



# Education Act 2011

## 2011 CHAPTER 21

### PART 2

#### DISCIPLINE

#### **2 Power of members of staff at schools to search pupils**

- (1) Chapter 2 of Part 10 of EA 1996 (punishment and restraint of pupils) is amended as set out in subsections (2) to (5).
- (2) In section 550ZA (power of members of staff to search pupils for prohibited items: England)—
  - (a) in subsection (3) (prohibited items), after paragraph (e) insert—
    - “(ea) an article that the member of staff reasonably suspects has been, or is likely to be, used—
      - (i) to commit an offence, or
      - (ii) to cause personal injury to, or damage to the property of, any person (including P);”;
  - (b) in that subsection, after paragraph (f) insert—
    - “(g) any other item which the school rules identify as an item for which a search may be made.”;
  - (c) after subsection (4), insert—
    - “(4A) In subsection (3)(ea)(i), “offence” includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence.
    - (4B) In subsection (3)(g), the “school rules” means—
      - (a) in the case of a maintained school or a non-maintained special school, rules in force at the school that are made under measures determined and publicised by the head teacher under section 89 of the Education and Inspections Act 2006;

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- (b) in the case of any other school, measures relating to discipline in the school that are determined and publicised in accordance with regulations.

(4C) In subsection (4B)(a)—

“maintained school” means—

- (a) a community, foundation or voluntary school,
- (b) a community or foundation special school,
- (c) a maintained nursery school, or
- (d) a pupil referral unit;

“non-maintained special school” means a school that is approved under section 342.”

(3) In section 550ZB (power of search under section 550ZA: supplementary)—

- (a) in subsection (5), after “section 550ZA” insert “to search for an item within section 550ZA(3)(a) to (f)”;
- (b) in subsection (6)—
  - (i) in paragraph (b), after “P” insert “, unless the condition in subsection (6A) is satisfied”;
  - (ii) in paragraph (c), after “staff” insert “, unless the condition in subsection (6A) is satisfied”;
- (c) after subsection (6), insert—

“(6A) The condition is satisfied if—

- (a) the person carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency, and
- (b) in the time available it is not reasonably practicable for the search to be carried out by a person of the same sex as P or in the presence of another member of staff (as the case may be).”;
- (d) in subsection (7), in paragraph (b), after “staff” insert “, unless the condition in subsection (7A) is satisfied”;
- (e) after subsection (7), insert—

“(7A) The condition is satisfied if—

- (a) the person carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency, and
- (b) in the time available it is not reasonably practicable for the search to be carried out in the presence of another member of staff.”

(4) In section 550ZC (power to seize items found during search under section 550ZA)—

- (a) in subsection (2) after “subsection (1)” insert “to seize an item within section 550ZA(3)(a) to (f) or anything within subsection (1)(b)”;
- (b) after subsection (6) insert—

“(6A) A person who seizes an item that is a prohibited item by virtue of section 550ZA(3)(ea) (article used in commission of offence or to

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cause personal injury or damage to property) under subsection (1) must—

- (a) deliver the item to a police constable as soon as reasonably practicable,
- (b) return the item to its owner,
- (c) retain the item, or
- (d) dispose of the item.

(6B) A person who seizes an item that is a prohibited item by virtue of section 550ZA(3)(g) (item for which search may be made under school rules) under subsection (1) must return it to its owner, retain it or dispose of it.

(6C) In deciding what to do with an item under subsection (6A) or (6B), the person who seized it must have regard to guidance issued for the purpose of this section by the Secretary of State.

(6D) Subsections (6E) and (6F) apply to an item that—

- (a) has been seized under subsection (1),
- (b) is a prohibited item by virtue of section 550ZA(3)(ea) or (g), and
- (c) is an electronic device.

(6E) The person who seized the item may examine any data or files on the device, if the person thinks there is a good reason to do so.

(6F) Following an examination under subsection (6E), if the person has decided to return the item to its owner, retain it or dispose of it, the person may erase any data or files from the device if the person thinks there is a good reason to do so.

(6G) In determining whether there is a good reason for the purposes of subsection (6E) or (6F), the person must have regard to any guidance issued for the purposes of this section by the Secretary of State.”;

- (c) in subsection (9), for “and (5)” substitute “, (5) and (6A)”.

(5) In section 550ZD (section 550ZC: supplementary)—

- (a) in subsection (1), after “(5)(a)” insert “, (6A)(a)”;
- (b) in subsection (2)(a), for the words from “alcohol” to “article” substitute “an item within subsection (2A)”;
- (c) after subsection (2), insert—

“(2A) The items referred to in subsection (2)(a) are—

- (a) alcohol or its container;
- (b) a controlled drug;
- (c) a stolen article;
- (d) an item that is a prohibited item by virtue of section 550ZA(3)(ea) or (g).

(2B) Subsection (3) also applies where a person—

- (a) erases data or a file from an electronic device under section 550ZC(6F); and
- (b) proves that the erasure was lawful.”;

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- (d) in subsection (3)(a), for “or disposal” substitute “, disposal or erasure”;
  - (e) in subsection (4), after “(2)” insert “, (2B)”.
- (6) In section 569 of EA 1996, in subsection (2A) (regulations subject to affirmative procedure), for “550ZA or 550ZC” substitute “550ZA(3)(f) or 550ZC(7)”.
- (7) In section 89 of EIA 2006 (determination by head teacher of behaviour policy), after subsection (4) insert—
- “(4A) In relation to a school in England, rules made under subsection (4) must identify the items for which a search may be made.”

### **3 Power of members of staff at further education institutions to search students**

- (1) Part 3 of FHEA 1992 (miscellaneous and general) is amended as follows.
- (2) In section 85AA (power of members of staff to search students for prohibited items: England), in subsection (3) (prohibited items), after paragraph (e) insert—
- “(ea) an article that the member of staff reasonably suspects has been, or is likely to be, used—
    - (i) to commit an offence, or
    - (ii) to cause personal injury to, or damage to the property of, any person (including S);”.
- (3) In section 85AB (power of search under section 85AA: supplementary)—
- (a) in subsection (6)—
    - (i) in paragraph (b), after “S” insert “, unless the condition in subsection (6A) is satisfied”;
    - (ii) in paragraph (c), after “staff” insert “, unless the condition in subsection (6A) is satisfied”;
  - (b) after subsection (6), insert—
 

“(6A) The condition is satisfied if—

    - (a) the person carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency, and
    - (b) in the time available it is not reasonably practicable for the search to be carried out by a person of the same sex as S or in the presence of another member of staff (as the case may be).”;
  - (c) in subsection (7), in paragraph (b), after “staff” insert “, unless the condition in subsection (7A) is satisfied”;
  - (d) after subsection (7), insert—
 

“(7A) The condition is satisfied if—

    - (a) the person carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency, and
    - (b) in the time available it is not reasonably practicable for the search to be carried out in the presence of another member of staff.”
- (4) In section 85AC (power to seize items found during search under section 85AA)—

- (a) after subsection (6) insert—

“(6A) A person who seizes an item that is a prohibited item by virtue of section 85AA(3)(ea) (article used in commission of offence or to cause personal injury or damage to property) under subsection (1) must—

- (a) deliver the item to a police constable as soon as reasonably practicable,
- (b) return the item to its owner,
- (c) retain the item, or
- (d) dispose of the item.

In deciding what to do with an item under this subsection, the person who seized it must have regard to guidance issued for the purpose of this section by the Secretary of State.

- (6B) Subsections (6C) and (6D) apply to an item that—

- (a) has been seized under subsection (1),
- (b) is a prohibited item by virtue of section 85AA(3)(ea), and
- (c) is an electronic device.

- (6C) The person who seized the item may examine any data or files on the device, if the person thinks there is a good reason to do so.

- (6D) Following an examination under subsection (6C), if the person has decided to return the item to its owner, retain it or dispose of it, the person may erase any data or files from the device if the person thinks there is a good reason to do so.

- (6E) In determining whether there is a good reason for the purposes of subsection (6C) or (6D), the person must have regard to any guidance issued for the purposes of this section by the Secretary of State.”;

- (b) in subsection (9), for “and (5)” substitute “, (5) and (6A)”.

- (5) In section 85AD (section 85AC: supplementary)—

- (a) in subsection (1), after “(5)(a)” insert “, (6A)(a)”;
- (b) in subsection (2)(a), for the words from “alcohol” to “article” substitute “an item within subsection (2A)”;
- (c) after subsection (2), insert—

“(2A) The items referred to in subsection (2)(a) are—

- (a) alcohol or its container;
- (b) a controlled drug;
- (c) a stolen article;
- (d) an article that is a prohibited item by virtue of section 85AA(3)(ea).

- (2B) Subsection (3) also applies where a person—

- (a) erases data or a file from an electronic device under section 85AC(6D); and
- (b) proves that the erasure was lawful.”;
- (d) in subsection (3)(a), for “or disposal” substitute “, disposal or erasure”;
- (e) in subsection (4), after “(2)” insert “, (2B)”.

#### **4 Exclusion of pupils from schools in England: review**

(1) Chapter 3 of Part 3 of EA 2002 (maintained schools: admissions, exclusions and attendance) is amended as follows.

(2) Before section 52, insert—

##### **“51A Exclusion of pupils: England**

(1) The head teacher of a maintained school in England may exclude a pupil from the school for a fixed period or permanently.

(2) The teacher in charge of a pupil referral unit in England may exclude a pupil from the unit for a fixed period or permanently.

(3) Regulations must make provision—

- (a) requiring prescribed persons to be given prescribed information relating to any exclusion under subsection (1) or (2);
- (b) requiring the responsible body, in prescribed cases, to consider whether the pupil should be reinstated;
- (c) requiring the local authority to make arrangements enabling a prescribed person to apply to a review panel for a review, in any prescribed case, of a decision of the responsible body not to reinstate a pupil;
- (d) about the constitution of a review panel;
- (e) about the procedure to be followed on a review under paragraph (c).

(4) On an application by virtue of subsection (3)(c), the review panel may—

- (a) uphold the decision of the responsible body,
- (b) recommend that the responsible body reconsiders the matter, or
- (c) if it considers that the decision of the responsible body was flawed when considered in the light of the principles applicable on an application for judicial review, quash the decision of the responsible body and direct the responsible body to reconsider the matter.

(5) Regulations may provide for the panel to have supplementary powers, and in particular may provide that the panel has the power to make a direction about the effect on an excluded pupil of a recommendation under subsection (4)(b) or a direction under subsection (4)(c).

(6) In a case where the panel gives a direction under subsection (4)(c) to the governing body of a maintained school, the panel may, in prescribed circumstances, order an adjustment of the school’s budget share for a funding period.

(7) Regulations must make provision about—

- (a) how the amount of the adjustment is to be determined;
- (b) the effect of the adjustment on the budget shares of other maintained schools for the funding period.

(8) Regulations under this section may also make provision—

- (a) for the payment by the local authority of allowances to members of the review panel;

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- (b) requiring a person or body exercising functions under subsection (1) or (2) or under the regulations to have regard to any guidance given from time to time by the Secretary of State;
  - (c) requiring local authorities to give prescribed information to the Secretary of State;
  - (d) in relation to any other matter relating to the exercise of the powers conferred by subsections (1) and (2).
- (9) Regulations made by virtue of subsection (8)(a) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of a review panel.
- (10) In this section—
  - “budget share” and “funding period” have the same meaning as in Part 2 of the School Standards and Framework Act 1998;
  - “exclude”, in relation to the exclusion of a pupil from a school or pupil referral unit, means exclude on disciplinary grounds (and “exclusion” is to be construed accordingly);
  - “maintained school” has the same meaning as in Chapter 1;
  - “the responsible body” means—
    - (a) in relation to exclusion from a maintained school, the governing body of the school;
    - (b) in relation to exclusion from a pupil referral unit, such person as may be prescribed.
- (11) In relation to any time when no responsible body is prescribed in relation to permanent exclusion from a pupil referral unit, subsection (3) has effect in relation to such an exclusion as if—
  - (a) paragraph (b) were omitted, and
  - (b) the decision referred to in paragraph (c) were the decision of the teacher in charge of the unit permanently to exclude the pupil.
- (12) Regulations may make provision for this section and regulations made under it to apply, with prescribed modifications, in relation to Academies or a description of Academy.”
- (3) In section 52 (exclusion of pupils)—
  - (a) in subsection (1), after “maintained school” insert “in Wales”;
  - (b) in subsection (2), after “pupil referral unit” insert “in Wales”;
  - (c) in subsection (4)—
    - (i) in paragraph (b), omit from first “(in” to “Wales)”;
    - (ii) in paragraph (c), omit “the Secretary of State or” and “as the case may be,”;
  - (d) in the heading, at the end insert “: Wales”.
- (4) Schedule 1 (consequential amendments) has effect.

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*Status: This is the original version (as it was originally enacted).*

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**5 Repeal of requirement to give notice of detention to parent: England**

In section 92 of EIA 2006 (enforcement of disciplinary penalties: detention outside school sessions), in subsection (3)(d), after “that” insert “, in relation to a pupil at a school in Wales,”.

**6 Repeal of duty to enter into behaviour and attendance partnership**

Section 248 of ASCLA 2009 (co-operation with a view to promoting good behaviour etc: England) is repealed.