



# Education and Inspections Act 2006

## 2006 CHAPTER 40

### PART 7

#### DISCIPLINE, BEHAVIOUR AND EXCLUSION

#### CHAPTER 1

#### SCHOOL DISCIPLINE

#### *Certain schools required to have behaviour policy*

### **88 Responsibility of governing body for discipline**

- (1) The governing body of a relevant school must ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- (2) In particular, the governing body—
  - (a) must make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under section 89(1), and
  - (b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—
    - (i) shall notify him of those measures or matters, and
    - (ii) may give him such guidance as they consider appropriate.
- (3) Before making or revising the statement required by subsection (2)(a) the governing body must consult (in such manner as appears to them to be appropriate)—
  - (a) the head teacher,
  - (b) such other persons who work at the school (whether or not for payment) as it appears to the governing body to be appropriate to consult,
  - (c) parents of registered pupils at the school, and

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- (d) registered pupils at the school.
- (4) In exercising their functions under subsection (2) the governing body must have regard to any guidance given from time to time—
  - (a) in relation to England, by the Secretary of State, and
  - (b) in relation to Wales, by the Assembly.
- (5) In this section and section 89—
  - “relevant school” means—
    - (a) a community, foundation or voluntary school,
    - (b) a community or foundation special school,
    - (c) a maintained nursery school,
    - (d) a pupil referral unit, or
    - (e) a school approved by the Secretary of State or the Assembly under section 342 of EA 1996 (approval of non-maintained special schools);
  - “governing body”, in relation to a school approved by the Secretary of State or the Assembly under section 342 of EA 1996, means the proprietor of the school.

**Modifications etc. (not altering text)**

- C1** S. 88 applied (with modifications) (25.5.2007) by [The School Governance \(New Schools\) \(England\) Regulations 2007 \(S.I. 2007/958\)](#), regs. 1, **30**

**Commencement Information**

- I1** S. 88 in force at 1.4.2007 for E. by [S.I. 2007/935](#), **art. 4(a)**
- I2** S. 88 in force at 31.10.2010 for W. by [S.I. 2010/2543](#), **art. 2(a)**

**89 Determination by head teacher of behaviour policy**

- (1) The head teacher of a relevant school must determine measures to be taken with a view to—
  - (a) promoting, among pupils, self-discipline and proper regard for authority,
  - (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils,
  - (c) securing that the standard of behaviour of pupils is acceptable,
  - (d) securing that pupils complete any tasks reasonably assigned to them in connection with their education, and
  - (e) otherwise regulating the conduct of pupils.
- (2) The head teacher [<sup>F1</sup>of a relevant school in England ] must in determining such measures—
  - (a) act in accordance with the current statement made by the governing body under section 88(2)(a), and
  - (b) have regard to any notification or guidance given to him under section 88(2)(b).
- [<sup>F2</sup>2A) The head teacher of a relevant school in Wales must in determining such measures—
  - (a) act in accordance with the current statement made by the governing body under section 88(2)(a),

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- (b) have regard to any notification or guidance given to him under section 88(2)(b), and
  - (c) require pupils at the school to comply with the travel behaviour code made by the Welsh Ministers under section 12 of the Learner Travel (Wales) Measure 2008.]
- (3) [<sup>F3</sup>In relation to a relevant school in England, the] standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by the governing body.
- [<sup>F4</sup>(3A) In relation to a relevant school in Wales, the standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by—
  - (a) the governing body, or
  - (b) the Welsh Ministers.]
- (4) The measures which the head teacher determines under subsection (1) must include the making of rules and provision for disciplinary penalties (as defined by section 90).
- [<sup>F5</sup>(4A) In relation to a school in England, rules made under subsection (4) must identify the items for which a search may be made.]
- (5) The measures which the head teacher [<sup>F6</sup>of a relevant school in England ] determines under subsection (1) may, to such extent as is reasonable, include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.
- [<sup>F7</sup>(5A) The measures which the head teacher of a relevant school in Wales determines under subsection (1) may, to such extent as is reasonable and not required by subsection (2A)(c), include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.]
- (6) The measures determined by the head teacher under subsection (1) must be publicised by him in the form of a written document as follows—
  - (a) he must make the measures generally known within the school and to parents of registered pupils at the school, and
  - (b) he must in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons who work at the school (whether or not for payment).

#### Textual Amendments

- F1** Words in s. 89(2) inserted (4.1.2010) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 13(2)**, 28(2); S.I. 2009/2819, art. 2(2)(a)
- F2** S. 89(2A) inserted (4.1.2010) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 13(3)**, 28(2); S.I. 2009/2819, art. 2(2)(a)
- F3** Words in s. 89(3) substituted (4.1.2010) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 13(4)**, 28(2); S.I. 2009/2819, art. 2(2)(a)
- F4** S. 89(3A) inserted (4.1.2010) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 13(5)**, 28(2); S.I. 2009/2819, art. 2(2)(a)
- F5** S. 89(4A) inserted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), **ss. 2(7)**, 82(3); S.I. 2012/924, art. 2

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- F6** Words in s. 89(5) inserted (4.1.2010) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 13(6)**, 28(2); S.I. 2009/2819, art. 2(2)(a)
- F7** S. 89(5A) inserted (4.1.2010) by [Learner Travel \(Wales\) Measure 2008 \(nawm 2\)](#), **ss. 13(7)**, 28(2); S.I. 2009/2819, art. 2(2)(a)

**Commencement Information**

- I3** S. 89 in force at 1.4.2007 for E. by S.I. 2007/935, **art. 4(a)**
- I4** S. 89(1)-(3) (5)(6) in force at 1.1.2009 for W. by S.I. 2009/2545, **art. 3(2)(a)** (with art. 4)
- I5** S. 89(4) in force at 31.10.2010 for W. by S.I. 2010/2543, **art. 2(b)**

*Enforcement of discipline (including compliance with instructions)*

**90 Meaning of “disciplinary penalty”**

- (1) In this Chapter, “disciplinary penalty” means a penalty imposed on a pupil, by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him (whether because he fails to follow a rule in force at any such school or an instruction given to him by a member of its staff or for any other reason).
- (2) In subsection (1), the reference to conduct, in relation to a pupil, includes—
- (a) conduct which occurs at a time when the pupil is not on the premises of a school and is not under the lawful control or charge of a member of the staff of a school, but only to the extent that it is reasonable for the school imposing the penalty to regulate the pupil's conduct at such a time, and
  - (b) conduct which consists of a failure by the pupil to comply with a penalty previously imposed on him.

**Commencement Information**

- I6** S. 90 in force at 1.4.2007 for E. by S.I. 2007/935, **art. 4(a)**
- I7** S. 90 in force at 31.10.2010 for W. by S.I. 2010/2543, **art. 2(c)**

**91 Enforcement of disciplinary penalties: general**

- (1) This section applies in relation to a disciplinary penalty imposed on a pupil by any school at which education is provided for him, other than a penalty which consists of exclusion.
- (2) The imposition of the disciplinary penalty is lawful if the following three conditions are satisfied.
- (3) The first condition is that the imposition of the penalty on the pupil—
- (a) is not in breach of any statutory requirement or prohibition, and
  - (b) is reasonable in all the circumstances.
- (4) The second condition is that the decision to impose the penalty on the pupil was made—
- (a) by any paid member of the staff of the school, except in circumstances where the head teacher has determined that the member of staff is not permitted to impose the penalty on the pupil, or

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- (b) by any other member of the staff of the school, in circumstances where the head teacher has authorised the member of the staff to impose the penalty on the pupil and it was reasonable for the head teacher to do so.
- (5) The third condition is that the decision to impose the penalty was made, and any action taken on behalf of the school to implement the decision was taken—
  - (a) on the premises of the school, or
  - (b) elsewhere at a time when the pupil was under the lawful control or charge of a member of staff of the school.
- (6) In determining for the purposes of subsection (3)(b) whether the imposition of the penalty is reasonable, the following matters must be taken into account—
  - (a) whether the imposition of the penalty constitutes a proportionate punishment in the circumstances of the case, and
  - (b) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it (or of which he ought reasonably to be aware) including in particular—
    - (i) the pupil's age,
    - (ii) any special educational needs he may have,
    - (iii) any disability he may have, and
    - (iv) any religious requirements affecting him.
- (7) For the purposes of subsection (6)(b)(iii) a pupil has a disability if he has a disability for the purposes of the [F8Equality Act 2010].
- (8) A determination or authorisation by the head teacher for the purpose of subsection (4) (a) or (b) may be made—
  - (a) in relation to a particular member of staff or members of staff of a particular description;
  - (b) in relation to a particular disciplinary penalty or disciplinary penalties of a particular description;
  - (c) in relation to a particular pupil or pupils of a particular description or generally in relation to pupils.
- (9) Where the disciplinary penalty is detention outside school sessions, this section has effect subject to section 92.
- (10) Nothing in this section authorises anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548 of EA 1996.
- (11) This section is not to be construed as restricting what may lawfully be done apart from this section.
- (12) In this section, “paid member of the staff”, in relation to a school, means any member of the staff who works at the school for payment, whether under a contract of employment or a contract for services; and, for this purpose, it is immaterial whether the contract of employment or contract for services is made with the governing body or proprietor of the school or with any other person.

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### Textual Amendments

- F8** Words in s. 91(7) substituted by 2010 c. 15, Sch. 26 Pt. 1 para. 94 (as inserted (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010](#) (S.I. 2010/2279), art. 1(2), [Sch. 1 para. 6](#) (see S.I. 2010/2317, art. 2))

### Commencement Information

- I8** S. 91 in force at 1.4.2007 for E. by [S.I. 2007/935, art. 4\(a\)](#)  
**I9** [S. 91](#) in force at 31.10.2010 for W. by [S.I. 2010/2543, art. 2\(c\)](#)

## 92 Enforcement of disciplinary penalties: detention outside school sessions

- (1) This section applies in relation to a disciplinary penalty which consists of the detention of a pupil outside school sessions.
- (2) In relation to a disciplinary penalty to which this section applies, subsection (2) of section 91 has effect as if it required the following additional conditions to be satisfied, as well as the conditions set out in subsections (3) to (5) of that section.
- (3) The additional conditions are—
  - (a) that the pupil has not attained the age of 18,
  - (b) that the head teacher of the school has previously determined, and has made generally known within the school and to parents of registered pupils at the school, that the detention of pupils outside school sessions is one of the measures that may be taken with a view to regulating the conduct of pupils,
  - (c) that the detention is on a permitted day of detention, and
  - (d) that [<sup>F9</sup>, in relation to a pupil at a school in Wales,] the pupil's parent has been given at least 24 hours' notice in writing that the detention is due to take place.
- (4) The additional conditions set out in subsection (3)(a), (c) and (d) do not apply in the case of a detention during a break between school sessions on the same day.
- (5) If arrangements have to be made for the pupil to travel to school for the purposes of the detention or to travel home after the detention, then in determining for the purposes of the condition in subsection (3) of section 91 whether the imposition of the detention is reasonable, subsection (6) of that section is to be read as if it also required the question whether suitable travelling arrangements can reasonably be made by his parent to be taken into account.
- (6) Section 572 of EA 1996, which provides for the methods by which notices may be served under that Act, does not preclude a notice under subsection (3)(d) from being given to the parent by any effective method.
- (7) This section is not to be construed as restricting what may lawfully be done apart from this section.
- (8) In this section, “permitted day of detention”, in relation to a pupil, means any of the following days—
  - (a) a school day, other than a day on which the pupil has leave to be absent, and for this purpose “leave” means leave granted by a person authorised to do so by the governing body or proprietor of the school;

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- (b) a Saturday or Sunday during a school term, other than a Saturday or Sunday which falls during, or at a weekend immediately preceding or immediately following, a half-term break;
- (c) a day (whether or not during a school term) which is set aside wholly or mainly for the performance of duties by members of the staff of the school other than teaching, other than such a day which is excluded by regulations made—
  - (i) in relation to England, by the Secretary of State, and
  - (ii) in relation to Wales, by the Assembly.

#### Textual Amendments

- F9** Words in s. 92(3)(d) inserted (15.1.2012) by [Education Act 2011 \(c. 21\)](#), [ss. 5, 82\(3\)](#); [S.I. 2012/84](#), [art. 2](#)

#### Commencement Information

- I10** S. 92 in force at 1.4.2007 for E. by [S.I. 2007/935](#), [art. 4\(a\)](#)  
**I11** S. 92(1)-(7) (8)(a)(c) in force at 31.10.2010 for W. by [S.I. 2010/2543](#), [art. 2\(d\)](#)

### *Use of reasonable force*

## **93 Power of members of staff to use force**

- (1) A person to whom this section applies may use such force as is reasonable in the circumstances for the purpose of preventing a pupil from doing (or continuing to do) any of the following, namely—
  - (a) committing any offence,
  - (b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or
  - (c) prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise.
- (2) This section applies to a person who is, in relation to a pupil, a member of the staff of any school at which education is provided for the pupil.
- (3) The power conferred by subsection (1) may be exercised only where—
  - (a) the member of the staff and the pupil are on the premises of the school in question, or
  - (b) they are elsewhere and the member of the staff has lawful control or charge of the pupil concerned.
- (4) Subsection (1) does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548 of EA 1996.
- (5) The powers conferred by subsection (1) are in addition to any powers exercisable apart from this section and are not to be construed as restricting what may lawfully be done apart from this section.

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- (6) In this section, “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.

#### Commencement Information

- I12** S. 93 in force at 1.4.2007 for E. by [S.I. 2007/935, art. 4\(a\)](#)  
**I13** S. 93 in force at 31.10.2010 for W. by [S.I. 2010/2543, art. 2\(e\)](#)

### *Confiscation from pupils*

#### 94 Defence where confiscation lawful

- (1) This section applies where, as a disciplinary penalty—
- (a) an item which a pupil has with him or in his possessions is seized, and
  - (b) the item is retained for any period or is disposed of.
- (2) A person who seizes, retains or disposes of the item is not liable in any proceedings in respect of—
- (a) the seizure, retention or disposal (as the case may be), or
  - (b) any damage or loss which arises in consequence of it,
- if he proves that the seizure, retention or disposal (as the case may be) was lawful (whether or not by virtue of section 91).
- (3) Nothing in this section applies where an item is seized under section [<sup>F10</sup>550ZC or] 550AA of EA 1996 (provision as to what is to be done with such an item being made by that section).
- (4) This section is not to be construed as preventing any person relying on any defence on which he is entitled to rely apart from this section.

#### Textual Amendments

- F10** Words in s. 94(3) inserted (1.9.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\), ss. 242\(3\), 269\(4\); S.I. 2010/303, art. 6, Sch. 5](#) (as amended (26.7.2010) by [S.I. 2010/1891, art. 2\(2\)](#) (with art. 3))

#### Commencement Information

- I14** S. 94 in force at 1.4.2007 for E. by [S.I. 2007/935, art. 4\(a\)](#)  
**I15** S. 94 in force at 31.10.2010 for W. by [S.I. 2010/2543, art. 2\(e\)](#)

### *Interpretation of Chapter 1*

#### 95 Interpretation of Chapter 1

In this Chapter—

- “disciplinary penalty” has the meaning given by section 90;  
“member of the staff”, in relation to a school, means—
- (a) any teacher who works at the school, and



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- (b) any other person who, with the authority of the head teacher, has lawful control or charge of pupils for whom education is being provided at the school;  
“possessions”, in relation to a pupil, includes any goods over which he appears to have control.

#### Commencement Information

- I16** S. 95 in force at 1.4.2007 for E. by [S.I. 2007/935, art. 4\(a\)](#)  
**I17** S. 95 in force at 31.10.2010 for W. by [S.I. 2010/2543, art. 2\(e\)](#)

#### Repeals

### 96 Repeals consequential on provisions of Chapter 1

The following provisions (which are superseded by sections 88 to 93) cease to have effect—

- (a) sections 550A and 550B of EA 1996;  
(b) section 61 of SSFA 1998.

#### Commencement Information

- I18** S. 96 in force at 1.4.2007 for E. by [S.I. 2007/935, art. 4\(a\)](#)  
**I19** S. 96(a) in force at 31.10.2010 for W. by [S.I. 2010/2543, art. 2\(f\)](#)  
**I20** S. 96(b) in force at 1.1.2009 for specified purposes for W. by [S.I. 2009/2545, art. 3\(2\)\(b\)](#)  
**I21** S. 96(b) in force at 31.10.2010 for W. in so far as not already in force by [S.I. 2010/2543, art. 2\(f\)](#)

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