

Legislation relevant to Educational establishments

1. Causing Nuisance/ a disturbance on Educational premises

Section 547 of the Education Act 1996 creates the specific offence of causing a nuisance or disturbance on school or Academy premises.

547(1) Any person who without lawful authority is present on premises to which this section applies and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises (whether or not any such persons are present at the time) is guilty of an offence.

547(2) This section applies to premises, including playgrounds, playing fields and other premises for outdoor recreation, of -

- (a) any school maintained by a local education authority,
- (aa) any special school not so maintained,
- (ab) any independent school and
- (ac) any alternative provision Academy that is not an independent school;

Notes : (aa),(ab),(ac) apply only to England.

547(2A) This section also applies to any premises which are -

- (a) provided by a local education authority under section 508, and
- (b) used wholly or mainly in connection with the provision of instruction or leadership in sporting, recreational or outdoor activities.

547(3) If -

- (a) a police constable, or
- (b) [subject to subsection (5)] a person whom the appropriate authority (*in Wales - a local education authority*) has authorised to exercise the power conferred by this subsection,

has reasonable cause to suspect that any person is committing or has committed an offence under this section, he may remove him from the premises in question.

547(5) A local authority may not authorise a person to exercise the power conferred by subsection (3) in relation to premises of a foundation, voluntary or foundation special school without first obtaining the consent of the governing body.

2. Possession of an offensive weapon on school premises

Section 139A of the Criminal Justice Act 1988 creates the offence of possessing an article with a blade or sharp point or an offensive weapon on school premises.

Offences

139A(1) Any person who has an article to which section 139 of this Act applies with him on school premises shall be guilty of an offence.

139A(2) Any person who has an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953 with him on school premises shall be guilty of an offence.

Defences

139A(3) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had **good reason or lawful authority** for having the article or weapon with him on the premises in question.

139A(4) Without prejudice to the generality of subsection (3) above, it shall be a defence for a person charged with an offence under subsection (1) or (2) above to prove that he had the article or weapon in question with him -

- (a) for use at work,
- (b) for educational purposes,
- (c) for religious reasons, or
- (d) as part of any national costume.

139A(5) *Penalty*

Meaning of school premises

139A(6) In this section and section 139B, "school premises" means land used for the purposes of a school excluding any land occupied solely as a dwelling by a person employed at the school; and "school" has the meaning given by section 4 of the Education Act 1996.

Notes:

(i) These offences can be committed at any time of the day, not merely during normal school hours, as long as the land is normally used as school premises (e.g. for the normal academic year). The creation of these offences was intended to cover a gap in the law where such weapons are carried on school premises which are not public places because many schools do not allow access to the general public outside school hours.

(ii) However, the wording of section 139A above is such that the offences could be committed on school premises even when the public do have access (e.g. a youth has a 10cm (4 inch) long knife at a public car boot sale being held on school playing fields on a Bank Holiday Monday). There is, therefore, some overlap with the older legislation concerning the possession of offensive weapons and sharp blades in public.

(iii) There is a specific police power to enter and search school premises in connection with an offence under this section.

(iv) Consider the offence of causing/permitting a nuisance/disturbance on school premises.

3. Members of staff powers to search pupils

Section 550ZA of the Education Act 1996 enables a head teacher or other authorised member of staff of a school in England, to search a pupil and their possessions, if they have reasonable grounds to believe that the pupil is carrying a prohibited item (knife or other offensive weapon; alcohol, controlled drug, stolen article or as specified by regulations - any other article).

550ZA(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).

550ZA(2) The member of staff may search the pupil ("P") or P's possessions for that item.

550ZA(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;
- (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);

- (f) an article of a kind specified in regulations (*see note (v) below*).
- (g) any other item which the school rules identify as an item for which a search may be made.

550ZA(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.

550ZA(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.

550ZA(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;
- (b) in the case of any other school, measures relating to discipline in the school that are determined and publicised in accordance with regulations.

550ZA(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.

550ZA(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.

550ZA(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.

Notes

(i) This means that the head teacher cannot require (as a statutory or contractual duty) teaching staff (other than the head teacher) to carry out searches. It is unclear on the wording of the Act whether they may be authorised if they are willing so to act. It would also raise issues under health and safety legislation to expect untrained teachers to act as security officers.

(ii) Section 550ZB gives details of search requirements and is a supplementary section to this section.

(iii) Section 550ZC provides a power to seize, retain and dispose of items found during a search under section 550ZA.

(iv) Section 550ZD states that members of staff cannot be liable for any proceedings/loss/damage when lawfully carrying out their powers of seizure, retention and disposal under section 550ZC.

(v) The Schools (Specification and Disposal of Articles) Regulations 2012 specifies certain articles as being 'prohibited items' for the purposes of this section and section 550ZC

4. Education Act 1996 - power of search supplementary (authorisation/conditions) (England only)

Section 550ZB of the Education Act 1996 sets out the conditions before a search can be carried out on a pupil or their possessions under section 550ZA (English school only).

550ZB(1) A person may carry out a search under section 550ZA only if that person -

- (a) is the head teacher of the school; or
- (b) has been authorised by the head teacher to carry out the search.

550ZB(2) An authorisation for the purposes of subsection (1)(b) may be given in relation to -

- (a) searches under section 550ZA generally;
- (b) a particular search under that section;
- (c) a particular description of searches under that section.

550ZB(3) Nothing in any enactment, instrument or agreement shall be construed as authorising a head teacher of a school in England to require a person other than a member of the security staff of the school to carry out a search under section 550ZA.

550ZB(4) A search under section 550ZA may be carried out only where -

- (a) the member of staff and P are on the premises of the school; or
- (b) they are elsewhere and the member of staff has lawful control or charge of P.

550ZB(5) A person exercising the power in section 550ZA to search for an item within section 550ZA(3)(a) to (f) **may use such force as is reasonable** in the circumstances for exercising that power.

550ZB(6) A person carrying out a search of P under section 550ZA -

- (a) may not require P to remove any clothing other than outer clothing;
- (b) must be of the same sex as P, unless the condition in subsection (6A) is satisfied ;
- (c) may carry out the search only in the presence of another member of staff, unless the condition in subsection (6A) is satisfied; and
- (d) must ensure that the other member of staff is of the same sex as P if it is reasonably practicable to do so.

550ZB(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).

550ZB(7) P's possessions may not be searched under section 550ZA except in the presence of -

- (a) P; and
- (b) another member of staff, unless the condition in subsection (7A) is satisfied.

550ZB(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.

550ZB(8) In this section -

member of the security staff

in relation to a school, means a member of staff whose work at the school consists wholly or mainly of security-related activities;

outer clothing means -

- (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
- (b) a hat, shoes, boots, gloves or a scarf.

Notes

(i) This section stipulates that this search may only be carried out: by the head teacher, security staff or other authorised member of staff; at school or elsewhere if the member of staff has lawful control/charge at that time; by member of staff of the same sex and in presence of another member of staff (preferably of the same sex); and by removal of the outer clothing only (for example - hat, shoes, boots, gloves or a scarf).

(ii) This means that the head teacher cannot require (as a statutory or contractual duty) teaching staff (other than the head teacher) to carry out searches. It is unclear on the wording of the Act whether they may be authorised if they are willing so to act. It would also raise issues under health and safety legislation to expect untrained teachers to act as security officers.

(iii) Section 550ZA gives power to staff members to search pupils for prohibited items.

(iv) Section 550ZC provides a power to seize, retain and dispose of items found during a search under section 550ZA.

(v) Section 550ZD states that members of staff cannot be liable for any proceedings/loss/damage when lawfully carrying out their powers of seizure, retention and disposal under section 550ZC

5. Power of seizure, retention and disposal

Section 550ZC of the Education Act 1996 states what powers are available to a head teacher or other authorised member of staff of a school in England who discover prohibited items when searching a pupil or their possessions under section 550ZA.

550ZC(1) A person carrying out a search under section 550ZA may seize any of the following found in the course of the search -

- (a) anything which that person has reasonable grounds for suspecting is a prohibited item;
- (b) any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence.

550ZC(2) A person exercising the power in subsection (1) to seize an item within section 550ZA(3)(a) to (f) or anything within subsection (1)(b); may use such force as is reasonable in the circumstances for exercising that power.

550ZC(3) A person who seizes alcohol under subsection (1) may retain or dispose of the alcohol and its container.

550ZC(4) A person who seizes a controlled drug under subsection (1) -

- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
- (b) may dispose of it if the person thinks that there is a good reason to do so.

550ZC(5) A person who seizes a stolen article under subsection (1) -

- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
- (b) may return it to its owner (or, if returning it to its owner is not practicable, may retain it or dispose of it) if the person thinks that there is a good reason to do so.

550ZC(6) In determining, for the purposes of subsections (4) and (5), whether there is a good reason to dispose of a controlled drug or to return a stolen article to its owner, retain it or dispose of it, the person must have regard to any guidance issued by the Secretary of State.

550ZC(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 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.

550ZC(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.

550ZC(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.

550ZC(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.

550ZC(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.

550ZC(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.**

550ZC(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.

550ZC(7) Regulations may prescribe what must or may be done by a person who, under subsection (1), seizes an article of a kind specified in regulations under section 550ZA(3)(f) (or an article which the person has reasonable grounds for suspecting to be such an article) (*see note (vi) below*).

550ZC(8) A person who, under subsection (1), seizes -

- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
 - (b) an offensive weapon; or
 - (c) anything which that person has reasonable grounds for suspecting is evidence in relation to an offence;
- must deliver it to a police constable as soon as reasonably practicable.

550ZC(9) Subsection (8)(c) is subject to subsections (3), (4), (5) and (6A) and regulations made under subsection (7).

550ZC(10) In subsections (3) to (8), references to alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies and an offensive weapon include references to anything which the person has reasonable grounds for suspecting is alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies or an offensive weapon.

Notes

(i) It provides powers of seizure, retention and disposal in relation to the prohibited item(s) (knife or other offensive weapon; alcohol, controlled drug, stolen article or as specified by regulations - any other article) found.

(ii) This means that the head teacher cannot require (as a statutory or contractual duty) teaching staff (other than the head teacher) to carry out searches. It is unclear on the wording of the Act whether they may be authorised if they are willing so to act. It would also raise issues under health and safety legislation to expect untrained teachers to act as security officers.

(iii) Section 550ZA gives power to staff members to search pupils for prohibited items.

(iv) Section 550ZB gives details of search requirements and is a supplementary section to section 550ZA.

(v) Section 550ZD states that members of staff cannot be liable for any proceedings/loss/damage when lawfully carrying out their powers of seizure, retention and disposal under this section.

(vi) The Schools (Specification and Disposal of Articles) Regulations 2012 specifies certain articles as being 'prohibited items' for the purposes of this section and section 550ZA.

Regulation 4 specifies what must be done by a member of staff who seizes an article of a kind specified in the regulations