

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Learners

Power to search for prohibited items

Section 242: Power of members of staff to search pupils for prohibited items: England

751. A head teacher or an authorised member of the school staff has a statutory power, under section 550AA of the Education Act 1996 to search a pupil or his possessions without consent if there are reasonable grounds for suspecting that the pupil is in possession of a weapon. This section extends this power to cover controlled drugs, alcohol and stolen property. There is a power to make regulations to add to the list of 'prohibited items'.
752. It creates new sections 550ZA, 550ZB, 550ZC and 550ZD of the Education Act 1996 for England. These new sections re-enact the existing power in section 550AA of the Education Act and extend the power to enable searches to be made for controlled drugs, stolen items, alcohol, and other items specified in regulations where the member of staff has reasonable ground to suspect possession of a prohibited item. They give authorised members of staff a power to search where a pupil refuses a reasonable request to, for example, turn out their pockets, but do not impose any duty upon members of staff to carry out a search.
753. The new powers will be supported by guidance. The guidance will explain how the powers should be exercised by providing advice to schools on what they must and must not do if and when choosing to search a pupil or pupil's possessions for a prohibited item; as well as good practice that can help those exercising search powers to ensure they comply with the law and make an effective search.

Section 550ZA: Power of members of staff to search for prohibited items: England

754. *Subsection (1)* specifies that the power may be used only where a member of staff has reasonable grounds to suspect that a pupil has with him or her, or in his or her possession, a prohibited item. It also provides that a person may carry out a search only if he or she is the head teacher of the school, or he or she has been authorised by the head teacher to carry out the search.
755. *Subsection (3)* sets out which items are prohibited and hence may be searched for. There is already a power in 550AA to search for the items in paragraphs (a) and (b). The items in paragraphs (c) to (e) are the additional items, and paragraph (f) provides a regulation making power to prescribe additional items. Regulations made under this paragraph will be made using the affirmative resolution procedure.

756. *Subsections (4) and (5)* define what is meant by “stolen”, “member of staff” and “possessions”.
757. *Subsection (6)* provides that the powers in 550ZA, 550ZB and 550ZC do not restrict any common law, or other statutory, powers members of staff have to search pupils and their possessions.

Section 550ZB: Power of search under section 550ZA: supplementary

758. Section 550ZB sets out who may carry out searches and how searches must be conducted.
759. *Subsections (1), (2) and (3)* provide that only head teachers and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. Subsection (3) provides that a headteacher may not require anybody other than security staff to conduct a search. This means teachers can never be placed under any obligation to search a pupil.
760. *Subsection (4)* stipulates that a search may be carried only out on school premises or where the member of staff has lawful control or charge of the pupil. These powers apply only in England; they therefore do not apply on school trips to other countries.
761. *Subsection (5)* provides that reasonable force may be used in executing a search.
762. *Subsection (6)* states that a search of a pupil may only be made by a person of the same gender as the pupil and in the presence of another member of staff. Where reasonably practicable, the member of staff witnessing the search must also be of the same gender as the pupil. It also provides that the person carrying out the search may not require the pupil to remove any clothing other than outer clothing (as defined in *subsection (8)*). *Subsection (7)* states that a pupil’s possessions may be searched only in the presence of the pupil and another member of staff.
763. *Subsection (8)* defines “member of the security staff” and “outer clothing”.

Section 550ZC: Power to seize items found during search under section 550ZA

764. Section 550ZC sets out the powers members of staff will have to seize and dispose of any prohibited items.
765. *Subsections (1) and (2)* provide for the person carrying out the search to seize any prohibited items and any other items suspected to be evidence of an offence found during the search, and to use reasonable force when exercising this power. This would allow the person conducting the search to not only seize prohibited items such as weapons, drugs, alcohol and stolen items but could for example allow them to seize any non-prohibited items they find whilst conducting the search which might be evidence in relation to any other unconnected offence.
766. *Subsections (3) to (9)* state what may or must be done with items that are seized.
- Where a person conducting a search finds alcohol, they may retain or dispose of it.
 - Where they find controlled drugs, these must be delivered to the police as soon as possible, unless there is a good reason not to do so — in which case the drugs must be disposed of.
 - Where they find stolen articles, these must be delivered to the police unless there is a good reason not to do so — in which case they must be returned to the owner.

These articles may be retained or disposed of where returning them to their owner is not practicable.

- Where they find an item which has been added to the list by regulations made under section 550ZA (3)(f) there is a further regulation making power to prescribe what must or may be done with it.
767. In determining what is a “good reason” for not delivering items to the police, regard must be had to guidance issued by the Secretary of State.
768. Any weapons or items which are evidence of an offence must be passed to the police as soon as possible. Except that, where a person searching for a specific prohibited item, or a prohibited item specified in regulations, finds evidence of an offence in the form of another prohibited item, the item found will be dealt with in accordance with any specific provision made for that item or any provision specified in regulations. So, for example, in a case where a person searching for alcohol finds controlled drugs, the drugs must be delivered to the police as soon as possible, but there will also be a discretion to dispose of them.
769. *Subsection (10)* provides that the powers and duties relating to what must be done with any alcohol, controlled drugs, stolen articles and weapons seized apply to items reasonably suspected to be alcohol, controlled drugs, stolen articles and weapons.

Section 550ZD: Section 550ZC: supplementary

770. *Subsection (1)* provides that the Police Property Act 1987 applies in relation to items seized. The Act enables an application to be made to a magistrates court for an order that property in possession of the police be returned to its owner.
771. *Subsections (2) and (3)* provide that, where a person conducting a search, lawfully seizes, retains or disposes of an item seized under section 550ZC, they shall not be liable for the seizure, loss or disposal, or any damage arising. These provisions replicate provisions in section 94(2) of the Education and Inspections Act 2006. *Subsection (3)* of section 242 therefore disappplies the provisions in that section in relation to items seized under section 550ZC.
772. *Subsection (4)* provides that subsections (2) and (3) do not prevent a person who has seized items under section 550ZC from relying on any other available defence in proceedings.
773. *Subsection (5)* provides that the provisions in section 550ZD(1)- (4) may be made to apply in relation to any other items added to the list of ‘prohibited items’ by regulations.
774. *Subsection (2)* of section 242 amends section 569 of the Education Act 1996 to provide that regulations made under section 550ZA or 550ZC are subject to the affirmative resolution procedure.

Section 243: Power of members of staff to search pupils for weapons: Wales

775. This section makes amendments consequential on section 235, to retain the status quo in Wales. Members of staff in schools in Wales will continue to have powers to search for weapons only as set out in Section 550AA of the 1996 Act on weapons searching (which was inserted by section 45 of the Violent Crime Reduction Act 2006).

Section 244: Power of members of staff to search students for prohibited items: England

776. A principal or an authorised member of the college staff has a statutory power, under section 85B of the Further and Higher Education Act 1992 (“the 1992 Act”), to search a student or his possessions without consent if there are reasonable grounds for suspecting that the student is in possession of a weapon. This section extends this power to cover

controlled drugs, alcohol and stolen property. There is a power to make regulations to add to the list of 'prohibited items'.

777. This section inserts new sections 85AA, 85AB and 85AC for England, into the 1992 Act. These new sections re-enact the existing powers to search a student and his or her possessions without the student's consent for weapons, and extend the powers to enable searches to be made for, controlled drugs, stolen items or alcohol (for students under 18) where the member of staff has reasonable ground to suspect possession of a prohibited item. The section gives members of staff a power to search but does not impose any duty on them to carry out any searches.
778. The new powers will be supported by guidance. The guidance will explain how the powers should be exercised by providing advice to institutions on what they must and must not do if and when choosing to search a student or student's possessions for a prohibited item; as well as good practice that can help those exercising search powers to ensure they comply with the law and make an effective search.

**Section 85AA: Power of members of staff to search for prohibited items:
England**

779. *Subsection (1)* specifies that the power may only be used where a member of staff has reasonable grounds to suspect that a student has with him or her, or in his or her possession a prohibited item. It also provides that a person may carry out a search only if he or she is the principal of the institution, or he or she has been authorised by the principal to carry out the search.
780. *Subsection (3)* sets out which items are "prohibited items" and hence may be searched for. There is already a power in 85B to search for the items in paragraphs (a) and (b). The items in paragraphs (c) to (e) are additional items, and paragraph (f) provides a regulation making power to prescribe additional items. Regulations made under this power will be made using the affirmative resolution procedure.
781. *Subsection (4)* defines what is meant by "stolen".
782. *Subsection (5)* states that a student may not be searched for alcohol under this power if he or she is aged 18 or over.
783. *Subsection (6)* defines what is meant by "member of staff" and "possessions".
784. *Subsection (7)* provides that the powers in 85AA, 85AB and 85AC do not restrict any common law, or other statutory, powers members of staff have to search pupils and their possessions.

Section 85AB: Power of search under section 85AA: supplementary

785. Section 85AB sets out who may carry out the searches and how those searches must be conducted.
786. *Subsections (1), (2) and (3)* provide that only principals and authorised members of staff may conduct searches, and that a member of staff may have (a) a general authorisation to search, for example a member of staff may be authorised to search for any prohibited item at any time; (b) be authorised to conduct a particular search, for example given authorisation to search a particular individual in a particular circumstance; or (c) be authorised to conduct particular types of searches, for example given authorisation to conduct searches for some prohibited items (but not others), or where a particular set of circumstances arise. Subsection (3) sets out that a principal may not require anybody other than security staff to conduct a search. This means lecturers can never be placed under any obligation to search a student.
787. *Subsection (4)* stipulates that a search may be carried out only on the premises of the FE institution or where the member of staff has lawful control or charge of the student,

such as on a field trip. These powers apply only in England; they therefore do not apply on trips to other countries.

- 788. *Subsection (5)* provides that reasonable force may be used in executing a search.
- 789. *Subsection (6)* states that a search of a student may be made only by a person of the same gender as the student and in the presence of another member of staff. Where reasonably practicable, the member of staff witnessing the search must also be of the same gender as the student. It also provides that the person carrying out the search may not require the student to remove any clothing other than outer clothing (as defined in *subsection (8)*).
- 790. *Subsection (7)* states that a student's possessions may be searched only in the presence of the student and another member of staff.
- 791. *Subsection (8)* defines "member of the security staff" and "outer clothing".

Section 85AC: Power to seize items found during search under section 85AA

- 792. Section 85AC sets out the powers members of staff will have to seize and dispose of any prohibited items.
- 793. *Subsections (1) and (2)* provide for the person carrying out the search to seize any prohibited items and any other items suspected to be evidence of an offence found during the search, and to use reasonable force when exercising this power. However, alcohol may not be seized from a student aged 18 or over under this power.
- 794. *Subsection (3)* provides that where a searcher finds alcohol they may retain or dispose of it, at their discretion.
- 795. *Subsection (4)* provides that controlled drugs must be delivered to the police as soon as possible but may be disposed of if the person who has seized them considers that there is a good reason to do so.
- 796. *Subsection (5)* provides that stolen items must be delivered to the police as soon as possible but may be returned to the rightful owner, retained or disposed of if in the view of the person who has seized them, there is good reason to do so.
- 797. *Subsection (6)* provides that in relation to subsections (4) and (5), the person who has seized the controlled drug or stolen article must have regard to any guidance issued by the Secretary of State, in determining whether there is good reason not to deliver it to the police.
- 798. *Subsection (7)* provides that where an item is found which has been added to the list of prohibited items by regulations made under section 85AA(3)(f) there is a further regulation making power to prescribe what must or may be done with it.
- 799. *Subsection (8)* requires any person seizing a knife, offensive weapon or evidence in relation to an offence to deliver the item to the police as soon as reasonably practicable.
- 800. *Subsection (9)* provides that if an item is seized because it is suspected to be evidence of an offence, it is subject to the provisions on what must or may be done with it in subsections (3), (4), (5) and regulations made under subsection (7).
- 801. *Subsection (10)* provides that the powers and duties relating to what must be done with any alcohol, controlled drugs, stolen articles and weapons seized also apply to items reasonably suspected to be alcohol, controlled drugs, stolen articles and weapons.

Section 85AD: Section 85AC: supplementary

- 802. *Subsection (1)* provides that the Police (Property) Act 1897 applies in relation to items seized. The Act enables an application to be made to a Magistrates Court for an Order that property in possession of the police be returned to its owner.

803. Subsections (2) and (3) provide that, where a person conducting a search, lawfully seizes, retains or disposes of an item seized under section 85AC, they shall not be liable for the seizure, loss or disposal, or any damage arising.
804. Subsection (4) provides that subsections (2) and (3) do not prevent a person who has seized items under section 85AC from relying on any other available defence in proceedings.
805. Subsection (5) provides that the provisions in section 85AD(1)-(4) may be made to apply in relation to any other items added to the list of 'prohibited items' by regulations.
806. Subsection (2) of section 244 amends section 89 of the Further and Higher Education Act 1992 to provide that regulations made under section 85AA or 85AC are subject to affirmative resolution procedure.

Section 245: Power of members of staff to search students for weapons: Wales

807. This section makes consequential amendments to retain the status quo in Wales. Members of staff in colleges in Wales will continue to have powers to search for weapons only as set out in 85B of the 1992 Act on weapons searching.

Recording and reporting use of force

808. Staff at schools and FE institutions who supervise learners have powers to use force to prevent the commission of any criminal offence, injury, damage to property or serious breaches of discipline. The legislation that provides this power for schools has existed in its current form since 1998 and was re-enacted by section 93 of the Education and Inspections Act 2006. The analogous legislation for colleges is section 85C of the Further and Higher Education Act 1992 (inserted by the Education and Inspections Act 2006).
809. The Department for Children, Schools and Families issued revised guidance, entitled *The Use of Force to Control or Restrain Pupils* in November 2007.
810. This guidance is supplemented by two specialist guidance documents which provide additional information for staff working with pupils with special educational needs and/or disabilities, namely:
- *Guidance on the Use of Restrictive Physical Interventions for Staff Working with Children and Adults who display Extreme Behaviour in Association with Learning Disability and/or Autistic Spectrum Disorders* (Circ LEA/0242/2002); and
 - *Guidance on the Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties* (Circ LEA/0264/2003).
811. The Association of Colleges in partnership with the then Department for Education and Skills issued revised guidance, entitled *The Use of Force to Control or Restrain in Further Education* in April 2007. This document refers to the specialist guidance documents prepared for schools which may help FE Institutions in working with similar client groups. With the re-designation of sixth form colleges, this guidance will cover both general FE and sixth form colleges.

Section 246: Recording and reporting the use of force in schools: England

812. This section inserts a new subsection 93A into the Education and Inspections Act 2006. Subsections (1), (2) and (3) of 93A require the governing body of a school in England to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a pupil and to take reasonable steps to ensure that the procedure is followed by staff at the school. The procedure must provide that such incidents are both recorded in writing, and reported to the pupil's parents (except where the pupil is

aged 20 or over, or the exception in *subsection (5)* applies) as soon as possible after the incident.

813. Subsection (1)(b) specifies that the report must be made to each of the pupil's parents. *Subsection (7)* states that "parent" has the meaning given by section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a pupil has a mother and father who both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the child's mother, father and the relevant local education authority must be told about the incident.
814. *Subsection (4)* specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force. A considerable amount of good practice guidance has been issued about the use of force upon pupils. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording. This guidance (paragraphs 44 and 45) sets out some questions that schools may find helpful in deciding whether an incident is significant and requires a written record.
815. *Subsection (5)* provides an exception to the duty to report each use of force incident to the parent of the pupil. Subsection (5)(a) provides that the procedure must include provision that an incident must not be reported to the parent if it appears that it is likely to result in significant harm to the pupil. Subsection (5)(b) provides that if there is no parent of the pupil that the incident can be reported to without it resulting in significant harm to the pupil, the incident should be reported to the local authority within whose area the pupil is ordinarily resident.
816. *Subsection (6)* provides that the Secretary of State will issue guidance on the meaning of significant harm and whether reporting an incident to a parent is likely to result in significant harm to the pupil.

Section 247: Recording and reporting the use of force in FE institutions: England

817. This section creates a new section 85D of the Further and Higher Education Act 1992 ("the 1992 Act"), to be inserted after section 85C. Subsections (1), (2) and (3) of this section require the governing bodies of institutions within the FE sector in England (including sixth form colleges) to ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a student and to take reasonable steps to ensure that the procedure is followed by staff at the institution. The procedure must provide that such incidents are both recorded in writing, and reported to the student's parents (except where the student is aged 20 or over, or the exception in subsection (5) applies) as soon as possible after the incident.
818. Subsection (1)(b) specifies that the report must be made to each of the student's parents. *Subsection (7)* states that "parent" has the meaning given by section 576 of the Education Act 1996, and includes a local education authority which provides accommodation for a child or young person in care. This means that, for example, where a student has a mother and father whom both have parental responsibility for him, or her, and is the subject of a Care Order under section 31 of the Children Act 1989, or being accommodated under section 20 of that Act, the student's mother, father and the relevant local education authority must be told about the incident.
819. *Subsection (4)* specifies that the governing body must have regard to guidance issued by the Secretary of State for the purposes of recording and reporting significant incidents of the use of force. It is important to understand that the obligation to have regard to guidance only relates to governing bodies' obligations in relation to reporting and recording.

820. *Subsection (5)* provides an exception to the duty to report each use of force incident to the parent of the student. *Subsection (5)(a)* provides that an incident must not be reported to the parent if it appears that it is likely to result in significant harm to the student. *Subsection (5)(b)* provides that if there is no parent of the student that the incident can be reported to without it resulting in significant harm to the student, the incident should be reported to the local authority within whose area the student is ordinarily resident.
821. *Subsection (6)* provides that the Secretary of State will issue guidance on the meaning of significant harm and whether reporting an incident to a parent is likely to result in significant harm to the student.

School behaviour and attendance partnerships

822. Since September 2007, the Government has expected that all secondary schools be members of partnerships to improve behaviour and tackle persistent absence. Currently 98% of maintained secondary schools and 94% of Academies are members voluntarily, but the extent to which existing partnerships are aligned to DCSF design principles and outcomes, as outlined in (currently non-statutory) guidance is variable.
823. Partnerships typically comprise approximately 3 to 6 members, but this varies due to local circumstance. Some partnerships have links to primary schools, special schools, pupil referral units and/or other forms of alternative provision.

Section 248: Co-operation with a view to promoting good behaviour, etc.: England

824. This section places a duty on the governing body of a maintained secondary school in England (defined in *subsection (7)*), and the proprietor of an Academy, city technology college or city college for the technology of the arts in England (“relevant partners”), to make arrangements to co-operate with at least one other relevant partner with a view to achieving the objectives referred to in *subsection (2)*. 98% of maintained secondary schools and 94% of existing Academies are already in partnerships voluntarily.
825. *Subsection (1)* defines the bodies to which this section applies. The Government intends to apply the duty in the section to pupil referral units through regulations made under Schedule 1 to the Education Act 1996.
826. *Subsection (2)* provides that a relevant partner is required to make arrangements with at least one other such body. The Government intends to publish statutory guidance that will set out an expectation that behaviour and attendance partnerships consist of more than two members. This has not been specified in the section as in some cases bigger partnerships may prove impractical – such as in the case of rural schools.
827. To comply with the duty relevant partners must make arrangements with other such bodies within the same “area” as them (see further *subsection (4)*). In practice, partnerships will not generally cross local education authority boundaries.
828. *Subsection (2)* describes the issues schools must make arrangements to co-operate on. The arrangements are to co-operate with a view to promoting good discipline and behaviour generally on the part of pupils and reducing persistent absence on the part of pupils. DCSF considers that a pupil missing 20% or more of the sessions in a school year is persistently absent (whether the absence is authorised or unauthorised).
829. *Subsection (3)* requires a report to be prepared and submitted to the local Children’s Trust Board once in each 12 month period. *Subsection (3)* does not require every relevant partner to produce a report, but rather requires each relevant partner to secure that a report is prepared and submitted, with the intention that the report will be submitted on behalf of all relevant partners that are part of arrangements under *subsection (2)*. Advice on how this can be organised practically will be given in guidance issued under *subsection (5)*. *Subsection (3)* does not place any requirements

around when in the year this report should be submitted. Again, this will be covered in statutory guidance.

830. *Subsection (4)* gives details of what the report is required to cover. These are: details of the arrangements and what has been done under them (this would encompass how the partnership is composed and organised, and details of what activities it has engaged in), an assessment of the effectiveness of the arrangements (i.e. details of the impact the work of the partnership has had on promoting good behaviour and reducing persistent absence) and details of what is proposed to be done under arrangements in the future (i.e. details of what the partnership has planned for the next year).
831. *Subsection (5)* requires relevant partners to have regard to the Secretary of State's guidance in the exercise of the duty placed on the partners by subsection (2).

Short stay schools

832. Section 19 of the Education Act 1996 imposes a duty on LEAs to make arrangements for securing suitable education for children who, because of exclusion from school or for any other reason, may not receive such education if the arrangements are not made for them. Thus the LEA has a duty to provide education for every child of school age, if for some reason they cannot attend a mainstream or special school.
833. Section 19(2B) recognises that LEAs may fulfil the duty under section 19 by establishing and maintaining schools which are specifically organised to make educational provision for children falling within that section. Section 19(2B) says that such schools will be known as pupil referral units (PRU). A PRU is therefore a school set up and run directly by the LEA to provide education for children who cannot, for whatever reason, attend a mainstream or special school.
834. LEAs are given the power to establish and maintain schools by section 16 of the Education Act 1996. There is no express power to close a school included here, but it is taken as implicit that where a LEA is free to maintain schools, it is also free to cease to maintain them.
835. The Education and Inspections Act 2006 limits the powers of an LEA to close schools maintained by it (sections 15 and 16 and Schedule 2). However, PRUs are not covered by these limitations as they are not mentioned in the list of schools covered by the act. Therefore there are no restrictions on the ability of a LEA to close a PRU maintained by it.
836. The Secretary of State has the power to direct the closure of a school that is causing concern (section 68, Part 4 of the Education and Inspections Act 2006). This power may be exercised in cases where Ofsted have described the school as requiring special measures. Section 68 is applied to PRUs by paragraph 23 of Schedule 1 to [SI 2007/2979](#).

Section 249: Short stay schools: miscellaneous

837. *Subsection (1)* changes the name of pupil referral units to "short stay schools". This change applies only to pupil referral units in England; those in Wales will continue to be called "pupil referral units". The name change will apply in law only. Individual pupil referral units will be free to use any name they wish for their own purposes (as they do currently).
838. *Subsection (2)* gives the Secretary of State powers by order, to make amendments to legislation consequential on the change of name from "pupil referral unit" to "short stay school". This power applies to all primary legislation enacted before the end of the Session in which the Apprenticeships, Skills, Children, and Learning Act 2009 passed, and to all statutory instruments made before the passing of this Act.
839. *Subsection (3)* inserts a new paragraph 3A into Schedule 1 of the Education Act 1996. This extends the Secretary of State's regulation-making powers in this area.

840. New paragraph 3A(a) gives the Secretary of State the power to make regulations which would require the LEA to obtain the consent of the Secretary of State before closing a “short stay school”. The Government intends to use this power to make the closure of a short stay school subject to the Secretary of State’s consent where:
- The short stay school has been described by Ofsted as requiring special measures; or
 - Ofsted have given notice to the LEA that an inspection is due.
841. The Government expects that the LEA will be required to provide information about the provision they are intending to replace the closing short stay school with, and the Secretary of State will give his consent dependent on an assessment of the adequacy of these plans.
842. Paragraph 3A(b) gives the Secretary of State the power to make regulations enabling the Secretary of State to give directions to a LEA about the exercise of its functions under section 19 of the Education Act 1996. The Government envisages that the powers will be used to enable the Secretary of State to give directions to a LEA about the provision to be made under section 19 to replace the provision lost where a short stay school is closed at the direction of the Secretary of State.
843. Under paragraph 3A(c) any regulations the Secretary of State makes in relation to short stay schools may include provisions requiring LEAs to comply with directions made under the regulations. If a LEA failed to comply it would be open to the Secretary of State to enforce the directions using powers under section 497 of the Education Act 1996.
844. The Government envisages that these regulation-making powers will be used to allow the Secretary of State to give a direction to a LEA about the alternative provision that will replace a short stay school he decides should close. The Secretary of State already has the power to direct the closure of a short stay school that has been described by Ofsted as requiring special measures. This power is conferred by section 68 of Part 4 of the Education and Inspections Act 2006. “Special measures” is defined in section 44(1) of the Education Act 2005. The local education authority is under a duty (under section 19 of the Education Act 1996) to provide other suitable education for those pupils who are displaced by the closure of the short stay school, but how they do this is their decision. They could find places in independent schools, open a replacement short stay school, or use another provider of alternative provision.
845. The Secretary of State does not envisage using this direction-giving power to specify exactly who or what will replace the closing unit, but rather to specify the features it should exhibit. This might include directions in areas such as:
- The nature of the educational provision to be provided, such as the specific courses and subjects to be provided, and the ages and numbers of pupils to be catered for.
 - The manner in which the educational provision is to be provided, such as through a replacement short stay school, a third sector partner or another institution such as an FE college (NB specific institutions or providers would not be named, only types).
 - The management of the educational provision, such as specifying the internal management and review structures of provision, or specifying certain provisions which must be included in any contract with external providers.
846. The Secretary of State intends to use the powers to give directions to require the LEA to invite bids from external providers for the delivery of the alternative provision. The Secretary of State might specify the way in which the LEA should invite bids; for example by advertising in local newspapers or on the LEA website. He might also specify the date by which an invitation should be issued, and the length of time respondents are given to reply.

847. The Secretary of State does not intend to give directions as to the way that the LEA assesses the bids, but to require the LEA to report back to the Secretary of State once the process of inviting and assessing the bids has been completed. In its report the LEA would be expected to set out:
- The actual steps taken by the LEA in inviting bids,
 - Details of any bids received,
 - A description of the arrangements (if any) the LEA has entered into, or is proposing to enter into with any of the bidders,
 - Reasons why the LEA has reached the decision it has (including details of why they have decided not to enter into arrangements with any bidders, if this situation arises).