



# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

### PART 11

#### LEARNERS

##### *Power to search for prohibited items*

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

(1) After section 85A of the Further and Higher Education Act 1992 (c. 13) insert—

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

- (1) This section applies where a member of staff of an institution within the further education sector in England—
  - (a) has reasonable grounds for suspecting that a student at the institution may have a prohibited item with him or her or in his or her possessions; and
  - (b) falls within section 85AB(1).
- (2) The member of staff may search the student (“S”) or S's possessions for that item (but this is subject to subsection (5)).
- (3) For the purposes of this section and section 85AC each of the following is a “prohibited item”—
  - (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
  - (b) an offensive weapon, within the meaning of the Prevention of Crime Act 1953;
  - (c) alcohol, within the meaning of section 191 of the Licensing Act 2003;

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- (d) a controlled drug, within the meaning of section 2 of the Misuse of Drugs Act 1971, which section 5(1) of that Act makes it unlawful for S to have in S's possession;
  - (e) a stolen article;
  - (f) an article of a kind specified in regulations.
- (4) In subsection (3)(e) “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 in the provisions of that Act relating to goods which have been stolen.
- (5) A member of staff may not under this section search S or S's possessions for alcohol if S is aged 18 or over.
- (6) In this section and section 85AB—
- “member of staff”, in relation to an institution within the further education sector, means any person who works at that institution whether or not as its employee;
  - “possessions”, in relation to S, includes any goods over which S has or appears to have control.
- (7) The powers conferred by this section and sections 85AB and 85AC are in addition to any powers exercisable by the member of staff in question apart from those sections and are not to be construed as restricting such powers.

#### **85AB Power of search under section 85AA: supplementary**

- (1) A person may carry out a search under section 85AA only if that person—
- (a) is the principal of the institution; or
  - (b) has been authorised by the principal to carry out the search.
- (2) An authorisation for the purposes of subsection (1)(b) may be given in relation to—
- (a) searches under section 85AA generally;
  - (b) a particular search under that section;
  - (c) a particular description of searches under that section.
- (3) Nothing in any enactment, instrument or agreement shall be construed as authorising a principal of an institution within the further education sector in England to require a person other than a member of the security staff of the institution to carry out a search under section 85AA.
- (4) A search under section 85AA may be carried out only where—
- (a) the member of staff and S are on the premises of the institution; or
  - (b) they are elsewhere and the member of staff has lawful control or charge of S.
- (5) A person exercising the power in section 85AA may use such force as is reasonable in the circumstances for exercising that power.
- (6) A person carrying out a search of S under section 85AA—
- (a) may not require S to remove any clothing other than outer clothing;
  - (b) must be of the same sex as S;

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- (c) may carry out the search only in the presence of another member of staff; and
  - (d) must ensure that the other member of staff is of the same sex as S if it is reasonably practicable to do so.
- (7) S's possessions may not be searched under section 85AA except in the presence of—
- (a) S; and
  - (b) another member of staff.
- (8) In this section—
- “member of the security staff”, in relation to an institution, means a member of staff whose work at the institution consists wholly or mainly of security-related activities;
  - “outer clothing” means—
    - (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
    - (b) a hat, shoes, boots, gloves or a scarf.

#### **85AC Power to seize items found during search under section 85AA**

- (1) A person carrying out a search under section 85AA may seize any of the following found in the course of the search—
- (a) anything which that person has reasonable grounds for suspecting is a prohibited item;
  - (b) any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence,
- but may not seize alcohol from S under this section where S is aged 18 or over.
- (2) A person exercising the power in subsection (1) may use such force as is reasonable in the circumstances for exercising that power.
- (3) A person who seizes alcohol under subsection (1) may retain or dispose of the alcohol and its container.
- (4) A person who seizes a controlled drug under subsection (1)—
- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
  - (b) may dispose of it if the person thinks that there is a good reason to do so.
- (5) A person who seizes a stolen article under subsection (1)—
- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
  - (b) may return it to its owner (or, if returning it to its owner is not practicable, may retain it or dispose of it) if the person thinks that there is a good reason to do so.
- (6) In determining, for the purposes of subsections (4) and (5), whether there is a good reason to dispose of a controlled drug or to return a stolen article to its owner, retain it or dispose of it, the person must have regard to any guidance issued by the Secretary of State.

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- (7) Regulations may prescribe what must or may be done by a person who, under subsection (1), seizes an article of a kind specified in regulations under section 85AA(3)(f) (or an article which the person has reasonable grounds for suspecting to be such an article).
- (8) A person who, under subsection (1), seizes—
- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
  - (b) an offensive weapon; or
  - (c) anything which that person has reasonable grounds for suspecting is evidence in relation to an offence;
- must deliver it to a police constable as soon as reasonably practicable.
- (9) Subsection (8)(c) is subject to subsections (3), (4) and (5) and regulations made under subsection (7).
- (10) In subsections (3) to (8), references to alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies and an offensive weapon include references to anything which a person has reasonable grounds for suspecting is alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies or an offensive weapon.

#### **85AD Section 85AC: supplementary**

- (1) The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under section 85AC(4)(a), (5)(a) or (8) as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.
  - (2) Subsection (3) applies where a person—
    - (a) seizes, retains or disposes of alcohol or its container, a controlled drug or a stolen article under section 85AC; and
    - (b) proves that the seizure, retention or disposal was lawful.
  - (3) That person is not liable in any proceedings in respect of—
    - (a) the seizure, retention or disposal; or
    - (b) any damage or loss which arises in consequence of it.
  - (4) Subsections (2) and (3) do not prevent any person from relying on any defence on which the person is entitled to rely apart from those subsections.
  - (5) Regulations under section 85AC(7) may make provision corresponding to any provision of this section.”
- (2) In section 89 of the Further and Higher Education Act 1992 (c. 13) (regulations etc)—
- (a) in subsection (3) after “other than” insert “ one falling within subsection (3A) or ”, and
  - (b) after subsection (3) insert—
 

“(3A) A statutory instrument which contains (whether alone or with other provision) regulations under section 85AA or 85AC may not be made

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unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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**Commencement Information**

- II** S. 244 in force at 1.9.2010 by [S.I. 2010/303](#), art. 6, [Sch. 5](#) (with [arts. 9-11](#)) (as amended (26.7.2010) by [S.I. 2010/1891](#), art. 2(2) (with art. 3))

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**Commencement Orders yet to be applied to the Apprenticeships, Skills, Children and Learning Act 2009**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2009/3341 art. 2](#) commences (2009 c. 22)
- [S.I. 2010/2413 art. 2](#) commences (2009 c. 22)
- [S.I. 2011/829 art. 2](#) commences (2009 c. 22)
- [S.I. 2011/882 art. 2](#) amendment to earlier commencing SI 2010/303 art. 7 Sch. 6