



Education Act 2011

2011 CHAPTER 21

PART 2

DISCIPLINE

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).”;

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(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—

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- (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) ”.

Commencement Information

II S. 3 in force at 1.4.2012 by S.I. 2012/924, art. 2

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