

# 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.

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

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.