

**Education Bill: Discipline**  
**Peter Oldham QC**

1. The Bill's discipline provisions are clauses 2-6, and they are entitled:-

- 2 Power of members of staff at schools to search pupils*
- 3 Power of members of staff at further education institutions to search students*
- 4 Exclusion of pupils from schools in England: review*
- 5 Repeal of requirement to give notice of detention to parent: England*
- 6 Repeal of duty to enter into behaviour and attendance partnership*

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

2. Cl 2 works by amending section 550ZA of the Education Act 1996.

*The current law*

3. Section 550ZA, which was inserted by the Apprenticeship, Skills, Children and Learning Act 2009 and came into force on 1<sup>st</sup> September 2010, currently provides:-

***550ZA Power of members of staff to search pupils for prohibited items: England***

- (1) This section applies where a member of staff of a school in England—*
  - (a) has reasonable grounds for suspecting that a pupil at the school may have a prohibited item with him or her or in his or her possessions; and*
  - (b) falls within section 550ZB(1).*
- (2) The member of staff may search the pupil (“P”) or P’s possessions for that item.*
- (3) For the purposes of this section and section 550ZC each of the following is a “prohibited item”—*
  - (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);*
  - (b) an offensive weapon, within the meaning of the Prevention of Crime Act 1953;*
  - (c) alcohol, within the meaning of section 191 of the Licensing Act 2003;*
  - (d) a controlled drug, within the meaning of section 2 of the Misuse of Drugs Act 1971, which section 5(1) of that Act makes it unlawful for P to have in P’s possession;*

(e) a stolen article;

(f) an article of a kind specified in regulations.

(4) In subsection (3)(e) “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 in the provisions of that Act relating to goods which have been stolen.

(5) In this section and section 550ZB—

“member of staff”, in relation to a school, means—

(a) any teacher who works at the school; and

(b) 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;

“possessions”, in relation to P, includes any goods over which P has or appears to have control.

(6) The powers conferred by this section and sections 550ZB and 550ZC are in addition to any powers exercisable by the member of staff in question apart from those sections and are not to be construed as restricting such powers.

#### 4. Section 550ZB provides detail as to:-

- who may carry out a search (headteacher or authorised teacher, where he/she is of the same sex of the pupil),
- where it may be carried out (at school or another place where the member of staff has lawful control of the pupil),
- how it may be carried out (reasonable force in the circumstances; no removal of clothes other than outer clothes as defined; in the presence of another members of staff who is of the same sex where reasonably practicable),
- how the pupil’s possessions may be searched (in the presence of the pupil and another member of staff).

5. Section 550ZC provides a power to seize certain items found during the course of a search under section 550ZB i.e. anything which the person carrying out the search has reasonable grounds for suspecting is a prohibited item (as to which see section 550ZA(3) – knives, blades, offensive weapons, alcohol, controlled drugs, stolen articles, articles specified in regulations) or any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence.

The effect of cl 2

6. The amendments will:-

(1) widen the scope of prohibited items to include:-

(a) articles which a member of staff reasonably suspects has been or is likely to be used to commit an offence or cause personal injury or damage to property;

(b) “any other item which the school rules identify as an item for which a search may be made”. For these purposes the “school rules” are rules determined and publicised under section 89 of the Education and Inspections Act 2006 (i.e. the power to determine behaviour policy);

(2) provide how these added items, if seized, should be dealt with;

(3) 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 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.

**CI 3 Power of members of staff at further education institutions to search students**

7. This clause makes similar changes, in relation to searches, for further education institutions, by amending sections 85AA-85AD of the Further and Higher Education Act 1992.

**CI 4 Exclusions**

8. The existing exclusions regime will subsist only for Wales. This is effected by amending section 52 of the Education Act 2002 to provide that it applies only to Wales.

9. This means that the current appeal arrangements, made by regulations under section 52(3), will not apply to England. Instead there will be a review panel.

10. CI 4 inserts a new section 51A into the 2002 Act.

11. Cls 4(1) and (2) retain the powers of heads to exclude for fixed terms or permanently.

12. Cl 4(3) requiring the Secretary of State to make regulations:-

(1) providing for prescribed persons to be given information relating to a fixed term or permanent exclusion,

(2) requiring the responsible body ("RB") (for schools, the governing body, for PRUs, the prescribed person), in prescribed cases, to consider whether the pupil should be reinstated,

(3) requiring the local authority to make arrangements enabling a prescribed person to apply to a review panel for a review, in any prescribed case, of the decision of the RB not to reinstate a pupil, and

(4) dealing with the constitution and procedure of the review panel.

13. Cl 4(4) gives the review panel the powers (this not being left to regulations):-

(1) to uphold the RB's decision,

(2) to recommend that the RB reconsider the matter,

(3) to quash the decision of the RB and direct a reconsideration (but not to quash without directing reconsideration) if it considers that the RB's decision was flawed when considered "in the light of the principles applicable on an application for judicial review".

14. Cl 4(5) provides that regulations may also give the panel other powers, including the power "to make a direction about the effect on an excluded pupil of a recommendation to reconsider or a direction for reconsideration".

15. Cl 4(6) provides that where the panel makes a direction for reconsideration, it can in prescribed circumstances, order and adjustment of the school's budget share for a funding period. Regulations are to provide the detail: cl 4(7).

16. By cl 4(8), regulations may make provision for the local authority to pay allowances to members of the review panel and requiring the Secretary of State's guidance to be followed in relation to exclusions.

17. Cl 4(12) provides that regulations can apply cl 4, with modifications, to Academies.

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

18. Cl 5 amends section 92 of the Education and Inspections Act 2006 by removing, for England, the condition of 24 hours' notice of a detention to the pupil's parent.

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

19. Cl 6 repeals section 248 of the Apprenticeship, Schools, Children and Learning Act 2009 i.e. the partnering requirement for promoting good behaviour and reducing persistent absence.

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