



Search and Confiscation Policy

Background:

Amongst other things, the Education Act 2011 provided schools with powers designed to help teachers maintain good discipline. As a result teachers now have the power to search pupils for any items that have, or could be, used to cause harm or break the law, and for items banned by school rules, including alcohol, illegal drugs and stolen property. Thus:

- Any member of School staff can search a pupil for any item banned under the School rules, providing he/she agrees.
- The Head and staff authorised by her, also 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 include 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.

Protocol for conducting a search with consent

School staff can search pupils **with their consent** for any item which is banned under the School rules.

- It is clear in the School Behaviour Policy and through communications to both parents and pupils which items are banned and may therefore be subject to a search.
- The School is not required to have formal written consent from the pupil for this sort of search – it is enough for the member of staff to ask him/her to turn out his/her pockets or if they can look in a pupil's bag or locker and for him/her to agree.
- If a member of staff suspects a pupil has a banned item in his/her possession, they can instruct him/her to turn out his/her pockets or bag and if the pupil refuses, then the member of staff should apply an appropriate punishment as set out in the School Behaviour Policy.

Protocol for conducting a search without consent

Searches may be conducted by the Head or a member of staff authorised by them for prohibited items such as mobile phones, knives, alcohol, illegal drugs and/or stolen items. In the absence of the Head the Deputy Heads or a member of the SLT has authority to conduct or authorise a search.

Procedure if a pupil is suspected of having a mobile phone:

- Such searches will be carried out by two members of staff, and a) the principal staff member should preferably be the same sex as the pupil 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 searched but either is permissible should the circumstances require it e.g. when offsite on trips or activities.
- Staff authorised by the Head to conduct searches without consent include the Deputy Heads and Assistant Heads.
- If asked to help conduct a search, a member of staff can refuse to undertake such a search and a replacement member of staff will be found.

Establishing grounds for a search

- Given that a member of staff can only undertake a search without consent if they have reasonable grounds for suspecting that a pupil may have in his/her possession a prohibited item then 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.
- 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.

Location of a search

- 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.
- The powers only apply in England and thus searches cannot be undertaken when pupils are on overseas trips without the necessary parental permission.
- Parental agreement for searches with adequate justification without pupil consent will be included in consent forms for overseas trips.

Extent of the search – clothes, possessions, desks and lockers - what the law allows:

- The person conducting the search may not require a 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/or 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.
- 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 <https://ico.org.uk/for-organisations/guide-to-data-protection/>
- 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.

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.
- 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.
- 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 but may be disposed of if the person thinks there is a good reason to do so.
- 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 as soon as reasonably practicable – but may be returned to the owner (or may be retained or disposed of if returning them to their owner is not practicable) if the person thinks that there is a good reason to do so.
- It is up to the Head to decide whether there is a good reason not to deliver stolen items or controlled drugs to the police. 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 the following guidance issued by the Secretary of State:

In determining what is a ‘good reason’ for not delivering controlled drugs or stolen items to the police, 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.

- Any **weapons or items which are evidence of an offence** must be passed to the police as soon as possible.
- 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.
- 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).

- 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.
- If a member of staff finds a **pornographic image**, they may dispose of the image unless its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case it must be delivered to the police as soon as reasonably practicable. Images found on a mobile phone or other electronic device can be deleted unless it is necessary to pass them to the police.

Statutory guidance for dealing with electronic devices

- Where the person conducting the search finds an electronic device they may examine any data or files on the device if they think there is a good reason to do so.
- Following an examination, if the person has decided to return the device to the owner, or to retain or dispose of it, they may erase any data or files, if they think there is a good reason to do so.
- The member of staff must have regard to the following guidance issued by the Secretary of State when determining what is a “good reason” for examining or erasing the contents of an electronic device:
- In determining a ‘good reason’ to examine or erase the data or files the staff member must reasonably suspect that the data or file on the device in question has been, or could be, used to cause harm, to disrupt teaching or break the school rules.
- If inappropriate material is found on the device it is up to the teacher to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police.
- All school staff should be aware that behaviours linked to sexting put a child in danger. Governing bodies should ensure sexting and the school’s approach to it is reflected in the child protection policy. The UK Council for Child Internet Safety (UKCCIS) Education Group has recently published the advice - sexting in schools and colleges - responding to incidents and safeguarding young people

Telling parents and dealing with complaints

- The School is not required to inform parents before a search takes place or to seek their consent to search their child.
- Although there is no legal requirement to make or keep a record of a search, it is good practice to do so and the School will record any search as part of the incident / sanctions database.
- Individual pupil’s parents or guardians will be contacted where alcohol, illegal drugs or potentially harmful substances are found, though again there is no legal requirement to do so.
- Any complaints about searching will be dealt with through the normal School complaints procedure.

Resources:

Education Act 2011

Education and Inspections Act 2006

Education Act 1996

The Schools (Specification and Disposal of Articles) Regulations 2012

The School Behaviour (Determination and Publicising of Measures in Academies)

Regulations 2012

Health and Safety at Work etc. Act 1974

Screening, searching and confiscation – Advice for head teachers, staff and governing bodies:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444053/Screening_screening_confiscation_advice_Reviewed_July_2015.pdf

Link to Use of Reasonable Force

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444051/Use_of_reasonable_force_advice_Reviewed_July_2015.pdf

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463484/Behaviour_and_discipline_in_schools_guidance_for_governing_bodies.pdf

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463452/Behaviour_and_discipline_in_schools_guidance_for_headteachers_and_staff.pdf

Link to Information Commissioner for advice on the Data Protection Act

<https://ico.org.uk/for-organisations/guide-to-data-protection/>

Sexting in Schools and colleges: Responding to incidents and safeguarding young people. UKCCIS

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551575/6.2_439_KG_NCA_Sexting_in_Schools_WEB__1_.PDF

Ratified by the Compliance Committee, 10th November 2017