



# Education Act 2011

## 2011 CHAPTER 21

### PART 2

#### DISCIPLINE

#### **2 Power of members of staff at schools to search pupils**

- (1) Chapter 2 of Part 10 of EA 1996 (punishment and restraint of pupils) is amended as set out in subsections (2) to (5).
- (2) In section 550ZA (power of members of staff to search pupils for prohibited items: England)—
  - (a) 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 P);”;
  - (b) in that subsection, after paragraph (f) insert—
    - “(g) any other item which the school rules identify as an item for which a search may be made.”;
  - (c) after subsection (4), insert—
    - “(4A) In subsection (3)(ea)(i), “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.
    - (4B) In subsection (3)(g), the “school rules” means—
      - (a) in the case of a maintained school or a non-maintained special school, rules in force at the school that are made under measures determined and publicised by the head teacher under section 89 of the Education and Inspections Act 2006;

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- (b) in the case of any other school, measures relating to discipline in the school that are determined and publicised in accordance with regulations.

(4C) In subsection (4B)(a)—

“maintained school” means—

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

“non-maintained special school” means a school that is approved under section 342.”

(3) In section 550ZB (power of search under section 550ZA: supplementary)—

- (a) in subsection (5), after “section 550ZA” insert “to search for an item within section 550ZA(3)(a) to (f)”;
- (b) in subsection (6)—
  - (i) in paragraph (b), after “P” insert “, unless the condition in subsection (6A) is satisfied”;
  - (ii) in paragraph (c), after “staff” insert “, unless the condition in subsection (6A) is satisfied”;
- (c) 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 P or in the presence of another member of staff (as the case may be).”;

- (d) in subsection (7), in paragraph (b), after “staff” insert “, unless the condition in subsection (7A) is satisfied”;
- (e) 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 550ZC (power to seize items found during search under section 550ZA)—

- (a) in subsection (2) after “subsection (1)” insert “to seize an item within section 550ZA(3)(a) to (f) or anything within subsection (1)(b)”;
- (b) after subsection (6) insert—

“(6A) A person who seizes an item that is a prohibited item by virtue of section 550ZA(3)(ea) (article used in commission of offence or to

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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.

(6B) A person who seizes an item that is a prohibited item by virtue of section 550ZA(3)(g) (item for which search may be made under school rules) under subsection (1) must return it to its owner, retain it or dispose of it.

(6C) In deciding what to do with an item under subsection (6A) or (6B), the person who seized it must have regard to guidance issued for the purpose of this section by the Secretary of State.

(6D) Subsections (6E) and (6F) apply to an item that—

- (a) has been seized under subsection (1),
- (b) is a prohibited item by virtue of section 550ZA(3)(ea) or (g), and
- (c) is an electronic device.

(6E) 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.

(6F) Following an examination under subsection (6E), 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.

(6G) In determining whether there is a good reason for the purposes of subsection (6E) or (6F), the person must have regard to any guidance issued for the purposes of this section by the Secretary of State.”;

(c) in subsection (9), for “and (5)” substitute “, (5) and (6A)”.

(5) In section 550ZD (section 550ZC: 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—

- (a) alcohol or its container;
- (b) a controlled drug;
- (c) a stolen article;
- (d) an item that is a prohibited item by virtue of section 550ZA(3)(ea) or (g).

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

- (a) erases data or a file from an electronic device under section 550ZC(6F); and
- (b) proves that the erasure was lawful.”;

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- (d) in subsection (3)(a), for “or disposal” substitute “, disposal or erasure”;
  - (e) in subsection (4), after “(2)” insert “, (2B)”.
- (6) In section 569 of EA 1996, in subsection (2A) (regulations subject to affirmative procedure), for “550ZA or 550ZC” substitute “550ZA(3)(f) or 550ZC(7)”.
- (7) In section 89 of EIA 2006 (determination by head teacher of behaviour policy), after subsection (4) insert—
- “(4A) In relation to a school in England, rules made under subsection (4) must identify the items for which a search may be made.”