



Department  
for Business  
Innovation & Skills

## **SCREENING, SEARCHING AND CONFISCATION**

### **ADVICE FOR PRINCIPALS AND STAFF OF FURTHER EDUCATION COLLEGES, SIXTH FORM COLLEGES AND 16-19 ACADEMIES**

#### **ABOUT THIS ADVICE**

This advice is intended to explain colleges' powers of screening and searching students so that principals and staff have the confidence to use them when it is considered necessary. In particular it explains the use of the power to search students without consent. It also explains the powers colleges have to seize and then confiscate items found during a search. It includes statutory guidance to which colleges must have regard.

This advice replaces any previous advice issued by BIS, DfE, DIUS or DfES.

#### **EXPIRY/REVIEW DATE**

This advice will next be reviewed in 2013.

#### **WHAT LEGISLATION DOES THIS ADVICE RELATE TO?**

Education Act 1996

Education and Inspections Act 2006

Health and Safety at Work Act etc. 1974

Education Act 2011

Apprentices, Skills, Children and Learners (ASCL) Act 2009

Further Education Institutions and 16 -to 19 Academies (Specification and Disposal of Articles) Regulations 2012

(Further relevant legislation is listed at the end of this document.)

#### **WHO IS THIS ADVICE AIMED AT?**

This advice is aimed at principals and staff of Further Education colleges, Sixth Form colleges and 16-19 Academies in England.

## KEY POINTS

### *Searching*

- College staff can search a student for any item if the student agrees (see p.4).
- Principals and staff authorised by them have a statutory power to search students or their possessions, without consent, where they have reasonable grounds for suspecting that the student may have a prohibited item (see p.4). Prohibited items for **all students** are:
  - knives or weapons
  - illegal drugs
  - stolen items

Prohibited items for **students up to age 18 only** are:

- tobacco products
  - fireworks
  - pornography
  - alcohol
- In addition principals, and staff authorised by them, have a statutory power to search students or their possessions, without consent, for any 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 the student) (see p.5).

### *Confiscation*

- College staff can seize any prohibited item found as a result of a search (see p.8).

### *Screening*

- Colleges can require students 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 students (see p.3).

## Colleges' obligations under the European Convention on Human Rights (ECHR)

Under article 8 of the European Convention on Human Rights students have a right to respect for their private life. In the context of these particular powers, this means that students have the right to expect a reasonable level of personal privacy.

The right under Article 8 is not absolute: it can be interfered with but any interference with this right by a college (or any public body) must be justified and proportionate.

The powers to search in the Education Act 1996 are compatible with Article 8. A college exercising those powers lawfully should have no difficulty in demonstrating that it has also acted in accordance with Article 8. This advice will assist colleges in deciding how to exercise the search powers in a lawful way.

## SCREENING

### What the law allows:

- Colleges can require students 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 students.
- Colleges' statutory power to make rules on student behaviour<sup>1</sup> and their duty as an employer to manage the safety of staff, students and visitors<sup>2</sup> enables them to impose a requirement that students undergo screening.
- Any member of college staff authorised by the principal can screen students.

1. If a student refuses to be screened, the college may refuse to have the student on the premises. Health and safety legislation requires a college to be managed in a way which does not expose students or

<sup>1</sup> Section 89 of the Education and Inspections Act 2006

<sup>2</sup> Section 3 of the Health and Safety at Work etc. Act 1974

staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.

2. This type of screening, without physical contact, is not subject to the same conditions as apply to the powers to search without consent.

## SEARCHING

### SEARCHING WITH CONSENT

#### Colleges' common law powers to search:

- College principals and staff<sup>3</sup> authorised by them can search students **with their consent**<sup>4</sup> for any item.

1. Colleges are not required to have formal written consent from the student for this sort of search – it is enough for a staff member to ask a student to turn out his or her pockets or ask if the staff member can look in the student's bag or locker, and for the student to agree.
2. Colleges should make clear in their behaviour policies and in communications to students, and to parents of students aged under 18, what items are prohibited and what the consequences are for possession of prohibited items.
3. If a member of staff suspects a student has a prohibited item in his/her possession, they can instruct the student to turn out his or her pockets or bag and if the student refuses, the member of staff can invoke an appropriate disciplinary action, if this is in accordance with the college's behaviour policy.

### SEARCHING WITHOUT CONSENT

#### What the law says:

*What can be searched for?*

For students of all ages:

- knives or weapons
- illegal drugs
- stolen items

<sup>3</sup> Member of college staff means any adult who is employed at the college in a position of responsibility or authority with regard to the student body

<sup>4</sup> The ability to give consent may be influenced by the student's age or other factors

For students aged up to 18:

- alcohol
- tobacco products
- fireworks
- pornography

Students aged over 18 cannot be searched without consent for these last four items simply on suspicion of possession.

Any student, of any age, can be searched for any article that a member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or to cause personal injury, or damage to property.<sup>5</sup>

These items are referred to in the legislation as 'prohibited items'.<sup>6</sup>

*Why is there an age limit on searching for some items?*

It is illegal for students of all ages to possess knives or weapons, illegal drugs and stolen items. It is not illegal for adults (students aged 18 and over) to possess alcohol, tobacco products, fireworks and pornography.

*Can I search?*

Yes, if you are a college principal or a member of college staff authorised by the principal.

*Under what circumstances?*

You must be the same sex as the student being searched; there must be a witness (also a staff member) present and, if at all possible, they should be the same sex as the student being searched. You may not require the student to remove any clothing other than outer clothing (see p.7).

There is a limited exception to this rule. You can carry out a search of a student of the opposite sex to you and without a witness present, but **only** where you reasonably believe that there is a risk that **serious harm** will be caused to a person if you do not conduct the search immediately and where it is **not reasonably practicable** to summon another member of staff.

*When can I search?*

If you have reasonable grounds for suspecting that a student is in possession of a prohibited item. The law also says what must be done with prohibited items which are seized following a search (see p.8).

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<sup>5</sup> (Education Act 2011, Section 3).

<sup>6</sup> (Section 550ZA, Education Act 1996. Extended in ASCL 2009 and again by the Further Education Institutions and 16 -to 19 Academies (Specification and Disposal of Articles) Regulations 2012.)

The requirement that the searcher is the same sex as the student and that a witness is present will continue to apply in nearly all searches. Where it is practicable to summon a staff member of the same sex as the student and a witness then the member of staff wishing to conduct a search must do so.

### **Authorising members of staff to search**

1. College principals 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 principals may not require anyone other than a member of the college 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 principal can require a member of the college's security staff to undertake a search.
5. If a security guard who is not a member of the college staff, searches a student, the person witnessing the search should ideally be a permanent member of the college staff, as they are more likely to know the student.

### **Training for college staff**

College principals have the authority to decide on appropriate training for their staff. When designating a member of staff to undertake searches under these powers, the principal should consider whether the member of staff requires any additional training to enable them to carry out their responsibilities.

### **Establishing grounds for a search without consent**

1. College staff can only undertake a search without consent if they have reasonable grounds for suspecting that a student may have in his or her possession a prohibited item.
2. The member of staff must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other students talking about the item or they might notice a student behaving in a way that causes them to be suspicious.
3. In the exceptional circumstances when it is necessary to conduct a search of a student of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a student's expectation of privacy increases as they get older. It is

always in the interest of the member of staff, and of the college, to have a witness present wherever possible.

4. The powers allow college staff to search regardless of whether the student is found after the search to have that item. This includes circumstances where staff suspect a student of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.
5. College staff can view CCTV footage in order to make a decision as to whether to conduct a search for an item<sup>7</sup>.

### Location of a search

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

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

#### What the law says<sup>8</sup>:

- The person conducting the search may not require the student to remove any clothing other than outer clothing.
- ‘Outer clothing’ means (i) clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear or (ii) clothing such as coats, hats, shoes, boots, gloves and scarves.
- ‘Possessions’ means any goods over which the student has or appears to have control – this includes desks, lockers and bags.
- A student’s possessions can only be searched in the presence of the student and another member of staff, except where there is a risk that **serious harm** will be caused to a person if the search is not conducted immediately and where it is **not reasonably practicable** to summon 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

<sup>7</sup> College 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 [http://www.ico.gov.uk/for\\_organisations/data\\_protection.aspx](http://www.ico.gov.uk/for_organisations/data_protection.aspx)

<sup>8</sup> (Further and Higher Education Act 1992, Section 85AA)

going further than that, which can only be carried out by a person with more extensive powers (e.g. a police officer).

### **Lockers and desks**

Under common law powers, colleges are able to search lockers and similar storage facilities for any item provided the student agrees. Colleges can also make it a condition of having a locker that the student consents to have it searched for any item whether or not the student is present.

If a student 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 where the member of staff has a reasonable belief that the student is in possession of a prohibited item.

### **Use of force**

Reasonable force may be used by the person conducting a search for prohibited items or articles that have been or could be used to commit an offence or cause harm.

Separate advice is available on the Department for Education website on teachers' power to use force in schools and this advice also applies to colleges

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

## **AFTER THE SEARCH**

### **The power to seize and confiscate items**

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 or is evidence in relation to an offence.
- Where a person conducting a search of a student aged under 18 finds **alcohol, fireworks, pornography or tobacco products**, they may retain or dispose of them. This means that colleges can dispose of these items as they think appropriate but this should not include returning it to a student aged under 18.
- Where they find **controlled drugs** (see *Misuse of Drugs Act 1971, Section 2*), 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 (for example, if it is not possible to store them securely until the police arrive).
- Where they find **other substances** which are not believed to be controlled drugs these can be confiscated where a staff member believes them to be harmful or detrimental to good order and discipline in accordance with the college's disciplinary policy. 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 member of staff thinks that there is a good reason to do so.
- Any **weapons or items which are evidence of an offence** must be passed to the police as soon as possible.

## Statutory guidance on the disposal of controlled drugs and stolen items

It is up to college staff 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, it is advised that the member of staff has regard to the following guidance for schools (which is also applicable to colleges)<sup>9</sup>:

<sup>9</sup> Section 550ZC (6) Education Act 1996

- **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.**
- 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 hairbrushes, magazines. However, staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal for students under 18 (alcohol/fireworks).

### **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 is advised to have regard to the following guidance for schools (which is also applicable to colleges)<sup>10</sup> 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.**
- If inappropriate material is found on the device it is up to the staff member to decide whether they should **delete** that material, **retain** it as evidence (of a criminal offence or a breach of college discipline) or whether the material is of such seriousness that it requires the involvement of the police.

College staff should also take account of any additional guidance and procedures on the retention and disposal of items that have been put in place by the college.

<sup>10</sup> Section 550ZC (6G) Education Act 1996

## **Telling parents of students aged under 18, record keeping and dealing with complaints**

1. Colleges are not required to inform parents of students aged under 18 before a search takes place or to seek their consent to search their child.
2. There is no legal requirement to make or keep a record of a search. However, many colleges do keep records and it is regarded as good practice to do so.
3. It is also good practice for colleges to inform the parents or guardians of students aged under 18 when alcohol, illegal drugs, tobacco products, fireworks, pornography or potentially harmful substances are found, although there is no legal requirement to do so.
4. Where a student is of statutory school age, and also attending school, it would be advisable for the college to inform the school when a search has taken place and if any of the items in 3, above, have been found.
5. Complaints about screening or searching should be dealt with through the normal college complaints procedure.

## Frequently Asked Questions

### **I'm a member of college staff; can I refuse to search a student without their consent?**

Yes. A principal cannot require a member of staff, other than security 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.

### **Is there a risk that I could face legal challenge if I search a student without consent?**

Principals and authorised college staff have a specific statutory power to search students without consent for specific items – knives/weapons, illegal drugs and stolen items, and, for students up to age 18, alcohol, tobacco products, fireworks and pornography. 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.

### **How will I know if a student is under or over 18?**

Staff can ask to see identification (e.g., college pass, driving licence, Citizencard, travel pass).

### **Do recent regulations mean that students over 18 can't be searched at all for tobacco products, alcohol, fireworks and pornography?**

Under section 85A of the Further and Higher Education Act 1992, students can be searched for any item where there is reasonable belief that it has been, or is likely to be, used to commit an offence or cause harm or damage to property. This would include tobacco products, alcohol, fireworks and pornography, where this belief exists. For example, if a member of college staff has a reasonable belief that an older student intends to set off fireworks in class then the student can be searched for them.

## Additional 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](http://www.ico.gov.uk/for_organisations/data_protection.aspx)

## Legislative links

The Education Act 1996

<http://www.legislation.gov.uk/ukpga/1996/56/contents>

Education and Inspections Act 2006

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

Education Act 2011

<http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>

Apprenticeships, Skills, Children and Learning Act 2009

<http://www.legislation.gov.uk/ukpga/2009/22/contents>

Health and Safety at Work etc Act 1974

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

Further and Higher Education Act 1992

<http://www.legislation.gov.uk/ukpga/1992/13/contents>

Further Education Institutions and 16 -to 19 Academies (Specification and Disposal of Articles) Regulations 2012

<http://www.legislation.gov.uk/ukdsi/2012/9780111523995/contents>

Misuse of Drugs Act 1971

[www.legislation.gov.uk/ukpga/1971/38/contents](http://www.legislation.gov.uk/ukpga/1971/38/contents)

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