

Screening, Searching and Confiscation

Advice for Gead Teachers
Staff and Governing Bodies

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Advice for Head Teachers, Staff and Governing Bodies

About this advice

This is non-statutory advice from the Department for Education. It is intended to explain schools' powers of screening and searching pupils so that school staff have the confidence to use them. In particular it explains the use of the power to search pupils without consent. It also explains the powers schools have to seize and then confiscate items found during a search.

This advice replaces "Screening and Searching of Pupils for Weapons: Guidance for School Staff".

Expiry/review date

This advice will be reviewed in autumn 2011 after the Education Bill, currently before Parliament, receives Royal Assent.

What legislation does this advice relate to?

Education and Inspections Act 2006

Health and Safety at Work Act etc. 1974

Who is this advice for?

This advice is aimed at head teachers, school staff and governing bodies in **all schools**¹.

Key Points

- School staff can search a pupil for any item banned under the school rules, if the pupil agrees².
- Head teachers and staff authorised by them have a statutory power to search pupils or their possessions, without consent, where they suspect the pupil has certain prohibited items. The items that can be searched for under this power are knives or weapons, alcohol, illegal drugs and stolen items.
- School staff can seize any banned or prohibited item found as a result of a search or which they consider harmful or detrimental to school discipline.

¹ "All schools" include Academies, Free Schools, independent schools and all types of maintained schools.

² The ability to give consent may be influenced by the child's age or other factors

Screening

What the law allows:

- Schools can require pupils to undergo screening by a walk-through or hand-held metal detector (arch or wand) even if they do not suspect them of having a weapon and **without** the consent of the pupils.
- Schools' statutory power to make rules on pupil behaviour³ and their duty as an employer to manage the safety of staff, pupils and visitors⁴ enables them to impose a requirement that pupils undergo screening.
- Any member of school staff can screen pupils.

1. If a pupil refuses to be screened, the school may refuse to have the pupil on the premises. Health and safety legislation requires a school to be managed in a way which does not expose pupils or staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.
2. If a pupil fails to comply, and the school does not let the pupil in, the school has not excluded the pupil and the pupil's absence should be treated as unauthorised. The pupil must comply with the rules and attend.
3. This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

³ Section 89 of the Education and Inspections Act 2006

⁴ Section 3 of the Health and Safety at Work etc. Act 1974

Searching with consent

Schools' common law powers to search:

- School staff⁵ can search pupils **with their consent**⁶ for any item which is banned by the school rules.
1. Schools are not required to have formal written consent from the pupil for this sort of search – it is enough for the teacher to ask the pupil to turn out his or her pockets or if the teacher can look in the pupil's bag or locker and for the pupil to agree.
 2. Schools should make clear in their school behaviour policy and in communications to parents and pupils what items are banned.
 3. If a member of staff suspects a pupil has a banned item in his/her possession, they can instruct the pupil to turn out his or her pockets or bag and if the pupil refuses, the teacher can apply an appropriate punishment as set out in the school's behaviour policy.
 4. A pupil refusing to co-operate with such a search raises the same kind of issues as where a pupil refuses to stay in a detention or refuses to stop any other unacceptable behaviour when instructed by a member of staff – in such circumstances, schools can apply an appropriate disciplinary penalty.

Searching without consent

What the law says:

What can be searched for?

1. Knives or weapons, alcohol, illegal drugs and stolen items (referred to in the legislation as 'prohibited items').⁷

Can I search?

2. Yes, if you are a head teacher or a member of school staff⁸ and authorised by the head teacher. But:
 - a. you must be the same sex as the pupil being searched; and
 - b. there must be a witness (also a staff member) and, if at all possible, they should be the same gender as the pupil being searched. For example, it is possible for a female teacher to witness a search of a male pupil where there is only one male member of staff in a school or taking part in a school trip.

⁵ School staff here means a teacher or someone who has lawful control or charge of the child.

⁶ The ability to give consent may be influenced by the child's age or other factors

⁷ Section 550ZA of the Education Act 1996. These provisions also include a power to make regulations to add to the list of prohibited items. No regulations have yet been made, but it is intended that regulations will be made to add to the list of 'prohibited items' as described above

⁸ Member of school staff means any teacher who works at the school, and 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.

When can I search?

3. If you have reasonable grounds for suspecting that a pupil is in possession of a prohibited item.

The law also says what must be done with prohibited items which are seized following a search.

Authorising members of staff

1. Head teachers should decide who to authorise to use these powers. There is no requirement to provide authorisation in writing.
2. Staff, other than security staff, can refuse to undertake a search. The law states that head teachers may not require anyone other than a member of the school security staff to undertake a search.
3. Staff can be authorised to search for some items but not others; for example, a member of staff could be authorised to search for stolen property, but not for weapons or knives.
4. A head teacher can require a member of the school's security staff to undertake a search.
5. If a security guard, who is not a member of the school staff, searches a pupil, the person witnessing the search should ideally be a permanent member of the school staff, as they are more likely to know the pupil.

Training for school staff

There is no legal requirement for a head teacher or authorised member of staff to be trained before undertaking a 'without consent' search.

When designating a member of staff to undertake searches under these powers, the head teacher should consider whether the member of staff requires any additional training to enable them to carry out their responsibilities.

Establishing grounds for a search

1. Teachers can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in his or her possession a prohibited item. The teacher must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other pupils talking about the item or they might notice a pupil behaving in a way that causes them to be suspicious.
2. The powers allow school staff to search regardless of whether the pupil

is found after the search to have that item. This includes circumstances where staff suspect a pupil of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.

3. School staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item⁹.

Location of a search

1. Searches without consent can only be carried out on the school premises or, if elsewhere, where the member of staff has lawful control or charge of the pupil, for example on school trips in England or in training settings.
2. The powers only apply in England.

During the search

Extent of the search – clothes, possessions, desks and lockers

What the law says:

- The person conducting the search may not require the pupil to remove any clothing other than outer clothing.
- ‘Outer clothing’ means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear but ‘outer clothing’ includes hats; shoes; boots; gloves and scarves.
- ‘Possessions’ means any goods over which the pupil has or appears to have control – this includes desks, lockers and bags.
- A pupil’s possessions can only be searched in the presence of the pupil and another member of staff.

The power to search without consent enables a personal search, involving removal of outer clothing and searching of pockets; but not an intimate search going further than that, which only a person with more extensive powers (e.g. a police officer) can do.

Lockers and desks

Under common law powers, schools are able to search lockers and desks for any item provided the pupil agrees. Schools can also make it a condition of having a locker or desk that the pupil consents to have these searched for any item whether or not the pupil is present.

⁹ School staff must ensure they act in accordance with the Data Protection Act 1998, when doing so. Guidance on this is provided by the Information Commissioner and can be found at [appropriate link will be added].

If a pupil does not consent to a search (or withdraws consent having signed a consent form) then it is possible to conduct a search without consent but only for the “prohibited items” listed above.

Use of force

Reasonable force may be used by the person conducting the search. Separate advice is available on teachers’ power to use force.

After the search

The power to seize and confiscate items – general

What the law allows:

- Schools’ general power to discipline, as set out in Section 91 of the Education and Inspections Act 2006, enables a member of staff to confiscate, retain or dispose of a pupil’s property as a disciplinary penalty, where reasonable to do so.

1. The member of staff can use their discretion to confiscate, retain and/or destroy any item found as a result of a ‘with consent’ search so long as it is reasonable in the circumstances. Where any article is thought to be a weapon it must be passed to the police.
2. Staff have a defence to any complaint or other action brought against them. The law protects members of staff from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.

Items found as a result of a ‘without consent’ search

What the law says:

- A person carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited item (that is a weapon/knife; alcohol; illegal drugs or stolen items) or is evidence in relation to an offence.
- Where a person conducting a search finds **alcohol**, they may retain or dispose of it.
- Where they find **controlled drugs**, these must be delivered to the police as soon as possible unless there is a good reason not to do so – in which case the drugs must be disposed of.
- Where they find **other substances** which are not believed to be controlled drugs these can be confiscated where a teacher believes them to be harmful or detrimental to good order and discipline. This

would include, for example, so called 'legal highs'. Where staff suspect a substance may be controlled they should treat them as controlled drugs as outlined above.

- Where they find **stolen items**, these must be delivered to the police unless there is a good reason not to do so – in which case the stolen item should be returned to the owner. These stolen items may be retained or disposed of if returning them to their owner is not practicable.
- In determining what is a “good reason” for not delivering **controlled drugs or stolen items** to the police the member of staff must have regard to guidance issued by the Secretary of State¹⁰ (see paragraphs 1 to 4 below).
- Any **weapons or items which are evidence of an offence** must be passed to the police as soon as possible.
- It is up to teachers to decide whether there is a good reason not to deliver stolen items or controlled drugs to the police.

1. **In determining what is a ‘good reason’, the member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article.**
2. Where staff are unsure as to the legal status of a substance and have reason to believe it may be a controlled drug they should treat it as such.
3. With regard to stolen items, it would not be reasonable or desirable to involve the police in dealing with low value items such as pencil cases. However, school staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).
4. Schools can dispose of alcohol as they think appropriate but this does not include returning it to the pupil.

¹⁰ Section 550ZC (6) Education Act 1996

Telling parents and dealing with complaints

Schools are not required to inform parents before a search takes place or to seek their consent to search their child.

1. There is no legal requirement to make or keep a record of a search.
2. Schools should inform the individual pupil's parents or guardians where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
3. Complaints about screening or searching should be dealt with through the normal school complaints procedure.

Frequently Asked Questions

I'm a teacher; can I refuse to search a pupil without their consent?

Yes. A head teacher cannot require a member of staff to conduct a search. In order to conduct a search without consent, a member of staff must be authorised to do so. Staff can choose whether they want to be authorised, or not.

What sort of training should teachers or other school staff undergo before being authorised to search a pupil?

School staff are not legally required to undergo any training prior to being authorised by the head teacher to search pupils. As with all issues of staff training, these are decisions best made by the head teacher taking account of all the relevant circumstances.

Is there a risk that I could face legal challenge if I search a pupil without consent?

Head teachers and authorised school staff have a specific statutory power to search pupils without consent for specific items – knives/weapons, alcohol, illegal drugs and stolen items. As long as the member of staff acts within the limits of this specific power they will have a robust defence against a legal challenge.

Associated Resources

Link to Use of Reasonable Force – advice for head teachers, staff and governing bodies

<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0077153/use-of-reasonable-force-advice-for-school-leaders-staff-and-governing-bodies>

Link to Behaviour and Discipline in Schools – guidance for governing bodies

<http://www.education.gov.uk/schools/pupilsupport/behaviour/g0076647/guidance-for-governing-bodies-on-behaviour-and-discipline>

Link to Behaviour and Discipline in Schools – advice for head teachers and school staff

<http://www.education.gov.uk/schools/pupilsupport/behaviour/f0076803/advice-for-headteachers-and-school-staff-on-behaviour-and-discipline>

Link to Information Commissioner for advice on the Data Protection Act

http://www.ico.gov.uk/for_organisations/data_protection.aspx

Legislative links

Education and Inspections Act 2006

<http://www.legislation.gov.uk/ukpga/2006/40/contents>

Health and Safety at Work etc Act 1974

<http://www.hse.gov.uk/legislation/hswa.htm>

You can download this booklet online at: <http://www.education.gov.uk/publications>
Search using the ref: DfE-00056-2011

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