



Apprenticeships, Skills, Children and Learning Act 2009

2009 CHAPTER 22

VALID FROM 01/09/2010

PART 11

LEARNERS

Power to search for prohibited items

242 Power of members of staff to search pupils for prohibited items: England

(1) After section 550A of the Education Act 1996 (c. 56) insert—

“Powers to search pupils

550ZA Power of members of staff to search pupils for prohibited items: England

- (1) This section applies where a member of staff of a school in England—
 - (a) has reasonable grounds for suspecting that a pupil at the school may have a prohibited item with him or her or in his or her possessions; and
 - (b) falls within section 550ZB(1).
- (2) The member of staff may search the pupil (“P”) or P’s possessions for that item.
- (3) For the purposes of this section and section 550ZC each of the following is a “prohibited item”—

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- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
 - (b) an offensive weapon, within the meaning of the Prevention of Crime Act 1953;
 - (c) alcohol, within the meaning of section 191 of the Licensing Act 2003;
 - (d) a controlled drug, within the meaning of section 2 of the Misuse of Drugs Act 1971, which section 5(1) of that Act makes it unlawful for P to have in P's possession;
 - (e) a stolen article;
 - (f) an article of a kind specified in regulations.
- (4) In subsection (3)(e) “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 in the provisions of that Act relating to goods which have been stolen.
- (5) In this section and section 550ZB—
- “member of staff”, in relation to a school, means—
 - (a) any teacher who works at the school; and
 - (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 P, includes any goods over which P has or appears to have control.
- (6) The powers conferred by this section and sections 550ZB and 550ZC are in addition to any powers exercisable by the member of staff in question apart from those sections and are not to be construed as restricting such powers.

550ZB Power of search under section 550ZA: supplementary

- (1) A person may carry out a search under section 550ZA only if that person—
- (a) is the head teacher of the school; or
 - (b) has been authorised by the head teacher to carry out the search.
- (2) An authorisation for the purposes of subsection (1)(b) may be given in relation to—
- (a) searches under section 550ZA generally;
 - (b) a particular search under that section;
 - (c) a particular description of searches under that section.
- (3) Nothing in any enactment, instrument or agreement shall be construed as authorising a head teacher of a school in England to require a person other than a member of the security staff of the school to carry out a search under section 550ZA.
- (4) A search under section 550ZA may be carried out only where—
- (a) the member of staff and P are on the premises of the school; or
 - (b) they are elsewhere and the member of staff has lawful control or charge of P.

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- (5) A person exercising the power in section 550ZA may use such force as is reasonable in the circumstances for exercising that power.
- (6) A person carrying out a search of P under section 550ZA—
 - (a) may not require P to remove any clothing other than outer clothing;
 - (b) must be of the same sex as P;
 - (c) may carry out the search only in the presence of another member of staff; and
 - (d) must ensure that the other member of staff is of the same sex as P if it is reasonably practicable to do so.
- (7) P's possessions may not be searched under section 550ZA except in the presence of—
 - (a) P; and
 - (b) another member of staff.
- (8) In this section—

“member of the security staff”, in relation to a school, means a member of staff whose work at the school consists wholly or mainly of security-related activities;

“outer clothing” means—

 - (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
 - (b) a hat, shoes, boots, gloves or a scarf.

550ZC Power to seize items found during search under section 550ZA

- (1) A person carrying out a search under section 550ZA may seize any of the following found in the course of the search—
 - (a) anything which that person has reasonable grounds for suspecting is a prohibited item;
 - (b) any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence.
- (2) A person exercising the power in subsection (1) may use such force as is reasonable in the circumstances for exercising that power.
- (3) A person who seizes alcohol under subsection (1) may retain or dispose of the alcohol and its container.
- (4) A person who seizes a controlled drug under subsection (1)—
 - (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
 - (b) may dispose of it if the person thinks that there is a good reason to do so.
- (5) A person who seizes a stolen article under subsection (1)—
 - (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but

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(b) may return it to its owner (or, if returning it to its owner is not practicable, may retain it or dispose of it) if the person thinks that there is a good reason to do so.

(6) In determining, for the purposes of subsections (4) and (5), whether there is a good reason to dispose of a controlled drug or to return a stolen article to its owner, retain it or dispose of it, the person must have regard to any guidance issued by the Secretary of State.

(7) Regulations may prescribe what must or may be done by a person who, under subsection (1), seizes an article of a kind specified in regulations under section 550ZA(3)(f) (or an article which the person has reasonable grounds for suspecting to be such an article).

(8) A person who, under subsection (1), seizes—

(a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);

(b) an offensive weapon; or

(c) anything which that person has reasonable grounds for suspecting is evidence in relation to an offence;

must deliver it to a police constable as soon as reasonably practicable.

(9) Subsection (8)(c) is subject to subsections (3), (4) and (5) and regulations made under subsection (7).

(10) In subsections (3) to (8), references to alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies and an offensive weapon include references to anything which the person has reasonable grounds for suspecting is alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies or an offensive weapon.

550ZD Section 550ZC: supplementary

(1) The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under section 550ZC(4)(a), (5)(a) or (8) as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.

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

(a) seizes, retains or disposes of alcohol or its container, a controlled drug or a stolen article under section 550ZC; and

(b) proves that the seizure, retention or disposal was lawful.

(3) That person is not liable in any proceedings in respect of—

(a) the seizure, retention or disposal; or

(b) any damage or loss which arises in consequence of it.

(4) Subsections (2) and (3) do not prevent any person from relying on any defence on which the person is entitled to rely apart from those subsections.

(5) Regulations under section 550ZC(7) may make provision corresponding to any provision of this section.”

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- (2) In section 569 of the Education Act 1996 (c. 56) (regulations)—
- (a) in subsection (2) after “this Act,” insert “ other than one falling within subsection (2A), ”, and
 - (b) after subsection (2) insert—

“(2A) A statutory instrument which contains (whether alone or with other provision) regulations under section 550ZA or 550ZC may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

- (3) In section 94(3) of the Education and Inspections Act 2006 (c. 40) (provision to apply where items confiscated from pupils) before “550AA” insert “ 550ZC or ”.

243 Power of members of staff to search pupils for weapons: Wales

- (1) Section 550AA of the Education Act 1996 (c. 56) (power of members of staff to search pupils for weapons) is amended as follows.
- (2) At the end of the title insert “ : Wales ”.
- (3) In each of subsections (1) and (4) after “a school” insert “ in Wales ”.

244 Power of members of staff to search students for prohibited items: England

- (1) After section 85A of the Further and Higher Education Act 1992 (c. 13) insert—

“85AA Power of members of staff to search students for prohibited items: England

- (1) This section applies where a member of staff of an institution within the further education sector in England—
 - (a) has reasonable grounds for suspecting that a student at the institution may have a prohibited item with him or her or in his or her possessions; and
 - (b) falls within section 85AB(1).
- (2) The member of staff may search the student (“S”) or S's possessions for that item (but this is subject to subsection (5)).
- (3) For the purposes of this section and section 85AC each of the following is a “prohibited item”—
 - (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
 - (b) an offensive weapon, within the meaning of the Prevention of Crime Act 1953;
 - (c) alcohol, within the meaning of section 191 of the Licensing Act 2003;
 - (d) a controlled drug, within the meaning of section 2 of the Misuse of Drugs Act 1971, which section 5(1) of that Act makes it unlawful for S to have in S's possession;
 - (e) a stolen article;
 - (f) an article of a kind specified in regulations.

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- (4) In subsection (3)(e) “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 in the provisions of that Act relating to goods which have been stolen.
- (5) A member of staff may not under this section search S or S's possessions for alcohol if S is aged 18 or over.
- (6) In this section and section 85AB—
 - “member of staff”, in relation to an institution within the further education sector, means any person who works at that institution whether or not as its employee;
 - “possessions”, in relation to S, includes any goods over which S has or appears to have control.
- (7) The powers conferred by this section and sections 85AB and 85AC are in addition to any powers exercisable by the member of staff in question apart from those sections and are not to be construed as restricting such powers.

85AB Power of search under section 85AA: supplementary

- (1) A person may carry out a search under section 85AA only if that person—
 - (a) is the principal of the institution; or
 - (b) has been authorised by the principal to carry out the search.
- (2) An authorisation for the purposes of subsection (1)(b) may be given in relation to—
 - (a) searches under section 85AA generally;
 - (b) a particular search under that section;
 - (c) a particular description of searches under that section.
- (3) Nothing in any enactment, instrument or agreement shall be construed as authorising a principal of an institution within the further education sector in England to require a person other than a member of the security staff of the institution to carry out a search under section 85AA.
- (4) A search under section 85AA may be carried out only where—
 - (a) the member of staff and S are on the premises of the institution; or
 - (b) they are elsewhere and the member of staff has lawful control or charge of S.
- (5) A person exercising the power in section 85AA may use such force as is reasonable in the circumstances for exercising that power.
- (6) A person carrying out a search of S under section 85AA—
 - (a) may not require S to remove any clothing other than outer clothing;
 - (b) must be of the same sex as S;
 - (c) may carry out the search only in the presence of another member of staff; and
 - (d) must ensure that the other member of staff is of the same sex as S if it is reasonably practicable to do so.
- (7) S's possessions may not be searched under section 85AA except in the presence of—

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- (a) S; and
- (b) another member of staff.

(8) In this section—

“member of the security staff”, in relation to an institution, means a member of staff whose work at the institution consists wholly or mainly of security-related activities;

“outer clothing” means—

- (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
- (b) a hat, shoes, boots, gloves or a scarf.

85AC Power to seize items found during search under section 85AA

(1) A person carrying out a search under section 85AA may seize any of the following found in the course of the search—

- (a) anything which that person has reasonable grounds for suspecting is a prohibited item;
- (b) any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence,

but may not seize alcohol from S under this section where S is aged 18 or over.

(2) A person exercising the power in subsection (1) may use such force as is reasonable in the circumstances for exercising that power.

(3) A person who seizes alcohol under subsection (1) may retain or dispose of the alcohol and its container.

(4) A person who seizes a controlled drug under subsection (1)—

- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
- (b) may dispose of it if the person thinks that there is a good reason to do so.

(5) A person who seizes a stolen article under subsection (1)—

- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
- (b) may return it to its owner (or, if returning it to its owner is not practicable, may retain it or dispose of it) if the person thinks that there is a good reason to do so.

(6) In determining, for the purposes of subsections (4) and (5), whether there is a good reason to dispose of a controlled drug or to return a stolen article to its owner, retain it or dispose of it, the person must have regard to any guidance issued by the Secretary of State.

(7) Regulations may prescribe what must or may be done by a person who, under subsection (1), seizes an article of a kind specified in regulations under section 85AA(3)(f) (or an article which the person has reasonable grounds for suspecting to be such an article).

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- (8) A person who, under subsection (1), seizes—
- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
 - (b) an offensive weapon; or
 - (c) anything which that person has reasonable grounds for suspecting is evidence in relation to an offence;
- must deliver it to a police constable as soon as reasonably practicable.
- (9) Subsection (8)(c) is subject to subsections (3), (4) and (5) and regulations made under subsection (7).
- (10) In subsections (3) to (8), references to alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies and an offensive weapon include references to anything which a person has reasonable grounds for suspecting is alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies or an offensive weapon.

85AD Section 85AC: supplementary

- (1) The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under section 85AC(4)(a), (5)(a) or (8) as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.
 - (2) Subsection (3) applies where a person—
 - (a) seizes, retains or disposes of alcohol or its container, a controlled drug or a stolen article under section 85AC; and
 - (b) proves that the seizure, retention or disposal was lawful.
 - (3) That person is not liable in any proceedings in respect of—
 - (a) the seizure, retention or disposal; or
 - (b) any damage or loss which arises in consequence of it.
 - (4) Subsections (2) and (3) do not prevent any person from relying on any defence on which the person is entitled to rely apart from those subsections.
 - (5) Regulations under section 85AC(7) may make provision corresponding to any provision of this section.”
- (2) In section 89 of the Further and Higher Education Act 1992 (c. 13) (regulations etc)—
- (a) in subsection (3) after “other than” insert “ one falling within subsection (3A) or ”, and
 - (b) after subsection (3) insert—

“(3A) A statutory instrument which contains (whether alone or with other provision) regulations under section 85AA or 85AC may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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245 Power of members of staff to search students for weapons: Wales

- (1) Section 85B of the Further and Higher Education Act 1992 (power to search further education students for weapons) is amended as follows.
- (2) At the end of the title insert “ : Wales ”.
- (3) In subsection (1) after “an institution within the further education sector” insert “ in Wales ”.

PROSPECTIVE

Recording and reporting use of force

246 Recording and reporting the use of force in schools: England

After section 93 of the Education and Inspections Act 2006 (c. 40) (power of members of staff to use force) insert—

“93A Recording and reporting the use of force by members of staff: England

- (1) The governing body of a school in England must ensure that a procedure is in place for—
 - (a) recording each significant incident in which a member of the staff uses force on a pupil for whom education is being provided at the school (a “use of force incident”); and
 - (b) reporting each use of force incident (except those where the pupil is aged 20 or over or provision made under subsection (5) applies) to each parent of the pupil as soon as practicable after the incident.
- (2) The governing body must take all reasonable steps to ensure that the procedure is complied with.
- (3) The procedure must require that a record of a use of force incident is made in writing as soon as practicable after the incident.
- (4) In discharging their duty under subsection (1), the governing body must have regard to any guidance issued by the Secretary of State for the purposes of that subsection.
- (5) A procedure under subsection (1) must include provision to the effect—
 - (a) that a person (“R”) who would otherwise be required by the procedure to report an incident to a parent must not report it to that parent if it appears to R that doing so would be likely to result in significant harm to the pupil; and
 - (b) that if it appears to R that there is no parent of the pupil to whom R could report the incident without that being likely to result in significant harm to the pupil, R must report the incident to the local authority^{F1}... within whose area the pupil is ordinarily resident.
- (6) In deciding for the purposes of provision made under subsection (5) whether reporting an incident to a parent would be likely to result in

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significant harm to the pupil, R must have regard to any guidance issued by the Secretary of State about the meaning of “significant harm” for those purposes.

(7) In this section—

“governing body”, in relation to a school which is not a maintained school, means the proprietor of the school;

“maintained school” means—

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

“parent”, in relation to a pupil, has the meaning given by section 576 of EA 1996 in relation to a child or young person, but includes a local authority which provides accommodation for the pupil under section 20 of the Children Act 1989.”

Textual Amendments

- F1** Words in s. 246 repealed (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 16(12), [Sch. 3 Pt. 1](#)

247 Recording and reporting the use of force in FE institutions: England

After section 85C of the Further and Higher Education Act 1992 (power of members of staff to use force) insert—

“85D Recording and reporting the use of force by members of staff: England

- (1) The governing body of an institution within the further education sector in England must ensure that a procedure is in place for—
 - (a) recording each significant incident in which a member of the staff uses force on a student at the institution (a “use of force incident”); and
 - (b) reporting each use of force incident (except those where the student is aged 20 or over or provision made under subsection (5) applies) to each parent of the student as soon as practicable after the incident.
- (2) The governing body must take all reasonable steps to ensure that the procedure is complied with.
- (3) The procedure must require that a record of a use of force incident is made in writing as soon as practicable after the incident.
- (4) In discharging their duty under subsection (1), the governing body must have regard to any guidance issued by the Secretary of State for the purposes of that subsection.
- (5) A procedure under subsection (1) must include provision to the effect—

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- (a) that a person (“R”) who would otherwise be required by the procedure to report an incident to a parent must not report it to that parent if it appears to R that doing so would be likely to result in significant harm to the student; and
 - (b) that if it appears to R that there is no parent of the student to whom R could report the incident without that being likely to result in significant harm to the student, R must report the incident to the local authority^{F2}... within whose area the student is ordinarily resident.
- (6) In deciding for the purposes of provision made under subsection (5) whether reporting an incident to a parent would be likely to result in significant harm to the student, R must have regard to any guidance issued by the Secretary of State about the meaning of “significant harm” for those purposes.
- (7) In this section, “parent”, in relation to a student, has the meaning given by section 576 of EA 1996 in relation to a child or young person, but includes a local authority which provides accommodation for the student under section 20 of the Children Act 1989.”

Textual Amendments

F2 Words in s. 247 repealed (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 16(13), [Sch. 3 Pt. 1](#)

PROSPECTIVE

School behaviour and attendance partnerships

^{F3}248 Co-operation with a view to promoting good behaviour, etc.: England

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Textual Amendments

F3 S. 248 repealed (15.1.2012) by [Education Act 2011 \(c. 21\)](#), [ss. 6, 82\(2\)\(a\)](#)

Short stay schools

249 Short stay schools: miscellaneous

- (1) A school established in England and falling within section 19(2B) of the Education Act 1996 (c. 56) (pupil referral units) is to be known from the day on which this subsection comes into force as a “short stay school”.

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- (2) The Secretary of State may by order make amendments consequential on the change of name effected by subsection (1) to—
- (a) any enactment (including this Act) passed on or before the last day of the Session in which this Act is passed;
 - (b) an instrument made under an Act before the passing of this Act.
- (3) After paragraph 3 of Schedule 1 to the Education Act 1996 (c. 56) (short stay schools: further provision) insert—

“3A Regulations may also—

- (a) require a [^{F4}local authority] in England to obtain the consent of the Secretary of State, in specified circumstances, to the closure of a short stay school;
- (b) confer a power on the Secretary of State to give directions to a [^{F4}local authority] in England about the exercise of—
 - (i) their functions under section 19;
 - (ii) their functions under any enactment applied to short stay schools (with or without modifications) by regulations under paragraph 3;
 - (iii) any other function connected with short stay schools;
- (c) require a [^{F4}local authority] to comply with such directions.”

Textual Amendments

- F4** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(2)**

Status:

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