

<p>Subject:</p> <p>ADMISSIONS AND ENROLMENT NUMBERS – TEMPORARY VARIATION REQUESTS</p>	<p>Circular Number: 2016/01</p> <p>Date of Issue: 12 January 2016</p>
<p>Target Audience:</p> <ul style="list-style-type: none"> • Principals and Boards of Governors of all Grant-Aided Schools; • Education Authority; • The Council for Catholic Maintained Schools; 	<p>Governor Awareness: Essential</p> <p>Status of Contents: Advice for Principals and Boards of Governors</p>
<p>Summary of Contents:</p> <p>This Circular provides advice for the Principals and Boards of Governors of grant-aided primary and post primary schools in relation to the Department’s consideration of requests from schools to temporarily vary the school’s approved admission and or enrolment numbers.</p>	<p>Related documents Circular 2014/06 (Primary) Circular 2015/25 (Post-primary) Circular 2014/05 (Sixth Form) Circulars 2011/01 & 2012/20 (Class Sizes); Circular 2012/10 (Waiting Lists) Circular 2013/24 (Duty to Verify)</p> <p>Superseded Documents: Circular 2015/03 (Temporary Variation Requests)</p> <p>Expiry Date: Not Applicable</p>
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INDEX

PART ONE – BACKGROUND

Introduction.....	3
Legislation.....	3
Is a temporary variation required?.....	4
Should a temporary variation be requested?.....	4

PART TWO – THE PROCESS

Temporary Variation Process.....	5
Contacting the Department.....	5
Timescales.....	6

PART THREE – DEPARTMENTAL CONSIDERATION

Sectoral Availability.....	6
Issues not taken into Consideration.....	9
Siblings.....	9
Consultation.....	9
Area Planning.....	9
Exceptional Circumstances.....	10
Discretionary Place.....	11
The Decision.....	11

PART FOUR – ESSENTIAL POINTS TO NOTE

Unlawful Admissions.....	12
Resisting Parental Pressure.....	12
Additional Places.....	13
Class Size Exemptions.....	13
Transport.....	14
Waiting Lists.....	14
Contacts.....	14

PART ONE - BACKGROUND

INTRODUCTION

1. This circular updates Circular 2015/03 which issued on 23 February 2015 to explain temporary variation policy. All primary and post primary Temporary Variation applications should be submitted using the appropriate application form. It is available on the Department of Education website, www.deni.gov.uk under Schools and Infrastructure, Admissions, School Admissions Guidance.
2. In order to increase the efficiency of the process and in order to minimise distress to families involved, **schools should be careful not to make speculative requests which have little chance of approval.**
3. Post primary schools seeking a temporary variation for pupils seeking admission to sixth form should use the process set out in the relevant circular, entitled **Procedure for Requesting Extra Sixth Form Places** circular number 2014/05.
4. The Department will not consider temporary variation requests for reception pupils.
5. This circular should be read in conjunction with the appropriate Open Enrolment circular from the following list; Open Enrolment in Primary Schools 2014/06; The Procedure for Transfer from Primary to Post-Primary Education 2015/25; Guidance on a School's Duty to Verify Application Information 2013/24.

LEGISLATION

6. Articles 11 and 12 of the Education (NI) Order 1997 require the Department to determine an enrolment number and an admissions number respectively for each grant-aided primary and post primary school. The Department sets these numbers for each school each year in consultation with Boards of Governors, and where relevant, the Council for Catholic Maintained Schools (CCMS) and the Education Authority (EA).
7. Under Article 10 of the Education (NI) Order 1997 the Board of Governors of a school shall not;
 - a) Admit to the school a number of pupils which exceeds the school's admissions number for the year; or
 - b) Cause or permit the number of registered pupils at the school at any time to exceed the school's enrolment number.

8. The Department has the power to vary these numbers at any time. When such a variation is made and relates to that academic year only, this is known as a **temporary variation** to the approved admissions and enrolment numbers. The Department may need to make such a temporary variation for a number of reasons and if it does will consult with the school in question, the EA and if a maintained school with CCMS before setting the new temporary number or numbers. Temporary Variation requests are initiated by the school; it is this kind of request, and the process that surrounds it, that this circular seeks to expand upon and clarify.

IS A TEMPORARY VARIATION REQUIRED?

9. A temporary variation is required where an admission will cause the school to exceed either its admissions or enrolment number or both. For the purposes of calculating the number of pupils in a school the following kinds of admissions are not included in the school's admission and/or enrolment numbers for that given year;
 - A pupil for whom the EA is maintaining a statement of special educational needs;
 - A pupil who is the subject of a school attendance order;
 - Where a direction has been made under Article 42 of the Education (Northern Ireland) Order 1996 to admit a child to a specified school;
 - In compliance with the findings of an Appeal Tribunal or;
 - In compliance with a direction of the Exceptional Circumstances Body (in the case of admissions to years 8-12 only).

SHOULD A SCHOOL SEEK A TEMPORARY VARIATION?

10. It is entirely a decision for the school whether or not it wishes to exceed its number by way of a temporary variation request. Under the law a school must admit all applicants up to its admissions and enrolment numbers. Where it wishes to exceed its numbers it must seek a temporary variation from the Department. There is, however, **no requirement** for it to exceed its numbers except under direction of for instance, the Admissions Appeal Tribunal, or in the case of post primary schools, the Exceptional Circumstances Body.
11. When considering whether or not to make a temporary variation request, a school should therefore carefully consider the advice given in this circular, and consider whether or not it can safely accommodate the additional pupils in question. **The Department reserves the right to verify such information in certain cases where, for example, a school is substantially above its approved enrolment number.**

12. The Department understands that schools may be placed under considerable pressure (by parents, media, local political representatives) to seek a temporary variation from the Department. However if a school wishes to remain within its approved admissions and enrolment numbers, for instance where it does not have sufficient accommodation available, or for the purposes of class sizes or teaching cover, it is under no obligation to exceed its numbers by way of a temporary variation.
13. If the Department agrees to grant a temporary variation to a school's numbers it is on the following basis;
 - The school's request falls within the temporary variation policy;
 - In making its request the school has ensured that it can **safely** accommodate all the additional pupils it has requested places for **within its existing accommodation**.

PART TWO - THE PROCESS

TEMPORARY VARIATION PROCESS

14. Where a school makes a temporary variation request to the Department, a number of steps are involved namely ;
 - a) The school becomes aware that it requires a temporary variation to its approved admission and/or enrolment numbers;
 - b) The school writes to the Department, **using the form provided on the DE website www.deni.gov.uk** to request a temporary variation;
 - c) The Department considers the request, including the results of its consultation with the EA and CCMS as appropriate, and makes its decision;
 - d) The Department communicates its decision to the school;
 - e) If the Department has agreed to grant an additional place/additional places the school can admit the additional pupils named by the Department in its approval letter. If the Department has not agreed to grant an additional place/additional places the school must not admit those pupils or it will be acting in contravention of Article 10 of the Education (Northern Ireland) Order 1997.

CONTACTING THE DEPARTMENT

15. Where a school is unsure of what steps it needs to take, or needs any additional information regarding its admissions policy, it should always seek advice from School Access Team or the Transfer

Officer in the relevant EA regional office in the first instance. Under no circumstances should a school admit an additional pupil or pupils where such an admission would cause the school to exceed the approved admissions or enrolment numbers as this is an unlawful act (see paragraph 33 on unlawful admissions).

DEPARTMENTAL CONSIDERATION OF THE REQUEST - TIMESCALES

16. Requests will be dealt with in the order in which they are received. All requests will be dealt with as promptly as possible and decisions are usually relayed to schools within 5-7 working days. In the case of more complex requests processing may take longer. **A school should not contact the Department seeking a progress report on its request until at least 7 working days have elapsed.** Handling such enquiries from schools ultimately slows the efficiency with which officers can process the requests in question.
17. The Department acknowledges that it can be difficult to maintain confidentiality during the open enrolment processes, particularly in small communities, or in the case of schools that have been oversubscribed in the past. It remains a school's responsibility, however, to maintain the integrity of the process until it has closed and all placement letters have issued. **This means that every effort must be made to ensure confidentiality.** If pressed for information during the processes from parents or their representatives, a school should explain that it cannot comment on any aspect of the process until it has concluded with the issue of placement letters.
18. Further to this, Temporary Variation requests come to the Department from the school involved and the Department will report its decision to that school directly, copying the letter to the relevant EA regional office and CCMS where appropriate. The Department **will not discuss a school's request with the parents or other representatives of the child involved before it has made its decision** but will only report its decision to the relevant school. **On this basis, whilst waiting for the Department's decision, schools should not advise parents to contact the Department directly** as the Department will immediately direct such queries back to the school.

PART THREE - HOW DOES THE DEPARTMENT CONSIDER TEMPORARY VARIATION REQUESTS?

SECTORAL AVAILABILITY OF PLACES IN AN AREA

19. The Department's main aim is to ensure that every pupil of compulsory school age has a place in a grant-aided school within

reasonable travelling distance of their home address and within the sector the family has chosen.

19.1 What does the Department mean by 'sector'?

For the purpose of considering TV's the Department considers all grant-aided schools to be one of four types*

- (i) **denominational** (i.e. maintained primary schools, maintained post primary schools, denominational grammar schools);
- (ii) **non-denominational** (i.e. controlled primary schools, controlled post primary schools, non-denominational grammar schools);
- (iii) **Integrated** (i.e. controlled or maintained integrated primary or post primary schools and;
- (iv) **Irish Medium** (i.e. Irish Medium primary or post primary schools or Irish Medium primary or post primary units within maintained primary or post primary schools).

** Schools classified as 'other maintained' (i.e. voluntary maintained schools that are not Irish-medium) will be treated 'by exception' and outside of these four categories.*

19.2 What does the Department mean by 'reasonable travelling distance?'

In the context of the temporary variation policy only;

- For **primary schools** the Department defines 'reasonable travelling distance' as a distance of 2 miles.
- If a TV is sought to enable a child to attend a school in excess of 2 miles from their home address the request will be considered, however it may only be successful if no alternative school exists with places available closer to the child's home address.
- For **post primary schools** the Department defines 'reasonable travelling distance' as a journey that can be completed by public transport in one hour or less and is not further than 15 miles travelling distance from the family home address.

The Department uses distance and transport information provided by the EA.

19.3 How does the Department decide whether or not a place is available for a pupil in their chosen sector within reasonable travelling distance of their home?

- The Department establishes which schools are within the sector chosen by the family within a reasonable travelling distance of the family home as set out in 19.1 and 19.2.
- The Department checks which of these schools have places available by checking the current (as at point of consideration of request) admissions/enrolment position of each of those schools against the approved admissions numbers;
- If any of those schools have places available then the Department regards there to be alternative places available for that pupil in the area;
- The Department does not take account of whether or not the family have applied to any of the schools in question.
- By law, where a school has places available within its admissions number it must admit all pupils who apply. The same applies to its enrolment number, except where a school feels that the admission of a particular compulsory school age pupil would prejudice the efficient use of its resources. Again, this is to maximise the operation of parental preference and help to maintain a viable school's estate.

ISSUES NOT TAKEN INTO CONSIDERATION

20. The following factors will not normally be taken into consideration by the Department when considering if a TV should be granted::
- The pupil's residence in a particular Parish;
 - The fact that a pupil is an Eldest Child;
 - The child's sibling connection with the school but where they are not next in line for a place;
 - The family having listed the school as their first preference;
 - Family connection with the school;
 - Parent's child-minding or work arrangements;
 - Transport availability.

If a school wants to admit pupils that meet these conditions, they should be sufficiently prioritised in the school's own admissions criteria.

SIBLINGS

21. The Department realises that it is often important for siblings, particularly in the primary sector, to attend the same school. In the primary sector the Department may grant additional places for children who currently have siblings attending the named primary school and **who are next in line for a place** on the school's waiting list.
22. In the post primary sector additional places for pupils with a current sibling connection are not usually granted on the basis of sibling connection alone. In many cases siblings do not attend the same post primary school, for instance in the case of a pupil's preference for a single sex school. The Department, however, will consider all the factors associated with a request. Clear and compelling justification for such requests must be provided by the school. As with all other types of request, however, the Department's main focus will always be the overall availability of places in an area.

CONSULTATION

23. In all cases the Department will consult with the EA, and the CCMS where appropriate, before reaching its final decision.

AREA PLANNING

24. Area planning is the process through which need for **all** education provision will be determined. Where area plans identify a need for an increased number of places in a particular sector they will also specify how these places should be provided. This may be through the Development Proposal process that has identified a need for a new school or for increased capacity of an existing school. These

proposals will then progress through the normal capital investment process within available funding. Temporary variations are intended to meet the needs of individual children, they are not intended to facilitate the growth of a school in the absence of a Development Proposal.

25. At present, therefore, and within the current existing school's estate, in order to ensure the most efficient use of resources, the Department must take account of the overall availability of places in an area as a whole. The Department cannot guarantee that every pupil will receive a place in their first preference school as providing additional places at a popular school which is full where another school of the same type in the area has places available does not represent efficient use of the resources available. In this way, in order to maintain a viable school's estate at present the Department responds to a need for places in a particular sector in a particular area, rather than parental preference for one school over another.
26. This approach can often be difficult for parents and individual schools to understand, as each regard their particular set of circumstances to be unique and deserving of an additional place or places at a particular school. The Department, however, makes no value judgement as to which cases are more or less deserving of places at particular schools. The Department simply seeks to ensure that every pupil can avail of a grant-aided school place within their chosen sector and within a reasonable distance of their home.

EXCEPTIONAL CIRCUMSTANCES

27. **Post Primary Schools** - Pupils who are in years 8-12 and who have not gained a place in the school which they feel for exceptional reasons they must attend, can make application to the Exceptional Circumstances Body (ECB) who will hear their case. An application to the Exceptional Circumstances Body cannot be successful unless the child has already applied to, and been refused admission to, the relevant post-primary school through the normal admissions processes. If the ECB agrees that exceptional reasons exist for that pupil to attend that particular school, they will direct the school in question to admit the pupil. This direction does not take account of the admissions or enrolment position of the school, nor the availability of places in an area, but simply seeks to ensure that the needs of the child are met. The Department, therefore, does not consider such cases under the temporary variation process.
28. **Primary Schools** - The ECB cannot consider the cases of pupils in year 1-7. Approximately 96% of all year 1 pupils are placed in their first preference primary school each year and so the circumstance where a pupil has not gained a place in their school of choice is far less likely to occur. In a small number of cases, however, the Department will consider the provision of an additional place for a vulnerable pupil who is next in line seeking a place in year 1-7 and

who has not gained a place in the school which for exceptional reasons their parents feel they must attend. These cases often relate to pupils who are 'Looked After Children (LAC) i.e. children under the care of an authority or are foster children. Any school seeking a place under these circumstances should provide as much additional information regarding the pupil, including, for instance, letters from the pupil's doctor or social worker, where appropriate.

DISCRETIONARY PLACE

29. While the vast majority of temporary variation applications can be considered within the terms of the policy laid down in this circular, it may occur that, in very exceptional circumstances, the Department has to take a pragmatic approach to facilitate the placement of a pupil or pupils lower down the rank order for whom there is no other viable school option. Under those very exceptional circumstances, the Department reserves the right to award an additional place(s) to a pupil(s) who would otherwise not have been admitted, to enable a pupil further down the list to be granted a place. This has previously been referred to as awarding a 'collateral' place.

THE DECISION

30. Once the Department has made its decision it will communicate this in writing to the school listing the successful pupils by name in the letter. It is important to note that places can only be approved for the pupils next in line. This means that if pupils named in such a letter are later displaced by other applicants (for instance at a later stage in the admissions process), the school must approach the Department with a fresh temporary variation request for **all** the excess pupils it now wishes to admit. This may include pupils for whom the Department has already approved additional places but who are now not next in line.
31. The school must only admit additional pupil or pupils if it receives approval of the request from the Department. **To admit pupils in excess of the approved numbers of the school is an unlawful act.** To this end the school must not;
 - Admit any pupil or pupils in excess of the approved admissions and or enrolment numbers without the prior approval of the Department;
 - Admit any such excess pupils where a request to admit them has been lodged with the Department but where the school has not yet been informed of the Department's decision;
 - Admit any such excess pupils in respect of whom a temporary variation request has been submitted to the Department and which the Department has subsequently turned down;
 - Admit any such excess pupils who have been previously refused admission to the school but who present themselves

in the school's uniform at the school demanding admission (see paragraph 34 for further advice on parental pressure).

32. In the case of requests made during the open enrolment procedures, schools **must not** inform parents of the outcome of a temporary variation request until the processes have closed and all parents are advised by schools/EA to which school their child has been offered a place.

PART FOUR - ESSENTIAL POINTS TO NOTE

UNLAWFUL ADMISSIONS

33. Where a school admits pupils in excess of its approved numbers (not including those kinds of admissions listed in paragraph 9) without the Department's prior approval it is acting unlawfully. The Department views such unlawful admissions seriously and schools should note that such unlawful admissions may be **automatically rated zero for LMS purposes** and therefore may not be funded. Further to this the Department may take whatever action is required to bring the school back in line with its approved numbers. These actions could include but are not limited to;

- Ensuring that the excess pupil or pupils are weighted 'zero' for LMS purposes for at least one academic year and, in some circumstances, up to and including all the academic years for which they attend the school in question;
- Setting reduced admissions and enrolment numbers for future years to bring the school's actual enrolment back in line with the approved enrolment where the two differ;
- Directing the school not to admit the excess pupil or pupils. This direction would fall under Article 101 of the Education and Libraries (NI) Order 1986, which states that the Department can direct any relevant authority, including the Board of Governors of a school, to act or not act according to the detail of the direction.
- Removing from the school's Board of Governors the legal responsibility for the operation of the admissions process and placing it in the hands of an approved third party, for example, a sectoral body.

RESISTING PARENTAL PRESSURE TO ADMIT PUPILS UNLAWFULLY

34. The Department is aware that Boards of Governors can be placed under considerable pressure by parents whose children have been unsuccessful in securing a place at their school. This can result in families presenting their child at the school demanding admission. In some cases the child in question may even be wearing the uniform of the school in question. In all cases, however, the school must recognise the legal position and resist taking any action that will lead

the Boards of Governors of the school to act unlawfully. Further advice on this subject can be found in the relevant circular namely; Open Enrolment in Primary Schools Circular Number 2014/06 or The Procedure for Transfer from Primary to Post-Primary Education Circular Number 2015/25.

ADDITIONAL PLACES GRANTED

35. Where the Department has granted a temporary variation to allow the school to admit specific pupils in excess of the approved admission and/or enrolment numbers, the school should note that;
- The variation applies to one academic year only;
 - If the specified pupil or pupils leave the school, or no longer require the place but have not yet been admitted to the school, the approved numbers revert downwards until they reach the original approved admissions and enrolment numbers set for that school by the Department for that academic year. The place or places granted cannot be used to allow the school to admit any other excess pupil or pupils.
 - In granting the temporary variation the school must be able to ensure that the additional pupils can be safely accommodated within the school's existing accommodation. No additional accommodation will be provided to give extra space for pupils admitted via a temporary variation at the school's request.
36. Further to this if a school's numbers have grown year on year through additional places sought and granted through the temporary variation policy, but, **where no subsequent Development Proposal has been approved by the Minister to allow for the permanent expansion of the school**, the Department may consider;
- a cessation of temporary variation approvals at that school;
 - a reduction in the school's permanent admissions number in order to bring the school's actual numbers back in line with its approved numbers over a period of 5 years.

CLASS SIZE EXCEPTIONS

37. Primary schools should note that where the admission of a pupil or pupils will cause the school to exceed both the Class Size Policy and the approved admissions and/or enrolment numbers of the school a school will require both a class size exception from the EA and a temporary variation to the admissions/enrolment number from the Department (School Access Team). In these cases the school should write to School Access Team in the Department stating that it requires both a temporary variation and a class size exception. The Department will consider the temporary variation request under its normal policy and if it decides to grant a temporary variation the

Department will consult with the EA regarding whether or not a class size exception will be granted. The Department will inform the school in question as to the results of both the temporary variation request and the class size exception. Only in the case of both a class size exception and a temporary variation being granted should a school admit such an excess pupil.

38. Where a school requires a class size exception **only**, it should write to the class size exception officer in the EA directly. **Please see also Departmental circulars 2011/01, 2012/20 and 2014/07 for more information on this subject.**

TRANSPORT

39. EA Regional Offices will provide assistance with transport for a pupil where;
- there is no suitable school within two miles in the case of primary schools, or three miles in the case of post primary schools, of the pupil's home, or;
 - where a parent has applied to all suitable schools within two miles in the case of primary schools, or three miles in the case of post primary schools, of their home and been refused a place for their child in each.

Assistance normally takes the form of a seat on a bus but other forms of assistance, such as an allowance in lieu of transport, may be provided instead.

40. For the purposes of eligibility for home to school transport, a suitable school is defined as being in one of the following six categories: Catholic Maintained, Controlled or Other Voluntary, Integrated, Irish medium, Denominational or non-Denominational Grammar.
41. It should be drawn to the attention of parents that changes in Departmental policy may alter transport eligibility criteria, entitlement and arrangements during their child's time at any particular school and this should be taken into consideration when making their school selection.

WAITING LISTS

42. It is essential that each school is clear and transparent regarding the operation of its waiting list policy. The Department will not instruct schools on how waiting lists should be managed, as this is entirely a matter for the Board of Governors of the school. It is essential, however, that each school publicises its waiting list policy, whatever it may be. Even where no waiting list is maintained by the school, this information should be publicly available. Further advice on this issue can be found in Circular 2012/10.

CONTACTS

43. Any further questions a school has on the content of this circular should be directed, in the first instance, to School Access Team in the Department of Education. Transfer Officers in each of the EA Regional Offices can also provide assistance and guidance.

A handwritten signature in black ink, appearing to be 'SH', followed by a long horizontal line extending to the right.

**SCOTT HARBINSON
SCHOOL ACCESS TEAM**