

# EDUCATION ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2: Discipline

##### *Section 2: power of members of staff to search pupils*

66. A head teacher or an authorised member of school staff has a statutory power, under section 550ZA of EA 1996, to search a pupil or his possessions without consent if there are reasonable grounds for suspecting that the pupil is in possession of a weapon, alcohol, illegal drugs, stolen property and other items specified in regulations (“prohibited items”). Section 2 extends the list of prohibited items.
67. *Subsection (2)(a)* inserts into section 550ZA(3) a new paragraph (ea) which adds to the list of prohibited items any article which the member of staff reasonably suspects has been, or is likely to be, used to commit an offence or to cause personal injury to, or damage to the property of, any person, including the pupil being searched.
68. *Subsection (2)(b)* inserts into section 550ZA(3) a new paragraph (g) which adds to the list of prohibited items any other item which the school rules identify as an item for which a search can be undertaken.
69. *Subsection (2)(c)* inserts new subsections (4A) to (4C) into section 550ZA. The new subsection (4A) specifies that “offence” in section 550ZA(3)(ea) includes behaviour by younger pupils that would be an offence if they had attained the age of criminal responsibility. New subsection (4B)(a) defines the school rules for maintained schools and non-maintained special schools as rules made and publicised by the head teacher in accordance with section 89 of EIA 2006. New subsection (4B)(b) provides that in the case of other schools, measures relating to behaviour must be made and publicised in accordance with regulations. Regulations made under this paragraph will be made using the negative resolution procedure by virtue of the new subsection (6). New subsection (4C) specifies the types of school to which subsection (4B)(a) applies.
70. *Subsection (3)(a)* amends section 550ZB(5) of EA 1996 so that reasonable force may only be used in executing a search for items within section 550ZA(3)(a) to (f), and so not for items which the school rules identify as an item for which a search may be made.
71. *Subsection (3)(b)* amends section 550ZB(6) of EA 1996 and enables searches to be carried out by a member of staff who is of the opposite sex to the pupil being searched, and searches to be carried out without another member of staff being present, but only where the condition in new subsection (6A) is met. The new subsection (6A) is inserted by *subsection (3)(c)*. The condition in new subsection (6A) is that the member of staff carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be carried out by a member of staff of the same sex as the pupil, or for the search to be witnessed by another member of staff.

72. *Subsection (3)(d)* amends section 550ZB(7) and enables searches of a pupil or his or her possessions to be carried out in the absence of another member of staff where the condition in new subsection (7A) is met. The new subsection (7A) is inserted by *subsection (3)(e)*. The condition is that the member of staff carrying out the search reasonably believes that there is a risk that serious harm will be caused to a person if they do not conduct the search urgently and that it is not reasonably practicable for the search to be witnessed by another member of staff.
73. *Subsection (4)(a)* amends section 550ZC(2), which is about the power of teachers to use reasonable force to seize items found during a search. The effect of the amendment is that force may be used to seize items that are prohibited by virtue of section 550ZA(3) (a) to (f), but not items prohibited by virtue of section 550ZA(3)(g).
74. *Subsection (4)(b)* inserts new subsections (6A) to (6G) into section 550ZC of EA 1996. Section 550ZC provides a power to seize items found as a result of a search under section 550ZA. New subsection (6A) provides that where a person carrying out the search seizes an item listed as prohibited under new section 550ZA(3)(ea) the item must be delivered to the police, returned to its owner, retained, or disposed of.
75. New subsection (6B) provides that where an item is prohibited by virtue of section 550ZA(3)(g) it must be returned to its owner, retained or disposed of.
76. New subsections (6D) to (6G) provide specific powers regarding electronic devices seized under these provisions. New subsection (6E) provides that the person who has seized the item may examine any data or files if they believe there is a good reason to do so. New subsection (6F) allows data or files from the device to be erased if the person has decided to return it to its owner, retain it or dispose of it and thinks there is a good reason to do so. New subsection (6G) requires regard to be had to guidance issued by the Secretary of State when determining whether there is a good reason to examine any data or files, or erase data or files.
77. *Subsection (5)(a)* provides that the Police (Property) Act 1897 applies in relation to articles that are delivered to the police under section 550ZC(6A)(a). The Act enables an application to be made to a magistrate's court for an order that property in possession of the police be returned to its owner.
78. *Subsection (5)(b) to (e)* amends section 550ZD to provide that, where a person conducting a search, lawfully seizes, retains, disposes or erases an article seized under any of the new provisions in section 550ZC, they shall not be liable for the seizure, loss or disposal, or any damage arising.

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

79. This section provides similar powers of search in relation to further institutions as section 2 provides in relation to schools. The only substantive difference between the two search powers is that the power to search for items identified in the school rules is not replicated for further education institutions.

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

80. *Subsection (2)* of section 4 inserts a new section 51A into EA 2002, which applies to schools in England only, providing for the exclusion of pupils from maintained schools and pupil referral units (PRUs). *Subsection (3)* of this section makes amendments to section 52 (exclusion of pupils) of the EA 2002 so that it will only apply now to schools in Wales. The following therefore applies only to England; the current appeal procedure will continue to exist in relation to Wales.
81. Subsections (1) and (2) of new section 51A keep the power in section 52 for head teachers of maintained schools and teachers in charge of PRUs in England to exclude any pupil from school on disciplinary grounds for a fixed period or permanently.

82. Subsection (3) of new section 51A requires the Secretary of State to make regulations regarding the procedure relating to the exclusion of pupils and subsections (3) and (5) to (12) set out what these regulations must cover and what they may also cover. These regulation-making powers broadly mirror those in the current section 52, though the powers of the new review panel are significantly different from those of the current appeal panel.
83. Subsection (4) sets out the powers of a review panel to make a decision when a prescribed person (who it is intended will be, for example, a parent or a pupil if aged over 18) applies to it for a review of a decision, made by a responsible body, not to reinstate a pupil. The responsible body in the case of a maintained school will be its governing body; in the case of a PRU, it will be a person prescribed in regulations. A review panel may uphold the decision of the responsible body or recommend that the responsible body reconsiders the case. If it considers that the decision of the responsible body was flawed when viewed in the light of the principles of judicial review it can direct the responsible body to reconsider the matter, but the review panel does not have the power to order reinstatement. Subsection (5) allows the Secretary of State to make regulations to give the review panel additional powers when it has recommended reconsideration or quashed a decision of the responsible body. This might be used, for example, to allow the panel to make recommendations about what should go on the pupil's record.
84. Subsections (6) and (7) provide that where a panel has quashed a decision of the responsible body and directed that the responsible body considers the decision again, then, in prescribed circumstances, an adjustment of a school's budget may be made. Regulations must make provisions setting out how the amount of such a payment is to be determined and what effect such adjustments will have on the budget shares of other maintained schools.
85. Subsection (8) provides a regulation-making power to deal with the following matters: the payment of allowances to members of the review panel; requiring the person or body making the exclusion to have regard to guidance from the Secretary of State; requiring local authorities to provide prescribed information to the Secretary of State; and a general power to cover any other matters associated with an exclusion decision.
86. Subsection (10) defines the terms used in this section and provides that regulations may prescribe who is the "responsible body" in relation to a PRU.
87. Subsection (11) provides that when regulations have not prescribed who the "responsible body" is in relation to a permanent exclusion from a PRU, the procedure in subsection (3) has effect with the change that the review panel will review the decision of the teacher in charge not to reinstate the pupil.
88. Subsection (12) provides a regulation-making power to allow the Secretary of State to apply new section 51A and regulations made under it, to Academies, or a description of Academy, with or without modifications.
89. *Subsection (3)* of this section makes amendments necessary to section 52 of EA 2002 because it will only apply now to Wales.
90. *Subsection (4)* gives effect to *Schedule 1* which makes amendments to other legislation consequential on the changes made by *subsections (2) and (3)*.

### *Schedule 1*

91. *Paragraph 1* makes consequential amendments to the Local Government Act 1972 to allow the payment of members of review panels for travel expenses and attendance at meetings. It provides that this does not affect existing provisions in Wales.

*These notes refer to the Education Act 2011 (c.21)  
which received Royal Assent on 15 November 2011*

92. *Paragraphs 2 to 7* amend legislation to replace references to “appeals panels” with references to “review panels”, and replace references to section 52 with references to the new section 51A.
93. *Paragraph 9* inserts a new subsection (3A) into section 87 of SSFA 1998 which established that there is no requirement to admit children permanently excluded from two or more schools. The new subsection (3A) sets out the circumstances in which a child should not be treated as excluded for the purposes of that section, for example, when the child has been reinstated in line with new section 51A.
94. *Paragraph 10* amends section 87(4) of SSFA 1998 so that it applies to Wales only. Section 87(4) covers the impact of decisions made by an independent appeal panel on provisions relating to pupils who have been permanently excluded from two or more schools. As the new section will abolish independent appeal panels in England, section 87(4) is no longer relevant.
95. *Paragraphs 11 to 13* amend paragraph 14 of Schedule 17 to the Equality Act 2010 so that it applies to exclusions from schools in Wales only.

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

96. *Section 5* amends section 92 of EIA 2006 by removing the requirement on members of staff in schools in England to give to a parent, guardian or carer a minimum of 24 hours’ written notice that their child is required to attend detention outside of normal school hours. The requirement remains in place for schools in Wales.

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

97. *Section 6* removes the requirement in section 248 of ASCLA 2009 that the governing body of a maintained secondary school, or the proprietor of an Academy, city technology college or city college for the technology of the arts (referred to in the section as “relevant partners”) must co-operate with at least one other relevant partner in their area for the purpose of promoting good behaviour, discipline and attendance amongst pupils. The co-operative arrangements that result are known as “a behaviour and attendance partnership”.