

Draft Regulations laid before Parliament under section 89(3A) of the Further and Higher Education Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 000

EDUCATION, ENGLAND

**The Further Education Institutions and 16 to 19 Academies
(Specification and Disposal of Articles) Regulations 2012**

Made - - - - 2012
Coming into force - - 1st September 2012

The Secretary of State, makes the following Regulations in exercise of the powers conferred by sections 85AA(3)(f), 85AC(7) and 89(4) of the Further and Higher Education Act 1992⁽¹⁾:

In accordance with section 89(3A) of that Act⁽²⁾, a draft of this instrument was laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Further Education Institutions and 16-19 Academies (Specification and Disposal of Articles) Regulations 2012 and come into force on 1st September 2012.

Interpretation

2. In these Regulations—

“the 1992 Act” means the Further and Higher Education Act 1992;

“firework” means a device within the meaning of section 1 (introduction) of the Fireworks Act 2003⁽³⁾;

“image” means—

(a) a moving or still image (produced by any means), or

(1) 1992 c. 13. Sections 85AA and 85AC were inserted by section 244(1) of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and were amended by sections 3(2), 3(4) and 54(1) of and paragraph 8 of Schedule 13 to the Education Act 2011 (c.21). See section 90(5) of the 1992 Act and section 579 of the Education Act 1996 (c. 56) for the definition of “regulations”.

(2) Subsection (3A) of section 89 of the 1992 Act was inserted by section 244(2) of the Apprenticeships, Skills, Children and Learning Act 2009.

(3) 2003 c. 22.

(b) data (stored by any means) which is capable of conversion into an image within subparagraph (a);

“pornographic image” means an article containing an image of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal;

“tobacco” includes the items listed in section 7(5) of the Children and Young Persons Act 1933(4).

Prohibited items

3.—(1) Each of the following articles is a prohibited item for the purposes of sections 85AA and 85AC of the 1992 Act—

- (a) tobacco and cigarette papers;
- (b) a firework;
- (c) a pornographic image.

(2) An article specified in paragraph (1) is not a prohibited item where the student who is suspected of having the item in his or her possession is aged 18 or over.

Disposal of articles

4.—(1) Paragraphs (2) to (5) prescribe what must or may be done by a member of staff who, under section 85AC(1) of the 1992 Act, seizes an article specified in regulation 3.

(2) In the case of tobacco and cigarette papers, the member of staff may retain or dispose of the tobacco or cigarette papers and its or their container.

(3) In the case of a firework, the member of staff may retain or dispose of the firework and its container.

(4) In the case of a pornographic image, the member of staff may dispose of the image unless the member of staff has reasonable grounds for suspecting that—

- (a) the image is an image to which section 62(2) (possession of prohibited images of children) of the Coroners and Justice Act 2009(5) applies; or
- (b) the image is an image to which section 63 (possession of extreme pornographic images) of the Criminal Justice and Immigration Act 2008(6) applies.

(5) In the case of a pornographic image to which either paragraph (4)(a) or (b) applies, the member of staff must deliver it to a police constable as soon as is reasonably practicable.

Name
Minister of State for Further Education, Skills
and Lifelong Learning

Date Department for Business, Innovation and Skills

(4) 1933 c. 12. Section 7(5) was amended by section 1(1)(c) of the Protection of Children (Tobacco) Act 1986 c. 34.
(5) 2009 c. 25. Section 62 of the Coroners and Justice Act 2009 makes it an offence for a person to be in possession of a prohibited image of a child.
(6) 2008 c. 4. Section 63 of the Criminal Justice and Immigration Act 2008 makes it an offence for a person to be in possession of an extreme pornographic image.

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations specify articles that members of staff in further education institutions and 16 to 19 Academies can search students for prohibited items without their consent, and make provision for their disposal.

Regulation 3 lists the specified articles that are prohibited items. These are tobacco and cigarette papers, fireworks, and pornography. These items are not prohibited items where the student suspected of possessing them is aged 18 or over.

Regulation 4 makes provision for the disposal of the specified articles. Cigarettes and fireworks may be kept or disposed of. Any pornography may be disposed of unless possession constitutes a specified offence. Where this is the case, it must be taken to the police as soon as is reasonably practicable.

No impact assessment has been produced for this instrument because no impact on the private, voluntary or public sector is foreseen.