



**Response to the Department of Education Consultation  
Document on Transfer 2010: Guidance to Primary School  
Principals, Post-primary School Boards of Governors and  
Principals, and Education and Library Boards/Education and  
Skills Authority on Post-Primary School Admissions for 2010/11  
School Year**

## INTRODUCTION

The Department of Education issued a consultation document on the Guidance for transfer arrangements for September 2010. Paragraphs 16-28 of the document provide guidance and recommendations to schools on admissions criteria and their operation and are the paragraphs within the document that have been issued for consultation.

This attached paper is the board's response. This paper is based on the operational aspects of the transfer procedure and highlights the implications for parents, primary schools, post-primary schools, ELBs/ESA and Admission Appeal Tribunal Members.

The paper is comprised of three sections:

- Section A Practical issues and implications of the Guidance;
- Section B Impact on the Board's statutory duties; and
- Section C Summary.

## Section A Practical issues and implications of the Guidance

The board is of the view that there are many practical issues and implications of the Guidance. The background and implications of these are detailed below and the implications for each of the stakeholder groups are summarised in tabular form.

1. The Minister has withdrawn her proposal for partial academic selection resulting in an unregulated system.
2. There will be no admission regulations stating permitted or prohibited admissions criteria i.e. there will no longer be:-
  - A prohibition on the use of academic admissions criteria by **non-grammar** schools;
  - A prohibition on the use by any school of their own test or examination in order to determine the application of academic admissions criteria;
  - A prohibition on the use by schools of criteria giving priority according to the preference given to an application by an applicant;
  - Schools may use any admissions criteria except for those prohibited more generally by equality legislation.

The absence of regulations also impacts on admission to primary school.

3. DE has issued guidance on how admissions criteria are to be drawn up and applied in the absence of a legislative framework. The Boards of Governors and ELBs/ESA are required to “*have regard to*” this DE Guidance. The term “*have regard to*” requires definition that should be clear and unambiguous re the consequences for those parties that depart from the Guidance especially if legally challenged. It is unclear if it is sufficient for BOGs to record in their minutes that the Guidance was considered but agreement reached not to comply. The Guidance should detail the process that a school must follow to demonstrate that it has had due regard to the Guidance. The Minister indicated (Hansard) that legal advice was obtained, it is the Transfer Officers’ understanding that the Department Solicitor’s Office provided the advice on ‘have regard to’ but this information has not been made available. In the spirit of openness and transparency should this advice be made available to the ELBs?
4. The Department will not provide transfer tests from 2010 and comments that with regard to the grammar schools which have stated that they will develop and operate their own tests that in terms of scheduling and applications these independent tests will operate without the approval of the Department as part of the admissions process.

Although paragraph 10 confirms that as the regulations issued under Article 16 of the 1997 Order have lapsed and certain criteria are no longer expressly prohibited and paragraph 11 states that it will be legal for a Board of Governors to use any admissions criteria (except those prohibited more generally by equality legislation), paragraph 12 advises “Notwithstanding this, this DE Guidance makes recommendations to all post-primary Boards of Governors on the admissions criteria they should and should not use. All schools are obliged to have regard to these recommendations”.

Paragraph 18 continues in the same vein, on the one hand stating that “academic admissions criteria will not be explicitly prohibited” whilst on the other hand advising that “the Department does not consider academic selection to be consistent with the objective of treating children fairly and giving each child the opportunity to reach his/her full potential”. The Department’s position is that “*taking such an important decision at the age of 10/11 is no longer tenable*”.

Paragraph 19 reminds us that previous transfer tests were developed and operated “by a dedicated, resourced and expert body (the CCEA)” and stresses that an “independent assessment mechanism” of “Entrance Test” will require “a robust assessment mechanism capable of providing for sound ability-based admissions decisions”.

Although paragraphs 20 – 27 give advice and identify further concerns for schools which contemplate using entrance tests, the cumulative effect of the earlier statements in the Guidance is to make the Department’s position with regard to ‘entrance tests’ very clear.

For this reason it is important for ELBs/ESA to seek urgent clarification from the Department with regard to its policy for funding the cost of legal challenges which will undoubtedly arise to schools and appeal tribunals in the summer of 2010. In particular the Department should be asked to clarify if they will indemnify Boards of Governors in relation to the admission procedure. It will be the Judge who declares who makes payment.

**In the event that clarification is not forthcoming from the Department then a prudent Board and a prudent Board of Governors would adopt the Department’s Guidance in full.**

5. This Guidance presents a dilemma for Transfer Officers; our current role includes providing advice and guidance to Principals, BOGs, Appeal Tribunal Members and Parents. Do we only give advice etc on the published Guidance even though it would appear that a substantial number of schools will not be following this Guidance or do we, acting in the interests of parents assist those non-compliant schools, or, acting in the interests of our employers do we refuse to assist schools that have not complied with the

Guidance? This not only applies to schools that continue to use academic selection but also schools that e.g. do not adopt the FSME criterion.

6. The admissions criteria which are adopted by schools are central to the whole process. Boards of Governors in all sectors will remain responsible for the drawing up and application of admissions criteria which should be objective, clear and easily understood by all concerned. It will be the letter of the criteria as published which is liable to challenge. Boards of Governors therefore, in revising their criteria, are strongly advised to bear in mind the issues raised in the DE Guidance so that, if they depart from the Guidance they can justify and defend their reason for doing so. It is strongly recommend that the reasons for doing so are recorded.

## Practical issues and implications for Parents, Primary Schools, Post Primary Schools, ELBs, Admission Appeal Tribunal Members:

On basis of information currently available – many of these problems may have been identified and considered by the post-primary schools. The order of the potential actual problems reflects the annual cycle of activities within the transfer procedure.

Potential/Actual Problem	Implication for Parents	Implication for Primary Schools	Implication for Post Primary Schools	Implication for ELBs	Implication for Appeal Tribunal Members
1 Schools do not comply with Guidance and retain academic selection	<ul style="list-style-type: none"> <li>• ELBs unable to provide clear information for parents – Transfer Booklets not available until Dec 09</li> <li>• Onus on parents to access information</li> <li>• Impacts on equality of access to schools for socially disadvantaged pupils as parents may be less well informed</li> <li>• Socially divisive (i.e. does not promote equality of opportunity)</li> <li>• Relocation (even within NI) will present problems in all year groups</li> </ul>	<ul style="list-style-type: none"> <li>• Parental expectation to prepare pupils for new tests</li> <li>• If do not prepare pupils parents could transfer to schools that do – impact on numbers in an already competitive environment</li> <li>• Skew teaching of Revised Curriculum</li> <li>• Potential for increase in Curriculum Complaints Tribunals</li> <li>• Conflict with ETI</li> </ul>	<ul style="list-style-type: none"> <li>• Identification of pupils sitting tests</li> <li>• Who will provide advice and guidance on writing admission criteria</li> <li>• Potential for legal challenges</li> <li>• Funding of legal challenges</li> <li>• Should controlled schools have approval of ELB to depart from the Guidance</li> <li>• Current non-selective schools can become bilateral</li> <li>• Under subscription of test takers</li> <li>• Allegations of elitism</li> <li>• Schools that comply with the Guidance may lose pupils to those that retain academic selection</li> </ul>	<ul style="list-style-type: none"> <li>• Impact on Transfer &amp; Open Enrolment Sections eg no appointment of supervisors</li> <li>• Lack of clarity re role</li> <li>• Funding of legal challenges</li> <li>• ELB must have regard to the Guidance</li> <li>• Should controlled schools have approval of ELB to depart from Guidance?</li> <li>• Potential for increase in Curriculum Complaints Tribunals</li> <li>• Impact on pupil entitlement to transport assistance</li> <li>• Impact on placement of statemented pupils</li> <li>• Impact on EPS – will they need to cater for Special Provision</li> </ul>	<ul style="list-style-type: none"> <li>• Increase in admission appeals</li> <li>• Potential for increase in Curriculum Complaints Tribunals</li> <li>• Need for training</li> <li>• Inability of Clerk to be knowledgeable source of advice.</li> </ul>

<b>Potential/Actual Problem</b>	<b>Implication for Parents</b>	<b>Implication for Primary Schools</b>	<b>Implication for Post Primary Schools</b>	<b>Implication for ELBs</b>	<b>Implication for Appeal Tribunal Members</b>
<p><b>2</b> No uniform approach from post-primary schools re tests</p>	<ul style="list-style-type: none"> <li>• Confusion</li> <li>• Tests will take place before criteria published</li> <li>• Will have to register with different schools to enter for tests</li> <li>• Cost – for entering the tests and transport to the test centre</li> <li>• Potential for clash of dates for different tests</li> <li>• Supplementary test for children who miss test</li> <li>• Children sitting test in an unfamiliar environment</li> <li>• Relocation (even within NI) will present problems</li> <li>• Equality of opportunity for non-national children</li> </ul>	<ul style="list-style-type: none"> <li>• Differing arrangements amongst receiver post-primary schools</li> <li>• Decide if they will co-operate and assist parents and post-primary schools</li> <li>• Required to liaise closely with traditional post-primary schools</li> <li>• Pressure of parental expectation to prepare pupils for all tests - contrary to DE Guidance</li> </ul>	<ul style="list-style-type: none"> <li>• Dissemination of information</li> <li>• Logistics/Admin</li> <li>• Quality Assurance</li> <li>• Security of tests</li> <li>• Appointment of Supervisors – vetting, training and paying</li> <li>• Equality issues – will all P7 cohort be appropriately targeted?</li> <li>• How is this funded? Can LMS budget be used?</li> <li>• Interpretation of academic information</li> <li>• Impact on admission profile between sectors</li> <li>• Potential for increase in ‘special circumstance’ claims</li> </ul>	<ul style="list-style-type: none"> <li>• Dissemination of information</li> <li>• Legal position</li> <li>• Array of results</li> <li>• Increase in admission appeals</li> <li>• Timetables for tests may not co-ordinate with current Transfer timetable</li> <li>• Consensus on timetable required.</li> <li>• Pressure of parental expectation to co-ordinate all strands of admissions procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Array of results</li> <li>• Interpretation of academic information</li> <li>• Unfamiliar with JCQ model for Special Consideration</li> </ul>

Potential/Actual Problem	Implication for Parents	Implication for Primary Schools	Implication for Post Primary Schools	Implication for ELBs	Implication for Appeal Tribunal Members
<p><b>3</b> Differing Scoring Systems e.g. Rank order Banded Pass mark</p>	<ul style="list-style-type: none"> <li>• Confusion</li> <li>• What does the result mean?</li> <li>• Which schools will this make child eligible for?</li> <li>• Relocation (even within NI) will present problems</li> </ul>	<ul style="list-style-type: none"> <li>• Parents will look for guidance</li> <li>• Who will schools look to for guidance?</li> </ul>	<ul style="list-style-type: none"> <li>• Will have to set out in admissions criteria scoring system being used</li> <li>• Will AQE schools accept other tests and vice versa (if not is this Wednesbury reasonable?)</li> <li>• Will there be a minimum mark required to secure admission? At present there is no minimum mark – legally there cannot be a minimum mark as have to admit up to admission number</li> </ul>	<ul style="list-style-type: none"> <li>• Rigorous control system removed</li> <li>• Parents, primary schools and Appeal Panels will need guidance</li> <li>• ELBs powerless to assist/advise and co-ordinate procedure</li> </ul>	<ul style="list-style-type: none"> <li>• Array of results</li> <li>• Interpretation of academic information</li> <li>• Unfamiliar with JCQ model to be used by AQE</li> </ul>

Potential/Actual Problem	Implication for Parents	Implication for Primary Schools	Implication for Post Primary Schools	Implication for ELBs	Implication for Appeal Tribunal Members
<p><b>4</b> Special Circumstances allegedly affecting performance in test</p>	<ul style="list-style-type: none"> <li>• Parents need to be informed as to what information is required from parents and when it will be required</li> <li>• JCQ framework detailed and complicated to follow</li> <li>• AQE defining Special Access &amp; Special Consideration – claims to be registered in advance on a separate form</li> <li>• Is there any appeal against – JCQ decision on special circumstances?</li> <li>• Is there opportunity to verbally present their case?</li> </ul>	<ul style="list-style-type: none"> <li>• What if any information is required from primary schools?</li> <li>• When would it be required?</li> <li>• What are the legal implications of them providing or not providing it?</li> <li>• Results of practice tests have traditionally been used as a key component of educational evidence (no longer available)</li> <li>• Potentially no further input to special circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Procedure will have to be very clear in admissions criteria</li> <li>• Schools will need to know if special circumstances have been taken account of in adjusted AQE results</li> <li>• Needs to be clear audit trail for appeals</li> <li>• Cost if centrally managed (administrators, assessors, reasonable adjustment)</li> <li>• Quality of evidence</li> <li>• Lack of comparative evidence (no SC1)</li> <li>• Increase in appeals</li> <li>• Representation at appeals if central body of assessors are the decision makers</li> <li>• Legal challenge</li> </ul>	<ul style="list-style-type: none"> <li>• Increase in number of appeals and associated increase in costs</li> <li>• Potential increase in number of Judicial Reviews. Who pays?</li> <li>• ELBs powerless to assist/advise</li> <li>• Information gathering for Appeal members and parents – ELBs would not have all the information BOGs considered</li> </ul>	<ul style="list-style-type: none"> <li>• Access by ELBs/ESA to the information considered by AQE Ltd and paper trail.</li> <li>• Can appeals overturn decision made on special circumstances? If so there may be resource implications</li> <li>• May impact on membership</li> </ul>

Potential/Actual Problem	Implication for Parents	Implication for Primary Schools	Implication for Post Primary Schools	Implication for ELBs	Implication for Appeal Tribunal Members
<p><b>5</b> Special Provision for children unable to sit test</p>	<ul style="list-style-type: none"> <li>• Parents need to be informed who is eligible for Special Provision and how it will operate</li> <li>• Equality of opportunity for children who missed the tests?</li> <li>• Another different scoring system?</li> <li>• What is the position for children seeking admission to Year 9 onwards in a school which up until Sept 2010 has admitted pupils on the basis of academic ability?</li> </ul>	<ul style="list-style-type: none"> <li>• What role if any does the school have?</li> </ul>	<ul style="list-style-type: none"> <li>• Schools using Entrance Tests will need to make fair and robust admissions decisions on applicants who have not been able to sit or cannot be assessed fairly by such a test (Para 27 DE Guidance)</li> <li>• Can schools request an assessment by an ELB Ed Psych?</li> <li>• If so will ELBs levy a charge for this service?</li> <li>• How can DE approve additional places for children moved into the area on the basis of academic ability? (If school have used academic criteria)</li> <li>• What is the position for children seeking admission to Year 9 onwards in a school which up until Sept 2010 has admitted pupils on the basis of academic ability?</li> </ul>	<ul style="list-style-type: none"> <li>• No statutory basis for Special Provision</li> <li>• Need for Board policy on provision of EP assessment</li> <li>• Can ELBs levy a charge for this service?</li> <li>• What is the position for children seeking admission to Year 9 onwards in a school which up until Sept 2010 has admitted pupils on the basis of academic ability?</li> <li>• What criteria will ELBs use when commenting on requests for additional places</li> </ul>	<ul style="list-style-type: none"> <li>• What is the position for children seeking admission to Year 9 onwards in a school which up until Sept 2010 has admitted pupils on the basis of academic ability?</li> </ul>

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6 Communication of Results	<ul style="list-style-type: none"> <li>• May receive more than one result and in more than one format</li> <li>• Interpretation of result</li> <li>• Will a remark facility exist?</li> <li>• How will parents be informed of remark facility?</li> <li>• Will there be a charge for remark facility?</li> </ul>	<ul style="list-style-type: none"> <li>• Will primary schools be informed of result?</li> <li>• If more than one test how will it be, or will it be, recorded by principal on Transfer Form</li> </ul>	<ul style="list-style-type: none"> <li>• Will need to be rigorous checking system in place before posted.</li> <li>• Schools should agree date</li> <li>• Remark facility?</li> </ul>	<ul style="list-style-type: none"> <li>• Will ELBs have access to this information – necessary for any future appeals</li> <li>• Freed of the responsibility to check grades recorded correctly</li> <li>• Will result have to be recorded in IT system?</li> </ul>	

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<p><b>7</b> Transfer Forms (including processing)</p>	<ul style="list-style-type: none"> <li>• Do parents have to record grade on Transfer Form?</li> <li>• Will results letter have to be attached?</li> <li>• How will FSME be indicated?</li> </ul>	<ul style="list-style-type: none"> <li>• Impact on level of work for primary principals unknown depending on how entrance test arrangements operate including special circumstances</li> <li>• Potential role for primary principals to verify if child is in receipt of FSM</li> </ul>	<ul style="list-style-type: none"> <li>• More work in application of criteria for those schools operating FSME especially integrated schools and bilateral schools</li> <li>• Resurrection of first preference criterion lessens work in application of criteria</li> </ul>	<ul style="list-style-type: none"> <li>• Will result have to be recorded in IT system?</li> <li>• If more than one result cannot be accommodated in current IT system without major change and cost</li> <li>• Will paper record of results have to be attached to Transfer Report or will this be with post-primary electronically</li> <li>• If FSME criterion is adopted may have implications for FSM Department and IT e.g. verification or increased applications</li> <li>• Further guidance awaited on operation of FSME criterion</li> </ul>	<ul style="list-style-type: none"> <li>• All information traditionally attached to Transfer Form is no longer held centrally</li> </ul>

Potential / Actual Problem	Implication for Parents	Implication for Primary Schools	Implication for Post Primary Schools	Implication for ELBs	Implication for Appeal Tribunal Members
<p><b>8</b> Schools complying with Guidance</p>	<ul style="list-style-type: none"> <li>• Lack of information re admissions – Transfer Booklets not available until Dec 09</li> <li>• FSM entitlement increased incentive for uptake by those eligible</li> <li>• Unaware of FSM entitlement criterion</li> <li>• Impact on parents of children not entitled to FSM</li> </ul>	<ul style="list-style-type: none"> <li>• May have to verify FSM entitlement on the Transfer Form</li> </ul>	<ul style="list-style-type: none"> <li>• Schools will need guidance on writing admissions criteria</li> <li>• May lose pupils to those schools that retain academic selection</li> <li>• FSM awareness campaign</li> <li>• Impact of FSM criterion</li> <li>• Difficulty in applying FSM criterion</li> <li>• Duty to verify FSM entitlement</li> <li>• What is the position for children seeking admission to Year 9 onwards in a school which up until Sept 2010 has admitted pupils on the basis of academic ability?</li> </ul>	<ul style="list-style-type: none"> <li>• New Admissions arrangements yet to be applied and tested – no pilot to assess benefits of this procedure</li> <li>• Critical role for Benefits Sections in New Admissions process</li> <li>• Potential for increased uptake of FSM entitlement</li> <li>• Data protection issues regarding FSM</li> <li>• Benefits Section may have to verify FSM</li> <li>• Impact on IT - new reports</li> <li>• Two procedures in operation</li> <li>• Impact of two procedures to be administered by T &amp; OE</li> </ul>	<ul style="list-style-type: none"> <li>• Increase in admission appeals</li> <li>• Need for training</li> <li>• Legal challenges</li> </ul>

Potential/Actual Problem	Implication for Parents	Implication for Primary Schools	Implication for Post Primary Schools	Implication for ELBs	Implication for Appeal Tribunal Members
9 Appeals	<ul style="list-style-type: none"> <li>Gathering information for appeal</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li>Incumbent on BOGs to be able to show how the published admissions criteria were applied</li> <li>In unregulated system schools will be more susceptible and vulnerable to challenge therefore increasing the need for a substantial audit trail of decision making process</li> </ul>	<ul style="list-style-type: none"> <li>Still obliged to make arrangements for appeal hearings</li> <li>Need to rewrite guidance for parents</li> <li>Increase in bureaucracy because established procedure no longer exists e.g. transfer grades of applicants/pupils admitted</li> </ul>	<ul style="list-style-type: none"> <li>Remit remains the same</li> <li>Tribunal members will need trained</li> <li>Inability of Clerk to be knowledgeable source of advice.</li> <li>As appeals cannot comment on fairness of criteria or procedure there is a potential for an increase in the number of judicial reviews</li> </ul>

## **Exceptional Circumstances Body**

The new “Exceptional Circumstances Body” (paragraph 13) is welcomed as a safety net. It will facilitate children for whom admission to a particular school is essential but whose application does not sufficiently meet the schools criteria (for the child to be admitted under the normal transfer arrangements). If fixed in time much of the benefit of this body will be lost. It is essential that it is able to meet as and when a child’s needs are ‘exceptional’ and considered to outweigh the criteria for admission to an oversubscribed school (eg incoming pupil seeking admission to year 9 – 14).

DE is currently pursuing an amendment to the 2006 Order to allow DE to give to ESA the responsibility to set up local Exceptional Circumstances Panels. However there is still uncertainty about how members will be appointed, trained and function. There is a significant practical difficulty with the Department’s proposal in that even if ESA is nominally in existence on 1 January 2010, the structure will not be in place to have members recruited etc and in a position to consider cases early in 2010 (maybe January 2010). The extent of these practical difficulties will be impacted by when regulations are drafted, consulted on and finalised as well as the timetable for consideration of exceptional circumstances i.e. will the cases be considered before, after or concurrently with the normal admissions procedure. If parents want their child to be considered under exceptional circumstances do they do it after being refused admission under the normal admission arrangements or are they firstly considered by this body?

Is there a maximum number of children admitted under this mechanism? This could cause difficulties for schools managing these extra pupils given that any children admitted under appeal are supernumerary as are statemented pupils ie impact on practical class size, physical capacity of the school.

Note: *The Department may make payments by way of travelling and subsistence allowances to members of the body.*

The Independent Admission Appeal Tribunal Members are paid an Attendance Allowance and travelling and subsistence equivalent to that of Board Members. The absence of payment to Members of the Exceptional Circumstances Body could impinge on recruitment particularly if the Members are required to have skills such as the ability to assess ‘medical need’.

It is perhaps worth noting that Members of the Special Educational Needs and Disability Tribunal are also paid.

## **Recommended Admissions Criteria**

### 1 Recommended first criterion - FSME

The Department advises (paragraph 17) that “further information will issue later to clarify exactly how the applications process will facilitate the operation of this criterion” and whether it refers to Entitlement or receipt.

ELBs will be aware of the unpopularity of the social disadvantage criterion amongst working parents in relation to admission to pre-school education. This can be substantiated by the number of Assembly questions and Correspondence to the Minister on this subject many of which DE has asked ELBs for input on. At extreme it could encourage parents to give up employment in the interests of their child’s education – a practice which is not helpful to the economy.

It should also be noted that potentially there will be issues with regard to Board’s I.T. and free school meals sections. It is likely that certification of eligibility on a particular date will be necessary and if this is to be conveyed electronically then data protection issues will also have to be considered. An alternative means of verification is that parents will be required to have certification carried out by the Social Security Agency as is the practice for pre-school applications. This methodology would potentially require the agreement of the Social Security Agency and would have implications for the timescale in which the Transfer Form is completed.

As presently worded there is no transparency for parents in exactly how many places will be allocated by each school under this criterion since the number will not be established until the school receives its first preference applications. In order to achieve its quota the school would apply its subsequent criteria to all FSM applicants. The Guidance does not comment on integrated schools, if they are to continue to seek to maintain religious balance through their criteria, this would become a very complex procedure in that a FSME criterion would have to be applied to a minimum of three different categories. For all schools which had to use their ‘random selection criterion’ (tie breaker) at first preference, they would have to have a tie breaker which would allow them to make robust decisions when they receive subsequent preferences (again a potentially complex procedure).

Decisions with regard to changes of preferences will further complicate the application of this criterion since these will affect the number to be allocated under this criterion.

This is likely to prove a contentious criterion and the Department’s further guidance will be critical for schools to publish this as a robust criterion. We would welcome the opportunity to comment whenever the further guidance is received.

## 2 Other Criteria

Sibling	The intention expressed is welcome but the phrase 'child of the family' is ambiguous and needs to be more clearly defined.
Eldest child	This appears to deal with previous concerns (why give a first child priority over a child who had a previous connection with a school?) in that children who are the eldest to be eligible to be admitted to the school would allow children whose sibling no longer attends this (or any) school to be considered on an even par. However, 'eldest child' needs to be more clearly defined.
Feeder/named primary school	This is current widely used and the comments made are helpful. However, this may affect schools that seek to give preference to primary schools within a parish as these schools may not necessarily be the closest suitable primary school geographically.
Parish (with nearest suitable school) Catchment Area (with nearest suitable school)	<p>The Department's combination of two criteria (parish and catchment area with nearest school) does not appear to recognise that a school is seldom located in the centre of a parish. This may affect schools that seek to give preference to primary schools within a parish as these schools may not necessarily be the closest suitable primary school geographically.</p> <p>Catchment area – some categories of schools e.g. integrated or Irish Medium schools would have difficulty using geographically based criteria as their 'catchment' area is so wide.</p> <p>Parish/Catchment - is it AND nearest suitable school or OR nearest suitable school?</p>
Nearest suitable school	This is as used at present. Definition of 'suitable' schools should be included in the glossary of the Transfer Booklets.
Random Selection (tie breaker)	<p>Further guidance would be useful. For example is 'lottery' acceptable to the Department and if so difficulties will arise after first preference - particularly where 'double lotteries' will be required (for FSM and for non FSM). Random letters changed each year as used by schools at present are useful but must indicate down to last available space (additional place identical name). All random selections should allow for additional place if a twin is selected by virtue of a forename.</p> <p>Name should be as per Birth Certificate.</p> <p>The Transfer Officer's preferred option would be the use of random surnames. This provides an audit trail for tribunals that is not available if a lottery mechanism is used. Furthermore where a lottery is used as a tiebreaker tribunals cannot fulfill the second part of their remit i.e. to determine if a child would have been admitted had the criteria been correctly applied. This has major implications for schools with a large number of appeals.</p>

In the event of under subscription of test-takers Grammar schools that choose to retain academic selection will have to make provision within their criteria to allow for consideration of applications from non-test takers as they are still legally obliged to admit up to their admissions number.

A number of the criteria make reference to the fact that the Department may intervene where it considers that the criteria may be used in a manner that disregards specific points. It is not clear at what point this intervention would take place i.e. is it pro-active or re-active? The only effective way to achieve this is for the Department to scrutinise the criteria of all schools before publication but the timescales are unlikely to facilitate this, therefore it seems to be only the most fundamental problems which are likely to come to the Department's attention. Without a system of formal review, less obvious errors are unlikely to come to light.

The decisions of Boards of Governors are subject to judicial review if it is alleged that criteria are illegal or unreasonable. ELBs are presently not in a position to provide advice on the legality of criteria drawn up under the new Guidance and consideration needs to be given to who will provide advice to Governors.

## **Section B Impact on the Board's statutory duties**

The board is of the view that the Guidance does impinge or alter some of the Board's statutory duties as detailed below:

### **2.1 New statutory Duty**

The Education (NI) Order 2006, Article 29 places a duty on the Department of Education to make regulations to:

- Define Exceptional circumstances; and
- "Provide for the constitution and procedure of a body to determine applications under this Article."

This Article is to be commenced for the cohort transferring to post-primary schools in September 2010. The Department is currently pursuing an amendment to the 2006 Order to allow DE to give to the ESA the responsibility to set up local Exceptional Circumstances Panels.

(See Page 15 for other comments).

### **2.2. Existing Statutory Duties**

The ELBs will retain entirely their established duties in respect of the Education Order (NI) 1997:

- Article 9 – Every Board shall make arrangements for the parent of a child resident in the area of the board - :
  - a) To express (in order of preference) his preferences as to the school at which he wishes education to be provided for his child; and
  - b) To give reasons for his preferences.
- Article 15 – .....every Board shall make arrangements for enabling the parent of a child to appeal ...

The anticipated increase in the number of appeals may impact on the ability to meet statutory obligations. The information provided by the post-primary school may be lacking increasing the potential for legal challenge.

- Article 17 – Every Board shall, for each school year, publish at such time and in such manner as the Department may direct particulars of –
  - a) The arrangements made by the board under Articles 9(1) and 15(1);
  - b) The arrangements for the admission of children to each grant aided school in its area.

The Education (School Information and Prospectuses) Regulations (NI) 2003 state that schools (which select pupils by reference to ability or aptitude and which includes in its admission criteria the transfer test grade achieved by pupils) must publish in their prospectuses:

- a) The number of such applicants for admission to the school falling within each transfer procedure test grade; and
- b) The number of such pupils falling within each such grade admitted to the school.

The DE circular on Transfer to Post Primary states that the former should be published by the ELBs. Under an unregulated system the ELBs will not have the information to publish.

Concerns also exist re the timing of the publication of the booklets (December) which will be too late to be of any practical use to parents e.g. entry and timing of tests.

The recommended FSME criterion may impinge on the Board's obligations under Data Protection.

## **Section C Summary**

This paper is based only on the operational aspects of the transfer procedure. It does not make any comment on the educational arguments for or against selection.

A number of comments have been received from other sections within the board whose operational arrangements may be affected by the Guidance (These are attached at Appendix 1).

It is noted that an EQIA will be carried out by the Department of Education.

In preparing the response the Transfer Officers are accepting that Boards of Governors and ELBs/ESA will “*have regard to*” this Department of Education Guidance as is required of them.

It is the view of the Transfer Officers of the five ELBs that the Department of Education’s Guidance is fraught with litigious and administrative perils. The current system has addressed inadequacies and inequalities highlighted by the judicial reviews that characterised transfer after its introduction in the late 1990s. Section A of this document outlines the likely impact on schools, parents and pupils with the potential for a fresh round of judicial reviews against schools, ELBs and the Department of Education.

Transfer Officers have previously highlighted that as the Officers responsible for the implementation of any new arrangements we are morally obliged to co-ordinate all the different strands into a structured system with a view to ensuring that no child is disadvantaged and that parents have sufficient time available to consider the various options and make informed choices for their children.

### **Resource Implications**

A major concern is the volume of work to be undertaken in the months ahead in order to ensure that the system operates as smoothly as possible for parents, schools and the ELBs/ESA. We would also wish to highlight that the continued smooth delivery of the Transfer Service cannot be achieved by the ELBs alone. It will require the input and co-operation of all stakeholders but in particular it will require prompt decision making and action by the Department of Education in a number of areas. A draft timetable is attached (Appendix 2) which highlights the key activities to be carried out in an ever shortening period of time.

Whilst the precise detail and amount of work referred to in the timetable cannot be quantified there will be significant implications for the transfer and open enrolment sections in the ELBs. At very least there will need to be a re-writing of working practices, procedures, proformas. There is also an opportunity to make efficiencies in the system by streamlining some aspects of the procedure e.g. removing duplication in the issue of 25,000 placement letters by ELBs whilst schools simultaneously issue letters.

There will need to be significant training for board staff, primary and post primary schools and tribunal members.

The impact on the current IT systems cannot be determined until operational details are known.

The introduction of the duty to verify guidance had a significant impact despite 'only' being an additional item being introduced to an existing procedure.

It is perhaps worth considering whether a dedicated Project Team should be established to implement the forthcoming changes to post-primary admissions. Whilst such a team would be limited in what they could progress, it could be established after the Department of Education has analysed the results of the consultation and issued the final version. A dedicated Project Team would allow the operation of the pre-school and primary procedures to continue at the same high standard without risk from the implications of the new post primary operations.

### **Impact of ESA**

Transfer Officers highlighted at the ESA workshops that there may have been merit in ESA taking the lead on the introduction of the new admission arrangements. This would have negated the need to implement the new arrangements in five areas followed by a period of time harmonising the five areas into a single system under ESA. With ESA not being established until January 2010 the five ELBs will now have to manage the transfer of approximately 25,000 pupils in an unregulated system whilst at the same time trying to 'merge' the five sections.

### **Longer term impact on ELBs/ESA**

The absence of activities associated with the Transfer Test e.g. submission of test entries to CCEA, appointment of supervisors, issue of results would facilitate a re-working of the transfer, primary and pre-school admission procedures in the longer term with the potential to bring one or both of these procedures forward in the year. This is not an option for September 2010 admissions as it is already too late to commence some of the necessary changes and a change in more than one admission procedure in one year is not recommended.

### **Other Considerations**

There will presumably be a need for transition arrangements for admission to Year 9 onwards for those schools which traditionally selected on basis of academic ability.

Clarification is required from the Department of Education that the Guidance relates to admissions for children of compulsory school age only i.e. that selection on the basis of academic ability can continue to be used for admission to sixth form.

## **General Comments**

The consultation period closes on 27 April 2009. A key factor in moving forward will be how soon 'final' guidance is issued to allow for gathering of admissions criteria.

Until then and even in the forthcoming years the ELBs will be working in a vacuum where staff are powerless and unable to assist either schools or parents. This will potentially be de-motivating added to the uncertainty associated with ESA.

## **Risks**

Unless there is real co-operation and an immediate start made on the practical implementation steps there are real risks to the ELBs/ESA. These potentially include:

- An inability to continue to provide a high quality valued service;
- An inability to have the necessary arrangements in place in an adequate timescale (including not having information available for parents on the admissions procedure as required under statute);
- Post-primary children being unplaced in September 2010;
- An unmanageable number of appeals to be heard in summer 2010;
- A potential increase in the number of judicial reviews.

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**COMMENTS RECEIVED FROM OTHER SECTIONS WITHIN THE BOARD****1. Benefits Department (including Free School Meals)**

What are the working practicalities of the first criterion whereby priority is to be given to a proportion of Free School Meals applicants? How and when will the eligibility to Free School Meals be determined? Will the applicant be asked to disclose eligibility at application stage and will this then be checked with the Benefits Section? An applicant could be eligible for Free School Meals at the time of application but become ineligible in the next week and vice versa. Or will the proportion of Free School Meals applicants be determined at application stage and then all applicants checked for eligibility at offer stage to determine who then falls into the Free School Meals category?

A check would need to be made with the Benefits Section at the time of determination, rather than via the EMS system, as Benefits would have the most up to date information.

**2. Education Psychology Department**

Paragraph 26 of the Guidance refers to the support previously given by Educational Psychology services [EPS] when the DE supported academic selection and endorsed Transfer Testing. Under the Special Provisions Procedure the EPS supported Grammar Schools' academic selection procedure by assessing the academic potential of pupils moving to or recently moved to Northern Ireland.

The current situation as described in the Guidance document is that the power that Grammar schools previously had to refuse admission to applicants on academic grounds has been removed [para 5]. It is also clear that schools which chose to operate "entrance tests will do so without the approval of DE" [para 9]. Grammar Schools will no longer have the ability to refuse admission where they are of the opinion that the academic ability of the child is not of a standard to that of the pupils with whom he/she would be taught at the school. [para 15]

In this context it is clear that EPS will no longer be able to support Grammar Schools in the process of academic selection. Not only would it be contrary to DE policy but it would put the Board at risk of legal challenge from those refused admission on the basis of assessment by EPS. Clarification is therefore required on what would be an appropriate response when requests for such assessments are received. Grammar Schools which choose to operate transfer tests will need an alternative arrangement so as not to discriminate against children who would previously have been entitled to Special Provision.

### 3. Special Education Department

Under legislation Special Education has a duty to place a child in a school suitable to his age, ability and aptitude taking into account any special educational needs, however this conflicts with the Guidance. If Special Education does request a place it would seem that the grammar schools cannot turn it down on grounds of ability? For more able SEN pupils Special Education Department would have requested advice from Education Psychology on the pupil's ability and predicted transfer grade to place them appropriately but how can they do this now when there may be a variety of tests – can SEN children sit these tests?

If Special Education do not request a place on the grounds that the school is not suitable for the child then the parent may revert to Tribunal – does it just consider the new criteria in the Guidance, is that what ELBs should be using, are SEN children still supernumerary?

If there were to be a significant number of supernumerary pupils admitted under Exceptional Circumstances this may impact a school's ability or willingness to accept stated children.

### 4. Transport Department

Section 10 Point c of the Guidance states there will no longer be:

“A prohibition on the use of schools of criteria giving priority according to the preference given to an application by an applicant”

At present all guidance provided by Transport section to parents of pupils making post primary application advises that:

*“Parents/Guardians should also note that the transport policy makes no exceptions for those parents who disregard the requirement to apply to all suitable school(s) within the qualifying distance of a pupil's home on the basis of possible rejection by those school(s). This may mean that parents/guardians will need to apply to some schools even where, on the evidence of past patterns, there would be little prospect of obtaining a place, to do so will not affect their application to other schools. If a child does not obtain a place at the first preference school, the second preference school is obliged to consider an application on the basis as if it had been the parent/guardians first preference etc. A parent/guardian would then be fully eligible for transport assistance for their child to a suitable school outside qualifying distance”.*

The new Guidance issued by the Department contradicts the current guidance offered by the Board. This will require further investigation and may have implications for the application process for transport assistance.

## **5. Planning and Development Department**

If a non-selective school decided to use academic criterion for selection (i.e. in totality or as a bilateral school) this would presumably require the publication of a Development Proposal on the basis that it would be a change in character.

**Transfer Procedure - September 2010 admissions**  
**Draft Timetable of Key Post Primary activities 2009/2010**

Date	Activity
February 2009 onwards	Creation of an Exceptional Circumstances Body
???	EQIA on Guidance conducted by DE
27 April 2009	Closing date for response to consultation on Guidance
May 2009	Analysis by DE of responses to consultation on Guidance & associated EQIA
May 2009	Work on harmonisation of timetables between DE/ELBs/AQE/others (cannot be undertaken until final guidance is issued?)
Early June 2009	Issue of final guidance on new admission arrangements
June 2009	Annual timetables for admission to pre-school, primary & post-primary due to finalised between DE & Transfer Officers
26 <sup>th</sup> June 2009	Post-primary schools to provide initial draft of admissions criteria to DE for scrutiny
28 <sup>th</sup> August 2009	Information to be available for issue to parents on dates of tests for those schools retaining academic selection
Monday 20 <sup>th</sup> September 2009	Schools to provide ELBs with FINAL admissions criteria for publication
November 2009	Printing of booklets
December 2009	Packing & distribution of transfer booklets and forms (Co-ordinated with deliveries of pre-school and primary booklets & application forms to over 400 locations)
1 January 2010	ESA in existence
January 2010	Exceptional Circumstances Body in existence
Friday 8 <sup>th</sup> January 2010	Final date for publication of transfer booklet
Friday 19 <sup>th</sup> February 2010	Transfer forms completed and sent to ELB
Friday 19 <sup>th</sup> February 2010??	Parents to apply to Exceptional Circumstances Body??
Friday 19 <sup>th</sup> March 2010	Transfer forms made available for schools
April 2010	Training of Tribunal Members
Friday 29 <sup>th</sup> May 2010	Issue of letters advising parents which post-primary school is accepting child (to include any determinations by Exceptional Circumstances Body)
Wednesday 9 <sup>th</sup> June 2010	Final date for notice of intention to appeal
July/August 2010	Independent Tribunals hear appeals

Notes:

1. *Timetable based on when certain activities need to happen and on basis of the stage some developments are currently at e.g. Guidance at consultation stage at time of preparation and other details unknown/not finalised e.g. when will Exceptional Circumstances Body meet;*
2. *Timetable based on current procedures which are scheduled to operate in conjunction with pre-school and primary admissions procedure; and*
3. *Above timetable does not include reference to any work necessary to move from ELBs to ESA e.g. major issues such as the creation of a regional service or smaller but equally critical practical issues such as the creation of a single panel of tribunal members, decisions on format of information booklets for parents etc.*
4. *Actual timetable would have to be agreed with the Department of Education.*