

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11: Learners

Power to search for prohibited items

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.