those schools currently using academic selection for entry to the school should begin the transition away from the use of academic admissions criteria and the use of unregulated tests or other forms of assessment that facilitate the application of these criteria.
 - **Familial criteria beyond current sibling:** the reason why only current sibling is recommended, and not other family connections, is because of the need to serve the interests of parents, children and families without disadvantaging other applicants. There are practical reasons why priority should be given to educating siblings at the same school. Other familial connections which have no such practical purpose (eg parent was a former pupil) should therefore not be used.
 - **Distance tie-breakers:** distance tie-breakers are not recommended because they will disadvantage rural/outlying applicants and will undermine those aspects of the recommended menu of criteria designed to ensure that these applicants are treated fairly.
 - **Children of employees/governors of a school:** notwithstanding the ability of this criterion to provide convenience for a small number of families, it makes admissions priority a benefit of service or employment. Schools exist to serve the community, not their employees. The 'Conflicts of Interest: A Good Practice Guide', published by the Northern Ireland Office in March 2015, is relevant. This is available online at http://www.niauditoffice.gov.uk/conflicts_of_interest_good_practice_guide.pdf
 - **Preference Criteria:** DE strongly recommends to all Boards of Governors that, whilst preference criteria (ie the prioritising of applicants according to the level of preference of their application – 1st, 2nd, 3rd etc) may no longer be explicitly prohibited, they should not in the interests of open enrolment policy be used by any school at any stage. The principle of open enrolment and of parental choice is that parents should be able to express their preferences of school for their child in an unfettered manner. The use of preference criteria will mean that the manner in which parents and children express these preferences will affect their prospects of admission. This will inevitably compel parents and children to express their preferences tactically. It will restrict parental choice.

- **Criteria related to compelling individual circumstances:** it is recognised that no set of admissions criteria can deal with every eventuality and that it is important to have arrangements that can take account of compelling individual circumstances. To address this issue, the Department established the Exceptional Circumstances Body (ECB) in 2010 to consider applications from parents who feel that their child must attend a particular post-primary school for exceptional or compelling reasons, but an application made through the normal process has been unsuccessful. The ECB operates independently from the Department and its members have the necessary expertise in the field of education and/or the welfare of children to make decisions on these often complex cases. In the interests of consistency of approach, it is strongly recommended that these cases are dealt with by the ECB and not by the Boards of Governors of individual schools. Schools should not therefore include ‘exceptional/ special circumstances’* related to, for example, ‘medical, social or security factors’ in their admissions criteria.

* Schools should note that this does not apply to the ‘special circumstances procedure’ described in Annex I – Advice on issues related to unregulated tests.

ISSUES RELATING TO THE USE OF UNREGULATED TESTS

19. Post-primary schools using unregulated tests should be aware that a risk of legal challenge to these arrangements remains and they need to ensure that their arrangements are sufficiently robust. Advice on issues related to unregulated tests (at Annex I) remains relevant and schools should continue to take this advice into account.

DICKSON PLAN SCHOOLS

20. This guidance applies equally to all schools that operate transfer processes within the Dickson Plan system – at both age 11 and age 14. As this guidance document is written largely in the context of transfer at the age of 11, the following points clarify how the guidance should be interpreted by those operating transfer at age 14. For transfer at age 14, the Department strongly recommends that:
 - senior high schools do not use academic admissions criteria;
 - where senior high schools persist with the use of academic admissions criteria they should not put in place any arrangements, including special circumstances procedures, that ascribe any role to a junior high school or any information held by a junior high school;

- senior high schools should not use the results of any assessments carried out in a junior high school that were not specifically designed for the use of academic selection for admission purposes;
- the vital educational role of junior high schools should not be reduced and distorted into a role where junior high schools see themselves as serving the academic admissions processes of senior high schools; and
- junior high schools should not facilitate a senior high school's application of academic admissions criteria.

ROLE OF PRIMARY SCHOOLS

21. Primary schools play a distinct and crucial role in the educational development of all children. This role is to ensure that the primary stage of every child's educational development (fundamental to all subsequent stages of educational development) is completed.
22. The vital educational role of primary schools should not be reduced and distorted into a role where primary schools see themselves as serving the academic admissions processes of post-primary schools. All primary schools have statutory obligations to deliver the primary curriculum (as defined in Articles 4-9 of the Education (NI) Order 2006) and must not depart from these obligations. The school should not facilitate unregulated entrance test arrangements in any way by supplying support materials, carrying out any preparation for unregulated tests during core teaching hours, offering afternoon school coaching in exam technique, or by providing familiarisation with a testing environment. The Education and Training Inspectorate will continue to monitor the quality of teaching and learning in primary schools in the context of the revised curriculum.
23. Primary schools will be aware that any failure to deliver the revised curriculum can be formally reported as a complaint to a Curriculum Complaints Tribunal. The Education Authority will make arrangements to enable parents and others to bring complaints about a school's delivery of the curriculum to these Tribunals.
24. Primary schools should be aware that where a parent or other interested party approaches the Department with a concern that the revised curriculum is not being delivered properly, they will be advised to lodge a complaint with the school principal in the first instance, and if there is no satisfactory outcome to escalate the complaint to the Board of Governors. If the Board of Governors fails to respond appropriately the parent can make a formal complaint to a Curriculum Complaints Tribunal.

25. Primary schools should not facilitate any arrangements in support of a post-primary school's application of unregulated academic admissions criteria. Where post-primary schools have a special circumstances procedure for the application of academic admissions criteria that requires parents to provide information relating to their child's performance, primary schools should be clear that:
- Parents/guardians have a legal right to any information that is held by a primary school that relates solely to their child;
 - Schools are not required, in law, to provide information in a specifically requested format;
 - Schools should not provide performance information to parents or guardians relating to any child other than their own;
 - Schools should not, under Data Protection law, directly provide performance data relating to any of their pupils to any other school.

APPEALS

Admissions Appeal Tribunals

26. The Education Authority will administer independent admissions appeal tribunals. Parents will be advised on how to apply to an admissions appeal tribunal in the placement letter they receive at the end of the admissions process.

Exceptional Circumstances Process

27. In 2010 the Department established an Exceptional Circumstances Body to provide a mechanism to consider the cases of a small group of children with exceptional and compelling circumstances, particular to the individual child, that require admission to a specific post-primary school, but where the child is unable to secure such admission through the application of the school's admissions criteria. The Body can consider applications from parents in relation to situations where a non-statemented child seeking admission to Years 8-12 has not, through the normal processes, gained a place in the specified school, and it is asserted by the parents that the child must attend that school, and that school only. If an application is upheld by the Body, it will use its power to direct admission on a supernumerary basis. Parents are advised on how to obtain further information about the process and how to apply to this Body in the placement letter they receive at the end of the admissions process or on the nidirect website at www.nidirect.gov.uk. Parents can make applications to this Body in parallel with applications to an admissions appeal tribunal.

MOVING FORWARD

Phased Transition

28. The Department recognises that schools moving away from the use of academic admissions criteria may need time to adjust and that teachers, parents, pupils and the local community may also need time to become familiar with the new arrangements. In such circumstances, where a school makes a clear commitment to make this transition over a period of time, a practical approach to making the transition may be for the school to continue to use academic admissions criteria but at a reducing rate over this transition period.
29. Schools should note that a move away from the use of academic admissions criteria will not have implications for the school's management type. A grammar school can continue to be a grammar school without using academic selection to admit pupils.

Development Proposals

30. Article 14 of the Education and Libraries (NI) Order 1986 states that a development proposal is required where there is a proposal "to make a significant change in the character or size" of a school, or to make any other change in a school "which would have a significant effect on another grant-aided school".
31. The law does not automatically require a development proposal when a school is proposing to move away from the use of academic admissions criteria.
32. However, where a school or a school managing authority has plans to make a change to a school with regard to using or ceasing to use academic selection for admission purposes, the current guidance on development proposals (Circular 2014/21 – Publication of a Development Proposal – 26 September 2014), paragraph 4.6 states:

"In the specific cases of a move away from the use of academic admissions criteria or, conversely, of their introduction, the Department's view is that a DP should be published in the interests of clarity and openness."

CONCLUSION

33. This guidance sets out the information required by a post-primary school to help it determine its criteria for admissions from September 2015. This should enable it to give certainty and clarity to all future applicants. Primary school principals and staff should also be clear on the nature of the process.

ADVICE ON ISSUES RELATED TO UNREGULATED TESTS

It is recommended that post-primary schools end the use of academic admissions criteria because the Department does not consider academic selection to gain entry to a school to be consistent with the objective of treating children fairly and giving each child the opportunity to reach his/her full potential.

The following are issues which the Department has identified as giving cause for concern if schools opt to use unregulated tests (“Entrance Tests”) in support of academic admissions criteria. This series of issues should not be considered to be exhaustive. It will be a matter for any grammar school using an unregulated test to ensure that it addresses such concerns.

A Robust Test: the Council for the Curriculum, Examinations and Assessment (CCEA) test was one where, for each question, facility values and discrimination values were calculated. This enabled CCEA to know the difficulty and reliability of the questions and so order them appropriately in the Transfer Tests. Using the facility values, the mean was set for each subject in each paper as in previous years to ensure comparability of standards year-on-year and across tests in any one year.

In the development stages, the trialing of the test items established their effectiveness, and similarly appropriate measures were taken to ensure the effectiveness of the structure of the test, the layout, style and printing of the test and appropriate security arrangements for the test material.

A reliability coefficient was also used as an effective measure of the internal consistency of the items in the test.

The Department advises Boards of Governors of their obligation under Article 16(5) of the Education (NI) Order 1997. This provides that the criteria drawn up by post-primary schools’ Board of Governors must be capable of enabling them to admit the number of applicants exactly equivalent to their admissions and enrolment numbers as set by the Department – ie the criteria must be capable of distinguishing between applicants right down to the last available place. It follows, therefore, that if one of the criteria drawn up by a Board of Governors will distinguish between applicants according to their performance in a named “Entrance Test”, that “Entrance Test” must be robustly capable of providing, or contributing to, the basis for such distinctions.

If Boards of Governors are planning to use “Entrance Tests” in order to support academic admissions criteria, then they have a legal responsibility to use an “Entrance Test” that enables them to discharge their obligation under Article 16 (5) of the Education (NI) Order 1997. In the light of this, the Department advises any Board of Governors planning to use an “Entrance Test” of its responsibility to assure itself that, in the terms set out in this Annex, its planned “Entrance Test” will be a robust assessment mechanism capable of providing for sound ability-based decisions.

An Irish “Entrance Test”: the Department always considered it important and necessary to provide an Irish equivalent to the Transfer Test. The Department had a range of reasons for this, not least of which was the recognition of the Irish-medium primary sector and its place within the overall school system. Indeed, the Department never considered the provision of an Irish version of the Transfer Test to be optional.

The Department would strongly advise any school planning to use an “Entrance Test” to make provision within their plans for the availability of an Irish equivalent to their English “Entrance Test”. The risk to schools that do not provide this equivalent, and to the adequate standard, is the threat of legal challenge to their admissions process on the grounds of indirect discrimination. Key to such a challenge would be any educational evidence that showed that children taught in Irish-medium primary schools were disadvantaged when competing with contemporaries taught in English-medium primary schools.

On Irish equivalents of English “Entrance Tests”, CCEA has advised that its Irish-medium Transfer Tests used the same Mathematics and Science items developed for the English-medium tests (translated into Irish). However, Irish Language items (to replace the items written to test English) were developed and pre-tested separately within an equally rigorous quality assurance process as that for English-medium.

Appropriate Security measures – Reserve Test Arrangements: Appropriate security arrangements for test materials are obviously vital but these security arrangements should not just consist of ensuring that all reasonable efforts are made to avoid a breach in test security. Accompanying such reasonable efforts, contingency arrangements need to be in place for the occurrence of such a breach. The only appropriate contingency arrangement for a test that has been invalidated due to a security breach is a reserve arrangement that, just as much as the original test, will be a robust assessment mechanism capable of providing for sound ability-based decisions.

In summary, if Boards of Governors are going to use “Entrance Tests” in order to support academic admissions criteria then they have an obligation to have an equivalent to this “Entrance Test” in reserve in case of a security breach. This obligation would be established by the liability of a Board of Governors for the breakdown in their admissions process that would inevitably occur if their planned “Entrance Test” was compromised and invalidated, and there was nothing equivalent to take its place.

Pre-test Communications: when it provided the Transfer Test – to be applied for by parents/pupils in September and sat in the following November/December – the Department communicated in August all of the information relating to the Transfer Test to all P7 parents. The Department did this through a booklet which was distributed to all parents through their child’s primary school. The booklet explained what the Transfer Test was, what it would test, when and where it would be sat, how and when parents/children should apply for the test, when results would issue and in what form, and, amongst other things, how it was supported by a special circumstances procedure. Importantly, this booklet was translated into Irish, Polish, Chinese, Portuguese and Lithuanian.

If they are not to be vulnerable to a challenge of indirect discrimination, schools planning to use an “Entrance Test” must make all reasonable and comparable efforts to ensure that all parents/children who may wish to can receive and understand all of the necessary information. They should also be aware of the need to communicate the availability of the test to parents in minority groups such as Travellers, and to those parents who do not have English as their first language.

“Entrance Test” Charges: the Department would advise any schools intending to charge parents for entering their child to sit a test, whether means-tested or not, to consider whether parents should have to pay in order to apply meaningfully for a state school.

The Department also has some concerns about the potential for such plans to be vulnerable to a legal challenge according to the way in which Article 128 (1) of the Education Reform (NI) Order 1989 may be interpreted in relation to test-charges. This Article states: “no charge shall be made in respect of admission to any grant-aided school”.

Special Circumstances Procedure: any schools that decide to include as part of their admissions criteria an academic criterion requiring an “Entrance Test” should understand the critical importance of such a process being supported by a special circumstances procedure. It is likely that the courts would consider it unreasonable for a school not to be able to factor into a test-based admissions decision, circumstances beyond the control of the candidate (eg bereavement, accident or illness) that on the day of the “Entrance Test” may have led to that candidate’s performance being adversely affected. Schools that decide to use “Entrance Tests” must be aware that it is their responsibility to provide a special circumstances procedure.

In this regard, schools attempting to use independent assessment procedures or “Entrance Tests” within their admissions should also be mindful of disability discrimination – as it is defined under the Disability Discrimination Act 1995. If a pupil seeking admission to a school is defined as disabled under the terms of this Act, then the school will have a duty to make “reasonable adjustments” in relation to the arrangements it makes for determining admission. This is likely to be an issue given the fact that some forms of disability, as defined by the Act, will not mean that the applicant is in receipt of a Statement of Special Educational Needs – and will, therefore, mean that their admission is to be determined fairly within the standard admissions procedures. For advice

on this, schools should refer to Section 3 of the guidance published by the Equality Commission entitled “What equality law means for you as an education provider: schools” which is available online at

<http://www.equalityhumanrights.com/publication/what-equality-law-means-you-education-provider-schools>.

Post-primary schools that are planning to use “Entrance Tests” should also be aware that the Department, when it provided the Transfer Test, sanctioned CCEA to provide the test paper in a variety of formats designed for the needs of non-statemented children with dyslexia/dyspraxia.

Special provision and supernumerary admissions: any post-primary schools that decide to include as part of their admissions criteria an academic criterion requiring an “Entrance Test” should also understand the supporting role that, in relation to the Transfer Test, was performed by the special provisions procedure. This supporting role was provided for children who entered late into the primary curriculum (ie because they have moved here from another country) and who, therefore, were less prepared for a Transfer Test aligned with that curriculum. It was also provided for children who made a “mid-year” application to a grammar school. According to their specific circumstances, many such children qualified for the special provision of being assessed for the purposes of grammar school admissions, not through the Transfer Test, but through the psychological assessment of an Education and Library Board Educational Psychologist.

Schools contemplating using “Entrance Tests” will need to make fair and robust admissions decisions on applicants who have not been able to sit an “Entrance Test” or who cannot be assessed fairly by such a test.

Admissions determined by procedures in support of “Entrance Tests” (special circumstances procedures, special provisions procedure), or by the application of any admissions criteria are never supernumerary: they always count towards a school’s admissions and enrolment number.

It is important that, in the interests of children, schools are aware of the risks associated with the decision to continue the use of unregulated tests. This series of issues should not be considered to be exhaustive.

POST-PRIMARY TRANSFER POLICY

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