

EXPLANATORY MEMORANDUM TO
THE SCHOOL BEHAVIOUR (DETERMINATION AND PUBLICISING OF MEASURES
IN ACADEMIES) REGULATIONS 2012

2012 No. 619

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument sets out the processes that the principal of an Academy school or an alternative provision Academy¹ must follow to determine and publicise the school rules that identify items as “prohibited items” which pupils may be searched for without their consent.
3. **Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Section 550ZA of the Education Act 1996 provides a power for head teachers and authorised members of staff in schools in England to search pupils without their consent for a range of ‘prohibited items’ which they have reasonable grounds for suspecting that the pupil may have in their possession. Section 2 of the Education Act 2011 amends section 550ZA and adds to the list of ‘prohibited items’. One addition to the list, in section 550ZA(3)(g), is any other item which the school rules identify as an item for which a search can be made. New section 550ZA(4B) defines the term “school rules” differently as between the case of a maintained school or a non-maintained special school, and any other school. It is intended that these provisions will be come into force on 1st April 2012.
 - 4.2 These regulations are based on the illustrative regulations that were circulated to the House of Commons Education Bill Committee (HC Committee, 10 March 2011, col 273). They set out the processes that the principal of an Academy must follow to determine and publicise measures, which are essentially the school rules, which identify items which may be searched for. They broadly replicate the

¹ Section 53 of the Education Act 2011 inserts new sections 1A to 1D into the Academies Act which renames existing Academies, Academy schools and creates two new types of Academies; 16-19 Academies and alternative provision Academies.

requirements on the head teachers of maintained schools and non-maintained special schools in section 89 of the Education and Inspections Act 2006.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Government has made it a priority to improve standards of behaviour and discipline in schools - the coalition agreement includes a commitment to “give heads and teachers the powers they need to ensure discipline in the classroom and promote good behaviour”. On 7 July 2010, the Minister of State for Schools made a statement to Parliament in which he announced that the Government intended to give teachers a more general search power covering any item which may cause disorder or pose a threat to safety in the next Education Bill.

7.2 The amendments to the Education Act 1996 made by section 2 of the Education Act 2011 were intended to give teachers that more general search power, in part by adding to the list of “prohibited items” which could be searched for.

7.3 The Education Act 2011 inserted subsection (3)(g) into section 550ZA of the Education Act 1996 to add items which the school rules identify as an item which may be searched for, to the list of ‘prohibited items’. The Government acknowledged that to safeguard the rights of children it was necessary for pupils and parents to be given notice of those items which teachers would be able to search for because it had been decided that it was not acceptable for these items to be brought into school. It was for that reason that items subject to a search without consent had to be identified in the school rules, and that the rules were determined and publicised in a specified way. Accordingly, in the case of an Academy school or alternative provision Academy, these regulations set out the processes that the principal must follow when determining and publicising measures which identify items which may be searched for. While the government has made it clear that it wants to give Academies freedom to innovate, it also thinks it is important that they follow certain basic standards that apply to maintained schools. The regulations will require the principal of the Academy to determine what items are identified, and in doing so to have regard to any guidance on the subject prepared by the proprietor of the Academy and to consult

the proprietor, staff where appropriate, registered pupils and their parents. The principal of the Academy must make the measures generally known in the school and is required to bring the rules listing the items that may be searched for to the attention of staff, pupils and parents at least once every school year.

8. Consultation outcome

- 8.1 The Department for Education conducted an informal consultation on the behaviour clauses in the Education Bill with Academy principals in February 2011 shortly after the Bill was published. They were supportive of these measures. Then in early 2012 the Department sent the illustrative Regulations to all Academies and invited comments on those Regulations with a deadline for response of 17 February. The Department received no responses.
- 8.2 Ministers' intention to strengthen the power to search was also mentioned in "the Importance of Teaching – The Schools White Paper 2010" (published on 22 November 2010). In a letter to head teachers, Academy principals and Chairs of Governors on 24 November 2010, the Secretary of State for Education invited comment on the White Paper by 8 December 2010. A summary of these comments was published in spring 2011.

9. Guidance

- 9.1 Advice on these requirements will be sent to Academy schools and AP Academies prior to these regulations coming into force. This advice will also be inserted in a forthcoming "Guide to Academies' Governing Bodies".

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is to set out the processes that the principal of an Academy is required to follow if the school rules identify additional prohibited items which may be searched for. It will only be necessary to meet the requirements if the school rules identify such items and Academies can not be compelled to do so.
- 10.3 An Impact Assessment was carried out for the Education Bill 2011 and is available at:
<http://www.education.gov.uk/aboutdfe/departmentalinformation/educationbill/a0073748/education-bill>
A separate Impact Assessment has not been prepared for this instrument because there is no consequent impact on the public, private or civil society sectors, and none of the thresholds set out in the Impact Assessment guidance have been breached.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There are no plans formally to review the operation of these powers. The Department will, however, remain alert to any feedback from practitioners, parents or others with an interest in this area, either through correspondence to the Department, or through formal arrangements such as meetings with the Independent Academies Association. The Department will consider and respond to any information received.

13. Contact

Ian Arrowsmith at the Department for Education, Tel: 020 7340 8102 or email: ian.arrowsmith@dfe.gsi.gov.uk can answer any queries regarding the instrument.