



Behaviour in Schools – Safe and Effective Intervention

Consultation

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Behaviour in Schools – Safe and Effective Intervention

- Audience** Governing bodies and head teachers of maintained and independent schools and pupil referral units in Wales, local authorities, teaching and other unions, church diocesan authorities, and national and local bodies in Wales with an interest in education.
- Overview** This document represents a consultation on three elements: new legislation covering behaviour and discipline contained in the Education and Inspections Act 2006; revised guidance on the use of force; and new powers to search for weapons contained in the Violent Crime Reduction Act 2006
- Action required** Responses to this consultation should be sent by **17 February 2010** to:
Jim Evans
Pupil Engagement Team
Support for Learners Division
Welsh Assembly Government
Cathays Park
Cardiff CF10 3NQ
Tel: 029 2082 1556
Or e-mailed electronically to: petshare@wales.gsi.gov.uk
- Further information** Please contact Jim Evans at the address above.
This document and further summary information can be accessed from the Welsh Assembly Government website:
www.wales.gov.uk/inclusionandpupilsupport
- Related documents** Circular 47/2006: Inclusion and Pupil Support
Circular 1/2004: Exclusion from Schools and Pupil Referral Units
Special Educational Needs Code of Practice for Wales (2002)

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BEHAVIOUR IN SCHOOLS – SAFE AND EFFECTIVE INTERVENTION

SUMMARY

This document represents a consultation on 3 aspects intended to support schools, local authorities and their partners in providing a safe environment for children and young people. It is proposed, subject to consultation that any new powers would be commenced in September 2010 and revised guidance would be issued in Spring 2010.

It covers the following 3 sections:

Section 1

New powers and duties for school discipline, parental responsibility and exclusion, contained in the Education and Inspections Act 2006. Much of the legislation consolidates provisions in previous Acts. The main powers and duties being introduced are as follows:

- A requirement for Head Teachers to consult with pupils and staff working at the school in developing their behaviour policy.
- Schools to have a power to regulate the behaviour of pupils off school premises.
- Schools' behaviour policies to require pupils to comply with the national Travel Behaviour Code and to include measures to secure pupils completing tasks assigned to them.
- A power for schools to discipline pupils and impose sanctions.
- New scope on the use of detention.
- A statutory defence for school staff confiscating pupils' property.
- Extension on the use of Parenting Orders and Parenting Contracts.
- Head Teachers to be required to request parents of excluded pupils to attend a reintegration interview. New regulations to put in place to define details.

Section 2

Revised guidance on the use of force to control or restrain pupils. This is more comprehensive guidance replacing that currently contained in Welsh Office Circular 37/98. The guidance is split into two main parts, one relevant for all schools and pupils and one relating to pupils with severe behavioural difficulties, which will be particularly relevant for special schools.

Section 3

Guidance relating to the new power for schools to be able to search pupils for weapons without their consent, contained in the Violent Crime Reduction Act, 2006. This is a new power rather than a duty and therefore does not create any new requirement on schools that choose not to use the power.

1. Introduction

1.1 This consultation document highlights changes in schools and local authorities' powers and duties on behaviour, discipline, parental responsibility and exclusion in the Education and Inspections Act 2006 and a new power for schools to search for weapons in the Violent Crime Reduction Act 2006 and seeks views on their commencement in Wales as well as the associated guidance where applicable.

1.2 The intention is that, subject to consultation, the relevant provisions in the Acts will be commenced in September 2010, with the exception of Section 89 as this will be commenced in January 2010 in order to tie-in with the commencement of the aspects of the Learner Travel Measure relating to the National Travel Behaviour Code in the same month.

1.3 The document also contains new guidance on the use of reasonable force to control or restrain pupils, which would replace that currently contained in Circular 37/98.

1.4 The elements presented in this document are therefore:

- Section 1: New powers and duties under the Education and Inspections Act 2006 (EIA 2006) (Sections 88 to 111).
- School discipline.
- Parental responsibilities and exclusion.
- Section 2: The Use of Force to Control or Restrain Pupils.
- Section 3: Screening and Searching Pupils for Weapons (Section 45 of the Violent Crime Reduction Act 2006).

1.5 While the majority of pupils behave well and schools are generally orderly and productive places of learning, the Welsh Assembly Government wishes to support teachers and other school staff to deal effectively with poor and disruptive behaviour, whilst at the same time minimising the disruption to other pupils' learning, and so possibly their life chances.

1.6 Rather than increase the number of sanctions applied to pupils the legislative changes proposed are intended to ensure greater clarity on what schools can do to promote positive behaviour and to promote greater consistency of application across Wales. This in turn will protect the rights of children and young people to consistent and fair treatment.

1.7 The Welsh Assembly Government has put in place the School Effectiveness Framework in order to develop and promote effective approaches in schools in Wales, which will include the promotion of positive behaviour and dealing with disruptive behaviour. The Framework sets out a national purpose for schools and two elements of this are particularly relevant in terms of the purpose of maintaining schools as safe and protective environments which promote positive behaviour. These two elements are as follows:

- To enable all children and young people to develop their full potential by acquiring skills, knowledge, understanding and attitudes, including personal, social and emotional skills, to enable them to become economically, socially and personally active citizens and lifelong learners.
- Promote a culture of social inclusion and respect for diversity, particularly through developing the wellbeing of learners and personalising their learning.

1.8 The School Councils Regulations 2005 require all maintained schools in Wales to have a school council that is democratically elected by pupils and which meets at least six times a year. The school council is a democratic channel which allows all pupils to have a voice and be listened to, as set out in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC). The Welsh Assembly Government recommends that schools develop a whole-school Participation Policy setting out a variety of ways in which pupils can be actively involved in decisions that affect them at different levels of schools life (e.g. including class councils, eco-schools, healthy schools, peer mentors, assessment for learning, etc).

1.9 Positive behaviour is a matter of concern for all pupils, ensuring that they experience a safe and positive learning environment. These policies are more likely to be respected and adhered to where pupils are directly involved in formulating and monitoring behaviour policies and have a stake in them, Pupils can be involved in a variety of ways – e.g. through:

- Consultations, suggestion boxes and focus groups.
- Schemes to promote and implement positive behaviour – e.g. peer mentors systems.
- Involvement in revision and monitoring of a whole-school behaviour policy.
- Development of codes of conduct at class levels.
- Implementation of reward and merit schemes.

1.10 In involving pupils in promoting and implementing positive behaviours, schools should adhere to the National Children and Young People’s Participation Standards for Wales.

1.11 The proposed changes should be seen within the framework of inclusion and pupil support set out in Welsh Assembly Government Circular 47/06. The changes in legislation in some cases may require only small amendments to guidance. In these cases the intention is to issue revised pages of the Inclusion and Pupil Support Guidance. Cross-references to this guidance are included throughout this document. The guidance will also be amended on the internet. Where the changes require more extensive new guidance this is presented in this document.

1.12 As well as Inclusion and Pupil Support Guidance, the proposed changes should be considered alongside the overall suite of guidance on these aspects including that for exclusions, tackling bullying and the SEN Code of Practice.

1.13 The introduction of the school discipline elements of the EIA 2006 (Sections 88 to 93) will mean that they replace the provisions currently contained in Sections 550A (Power of members of staff to restrain pupils) and Sections 550B (Detention outside school hours lawful despite absence of parental consent) of the Education Act 1996 and Section 61 (Responsibility of governing body and Head Teacher for discipline) of the School Standards and Framework Act 1998.

1.14 The Learner Travel Measure will also introduce an amendment to the EIA 2006 to ensure that schools' behaviour and discipline policies link in with a national Travel Behaviour Code for school transport. This is scheduled to commence in January 2010, at the same time as Section 89, the power of behaviour policies to cover behaviour outside school. Further details on this aspect are contained in Section 1.

Section 1: New powers and duties under the Education and Inspections Act 2006

1. Introduction

1.1 Some of the provisions in the EIA 2006, such as the statutory power to discipline, are new. Others re-enact or replace existing legal provisions. It is important that schools understand what these powers and duties mean for them in practical terms, and this is a key aim of this document. The Act clarifies and as appropriate strengthens schools' powers to discipline, reducing the risk of misunderstandings and challenges to their disciplinary authority. Schools are advised to review their existing policies in the light of this clarification.

1.2 This guidance aims to help schools understand their overall legal powers and duties as regards establishing a school behaviour policy and disciplining pupils. It also provides more specific advice on certain key sanctions (detention and confiscation). It does not, however, offer a definitive interpretation of the law: interpreting the law is a matter for the courts.

1.3 As highlighted in Section 3 of Inclusion and Pupil Support, an effective whole-school behaviour policy is based on mutual respect and cooperation. In the best of communities, however, this breaks down at times, and disciplinary measures may be necessary.

1.4 The main role of pupil participation with regard to discipline should be to ensure that systems and procedures which are in place encourage positive behaviour as far as possible, and are fair, consistent, appropriate and effective. As those who may be directly affected by these systems, pupils should have the opportunity to voice their opinions as to their appropriateness and effectiveness, and to suggest improvements. Regular review of behaviour and discipline policies is recommended, including a whole-school consultation process. Where the school council makes a recommendation to the governing body regarding discipline processes, they must receive feedback.

1.5 The guidance focuses particularly on provisions in the School Discipline chapter of the **Education and Inspections Act 2006 (EIA 2006)**, which are due to come into force. These include:

- provisions on school behaviour policies,
- the power to discipline, detention and confiscation.

2. Statutory Guidance for Governors on their Duties as Regards the School Behaviour Policy

Key points of legislation

- Governing bodies must ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.
- They must make, and from time to time review, a written statement of general principles to guide the Head Teacher in determining measures to promote good behaviour.
- They must notify the Head Teacher and give him or her related guidance *if* the Governing Body wants the school's behaviour policy to include particular measures or address particular issues.
- Must consult with a number of parties before making or revising their statement of general principles.
- Must have regard to any guidance given by the Welsh Assembly Government on these functions.

New duties under the EIA 2006 – Section 88

- In addition to the current requirement to consult the Head Teacher and parents of registered pupils at the school in developing a statement of principles to promote good behaviour and discipline, governing bodies would also have to consult pupils themselves and such other persons who work at the school (whether or not for payment) as it appears to be appropriate to the Governing Body to consult.

2.1 Guidance on the role of governing bodies in developing schools' behaviour and discipline policies is set out in broad terms in Section 3 of Inclusion and Pupil Support guidance. However, this guidance could be usefully extended and it is proposed that the guidance below is added to that guidance and will also be added to the Guide to Governors issued by the Welsh Assembly Government.

2.2 Governing bodies of relevant schools are required to have regard to guidance from the Welsh Assembly Government in making and reviewing the written statement of general principles on school discipline in both current and proposed legislation.

2.3 The guidance to governors on these matters below, should thus be regarded as statutory guidance.

What the law says

2.4 The full governing body, or a committee of it, must make final decisions about the statement of principles and any notifications and guidance. These responsibilities cannot be delegated to an individual.

2.5 For Pupil Referral Units (PRUs), these functions of the Governing Body would fall to the PRU management committee or, for PRUs that currently do not have a management committee, the local authority. In the case of a federation of schools, the federated governing body has this responsibility. The governing bodies of collaborating schools remain responsible for final decisions about the statement of principles and any notifications and guidance pertaining to that school, even where schools in a collaboration produce a common statement of principles, notifications and/or guidance.

2.6 The Guide to Governors also includes guidance on the Governing Body's duty to consult, to which governing bodies and local authorities must have regard by virtue of Section 176 of the Education Act 2002.

2.7 The Governing Body would be legally required to consult with the Head Teacher, staff, parents and pupils on the principles of the behaviour policy. The consultation may be arranged in such manner as appears appropriate to the Governing Body and include such representatives of the staff as the Governing Body deems appropriate. All pupils and parents must be included, i.e. given the opportunity to comment on proposals at the formative stage, and their responses considered when decisions on the proposals are made. The requirements on the Governing Body to consult staff and pupils on the principles are new ones, introduced under the EIA 2006.

2.8 Part IV of the Disability Discrimination Act 1995 (DDA 1995) creates a duty on governing bodies to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage in comparison with pupils who are not disabled (a duty to make 'reasonable adjustments'). This would include making reasonable adjustments to the statement of principles, school behaviour policy and disciplinary practices.

2.9 Governing bodies of maintained schools also have a duty (the 'general equality duty') under Part 5A DDA 1995 (inserted by the Disability Discrimination Act 2005) to have regard to the need to: eliminate disability discrimination; eliminate harassment of disabled persons that is related to their disabilities; promote equality of opportunity between disabled persons and other persons; take account of disabled persons' disabilities; promote positive attitudes towards disabled persons; and encourage participation by disabled persons in public life.

What this means in practical terms

2.10 Governors should decide on an appropriate timescale for reviewing the principles and for the Head Teacher to update the resulting behaviour policy. Good practice would suggest this should be done on average every two years. The principles may not need updating every time they are reviewed. A consultation exercise should be undertaken every time the statement of principles is updated (see 2.19-2.26 below).

Reflecting school values and equal opportunities in the principles of the school behaviour policy

2.11 The values a school is committed to promoting – such as respect, fairness and social inclusion – should be the basis for the principles underlying its behaviour policy. These principles are enshrined in and promoted by the United Nations Convention on the Rights of the Child (UNCRC), which has been adopted by the Welsh Assembly Government as a basis for all its policies.

2.12 Schools must comply with equalities legislation and the duty to promote the well-being of pupils (Section 21 of the Education Act 2002, as amended by Section 38 EIA 2006 and therefore it is important that the school's statement of principles reflects a commitment to improving outcomes for all pupils and eliminating all forms of discrimination, harassment and bullying, as well as promoting equality of opportunity, the welfare of pupils and good relations across the whole school community. This includes the right to participate in decisions that affect them and to play an active role in their community, as set out in Article 12 of the UNCRC, and in the National Children and Young People's Participation Standards for Wales.

2.13 The statement of principles should also ensure that vulnerable pupils – such as those with special educational needs, physical or mental health needs, migrant and refugee pupils and looked-after children – receive behavioural support according to their need. This complies with Article 20, 21, 22 and 23 of the Convention. Children and young people in all these groups can experience particular difficulties with behaviour, for example related to medical conditions, lack of understanding or trauma. For further information see Section 2 of Inclusion and Pupil Support.

What a statement of principles might look like

2.14 The kind of expectation which might be reflected in the principles of a school behaviour policy are set out in Section 3 of Inclusion and Pupil Support. It is, however, for individual schools to determine their own principles in the light of their individual characteristics / ethos; the needs of their own school community; and any agreement they have with other schools in a local partnership for improving behaviour and tackling persistent absence. The importance of pupil involvement at all stages of developing implementing evaluating and reviewing school behaviour policies cannot be overemphasised.

How the statement of principles can help the Head Teacher develop more specific disciplinary measures

2.15 The Head Teacher will use this statement of principles to lead work with the school community as a whole including a broad range of pupils to determine the more detailed measures (rules, rewards, sanctions and behaviour management strategies) that make up the overall school behaviour policy. Principles that most assist in doing this:

- Are based on the school's values and the UNCRC.
- Can be explained to, and by, pupils of any age or ability.

- Represent widespread agreement about standards amongst pupils, staff (including union representatives), governors and parents.
- Encourage a healthy balance between rewards and sanctions to encourage positive behaviour.
- Promote behaviour improvement as a means of improving learning and teaching.
- Are challenging but realistic and appropriate for development as the school builds on its successes.

Particular measures or matters that governors may want the Head Teacher to include in the policy

2.16 If the Governing Body want the school's behaviour policy to include particular measures or deal with particular matters, they must notify the Head Teacher and as appropriate give him or her related guidance.

2.17 Governors should take full account of the Head Teacher's views, and views of pupils, as to the likely effectiveness of a measure before deciding whether to include it. In all cases the measure should be supportive of the principles agreed by the Governing Body. In this way the Governing Body will be seen as acting consistently and upholding the principles agreed with stakeholders, including the broad pupil body. Governors should also ensure that any measure they want to include in the behaviour policy maintains the necessary balance between sanctions and rewards.

2.18 The Head Teacher must have regard to notification and guidance of this kind from the Governing Body.

Consultation

2.19 The wider duties on consultation introduced under the EIA 2006 are aimed to ensure that all parts of the school community have an opportunity to help shape the behaviour policy. This in turn should result in a greater sense of ownership of and commitment to the behaviour policy. The involvement of all pupils should also help ensure that there is a common understanding of the overall standards of behaviour which are expected by the school and which all members of the community need to meet.

2.20 In order to secure an appropriately representative view from school staff, the Governing Body needs also to include staff members who can represent the views of the unions which have members within the school. Partnership with the unions in developing the behaviour policy should also help ensure that any concerns around staff workload, conditions of service and health and safety are appropriately taken into account.

2.21 The consultation of pupils is an important new duty, which reflects children and young people's rights under Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) and the Assembly Government's priority of ensuring that children and young people have a voice in matters that affect them. All pupils must have the opportunity to comment on the statement of principles and so help

shape the behaviour policy. This could involve, for example, class teachers or form tutors – particularly those in charge of very young pupils – talking to their class about the behaviour principles, gathering any views and feeding them into the policy development process. Work in PSE lessons might also provide opportunities for discussing the principles. Pupils could also be given the opportunity to feed their views through ‘suggestion boxes’, through pupil representatives or their school council. It is important, however, that the views of pupils’, where appropriate, are faithfully reflected in policies, that pupils receive feedback concerning their input, and have the opportunity to be involved in policy implementation where appropriate, in line with the National Participation Standards.

2.22 In involving the school council or other representative pupil bodies in gathering pupils’ views, it is important that pupils are given the support, resources and time to do this effectively. This may include, for example, training in consultation methods, time to produce and analyse questionnaires or lead workshops, to analyse findings and to present these to senior management, governors and pupils. For consultations to be effective, good communication and feedback are essential. Resources and activities to assist the school council / pupil groups in conducting consultations can be found on the School Councils Wales web-site (www.schoolcouncilswales.org.uk).

2.23 The form of the consultation with pupils must be such that disabled pupils as well as pupil groups whose views are often under-represented have a full opportunity to express their views. The consultation of pupils could be organised in various ways: in groups; individually; face-to-face; by email; or using trained peers. All the views collected should be considered by the Governing Body in the light of the pupil’s age and understanding.

2.24 Schools should consider the most effective way to gather the views of parents. They could be informed of the opportunity to take part in the consultation by means of an invitation letter or via an item in the school newsletter, for instance. In addition, the School Parent Association might form a working group; parent governors might take the lead; or feedback could be sought in a combination of meetings and informal discussions.

2.25 Governors should also consider taking account of the views of local partners working with the school. This may include voluntary agencies, other schools, children’s services and community safety partners such as the police and youth offending teams. This will ensure that all partners are engaged with what the school is trying to achieve and can shape behaviour support work accordingly.

2.26 Governors should consider the results of the consultation exercise at a meeting of the full governing body. In practice this is likely to be in the form of a report from a committee summarising the feedback received from staff, pupils, partner organisations and parents and providing recommendations for appropriate changes.

3. Role of Head Teachers and Other School Staff

Key points of legislation

- Every school must have a behaviour policy, including disciplinary measures, determined by the Head Teacher in the light of principles set by the Governing Body.
- The policy must be designed to promote good behaviour and deter bad behaviour, including all forms of bullying.
- The policy must be publicised to school staff, pupil and parents.

New provisions under the EIA 2006 – Section 89

- Schools will have a statutory power to regulate the behaviour of pupils when off school premises and not supervised by school staff. Regulation must be reasonable. Schools should be clear about the factors they take into account in deciding whether a rule or sanction is reasonable.
- Section 89 is amended by the Learner Travel Measure which will additionally require schools' behaviour policies to include a requirement for pupils to comply with the national Travel Behaviour Code when this is in place.
- Schools' behaviour policies must include measures to secure pupils completing any tasks reasonably assigned to them in connection with their education.

Regulating pupils' conduct and disciplining them for misbehaviour outside school premises

3.1 As this is a new duty it is proposed that the following guidance is added to that currently contained in Inclusion and Pupil Support, Section 3.

Schools' legal powers

3.2 Under the common law, the extent of schools' power to regulate the conduct of pupils at times when they are not on the premises of the school and not under the lawful control or charge of a member of staff was not fully clear. Section 89(5) of the Education and Inspections Act 2006 gives Head Teachers a specific statutory power to regulate pupils' behaviour in these circumstances "to such extent as is reasonable".

3.3 Individual schools are best placed to make judgments about what is reasonable in their particular circumstances. However, paragraph 3.8 suggests factors that a school could take into account in making such judgments.

3.4 While schools are able to regulate certain conduct off school premises, they can only impose sanctions when the pupil is on the school site or under the lawful control or charge of a member of staff. A sanction could be imposed whilst a pupil is on a school trip, but not whilst the pupil is on his journey home from school for instance. In such circumstances, the member of staff could indicate to the pupil that he has been seen misbehaving and will be punished, but must wait until the pupil is next in school to issue the punishment.

The Learner Travel Measure – National Travel Behaviour Code

3.5 The Learner Travel (Wales) Measure passed in September 2008, introduces an additional requirement for schools to include, in their behaviour policies a requirement for their pupils to comply with the National Travel Behaviour Code. The Code is scheduled to come into force at the same time as Section 89 of the EIA 2006, in January 2010.

3.6 Separate guidance on the use of the Code has been issued. The main elements contained within the Measure are as follows:

- The local authority may withdraw travel arrangements made for a learner, up to the age of 19, if it is satisfied that he / she has failed to comply with the Travel Behaviour Code, provided that:
 - The learner and the parent are able to make representations to the authority.
 - The decision to withdraw travel is reasonable in the circumstances.
 - 24 hours' written notice is given.
- Also for pupils at schools that:
 - The Head Teacher is consulted and given 24 hours' written notice.
 - The period of withdrawal does not exceed 10 consecutive school days.
 - The pupil cannot have travel withdrawn for more than 30 school days in the school year.
- To determine whether withdrawing travel is reasonable the local authority would need to consider:
 - Whether the period of withdrawal is proportionate to the circumstances.
 - Any special circumstances relevant to the withdrawal of travel, including age, SEN, disability, loss of an opportunity to take an exam and whether suitable alternative travel arrangements can reasonably be made by the parents.

What this means for schools in practical terms

3.7 An effective policy on school discipline and pupil behaviour should also set expectations for positive behaviour off the school site. This includes behaviour on activities arranged by the school, such as work experience placements, educational visits and sporting events; behaviour on the way to and from school; and behaviour when wearing school uniform (if any) in a public place.

Possible criteria for regulating off-site behaviour

3.8 Schools must act reasonably both in relation to expectations of pupil behaviour and in relation to any measures determined for regulating behaviour by

pupils when off the school site and not under the lawful control or charge of a school staff member. Ultimately only a court of law could decide what was reasonable in a particular case, but schools should decide what to take into account in deciding whether a rule or sanction in a particular case is reasonable. A school could sensibly take account of the following factors (which may not all apply to every incident):

- The severity of the misbehaviour.
- The extent to which the reputation of the school has been affected.
- Related to this, whether the pupil(s) in question were wearing school uniform or were otherwise readily identifiable as members of the school.
- The extent to which the behaviour in question would have repercussions for the orderly running of the school and/or might pose a threat to another pupil or member of staff (e.g. bullying another pupil or insulting a member of the staff).
- Whether the misbehaviour in question was on the way to or from school, outside the school gates or otherwise in close proximity to the school.
- Whether the misbehaviour was whilst the pupil was on work experience, taking part in a further education course as part of a school programme or participating in a sports event with another school (i.e. when the pupil might be expected to act as an ambassador for the school) which might affect the chance of opportunities being offered to other pupils in the future.
- Whether the pupil(s) were truanting.

3.9 Applying such factors, there would, for example, be a strong case for punishing a pupil for harassing a member of staff off school premises, including through the internet. There would also be a strong case for punishing a pupil for verbally abusing members of the public on a bus on the way to school. However, the case for punishing a pupil for verbally abusing somebody who had no connection with the school at a weekend would be much weaker. This is not of course to say that schools should take no interest in behaviour they do not regulate. Liaison between the school and the local authority anti-social behaviour team may be particularly relevant in this context.

3.10 Schools may find it helpful to relate whatever factors they decide to use to a set of overall objectives that make clear why a policy for regulating behaviour off school premises is being applied. Such objectives might include:

- To maintain good order on transport, educational visits or other placements such as work experience or college courses.
- To secure behaviour which does not threaten the health or safety of pupils, staff or members of the public.
- To provide reassurance to pupils who may feel threatened or intimidated by the behaviour of a small minority of their peers.
- To provide reassurance to members of the public about school care and control over pupils and thus protect the reputation of the school; or

- To provide protection to individual staff from harmful conduct by pupils of the school when not on the school site.

3.11 Many extended school activities take place on school premises. Behaviour during such activities may be dealt with in the same way as for any other on-site activity. It would be logical to deal with behaviour during off-site extended school activities which are not supervised by school staff in the same way as behaviour during further education college or work experience placements.

Communicating the rules on behaviour out of school

3.12 Local authorities and schools should work with transport providers to agree how behaviour on public or contract transport should be addressed and in particular the practical application of the Travel Behaviour Code. Clear statements about rewards and consequences (including loss of access to transport) can improve behaviour. Expectations can be made clear through a 'safe travel' lesson as part of pupils' induction to the school.

3.13 Some schools discuss and develop policies relating to out-of-school behaviour with local groups such as Neighbourhood Watch, retail staff, street wardens and police to establish clear communication routes and operational strategies. This is often an effective way to manage complaints by individuals in the community.

3.14 Schools should, through their standard communication routes, set out how parents and other members of the community can:

- Report poor out-of-school behaviour of specific types by pupils.
- Be assured that close liaison as necessary with neighbourhood police teams or other agencies, such as transport providers, can deal with the issues.

3.15 School councils may have a role in ensuring that the wider community in which the school is located is safe for pupils, e.g. regarding the route to and from school. However, whilst the school council should have a say in formulating effective policies and strategies which impact on pupil well-being (e.g. behaviour code on school buses), it is not the school council's role to be involved in individual complaints either by or against pupils or other members of the school community.

3.16 A standard procedure for applications for educational visits should include clear statements to parents and pupils about behaviour standards and processes and the right to apply sanctions.

3.17 The staff handbook should include clarity about the expectations and procedures related to transport, educational visits, work experience and college placements. It should also make clear to staff procedures related to poor conduct by pupils or other members of the school community off site.

Ways in which the policy might be applied

3.18 The Travel Behaviour Code will provide the means through which local authorities, schools and their partners can monitor behaviour on all forms of transport to and from school, including private transport.

3.19 A staff educational visits procedures pack should state clearly the expectations and disciplinary sanctions available to staff. Head Teachers should be explicit about levels of authority which are delegated to staff on educational visits. For residential trips, and particularly for international visits, a contact strategy should be given to a senior leader so that advice for staff is available in a crisis.

3.20 For work experience and college placements the school contract with the providers can make clear expectations of standards of behaviour and procedures to use in the case of poor conduct. Schools give briefings and contracts for pupils and parents about these opportunities – and should use these means to make clear expected standards of behaviour.

3.21 New media (such as mobile phones, internet sites and chat rooms) can be exploited by pupils in order to bully or embarrass fellow pupils or members of staff. Schools should make clear in their behaviour policy that the use of defamatory or intimidating messages / images inside or outside of school will not be tolerated and that disciplinary sanctions will be applied to perpetrators. Schools should also be aware that the organisations behind some of the most popular internet sites amongst young people are working to help prevent and tackle cyberbullying.

Abuse or intimidation of staff outside school

3.22 Head Teachers should adopt firm measures against abuse or intimidation of staff. This includes unacceptable conduct by pupils when not on the school site, and when not under the lawful control or charge of a member of staff of the school. Staff should be made aware that:

- They have the same rights of protection from threat as any citizen in a public place.
- They should use their professional judgement about immediate action to take in circumstances where a number of young people are present and displaying intimidating behaviour:
 - Their first concern must be for their own personal safety.
 - They should make clear that the pupil has been recognised, even if in a group of young people.
 - They should then use their judgement about how to leave a difficult situation without provoking further confrontation.
- The school will apply appropriate disciplinary sanctions when the pupil is next in school.

3.23 Schools should liaise with Neighbourhood Police Teams (and Youth Offending Teams for specific individuals) to develop agreements about which serious behaviours require referral to the police. School partnerships have found that this can be done for the whole partnership.

4. The power to discipline: what it means

Key points of legislation

New provisions under the EIA 2006 – Section 91

- Schools have a statutory power to discipline pupils for breaches of school rules, failure to follow instructions or other unacceptable conduct.
- All teachers and other staff in charge of pupils have the power to discipline.
- The Head Teacher may limit the power to apply particular sanctions to certain staff and/or extend the power to discipline to adult volunteers.

New provisions under the EIA 2006 – Section 91

- Section 91 of the Education and Inspections Act 2006 would introduce, for the first time, a statutory power for teachers and certain other school staff to discipline pupils.

Why this power has been introduced

4.1 Hitherto the legal authority of schools to discipline pupils has been primarily based on the common law principle of the teacher being *in loco parentis* (“in place of the parent”). Much of the related case law dates back to the 19th Century. The *in loco parentis* principle has been significantly qualified in recent years – no longer applying at all to 18 year olds – and partly because of a perception of an increasing willingness of some families to challenge the authority of schools. Moreover, there is no reliable common law authority that a teacher’s powers are acquired solely by virtue of being a teacher; and it is not always certain whether the power is one the parent actually has or wishes to delegate.

4.2 The Act power would give school staff a clear statutory authority for punishing pupils whose behaviour is unacceptable, who break school rules or who fail to follow a reasonable instruction.

What the legal power covers

4.3 The power covers those issues on which schools are most likely to face any legal challenges, as regards their disciplinary authority. The legislation would not cover measures schools use to reward good behaviour and build good relationships because these are unlikely to be challenged. In particular, the Act specifies a power for teachers and certain other school staff to enforce disciplinary penalties. The penalty could be for failing to follow a school rule, an instruction given by a member of staff of the school, or for any other reason that causes the pupil’s behaviour to fall below the standard which could reasonably be expected of him or her.

4.4 The Act would give this power to all teachers and other paid members of staff who are in lawful control or charge of pupils, except if the Head Teacher has determined that a member of staff is not permitted to impose the penalty on the pupil in question. The Act would empower the Head Teacher to extend the power as is reasonable to any other adult who has lawful control or charge of pupils – such as a

parent volunteering to supervise a football match or help on a school trip for example. The Act will stipulate that the Head Teacher may empower staff by reference to an individual pupil or staff member, a group of pupils of a particular description, all pupils, or a group of staff of a particular description. There will be no legal requirements as regards how staff or pupils should be notified of such a decision, this being a matter of common sense and professional judgement. Head Teachers should, however, do this in writing for the sake of certainty – including reflecting as appropriate in staff members’ contracts, and making this a part of the measures that the Head Teacher sets down in the school’s behaviour policy.

4.5 Head Teachers cannot give the power to discipline to pupils. The legal provisions only relate to members of staff or other adults authorised by the Head Teacher and therefore do not include prefects or any other pupils. Prefects can have an important role to play in maintaining good order in the school, but it is important to distinguish between giving instructions to help uphold the behaviour policy and the power to impose sanctions. Pupils are not permitted to do the latter.

4.6 The power to discipline will be applicable to any pupil at a school where education is provided for them, and also to misbehaviour by pupils outside school premises when they are not in the lawful control or charge of a member of staff, so far as this is reasonable (see Section 3.4 for further details).

4.7 To safeguard the interests of pupils against unfair or inappropriate punishments, the Act will also provide that the disciplinary penalties in question must be reasonable, not breach any statutory requirement or prohibition (which would include legislation on SEN, disability, race and other equalities and human or civil rights); and take account of the pupil’s age, any special educational needs or disability the pupil may have, and any religious requirements affecting the pupil (see Section 10 of this guidance).

4.8 Exclusion of pupils, whether on a fixed period or permanent basis, will not be covered by the general power to discipline. This is because it is already covered by separate legislation, which reserves the power to apply this particular sanction solely to the Head Teacher or to the teacher in charge of a PRU (or, their absence, the acting Head Teacher or acting teacher in charge of a PRU).

4.9 Corporal punishment – as defined in Section 548 of the Education Act 1996 – is unlawful.

What this means for schools in practical terms

4.10 All staff should be clear about which sanctions they can apply and which may only be applied by more senior staff. For example, the school’s policy might be that detentions held on a weekend and on training days have to be authorised by a member of the senior leadership team, while lunchtime detentions can be set by any staff member.

4.11 Other types of staff or adults on site will also need to be aware of the authorisation levels. Temporary staff, student teachers and volunteers (providing, for example, help with educational visits or mentoring support) should be informed of the levels of sanctions they can apply.

4.12 Schools should apply to the Criminal Records Bureau (CRB) for an Enhanced Disclosure for regular volunteers who have contact with pupils (i.e. three or more times in a 30 day period or once a month or more, or overnight).

5. Punishing poor behaviour – use of disciplinary sanctions

What the law says

1.1. The Welsh Assembly Government is determined to support teachers and other school staff in securing high standards of behaviour in schools. This support includes legislation.

Key points of legislation

New provisions under the EIA 2006 – Section 91

- The Education and Inspections Act 2006 confirms and clarifies the right of the school to impose disciplinary sanctions on a pupil when their conduct falls below the standard which could reasonably be expected of them. These disciplinary sanctions are actions which aim to make clear the boundaries of acceptable behaviour to the pupil and the school community.

What this means for schools in practical terms

Effective disciplinary sanctions

5.2 One way of developing an appropriate scale of sanctions is to use a whole-school staff training session or whole-school discussion, involving pupils on the different forms of misbehaviour. This can help build agreement between staff and pupils about what are low-level misbehaviours (for example only requiring a quiet reprimand) and what are serious misbehaviours (requiring referral to senior staff and a range of intervention strategies). The training objective is to ensure shared understanding of proportionate and differentiated sanctions, and the thresholds for their use.

5.3 Schools should ensure their referral systems identify which matters can be dealt with by any staff member with the power to discipline and which require referral to a more senior member of staff. Referrals for assistance in a crisis situation in class can be based on using pupils to call for assistance or using IT or wireless systems. Schools should also work out protocols with local police and youth offending services, for use if very serious incidents occur.

5.4 Depending on the nature of the incident and the circumstances of the individual pupil involved, a referral to senior staff might also involve: consultation with the parent, engagement with multi-agency staff, use of continual reporting systems (books, cards) for the pupil, and/or creation of a pastoral support programme (PSP).

5.5 A PSP is a school-based intervention to help individual pupils to manage their behaviour. It is particularly useful for those whose behaviour is deteriorating rapidly and who are in danger of permanent exclusion. The PSP should identify precise and realistic targets for the pupil to work towards; it should be short, practical and agreed with the pupil and their parents. The local authority will be informed and other agencies involved. In some circumstances it may also be appropriate for schools to offer a parenting contract alongside the PSP. Pastoral support is not, however, just

about addressing behaviour. Good pastoral support should also be concerned with academic attainment and developing pupils' ability to become good citizens.

5.6 There are a number of ways in which schools may choose to monitor pupils' behaviours and the use of sanctions. They may for example use records such as Staff or Pupil Planners, wall charts or IT based data recording systems, as a continual process or to monitor specific behaviours. It is important to use these to capture both desirable and undesirable behaviours so that balanced evaluations can be reached. This sort of data can also identify common times and locations for issuing sanctions and so identify where other interventions are needed to support staff.

5.7 Sanctions are more likely to promote positive behaviour if pupils see them as fair. The guidelines to staff for implementing the school's behaviour policy should therefore advise them to:

- Make clear they are dealing with the behaviour, rather than stigmatising the person.
- Avoid early escalation to severe sanctions, reserving them for the most serious or persistent misbehaviour.
- Avoid sanctions becoming cumulative and automatic (sanctions should always take account of individual needs, age and understanding – see Section 10 for more information).
- Avoid whole group sanctions that punish the innocent as well as the guilty.
- Wherever possible, use sanctions that are a logical consequence of the pupil's inappropriate behaviour (for example, if work is not finished in class the teacher might make the pupil stay behind at break time to finish it off).
- Use sanctions to help the pupil and others to learn from mistakes and recognise how they can improve their behaviour (i.e. a learning outcome – improving emotional intelligence).
- When appropriate, use sanctions to put right harm caused.
- Never issue a sanction that is humiliating or degrading.
- Use sanctions in a calm and controlled manner.
- Ensure that sanctions are seen as inevitable and consistent (pupils should know that a sanction, when mentioned, will be used).
- Attempt to link the concept of sanctions to the concept of choice, so that pupils see the connection between their own behaviour and its impact on themselves and others, and so increasingly take responsibility for their own behaviour.

5.8 Sanctions should not be used where low-level interventions, such as giving a non-verbal signal or reminding a pupil of a rule, are all that is needed. Staff should also consider when it might be more appropriate to, rather than impose a sanction, encourage pupils to reflect on the harmful effects of their misbehaviour, through producing a written account of the problem or through individual or group discussions aimed at repairing relationships for example.

5.9 Some schools use restorative approaches to address poor behaviour. The underlying principle is that pupils are held to account for their actions and encouraged to put right the harm caused. Restorative techniques can be effective when used correctly and when the requisite time and resources are committed (more information can be found on the Youth Justice Board website).

5.10 Staff should also consider, when using sanctions, whether an apparent behaviour difficulty is in fact a manifestation of unidentified learning difficulties or other type of additional learning need.

5.11 Corporal punishment is unlawful (this includes the use of force in order to punish).

6. Detention

Key points of legislation

- School staff have a statutory power to put pupils aged under 18 in detention after school sessions and on some weekend and non-teaching days.
- Detentions are lawful if:
 - Pupils and parents have been informed that the school uses detentions as a sanction; and
 - The school gives parents 24 hours' notice of detentions outside school sessions.

New provisions under the EIA 2006 – Section 92

- Schools would be able to apply detention on some weekend and non-teaching days.
- 24-hour notice would no longer be required for lunchtime detentions.
- Detention could be applied by all school staff in lawful control of charge of pupils and not just teachers.

6.1 Schools now have much greater flexibility to impose detentions without parental consent, which should help both in strengthening their authority and in using this key sanction in ways that are suitably responsive to local circumstances. It is however important that these enhanced powers are used responsibly – taking appropriate account of a range of issues relating to the welfare and rights of staff, pupils and parents. This is particularly important where the detention would involve the child staying late or coming into school on a day when they would not normally be present.

What the law now provides

6.2 Hitherto it has only been lawful for teachers to impose the sanction of detention without parental consent during the school day, in the evenings and at lunchtimes. The law also required 24 hours' written notice to be given to parents for lunchtime and evening detentions.

6.3 The Act extends schools' powers to use detentions, by making it lawful for schools to put pupils aged under 18 in detention without parental consent at a variety of other times, outside school hours. It also removes the requirement for 24 hours' notice for lunchtime detentions (as lunchtimes occur during normal school hours and keeping back a child for a short period at the end of the morning session will not usually cause significant problems for them as regards lunch arrangements). Moreover, along with all other disciplinary penalties apart from exclusion, this sanction is now available to all school staff in lawful control or charge of pupils and not just to teachers. The exception would be if a Head Teacher chose to limit the power of detention to certain groups of staff.

6.4 The times outside normal school hours when detention without parental consent may be given are evenings (as previously), plus weekends and certain non-teaching days (days which have been set aside wholly or mainly for members of staff to work but not to teach pupils, sometimes referred to as “training days”, “INSET days” or “non-contact days”).

6.5 In the case of weekend detentions, this excludes a Saturday or Sunday which falls during or at a weekend immediately preceding or immediately following a half-term break. Some schools made use of detentions at weekends or on non-teaching days before the Education and Inspections Act 2006 was introduced, but this was only lawful where parental consent had first been obtained. The Act removes the requirement for parental consent for these detentions, thus removing a burden from schools and strengthening their disciplinary authority. Schools now have the power, if they wish, to require pupils to attend detentions on such days.

6.6 A school may require a pupil to attend detention on all non-teaching days except those excluded by regulations. The regulations exclude non-teaching days that occur on public holidays; before the first day of term; and during a half-term break. Non-teaching days that fall after the last school day of term are also generally excluded, but there is an exception: term-time weekday non-teaching days that immediately follow the day a school breaks up before half-term or the end of term may be used for detentions (so long as they are not public holidays).

What this means for schools in practical terms

Limiting to certain staff the power to impose this particular sanction

6.7 Some schools may wish to limit to certain senior staff the power to put pupils in detention – for example to heads of year or heads of department. Other schools may wish to use the flexibility created by the Act in the opposite way – extending the power to a wider range of staff, including some or all support staff in lawful control or charge of pupils. This is entirely a matter for individual schools to decide, and to reflect in their individual behaviour policies. Decisions will depend on the circumstances and staffing structures of the school. Schools should take appropriate account of training and development needs in deciding this. They should also make any such decisions in consultation with staff and school workforce unions.

What a detention can be used for

6.8 A range of activities can be required of the pupils which will be engaging and not lead to further ill discipline. Such activities might include: completing assessed coursework; undertaking tasks to assist staff such as classroom display work or materials preparation; or assisting staff with reparation tasks which do not raise any health and safety or child protection issues.

Notifying parents about a detention

6.9 Notifying can mean:

- A signed dated note by a teacher or staff member in a pupil planner (acceptable if there is clearly stated expectation in the school information)

to parents – for example, the home school agreement or prospectus – that parents will read the planner every day for notes from school).

Detentions outside school hours – including weekends and non-teaching days

6.10 While the Education and Inspections Act 2006 makes it possible for schools to give detentions at weekends and on certain non-teaching days without parental consent, it is entirely a matter for individual schools to decide whether this would be an appropriate strategy for them and fits into their overall behaviour policy. There is neither a duty nor expectation on schools to do this.

6.11 Where the school wishes to include provision for detentions at weekends or on non-teaching days as part of its overall behaviour policy, it needs to ensure that it takes appropriate account of issues around staff workload and conditions of service; issues around pupil welfare and notification to parents; plus issues around school security, cleaning, and budgets. Such issues may also apply to detentions after the end of the normal school day. For detentions on non-teaching days, there are also particular issues for the school to consider around entitlements to staff professional development.

6.12 The particular issues which weekend and non-teaching day detentions raise as regards staff, pupils and parents are considered more fully in paragraphs 6.13 to 6.18, immediately below. More general factors relating to the welfare of staff and pupils are in paragraphs 6.19 to 6.25 below, under the heading “deciding if the timing of a detention is reasonable”.

Staff

6.13 It is vital that arrangements for supervision by staff are undertaken in a manner that is consistent both with their contracts and job descriptions, and with the National Agreement on Raising Standards and Tackling Workload. Schools should also have regard to issues around work-life balance.

6.14 Schools also need to bear in mind that supervising detentions is not generally something which would require the professional judgement and expertise of a teacher. In accordance with the principles set out in the National Agreement on Raising Standards and Tackling Workload, it is a task that should normally be undertaken by appropriately skilled and rewarded support staff.

6.15 It is important to ensure, however, that staff monitoring detentions are not open to any allegations of misconduct. This will usually mean two members of staff supervising pupils in detention, or that a member of staff is continually visible by another member of staff. Some schools are using CCTV to provide back up support for staff but this should not be the sole form for protecting staff from allegations.

6.16 Schools should also bear in mind that in many cases non-teaching days will involve training for all the school staff. Teachers and other staff should not miss training on such days because a pupil has been put in detention. Similarly, schools should ensure that detention is not arranged at weekends to the detriment of

extended activities taking place at that time, or that extended school activities are not disrupted because detention is happening at the weekend as well.

6.17 These issues may be avoided if, for example, the school uses its delegated budget to buy in suitable help from outside the school. Where a detention is arranged for a non-teaching day, the following principles should be applied:

- The detention should not interfere with the training of any member of staff.
- It should be carried out by support staff except in exceptional circumstances.
- It should only occur with the agreement of the member of staff concerned (unless it is otherwise a requirement of their contract of employment).

Pupils and parents

6.18 Bearing in mind the requirement for 24 hours' notice to be given to parents, schools should ensure that both parents and pupils are informed:

- What the day is going to be used for.
- When the pupil is required to arrive and when they will depart, and that the family needs to ensure suitable arrangements are in place for the pupil to get to and from school.
- Which members of staff the pupil should report to.
- Whether uniform should be worn.
- Whether the pupil needs to bring.
 - Packed lunch and drink or any medication.
 - Any coursework or other learning materials.
- That the school has a legal power to impose the disciplinary penalty of detention, and what the consequences would be for non-attendance.

Deciding if the timing of a detention is reasonable:

Transport:

6.19 If a pupil is required to use transport to or from a detention (especially on a weekend or non-teaching day) the school should take into account whether such transport arrangements are reasonable and practicable. This may be a particular issue for schools where public transport is limited or expensive. In these circumstances schools will want to make reasonable arrangements with parents while insisting on the terms of the detention being met.

The pupil's out of school responsibilities:

6.20 Schools will need to be sensitive to issues where a pupil is a primary carer, a looked after child or vulnerable in other ways. For example, a pupil may have

responsibilities for helping care for a sick family member or for escorting a younger sibling home. Or a pupil with a history of severe behavioural problems may be required as a part of a Youth Offending Team contract or court order to attend specific sessions which may fall at the time of a proposed detention. Close liaison between schools, child, family and partner agencies is essential.

Family holidays and other commitments:

6.21 When setting weekend detentions or detentions on non-teaching days, schools should take into account holidays or other commitments that have been pre-planned. It would not be reasonable to expect a pupil to miss a family wedding, an extra-curricular activity that their parents have paid for in advance, or a sporting/cultural event that the family has tickets for, to name a few examples. Further, if the non-teaching day on which the proposed detention is to be held is at the end of the school term, the family may have arranged to start their holiday on that day. It would be unreasonable to expect the family to alter their travel arrangements.

Nutrition:

6.22 Although 24 hours' notice is no longer a legal requirement for lunchtime detentions, schools should continue to be sensitive to the personal circumstances of pupils expected home for lunch and should ensure that lunchtime detentions are not of such duration that a pupil misses the opportunity to eat (not to do so would affect the reasonableness, and thus potentially the legality, of the sanction).

6.23 The fact that lunchtime detentions may now be given without 24 hours' notice makes it particularly important for schools to ensure they are clear which pupils are expected home for lunch. In particular, schools usually require that parents inform them in writing if a pupil will be going home for lunchtime as a routine. In such circumstances schools may find it helpful to develop guidelines which allow pupils to be in detention for a certain period of time before releasing them to go home for lunch and get back in time for afternoon school. Alternatively – given the complexity of managing this – some schools adopt a standard '5 minute' lunchtime detention for pupils who go home to lunch and as needed defer a longer detention to after school the next day or to a weekend / non-teaching day.

6.24 It is essential that staff and pupils get a reasonable break at lunchtime to eat, drink and use toilets. Lunchtime detentions should not be of a duration that would deprive any individual staff member or pupil from their proper entitlement to these things.

Medical or religious circumstances:

6.25 Schools will need to respond to specific circumstances affecting individual pupils, for example a requirement to take medication at specific times or the need for space for religious observance.

Deciding how long the detention should be

6.26 School behaviour policies, developed with the whole school community need to set out standard procedures. For example, a detention to complete outstanding coursework may need to be longer than a detention for an incident of aggression which may achieve its purpose within a shorter time. Questions to consider include:

- Is the length reasonable in the light of the seriousness of the misbehaviour?
- Is the length reasonable to achieve a specific outcome?
- Is the length proportionate compared to other misbehaviour?
- If the detention is outside normal school hours, will it keep the pupil back beyond a time that might be regarded as reasonable (e.g. in terms of transport, late hours or implications for meal times)?

What to do if a pupil walks out of a detention

6.27 Generally, a requirement to remain in the classroom or elsewhere in the school should not be enforced by use of force, although failure to comply may be treated as a disciplinary offence. The only circumstances in which using force would be justifiable would be where the staff involved judged that allowing the pupil to leave would:

- Entail serious risks to the pupil's safety (taking account of their age and understanding), to the safety of other pupils or staff or of serious damage to property; and/or
- Lead to behaviour that prejudiced good order and discipline. In itself, refusal to remain in a particular place would not be enough to justify use of force. Staff would have to be convinced that, if allowed to leave, the pupil would seriously disturb the running of the school by, for example, disrupting other classes.

6.28 It is best to let a staff member deal with the pupil after leaving the room – the first aim being to point out the need to return to the detention, but the second position being to make clear that the pupils will be held to account for the action they have taken.

6.29 It is important to make clear to other pupils that the pupil has made choices and will be held to account for those choices. The purpose of this is to calm down other pupils.

6.30 A further and higher level sanction may be imposed on the pupil. This higher level sanction might be a fixed period exclusion, imposed by the Head Teacher.

7. Confiscation (including retention and disposal) of inappropriate items

Key points of legislation

- Schools can include confiscation of pupils' property as a disciplinary sanction in their behaviour policy.
- To be lawful, confiscation must be a reasonable sanction in the circumstances of the particular case.
- Decisions about retention and disposal of confiscated property must also be reasonable in the circumstances of the particular case.

New provisions under the EIA 2006 – Section 94

- The Education and Inspections Act 2006 introduces a specific statutory defence for school staff who have reasonably confiscated pupils' property.

What the law now provides

7.1 The EIA 2006 provides two things. First, the overall power to enforce disciplinary penalties, described in Part 5 of this guidance, would cover the use of confiscation as a disciplinary penalty (sanction). That includes seizure and also, as appropriate, the retention and disposal of certain items. As with other sanctions, the sanction of confiscation must be applied in a reasonable and proportionate way. But it would be entirely proper for a school to include confiscation as one of the disciplinary measures that might be applied as part of the school's behaviour policy. Discussions with pupils at the time of development of the whole school behaviour policy need to include reference to what the policy says regarding confiscation of property.

7.2 Second, the Act provides a member of staff with a specific statutory defence if he or she proves that the seizure, retention or disposal was lawful. Unauthorised seizure, retention or disposal of a pupil's property interferes with that pupil's rights under Article 1 of the First Protocol to the European Convention on Human Rights, which guarantees entitlement to peaceful enjoyment of one's possessions. It also interferes with the pupil's rights under domestic law. A consequence of this is that a teacher or other member of staff may only seize, retain or dispose of a pupil's property if he or she has authority to do it. The Education and Inspections Act 2006 provides that authority when the confiscation is a lawful disciplinary penalty. It is for the staff member confiscating to show the legality of the confiscation since he or she has made the decision to interfere with the property.

7.3 For the confiscation to be lawful it must be proportionate, necessary in a democratic society and in pursuance of a legitimate aim. Generally the aim pursued in confiscating property is maintaining an environment conducive to learning, one which safeguards the rights of other pupils to be educated. However, proportionality is very relevant, and that in turn depends on the value of the property. If a pupil is playing music loudly on a personal music player, it is likely that total destruction of the device after it has been seized is disproportionate, which would make such a step unlawful. Taking the device and returning it at the end of the school day is much

more likely to be a proportionate response. On the other hand, if a paper ball or piece of chewing gum has been confiscated, disposal of the item is likely to be a proportionate response.

7.4 A separate legal provision in the Violent Crime Reduction Act 2006, inserted in the Education Act 1996, when commenced (see Section 3) would make it lawful for certain school staff to search suspected pupils for knives or other weapons without consent. It also deals with the seizure of items found during the course of a search. Associated guidance sets out that schools can also screen pupils without suspicion using electronic means such as wands or arches.

7.5 Schools should note however that the legal power for school staff to search pupils currently only extends to weapons. A pupil might reasonably be asked to turn out their pockets or to hand over an item such as a personal music player that is causing disruption, and the school might use its legal power to discipline if the pupil unreasonably refuses to cooperate. However, if it is felt necessary for a pupil to be searched for (say) illegal drugs or stolen property, that should be done by the police rather than school staff using the appropriate powers available to them.

7.6 Schools should also note that, while confiscation of a mobile phone is legitimate, searching through a phone or accessing text messages without the pupil's permission is not. In some circumstances it may be reasonable for a member of staff to ask a pupil to reveal a message for the purpose of establishing whether cyberbullying has occurred, for instance, but if the pupil refuses then the member of staff should not enforce the instruction. The staff member can, however, legitimately issue a disciplinary penalty for failure to follow a reasonable instruction.

What this means for schools in practical terms

What criteria for confiscation might be used by a school?

7.7 These criteria are for individual schools to determine in the light of their policies on school uniform or behaviour generally.

They might include:

- An item poses a threat to others: for example a laser pen is being used to distract and possibly harm other pupils or staff.
- An item poses a threat to good order for learning: for example a pupil uses a personal music player in class.
- An item is against school uniform rules: for example a pupil refuses to take off a baseball cap on entering a classroom.
- An item poses a health or safety threat: for example a pupil wearing large ornate rings in PE may present a safety threat to other pupils.
- An item which is counter to the ethos of the school: for example material which might cause tension between one community and another.

- An item which is illegal for a child to have: for example racist or pornographic material. Protocols for how to deal with such items can be agreed with local police.

Confiscating items of clothing or jewellery – risks for schools to bear in mind

7.8 Schools should take particular care when deciding whether to confiscate items of clothing or jewellery. In particular, they should have appropriate regard to whether the item in question has religious or cultural significance to the pupil and should avoid physical contact or interference with pupils' clothing of a kind that might give rise to child abuse allegations. In order to minimise such risks, schools should ensure that if an item of clothing or jewellery is confiscated, this is done by a staff member of the same gender as the pupil and with another staff member present where possible. Confiscation of any item that would leave the pupil only partly dressed must be avoided.

What to do with confiscated items

7.9 Schools should keep records of confiscated items and the grounds for the action, so that they may justify them later if challenged. Some schools write a note in the pupil planner to inform the pupil's parent that an item has been confiscated, and the note is countersigned on return.

7.10 Pupils have a right to expect that confiscated items, especially those of monetary or emotional value, will be stored safely until they can be returned. For items of obvious value, schools should ensure appropriate storage arrangements (for example, in a safe, the finance office, or the Head Teacher's office). All reasonable steps should be taken to make such arrangements secure. If similar items have been confiscated from several pupils – such as mobile phones or personal music players for example – schools should take care to ensure that they are clear which item belongs to which pupil.

7.11 For some items school staff should seek specialist advice – for example suspected illegal drugs or items which might be used as weapons. Schools, in liaison with local authorities, should develop protocols in partnership with police, Youth Offending Teams and other specialist agencies to cover such issues and to ensure that schools have access to specialist support and advice if an incident occurs.

Mobile communication technologies (including mobile phones and wireless technologies)

7.12 Schools should have a clear policy on the use and possession of mobile phones. This should include clear statements about powers of confiscation, taking account of:

- The safety of pupils on the journey home and parental concerns over this issue – schools should return confiscated phones before the pupil leaves the school premises, if these are relevant factors.

- Examination board and school rules about the use of such technologies in examination settings, including supervised coursework.
- The unacceptability of pupils using phones or other technological equipment to humiliate or bully other members of the school community (e.g. sending abusive text messages, cyberbullying or using camera phones for so-called “happy slapping”, i.e. recording and transmitting of images of abuse).
- Whether, and in what circumstances, the school judges it appropriate to inform parents about the confiscation of such items.

For how long should items be confiscated?

7.13 In most cases, confiscation is a sufficient sanction, and return of the item at the end of the lesson, school session, or school day is adequate time to reinforce the school rule. This also limits the chance of problems with loss of items while in the care of school staff.

7.14 There may be some instances when the school chooses not to return an item to the pupil:

- Items of no value, such as an inappropriate message scrawled on a piece of paper, may simply be disposed of. However, schools should keep in mind that some items of seemingly no value may have emotional value to the child – staff should establish if this is the case before deciding whether or not to dispose of the confiscated item.
- Items of value which the pupil should not have brought to school or has misused in some way might – if the school judges this appropriate and reasonable – be stored safely at the school until a responsible family adult can come to retrieve them. For example, there is no acceptable reason why a pupil of compulsory school age should bring a cigarette lighter to school. In such circumstances retention is a reasonable step both to protect property and to enable discussion about whether the pupil is smoking and how this can be addressed.
- Other items which the pupil should not have had in their possession – particularly of an unlawful or hazardous nature – may be given by the school to an external agency for disposal or further action as necessary. This should always be followed by a letter to the parents confirming that this has taken place and the reasons for such action.

8. Parenting Orders and Parenting Contracts

Key points of legislation

- Under the Anti-Social Behaviour Act 2003 (Sections 19-24) relevant education institutions are able to enter into contracts with parents to address their children's poor behaviour or attendance at school or apply to a court for a parenting order on the same issues which has greater force in allowing sanctions for a breach of the order.
- Applications for parenting orders and contracts have to be within specific time periods set out in legislation.

New provisions under the EIA 2006 – Sections 97-99

- Section 97 extends the use of parenting contracts so that they may be used for serious misbehaviour as well as exclusion. It also clarifies that the behaviour in question can take place at school, or elsewhere if reasonable for the school to regulate it.
- Section 98 allows schools to apply for parenting orders in addition to local authorities. It also allows parenting orders to be applied for cases of serious misbehaviour where exclusion might have been warranted rather than solely cases where exclusion actually occurred.
- Section 99 adds a requirement for courts to take into account the failure of parents to attend a reintegration interview in considering whether to issue a parenting order. It also allows regulations to set out arrangements for 'cross-border' or 'cross-school' pupils.
- It is proposed that the revised regulations will set out the following extra provisions:

Where the pupil lives in one authority but attends school at another, the local authority where the pupil attends school will have the power to apply for a parenting order or enter into a parenting contract. The authority of residence could do so with agreement from the educating authority. In the case of a permanently excluded pupil the authority of residence would have the power to apply for a parenting order or enter into a parenting contract. In this case the educating authority may also do so with the agreement from the authority of residence.

Where a permanently excluded pupil has moved schools the new school will have the power to apply for parenting orders or enter into parenting contracts. The original school may also do so with the agreement of the new school.

Where more than one body has the power to apply for parenting orders or enter into parenting contracts (e.g. school and local authority) the one proposing to exercise the power must consult with each other body.

Where an organisation is proposing to use these powers they must request information from any other body which may be able to also use the powers to decide whether this is the best course of action, to avoid multiple applications or contracts and to decide which of an order or a contract is preferable.

The costs of the parenting order or contract would be borne by the body making the application or entering into the contract although these may be recovered from another body by agreement. E.g. a school may incur the costs but these will be recovered from the local authority.

8.1 The Welsh Assembly Government introduced parenting contracts for truancy and exclusion and parenting orders for exclusion in May 2006 as another intervention available to promote better school attendance and behaviour. The primary legislation is contained in the Anti-Social Behaviour Act 2003 with further detail set out in The Education (Parenting Orders) (Wales) Regulations 2006. Parenting orders for truancy were already available under Section 8 of the Crime and Disorder Act 1998. The guidance on the current legal provisions is set out in Annex 3.i of Inclusion and Pupil Support guidance.

8.2 The measures were intended to help parents to fulfil their responsibilities to ensure their children regularly attend school and behave well when they get there, providing support as appropriate.

The new powers

8.3 Under the new powers schools would be able to apply for parenting orders directly to the Magistrates' Court. Currently this power is only available to local authorities.

8.4 The new powers would allow schools and local authorities to offer parenting contracts to parents at an earlier stage where pupils have misbehaved in school i.e. the criteria that the pupil would have to have been excluded would no longer apply.

8.5 The same is true of parenting orders which could be applied for where there had been serious misbehaviour which would warrant exclusion rather than requiring there to have been an exclusion, as at present.

8.6 Under the new legislation a parenting contract may therefore be offered:

- In cases where a pupil has failed to attend regularly at the school at which he is registered or the alternative provision made for him; or where a child is excluded from school, whether for a fixed term or permanently; or
- As an early intervention in response to emerging behaviour problems.

8.7 Where being offered as an early intervention, schools and LAs need to ascertain that there has been misbehaviour sufficient to trigger the statutory

parenting contract. Sufficient misbehaviour is where the school or LA have reason to believe that a pupil has behaved in such a way as to:

- Cause, or be likely to cause, significant disruption to the education of other pupils or significant detriment to the welfare of that pupil or other pupils or to the health or safety of any staff; or
- Form part of a pattern of behaviour which (if continued) could lead to the pupil being excluded.

8.8 The behaviour in question can take place at school, or elsewhere if reasonable for the school to regulate it. What is reasonable will depend on all the circumstances and will be set out in the school's behaviour policy. For example, it may be reasonable for schools to regulate pupil's behaviour: outside school on school business (e.g. on school trips or at sporting fixtures); where there is a clear link between that behaviour and maintaining discipline at the school (e.g. shoplifting in school uniform after school); and, in the vicinity of, or on the journey to and from, school. It may not be reasonable for the school to regulate behaviour where the misbehaviour is more removed from the life of the school, for example, where a pupil has had a fight during a weekend with a pupil from another school. See Part 3 of this section for more details on schools' role in monitoring behaviour outside the school.

Cross-border aspects

8.9 The proposed regulations set out the following requirements and conditions. These elements are in secondary rather than primary legislation and as such are able to be amended for Wales only.

8.10 Where the pupil attends school in one LA and lives in another, the LA where the pupil attends school should normally take the lead in any LA-level action necessary to improve the pupil's attendance or behaviour. In such cases, the LA where the pupil lives and the LA where he or she attends school will need to work closely together. If a parenting order is made, consideration should be given to referring the parent to a parenting programme in the LA where the pupil lives.

8.11 Where a pupil is excluded the LA where the pupil lives would normally take the lead. In these circumstances if any action is school-led it would be expected that this would be undertaken by the school to which the pupil is moving rather than the original school.

8.12 It is important that parents are not subject to multiple parenting contracts or orders and that the decision on the most appropriate approach to take is made with all relevant information. For this reason the proposed regulations set out a requirement for schools or LAs pursuing contracts or orders to request information from each other when they are considering taking this approach.

8.13 LAs are advised to draw up protocols setting out the basis under which cross-border and inter-school working will take place.

9. Reintegration Interviews

Key points of legislation

New provisions under the EIA 2006 – Section 102

- The Welsh Assembly Government may make regulations to require Head Teachers of schools to request parents of pupils excluded for a fixed-term to attend a reintegration interview at the school with the Head Teacher or any other person authorised by the Head Teacher.
- The regulations may make provision about the time limits for the reintegration interview, the procedure for arranging the interview and the notification of the request to the parent. It is proposed that the regulations would set out that:

The request for interviews would apply to all fixed-term exclusions for primary-aged pupils but only fixed-term exclusions of six or more days for secondary-aged pupils.

Reintegration interviews would need to take place within 15 school days of the last day of the exclusion period.

Head Teachers would be required to inform the parents of all relevant details of the reintegration interview.

A request for parents to attend a reintegration interview is not required if the first day of exclusion is within the last 10 days of the school year or the pupil is expected to leave school for a reason unconnected with his or her behaviour before the end of the required 15 day period for the interview.

Purpose of the new legislation on Reintegration Interviews

9.1 Many schools carry out reintegration interviews for parents of excluded pupils as a matter of good practice, providing the Head Teacher (or any other person authorised by the Head Teacher) with the opportunity to discuss with parents or carers how best the pupil can return to school and any further support they need to be successful. The Welsh Assembly Government considers that reintegration interviews would represent an additional important element to ensure that more parents engage with schools in addressing their child's behaviour and for that reason wishes to make it compulsory for schools to request parents to attend reintegration interviews following fixed-term exclusions.

9.2 It is proposed that from January 2010, Section 102 of the Education and Inspections Act 2006 would make these interviews mandatory in that schools will have to offer them and parents will be expected, though not required, to attend them. The new requirement will apply to the parents of a primary aged pupil following a fixed period exclusion of any length, and of a secondary aged pupil of more than five days.

9.3 The interview would provide an opportunity to:

- Emphasise the importance of parents working with the school to take joint responsibility for their child's behaviour.
- Discuss how behaviour problems can be addressed.
- Explore wider issues and any circumstances that may be affecting the child or young person's behaviour.
- Reach agreement on how the child's education should continue, how best they can be reintegrated and what measures could be put in place to prevent further misbehaviour.

9.4 Local authorities will monitor schools to ensure that they are offering these interviews to parents. A parent's failure to attend will be a factor which will be taken into account by the courts in deciding whether or not to impose a parenting order on the parent (see Part 8 above). If a parent does not attend, however, this should not affect the child's return to school: an exclusion cannot be extended because a parent did not attend a reintegration interview – this would be to penalise the child for the action (or inaction) of the parent.

Detailed aspects of the proposed regulations

9.5 If a pupil is excluded before the beginning of the afternoon session of a school day, then that day would be counted as the first day of the exclusion.

9.6 The regulations would only apply to a parent who resides with the pupil.

9.7 The Head Teacher must give notice in writing to the parent of the following matters:

- The date, time and duration of the reintegration interview.
- The purpose of the interview.
- The duty of the court, in deciding whether to make a parenting order in respect of a parent under Section 20 of the Anti-social Behaviour Act 2003 to take into account a failure by the parent without reasonable excuse to attend a reintegration interview when requested to do so. (See Part 8 above).

9.8 The notice must be given no later than six school days before the date of the reintegration interview.

9.9 The interview must be held on a school day within the period beginning with the first day to which the exclusion relates and ending with the fifteenth school day falling after the last day to which the exclusion relates. This would be whether or not that school day falls in the same term. If the Head Teacher and parent agree the interview may be held on a day within this period which is not a school day.

9.10 Before giving the notice the Head Teacher (or any other person authorised by the Head Teacher) must use reasonable endeavours to arrange the interview for a date and time (within the period) convenient for the parent.

Annex 1.A: Education and Inspections Act 2006, Discipline, Behaviour and Exclusion (Sections 88 to 102)

Part 7 Discipline, behaviour and exclusion

Chapter 1 School Discipline

Certain schools required to have behaviour policy

88 Responsibility of governing body for discipline

(1) The governing body of a relevant school must ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.

(2) In particular, the governing body—

(a) must make, and from time to time review, a written statement of general principles to which the head teacher is to have regard in determining any measures under section 89(1), and

(b) where they consider it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters—

(i) shall notify him of those measures or matters, and

(ii) may give him such guidance as they consider appropriate.

(3) Before making or revising the statement required by subsection (2)(a) the governing body must consult (in such manner as appears to them to be appropriate)—

(a) the head teacher,

(b) such other persons who work at the school (whether or not for payment) as it appears to the governing body to be appropriate to consult,

(c) parents of registered pupils at the school, and

(d) registered pupils at the school.

(4) In exercising their functions under subsection (2) the governing body must have regard to any guidance given from time to time—

(a) in relation to England, by the Secretary of State, and

(b) in relation to Wales, by the Assembly.

(5) In this section and section 89—

- “relevant school” means—

(a)

a community, foundation or voluntary school,

(b)

a community or foundation special school,

(c)

a maintained nursery school,

(d)

a pupil referral unit, or

(e)

a school approved by the Secretary of State or the Assembly under section 342 of EA 1996 (approval of non-maintained special schools);

- “governing body”, in relation to a school approved by the Secretary of State or the Assembly under section 342 of EA 1996, means the proprietor of the school.

89 Determination by head teacher of behaviour policy

(1) The head teacher of a relevant school must determine measures to be taken with a view to—

(a) promoting, among pupils, self-discipline and proper regard for authority,

(b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils,

(c) securing that the standard of behaviour of pupils is acceptable,

(d) securing that pupils complete any tasks reasonably assigned to them in connection with their education, and

(e) otherwise regulating the conduct of pupils.

(2) The head teacher must in determining such measures—

(a) act in accordance with the current statement made by the governing body under section 88(2)(a), and

(b) have regard to any notification or guidance given to him under section 88(2)(b).

(3) The standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by the governing body.

(4) The measures which the head teacher determines under subsection (1) must include the making of rules and provision for disciplinary penalties (as defined by section 90).

(5) The measures which the head teacher determines under subsection (1) may, to such extent as is reasonable, include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.

(6) The measures determined by the head teacher under subsection (1) must be publicised by him in the form of a written document as follows—

(a) he must make the measures generally known within the school and to parents of registered pupils at the school, and

(b) he must in particular, at least once in every school year, take steps to bring them to the attention of all such pupils and parents and all persons who work at the school (whether or not for payment).

Enforcement of discipline (including compliance with instructions)

90 Meaning of “disciplinary penalty”

(1) In this Chapter, “disciplinary penalty” means a penalty imposed on a pupil, by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him (whether because he fails to follow a rule in force at any such school or an instruction given to him by a member of its staff or for any other reason).

(2) In subsection (1), the reference to conduct, in relation to a pupil, includes—

(a) conduct which occurs at a time when the pupil is not on the premises of a school and is not under the lawful control or charge of a member of the staff of a school, but only to the extent that it is reasonable for the school imposing the penalty to regulate the pupil’s conduct at such a time, and

(b) conduct which consists of a failure by the pupil to comply with a penalty previously imposed on him.

91 Enforcement of disciplinary penalties: general

(1) This section applies in relation to a disciplinary penalty imposed on a pupil by any school at which education is provided for him, other than a penalty which consists of exclusion.

(2) The imposition of the disciplinary penalty is lawful if the following three conditions are satisfied.

(3) The first condition is that the imposition of the penalty on the pupil—

(a) is not in breach of any statutory requirement or prohibition, and

(b) is reasonable in all the circumstances.

(4) The second condition is that the decision to impose the penalty on the pupil was made—

(a) by any paid member of the staff of the school, except in circumstances where the head teacher has determined that the member of staff is not permitted to impose the penalty on the pupil, or

(b) by any other member of the staff of the school, in circumstances where the head teacher has authorised the member of the staff to impose the penalty on the pupil and it was reasonable for the head teacher to do so.

(5) The third condition is that the decision to impose the penalty was made, and any action taken on behalf of the school to implement the decision was taken—

(a) on the premises of the school, or

(b) elsewhere at a time when the pupil was under the lawful control or charge of a member of staff of the school.

(6) In determining for the purposes of subsection (3)(b) whether the imposition of the penalty is reasonable, the following matters must be taken into account—

(a) whether the imposition of the penalty constitutes a proportionate punishment in the circumstances of the case, and

(b) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it (or of which he ought reasonably to be aware) including in particular—

(i) the pupil's age,

(ii) any special educational needs he may have,

(iii) any disability he may have, and

(iv) any religious requirements affecting him.

(7) For the purposes of subsection (6)(b)(iii) a pupil has a disability if he has a disability for the purposes of the Disability Discrimination Act 1995 (c. 50).

(8) A determination or authorisation by the head teacher for the purpose of subsection (4)(a) or (b) may be made—

(a) in relation to a particular member of staff or members of staff of a particular description;

(b) in relation to a particular disciplinary penalty or disciplinary penalties of a particular description;

(c) in relation to a particular pupil or pupils of a particular description or generally in relation to pupils.

(9) Where the disciplinary penalty is detention outside school sessions, this section has effect subject to section 92.

(10) Nothing in this section authorises anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548 of EA 1996.

(11) This section is not to be construed as restricting what may lawfully be done apart from this section.

(12) In this section, “paid member of the staff”, in relation to a school, means any member of the staff who works at the school for payment, whether under a contract of employment or a contract for services; and, for this purpose, it is immaterial whether the contract of employment or contract for services is made with the governing body or proprietor of the school or with any other person.

92 Enforcement of disciplinary penalties: detention outside school sessions

(1) This section applies in relation to a disciplinary penalty which consists of the detention of a pupil outside school sessions.

(2) In relation to a disciplinary penalty to which this section applies, subsection (2) of section 91 has effect as if it required the following additional conditions to be satisfied, as well as the conditions set out in subsections (3) to (5) of that section.

(3) The additional conditions are—

(a) that the pupil has not attained the age of 18,

(b) that the head teacher of the school has previously determined, and has made generally known within the school and to parents of registered pupils at the school, that the detention of pupils outside school sessions is one of the measures that may be taken with a view to regulating the conduct of pupils,

(c) that the detention is on a permitted day of detention, and

(d) that the pupil’s parent has been given at least 24 hours’ notice in writing that the detention is due to take place.

(4) The additional conditions set out in subsection (3)(a), (c) and (d) do not apply in the case of a detention during a break between school sessions on the same day.

(5) If arrangements have to be made for the pupil to travel to school for the purposes of the detention or to travel home after the detention, then in determining for the purposes of the condition in subsection (3) of section 91 whether the imposition of the detention is reasonable, subsection (6) of that section is to be read as if it also required the question whether suitable travelling arrangements can reasonably be made by his parent to be taken into account.

(6) Section 572 of EA 1996, which provides for the methods by which notices may be served under that Act, does not preclude a notice under subsection (3)(d) from being given to the parent by any effective method.

(7) This section is not to be construed as restricting what may lawfully be done apart from this section.

(8) In this section, “permitted day of detention”, in relation to a pupil, means any of the following days—

(a) a school day, other than a day on which the pupil has leave to be absent, and for this purpose “leave” means leave granted by a person authorised to do so by the governing body or proprietor of the school;

(b) a Saturday or Sunday during a school term, other than a Saturday or Sunday which falls during, or at a weekend immediately preceding or immediately following, a half-term break;

(c) a day (whether or not during a school term) which is set aside wholly or mainly for the performance of duties by members of the staff of the school other than teaching, other than such a day which is excluded by regulations made—

(i) in relation to England, by the Secretary of State, and

(ii) in relation to Wales, by the Assembly.

Use of reasonable force

93 Power of members of staff to use force

(1) A person to whom this section applies may use such force as is reasonable in the circumstances for the purpose of preventing a pupil from doing (or continuing to do) any of the following, namely—

(a) committing any offence,

(b) causing personal injury to, or damage to the property of, any person (including the pupil himself), or

(c) prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise.

(2) This section applies to a person who is, in relation to a pupil, a member of the staff of any school at which education is provided for the pupil.

(3) The power conferred by subsection (1) may be exercised only where—

(a) the member of the staff and the pupil are on the premises of the school in question, or

(b) they are elsewhere and the member of the staff has lawful control or charge of the pupil concerned.

(4) Subsection (1) does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment within the meaning of section 548 of EA 1996.

(5) The powers conferred by subsection (1) are in addition to any powers exercisable apart from this section and are not to be construed as restricting what may lawfully be done apart from this section.

(6) In this section, “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.

Confiscation from pupils

94 Defence where confiscation lawful

(1) This section applies where, as a disciplinary penalty—

(a) an item which a pupil has with him or in his possessions is seized, and

(b) the item is retained for any period or is disposed of.

(2) A person who seizes, retains or disposes of the item is not liable in any proceedings in respect of—

(a) the seizure, retention or disposal (as the case may be), or

(b) any damage or loss which arises in consequence of it,

if he proves that the seizure, retention or disposal (as the case may be) was lawful (whether or not by virtue of section 91).

(3) Nothing in this section applies where an item is seized under section 550AA of EA 1996 (provision as to what is to be done with such an item being made by that section).

(4) This section is not to be construed as preventing any person relying on any defence on which he is entitled to rely apart from this section.

Interpretation of Chapter 1

95 Interpretation of Chapter 1

In this Chapter—

- “disciplinary penalty” has the meaning given by section 90;
- “member of the 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 a pupil, includes any goods over which he appears to have control.

Repeals

96 Repeals consequential on provisions of Chapter 1

The following provisions (which are superseded by sections 88 to 93) cease to have effect—

(a) sections 550A and 550B of EA 1996;

(b) section 61 of SSFA 1998.

Chapter 2 Parental responsibilities and excluded pupils

Parenting contracts and parenting orders

97 Parenting contracts

(1) Section 19 of the Anti-social Behaviour Act 2003 (c. 38) (parenting contracts in cases of exclusion from school or truancy) is amended as follows.

(2) After subsection (1) insert—

“(1A) This section also applies where a local education authority or the governing body of a relevant school have reason to believe that a child who is a registered pupil at a relevant school has engaged in behaviour connected with the school which—

(a) has caused, or is likely to cause—

(i) significant disruption to the education of other pupils, or

(ii) significant detriment to the welfare of the child himself or of other pupils or to the health or safety of any staff, or

(b) forms part of a pattern of behaviour which (if continued) will give rise to a risk of future exclusion from the school on disciplinary grounds.

(1B) For the purposes of subsection (1A) the child’s behaviour is connected with the school to the extent that it consists of—

(a) conduct at the school, or

(b) conduct elsewhere in circumstances in which it would be reasonable for the school to regulate his conduct.”

(3) In subsection (6), after “subsection (1)” insert “or (1A)”.

(4) In the heading to the section, and in the italic cross-heading immediately before the section, for “exclusion from” substitute “misbehaviour at”.

98 Parenting orders in case of exclusion or misbehaviour

(1) Section 20 of the Anti-social Behaviour Act 2003 (parenting orders in case of exclusion from school) is amended as follows.

(2) In subsection (1), for “This section” substitute “Subsection (2)”.

(3) In subsection (2), for “A local education authority” substitute “A relevant body”.

(4) After subsection (2) insert—

“(2A) A relevant body may also apply to a magistrates' court for a parenting order in respect of a pupil at a relevant school if—

(a) it appears to the body making the application that the pupil has engaged in behaviour which would warrant the exclusion of the pupil from the school on disciplinary grounds for a fixed period or permanently, and

(b) such conditions as may be prescribed in regulations made by the appropriate person are satisfied.

(2B) For the purposes of subsection (2A), there are to be disregarded—

(a) any practice restricting the use of exclusion at a particular school, or at schools of a particular description, and

(b) any grounds that might exist for not excluding the pupil, to the extent that those grounds relate to his education or welfare after exclusion.”

(5) For subsection (3) substitute—

“(3) If an application is made under subsection (2) or (2A), the court may make a parenting order in respect of a pupil if it is satisfied—

(a) in the case of an application under subsection (2A), that the pupil has engaged in behaviour of the kind mentioned in that subsection, and

(b) in any case, that the making of the order would be desirable in the interests of improving the behaviour of the pupil.”

(6) After subsection (8) insert—

“(9) In this section “a relevant body” means—

(a) a local education authority,

(b) the governing body of any relevant school in England at which the pupil to whom the application relates is a pupil or from which he has been excluded.”

(7) In the heading, after “exclusion” insert “or potential exclusion”.

99 Parenting contracts and parenting orders: further provisions

(1) The Anti-social Behaviour Act 2003 (c. 38) is amended as follows.

(2) In section 21 (parenting orders: supplemental)—

(a) in subsection (1)(a), after “subsection (1)” insert “or (1A)”,

(b) after subsection (1) insert—

“(1A) In deciding whether to make a parenting order under section 20, a court must also take into account any failure by the parent without reasonable excuse to attend a reintegration interview under section 102 of the Education and Inspections Act 2006 (reintegration interview in case of fixed period exclusion) when requested to do so in accordance with regulations under that section.”,

(c) omit subsection (4), and

(d) in subsection (5), after “authorities,” insert “governing bodies”.

(3) After section 22 insert—

“22A Parenting contracts and parenting orders: further provisions

(1) The appropriate person may by regulations make further provision about the exercise by local education authorities and the governing bodies of relevant schools of their functions relating to—

(a) parenting contracts under section 19, and

(b) parenting orders under section 20.

(2) The provision that may be made under subsection (1) includes—

(a) provision limiting the power of a local education authority to enter into a parenting contract, or apply for a parenting order, in prescribed cases where—

(i) the school by reference to which the contract is entered into or the application is made is not in the area of the authority, or

(ii) the child by reference to whom the contract is entered into or the application is made does not reside in that area;

(b) provision as to which governing body may apply for a parenting order in cases where a pupil has been admitted to a relevant school after being permanently excluded from another;

(c) provision requiring one local education authority or governing body to consult with another before taking any prescribed step;

(d) provision authorising or requiring the provision of information by one local education authority or governing body to another;

(e) provision as to how the costs associated with parenting contracts entered into by local education authorities or governing bodies of relevant schools or the costs associated with the requirements of parenting orders under section 20 (including in each case the costs of providing counselling or guidance programmes) are to be met.

(3) In subsection (2), “prescribed” means prescribed by regulations made by the appropriate person under subsection (1).”

(4) In section 24 (interpretation)—

(a) for “sections 19 to 21” substitute “sections 19 to 22A”, and

(b) after the definition of “child of compulsory school age” insert—

““governing body”, in relation to a relevant school which is an Academy, a city technology college or a city college for the technology of the arts, means the proprietor of the school, as defined by section 579(1) of the 1996 Act;”.

Excluded pupils

100 Duty of governing body or proprietor where pupil excluded for fixed period

(1) Except in prescribed cases, the governing body of a relevant school in England must make arrangements for the provision of suitable full-time education for pupils of compulsory school age who are excluded from the school for a fixed period on disciplinary grounds.

(2) The education referred to in subsection (1) must be provided from a day that, in relation to the pupil concerned, is determined in accordance with regulations.

(3) The education must not be provided at the school unless it is provided there in pursuance of arrangements which—

(a) are made jointly with the governing body of at least one other relevant school, and

(b) make provision for the education of pupils excluded on disciplinary grounds from any of the schools that are parties to the arrangements.

(4) In determining what arrangements to make under subsection (1) in the case of any pupil, a governing body must have regard to any guidance given from time to time by the Secretary of State.

(5) In this section—

- “governing body”, in relation to a relevant school which is an Academy, a city technology college or a city college for the technology of the arts, means proprietor;
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made by the Secretary of State;
- “relevant school” does not include a pupil referral unit;
- “suitable full-time education”, in relation to a pupil, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

101 Duty of local education authority in relation to excluded pupils

(1) Section 19 of EA 1996 (exceptional provision of education in pupil referral units or elsewhere) is amended as follows.

(2) After subsection (3) insert—

“(3A) In relation to England, the duty imposed by subsection (1) includes, except in prescribed cases, a duty to make arrangements for the provision of suitable full-time education at school or otherwise than at school for—

(a) children of compulsory school age who have been permanently excluded on disciplinary grounds from relevant schools or pupil referral units, and have not subsequently been admitted to schools other than pupil referral units, and

(b) children of compulsory school age who are excluded for a fixed period on disciplinary grounds from any pupil referral unit maintained by the authority.

(3B) The education referred to in subsection (3A) must be provided from a day that, in relation to the pupil concerned, is determined in accordance with regulations.”

(3) For subsection (6) substitute—

“(6) In this section—

- “relevant school” means—
 - (a)
a maintained school,
 - (b)
an Academy,
 - (c)
a city technology college, or

(d)

a city college for the technology of the arts;

- “suitable education”, in relation to a child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have (and “suitable full-time education” is to be read accordingly).”

102 Reintegration interviews

(1) Regulations may require the head teacher of a relevant school in prescribed cases to request any parent of a temporarily excluded pupil to attend an interview (“a reintegration interview”) at the school with the head teacher of the school or any other person authorised by the head teacher.

(2) The purpose of a reintegration interview is to assist the reintegration of the pupil after the period of exclusion and to promote the improvement of his behaviour.

(3) Regulations under this section may make provision about the time within which any reintegration interview must be held, the procedure for arranging the interview and the notification of any request to the parent.

(4) In this section—

- “prescribed” means prescribed by regulations;
- “regulations” means regulations made—

(a)

in relation to England, by the Secretary of State, or

(b)

in relation to Wales, by the Assembly;

- “a temporarily excluded pupil” means a pupil who is or has been excluded on disciplinary grounds for a fixed period.

Annex 1.B: Learner Travel (Wales) Measure 2008, Travel Behaviour Code (Section 12-14)

12 Travel behaviour code

- (1) The Welsh Ministers must make a travel behaviour code.
- (2) A travel behaviour code is a code setting out the standards of behaviour required of learners to whom subsection (3) applies while they are travelling to and from the relevant places where they receive education or training (whether or not they take advantage of travel arrangements made by a local authority).
- (3) This subsection applies to—
 - (a) learners who have not attained the age of 19;
 - (b) learners who have attained the age of 19 who have begun a course of education or training before attaining that age and continue to attend that course;
 - (c) such other learners as may be prescribed.
- (4) The Welsh Ministers must review the travel behaviour code from time to time.
- (5) The Welsh Ministers must publish the code.
- (6) Before making or revising a code the Welsh Ministers must consult such persons as they consider appropriate.

13 Enforcement of travel behaviour code: pupils at relevant schools

- (1) Section 89 of the Education and Inspections Act 2006 is amended as follows.
- (2) In subsection (2), after “The head teacher” insert “of a relevant school in England”.
- (3) After subsection (2) insert—

“(2A) The head teacher of a relevant school in Wales must in determining such measures—

 - (a) act in accordance with the current statement made by the governing body under section 88(2)(a),
 - (b) have regard to any notification or guidance given to him under section 88(2)(b), and
 - (c) require pupils at the school to comply with the travel behaviour code made by the Welsh Ministers under section 12 of the Learner Travel (Wales) Measure 2008.”
- (4) In subsection (3) for “The” substitute “In relation to a relevant school in England, the”.
- (5) After subsection (3) insert—

“(3A) In relation to a relevant school in Wales, the standard of behaviour which is to be regarded as acceptable must be determined by the head teacher, so far as it is not determined by—

 - (a) the governing body, or
 - (b) the Welsh Ministers.”
- (6) In subsection (5), after “head teacher” insert “of a relevant school in England”.

(7) After subsection (5) insert—

“(5A) The measures which the head teacher of a relevant school in Wales determines under subsection (1) may, to such extent as is reasonable and not required by subsection (2A)(c), include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school.”

14 Enforcement of travel behaviour code: withdrawal of travel arrangements

(1) This section applies to learners for whom travel arrangements are made under section 3 or 4.

(2) The local authority may withdraw travel arrangements made for a learner if—

- (a) the authority is satisfied that the learner has failed to comply with the travel behaviour code made under section 12, and
- (b) the following conditions applicable to the learner are satisfied.

(3) All six of the following conditions apply to any learner who is a registered pupil at a relevant school.

(4) The first, third and fourth of the following conditions apply to any learner who is not a registered pupil at a relevant school.

(5) The first condition is that before any decision is taken to withdraw travel arrangements—

- (a) the learner and the parent of the learner are given the opportunity to make representations, and
- (b) those representations are considered by the local authority.

(6) The second condition is that the head teacher of the relevant school at which the learner is a registered pupil—

- (a) is consulted about the decision to withdraw travel arrangements; and
- (b) is given notice of the decision at least 24 hours before the withdrawal takes effect.

(7) The third condition is that the decision to withdraw travel arrangements is reasonable in the circumstances.

(8) The fourth condition is that the local authority gives notice of the withdrawal of travel arrangements to the learner’s parent at least 24 hours before the withdrawal takes effect.

(9) The fifth condition is that the period of withdrawal does not exceed 10 consecutive school days.

(10) The sixth condition is that the period of withdrawal would not result in the learner having travel arrangements withdrawn for more than 30 school days in the school year in which the withdrawal takes effect.

(11) In determining whether a decision to withdraw travel arrangements is reasonable for the purposes of subsection (7), the following matters in particular must be taken into account—

- (a) whether the period of withdrawal is proportionate in the circumstances of the case,

(b) any special circumstances relevant to the withdrawal of travel arrangements which are known to the local authority (or of which the authority ought to be aware) including in particular—

- (i) the learner's age,
- (ii) any special educational needs the learner may have,
- (iii) any disability the learner may have,
- (iv) whether the learner would lose an opportunity to take a public examination, and
- (v) whether suitable alternative travel arrangements can reasonably be made by the learner's parent.

(12) A notice under subsection (6) or (8) must be in writing and specify—

- (a) the period for which travel arrangements are to be withdrawn, and
- (b) the authority's reasons for withdrawal of the travel arrangements.

(13) For the purposes of this section and section 17, a "relevant school" means—

- (a) a maintained school,
- (b) a pupil referral unit, or
- (c) a non-maintained special school.

(14) Regulations may—

- (a) amend or repeal either or both of subsections (9) and (10);
- (b) make provision for reviews of decisions under subsection (2);
- (c) make provision for appeals from decisions under subsection (2).

(15) Regulations under subsection (14)(c) may in particular—

- (a) specify the categories of person who may appeal;
- (b) specify the circumstances in which appeals may be made;
- (c) provide for the constitution of appeals panels;
- (d) provide for appeal procedures;
- (e) make provision about the effect of appeal decisions;
- (f) provide for the payment of allowances to members of appeals panels;
- (g) require the provision of information about appeals.

Section 2: The Use of Force to Control or Restrain Pupils

1. Introduction

1.1 Existing guidance on this aspect is contained in Welsh Office Circular 37/98. It is proposed that the draft guidance in this section would replace that Circular in setting out the powers of school staff to use force set out in Section 93 of the Education and Inspections Act 2006 which replaces Section 550A, with minor changes.

1.2 The guidance should help schools to understand what the law means for them in practical terms, as well as providing them with advice on good practice. The purpose of the law and this guidance is to protect staff and pupils, prevent serious damage or disruption and reduce the likelihood of actions by staff being successfully challenged in the courts. Schools would therefore be strongly advised to follow the guidance but it should not be treated as a complete and authoritative statement of the law. Interpreting the law is a matter for the courts.

1.3 The Welsh Assembly Government wishes to emphasise that the focus should be on preventing, as far as possible, the need for the use of force on pupils. However it recognizes that this may not always be possible and in such circumstances staff need to be aware of sensitivities associated with any form of physical contact with pupils. This guidance also offers advice on physical contact other than the exercise of the power to use force provided by the Education and Inspections Act 2006.

1.4 The guidance should be seen within the wider context of the Welsh Assembly Government's Framework for Restrictive Physical Intervention Policy and Practice.

1.5 The main areas covered in this section are:

- What the law says.
- Effective practice for schools.
- The Use of Restrictive Physical Interventions for Pupils with Severe Behavioural Difficulties (primarily aimed at special schools but also relevant to mainstream schools with such pupils).

2. What the law says

Section 93 of the Education and Inspections Act 2006, which would replace Section 550A of the Education Act 1996 would enable school staff to use such force as is reasonable in the circumstances to prevent a pupil from doing, or continuing to do, any of the following:

- Committing any offence (or, for a pupil under the age of criminal responsibility, what would be an offence for an older pupil).
- Causing personal injury to, or damage to the property of, any person (including the pupil himself); or
- Prejudicing the maintenance of good order and discipline at the school or among any pupils receiving education at the school, whether during a teaching session or otherwise.

The staff to which this power applies are defined in Section 95 of the Act. They are:

- Any teacher who works at the school, and any other person whom the head has authorised to have control or charge of pupils. This:
 - i) Includes support staff whose job normally includes supervising pupils such as teaching assistants, learning support assistants, learning mentors and lunchtime supervisors.
 - ii) Can also include people to whom the head has given temporary authorisation to have control or charge of pupils such as paid members of staff whose job does not normally involve supervising pupils (for example catering or premises-related staff) and unpaid volunteers (for example parents accompanying pupils on school-organised visits).
 - iii) Does not include prefects.

Those exercising the power to use force must also take proper account of any particular special educational need (SEN) and/or disability that a pupil might have. Under the Disability Discrimination Act 1995 schools have two key duties:

- Not to treat a disabled pupil less favourably, for a reason relating to his or her disability, than someone to whom that reason does not apply, without justification.
- Take reasonable steps to avoid putting disabled pupils at a substantial disadvantage to pupils who are not disabled (known as the reasonable adjustments duty).

2.1 The power may be used where the pupil (including a pupil from another school) is on school premises or elsewhere in the lawful control or charge of the staff member (for example on a school visit).

2.2 There is no legal definition of when it is reasonable to use force. That will always depend on the precise circumstances of individual cases. To be judged

lawful, the force used would need to be in proportion to the consequences it is intended to prevent. The degree of force used should be the minimum needed to achieve the desired result. Use of force could not be justified to prevent trivial misbehaviour. However, deciding whether misbehaviour is trivial also depends on circumstances. For example, running in a corridor crowded with small children where there is a real danger of knocking them into walls or down steps may be dangerous enough not to be regarded as trivial.

2.3 The statutory power conferred by Section 93 of the Education and Inspections Act 2006 is in addition to the common law power of any citizen in an emergency to use reasonable force in self-defence, to prevent another person from being injured or committing a criminal offence. On preventing injury or damage to property, the statutory power is similar in scope to the common law power, except that it is only available to people authorised to have control or charge of pupils.

2.4 On preventing other types of criminal offence, Section 93 provides essential clarification. It is by no means clear that all the behaviours that prejudice school discipline are also criminal offences and most primary pupils are below the age of criminal responsibility. So Section 93 makes it clear that authorised staff may use force to prevent behaviour that prejudices the maintenance of school discipline regardless of whether that behaviour would also constitute a criminal offence.

2.5 Reasonable force may also be used in exercising the statutory power, introduced under Section 45 of the Violent Crime Reduction Act 2006, to search pupils without their consent for weapons. This search power would apply to Head Teachers and staff authorised by them, where they have reasonable grounds for suspecting that a pupil has a weapon. Reasonable force could be used by the searcher and/or the second person required to be present at a search. However the Welsh Assembly Government strongly advises schools not to search pupils where resistance is expected, but rather to call the police. (See Section 3 for more detail.)

2.6 **It is always unlawful to use force as a punishment.** This is because it would fall within the definition of corporal punishment, abolished by Section 548 of the Education Act 1996.

3. Effective practice for schools

Policy and procedures

3.1 It is good practice for a school to have an explicit policy on the use of reasonable force to control or restrain pupils. It is also good practice for governors, staff (including recognised trade unions), pupils and those with parental responsibility to be consulted about the policy and for the policy to be approved formally by the Governing Body and made known to staff, pupils and parents either as part of the school's behaviour policy or separately. Where the local authority provides a model policy on the use of force, maintained schools in particular may wish to take account of this in formulating and reviewing their own policies.

3.2 As the statutory power to use force would be held by individual members of staff, no school should have a policy of 'no physical contact' because this would make staff members feel deprived of that power or hinder their exercise of it.

3.3 It would be sensible for a school's policy on the use of force to describe both the kinds of circumstances the school regarded as justifying the use of force to restrain a pupil (for example, to prevent them injuring somebody) and the kinds of circumstances the school regarded as justifying the use of force to require a pupil to comply with a reasonable instruction (for example, to leave the classroom). All staff - authorised and unauthorised - need to understand their powers and the options open to them. They need to know what is acceptable and what is not.

3.4 A school's policy on use of force should be consistent with but not necessarily part of its behaviour policy. The Welsh Assembly Government guidance on school behaviour policies can be found in the Inclusion and Pupil Support Circular 47/2006. It should also be consistent with the school's policies on child protection and health and safety.

3.5 **Annex 2.A** suggests a framework for a policy that schools may find helpful, including a list of subjects the policy could usefully cover.

Reducing the likelihood of situations arising where use of force may be required

3.6 Although preventative measures will not always work, there are a number of steps which schools can take to help reduce the likelihood of situations arising where the power to use force may need to be exercised:

- Creating a calm, orderly and supportive school climate that minimises the risk and threat of violence of any kind.
- Developing effective relationships between pupils and staff that are central to good order.
- Adopting a whole-school approach to developing social and emotional skills such as the Social and Emotional Aspects of Learning (SEAL) programme.

- Taking a structured approach to staff development that helps staff to develop the skills of positive behaviour management; managing conflict and also to support each other during and after an incident. Further guidance is provided in the Welsh Assembly Government's Inclusion and Pupil Support Guidance, Circular 47/2006.
- Effectively managing individual incidents. It is important to communicate calmly with the pupil, using non-threatening verbal and body language and ensuring the pupil can see a way out of a situation. Strategies might include, for example, going with the staff member to a quiet room, away from bystanders or other pupils, so that the staff member can listen to concerns; or being joined by a particular member of staff well known to the pupil.
- Wherever practicable, warning a pupil that force may have to be used before using it.

Pupils with special educational needs and/or disabilities

3.7 The following advice is particularly relevant to pupils with SEN and/or disabilities:

- Involve the SEN Coordinator or other named member of staff and parents in developing the school's policy and practice on the use of force. This will help ensure that appropriate account is taken of the needs of individual pupils with SEN and/or disabilities including "fragile" pupils. (Further advice on "fragile" pupils and risk assessments at paragraphs 3.14-3.15.)
- Develop positive handling plans for individual pupils assessed as being at greatest risk of needing restrictive physical interventions in consultation with the pupil and his or her parents. Further advice on risk assessments is provided in paragraphs 3.14 and 3.15. Positive handling plans set out the techniques that should be used and those that should not normally be used. Any planned use of physical intervention should be compatible with a pupil's statement and properly documented in school records.
- As far as practically possible, make staff who come into contact with such pupils aware of the relevant characteristics of those individuals, particularly:
 - i) Situations that may provoke difficult behaviour, preventive strategies and what de-escalation techniques are most likely to work.
 - ii) What is most likely to trigger a violent reaction, including relevant information relating to any previous incident requiring use of force.
 - iii) If physical intervention is likely to be needed, any specific strategies and techniques that have been agreed by staff, parents and the pupil concerned.

- Information from parents may be as valuable as information held by the school. Some of this information may be sensitive. Schools should seek express (preferably written) consent from the parent to inform appropriate staff. However, where consent is unreasonably withheld the information may still be made available to staff who need it where minimising the chances of force being required would be in the vital interests of the pupil concerned. The importance of providing such information will be a factor in decisions about giving temporary authorisation to parent volunteers and others to supervise pupils.
- Designate staff to be called if incidents related to particular pupils occur. This does not necessarily mean waiting for them to arrive before taking action if the need for action is urgent. However they should always be involved in post-incident follow-up.
- Teach pupils who are at risk how to communicate in times of crisis and strategies to use in a crisis (such as using personal communication passports and non-verbal signals to indicate the need to use a designated quiet area or cool-off base) and ensure staff are familiar with these strategies.

3.8 More detail on working with pupils with Severe Behaviour Difficulties is contained in Part 4.

Ensuring staff know who has statutory power to use force

3.9 The Head Teacher or delegated senior member of staff is advised to do the following.

- As part of an induction process, explicitly inform the people concerned of their responsibilities in relation to the school policy on use of force.
- Keep an up-to-date record of these people and ensure that permanently authorised staff (i.e. staff whose job involves supervising pupils) knows who they are. Given the requirement for schools to maintain a central, up-to-date record of the Criminal Records Bureau status of all staff and volunteers, they may wish to align these two sets of records.

Deciding if use of force would be appropriate

3.10 The judgment on whether to use force and what force to use should always depend on the circumstances of each case and - crucially in the case of pupils with SEN and/or disabilities - information about the individual concerned.

3.11 Decisions on whether the precise circumstances of an incident justify the use of significant force must be reasonable. Typically such decisions have to be made quickly, with little time for reflection. Nevertheless, staff need to make the clearest possible judgments about:

- The seriousness of the incident, assessed by the effect of the injury, damage or disorder which is likely to result if force is not used. The greater

the potential for injury, damage or serious disorder, the more likely it is that using force may be justified.

- The chances of achieving the desired result by other means. The lower the probability of achieving the desired result by other means, the more likely it is that using force may be justified.
- The relative risks associated with physical intervention compared with using other strategies. The smaller the risks associated with physical intervention compared with other strategies, the more likely it is that using force may be justified.

Examples of situations

3.12 Examples of situations that particularly call for judgments of this kind include:

- A pupil attacks a member of staff, or another pupil.
- Pupils are fighting, causing risk of injury to themselves or others.
- A pupil is committing, or on the verge of committing, deliberate damage to property.
- A pupil is causing, or at risk of causing, injury or damage by accident, by rough play, or by misuse of dangerous materials or object.
- A pupil absconds from a class or tries to leave school other than at an authorised time. Refusal of a pupil to remain in a particular place is not enough on its own to justify use of force. It would be justifiable where allowing a pupil to leave would:
 - i) Entail serious risks to the pupil's safety (taking into account age and understanding), to the safety of other pupils or staff, or of damage to property; or
 - ii) Lead to behaviour that prejudices good order and discipline, such as disrupting other classes.
- A pupil persistently refuses to follow an instruction to leave a classroom.
- A pupil is behaving in a way that seriously disrupts a lesson; or
- A pupil is behaving in a way that seriously disrupts a school sporting event or school visit.

3.13 In these examples use of force would be reasonable (and therefore lawful) if it was clear that the behaviour was sufficiently dangerous or disruptive to warrant physical intervention of the degree applied and could not realistically be dealt with by any other means.

3.14 Wherever possible, these judgements should take account of the particular characteristics of the pupil, including his or her age, understanding and any SEN or disability that he or she may have. This would include the outcomes of any risk assessment and, as appropriate, any specific strategies and techniques set out in the pupil's positive handling plan.

Risk assessments

3.15 Leadership teams are advised to assess the frequency and severity of incidents requiring use of force that are likely to occur in their school. Historical patterns usually provide a good starting point. These assessments will help to inform decisions about staff training (see paragraphs 3.23 to 3.26 below).

3.16 Schools may also need to make individual risk assessments where it is known that force is more likely to be necessary to restrain a particular pupil, such a pupil whose SEN and/or disability is associated with extreme behaviour. An individual risk assessment is also essential for pupils whose SEN and/or disabilities are associated with:

- Communication impairments that make them less responsive to verbal communication.
- Physical disabilities and/or sensory impairments.
- Conditions that makes them fragile, such as haemophilia, brittle bone syndrome or epilepsy; or
- Dependence on equipment such wheelchairs, breathing or feeding tubes.

Situations where staff should not normally intervene without help

3.17 Sometimes an authorised member of staff should not intervene in an incident without help, unless it is an emergency. Schools should have communication systems that enable a member of staff to summon rapid assistance when necessary. Help may be needed in dealing with a situation involving an older pupil, a large pupil, more than one pupil or if the authorised member of staff believes he or she may be at risk of injury. In these circumstances he or she should take steps to remove other pupils who might be at risk and summon assistance from other authorised staff, or where necessary phone the police.

Using force

3.18 Before using force staff should, wherever practicable, tell the pupil to stop misbehaving and communicate in a calm and measured manner throughout the incident. Staff should not act out of anger or frustration, or in order to punish a pupil, and should make it clear that physical contact or restraint will stop as soon as it ceases to be necessary.

3.19 The types of force used could include:

- Passive physical contact resulting from standing between pupils or blocking a pupil's path.
- Active physical contact such as:
 - i) Leading a pupil by the hand or arm.
 - ii) Ushering a pupil away by placing a hand in the centre of the back.

- iii) In more extreme circumstances, using appropriate restrictive holds, **which may require specific expertise or training.**

3.20 Where there is a high and immediate risk of death or serious injury, any member of staff would be justified in taking any necessary action (consistent with the principle of seeking to use the minimum force required to achieve the desired result). Such situations could include preventing a pupil running off the pavement onto a busy road or preventing a pupil from hitting someone with a dangerous object such as a glass bottle or hammer.

3.21 Staff should make every effort to avoid acting in a way that might reasonably be expected to cause injury. However, in the most extreme circumstances it may not always be possible to avoid injuring a pupil.

3.22 Staff should always avoid touching or restraining a pupil in a way that could be interpreted as sexually inappropriate conduct.

Staff training

3.23 Like other forms of professional development, decisions about training in physical intervention are best made by individual schools in the light of their particular needs and circumstances. It is good practice for schools to set out their approach to relevant training in their school policy on use of force. A school may decide that all staff who supervise pupils should have such training. However, individuals have statutory power to use force by virtue of their job. So a school policy cannot lawfully prevent teachers or other staff whose job involves having control or charge of pupils from using that power regardless of whether they have received training.

3.24 As indicated below, there will be particular training needs for staff working closely with pupils with SEN and/or disabilities. Risk assessments (see paragraphs 3.14 and 3.15 above) will help inform decisions about staff training. They will also inform the circumstances in which schools would temporarily authorise staff or volunteers to have control or charge of pupils.

3.25 Schools are advised to ensure that training covers ways of avoiding or defusing situations in which physical intervention might become necessary as well as methods of physical intervention. This is particularly important for staff who work closely with pupils with SEN and/or disabilities associated with extreme behaviour. Schools should ensure that the training needs of these staff are identified and appropriately met.

3.26 A number of organisations offer training in the use of physical force and related techniques such as de-escalation. Information about this is available at <http://www.bild.org.uk>. Local authority advice and guidance on training can also help schools, particularly in the maintained sector, to ensure well-targeted and appropriate training.

Recording and reporting incidents

3.27 Schools are strongly advised to keep systematic records of every significant incident in which force has been used, in accordance with school policy and procedures on the use of force and its child protection requirements. The purpose of recording is to ensure policy guidelines are followed, to inform parents, to inform future planning as part of school improvement processes, to prevent misunderstanding or misinterpretation of the incident and to provide a record for any future enquiry.

3.28 Schools may find the following questions helpful in deciding whether an incident is significant and requires a written record:

- Did the incident cause injury or distress to a pupil or member of staff?
- Even though there was no apparent injury or distress, was the incident sufficiently serious in its own right to require a written record? Any use of restrictive holds would, for example, fall into this category.
- Is a written record needed to be able to justify the use of force? This is particularly relevant where the judgement was very finely balanced.
- Is a record needed to help identify and analyse patterns of pupil behaviour or staff training needs?
- Were other agencies involved, such as the police?

3.29 If the answer to any of these questions is "yes", it would be strongly advisable to make a written record. Such records can provide evidence of defensible decision making in case of a subsequent complaint or investigation. It is possible that not all of the specifics of an incident can be recorded where it is not known on whom force was used, as for example where a member of staff has hastily had to part several pupils encircling a fight. The staff member may (understandably) focus on and recall the identities of the fighting pupils and not the individual spectators who were drawn aside to allow access. Staff may find it helpful to seek the advice of a senior colleague or a representative of their professional association when compiling a report.

3.30 Schools may find the model recording form provided in Annex 2.B helpful. This identifies the types of information that should be recorded.

3.31 The member of staff involved in an incident is usually best placed to compile the record. It would be good practice for the member of staff with lead responsibility for safeguarding to check the record and for the school to provide the member of staff involved in the incident with a copy of the final version.

3.32 Differing accounts given of the same incident should all be recorded. It is not always advisable as a matter of course to give parents a copy of the incident record, but parents should be told when and where the incident took place, which members of staff were directly involved (anonymised where necessary), why they decided that force had to be used, what force was used, whether there were any injuries and what follow-up action (support and/or disciplinary) was being taken in relation to their

child. It is advisable that the school's policy on making a record following such incidents is contained within its policy on the use of force and drawn to the attention of members of staff, parents and pupils, if these persons are not otherwise notified of the policy.

3.33 The record is likely to form part of the pupil's educational record as it is a record of information which is processed (obtained, recorded and held) by or on behalf of the Governing Body of the school (or teacher at the school, other than for personal use), relates to the pupil, and originated from or was supplied by a teacher employed by the Governing Body or the local authority.

3.34 Even if a copy of the incident record is not provided by the school as mentioned above the parent would be entitled to see the educational record free of charge, within 15 school days of receipt of the parent's written request. If a parent makes a written request for a copy of the record this must be provided, also within 15 school days of that request being received.

3.35 When schools comply with a request to see or to have a copy of a pupil's educational record there is some information that must not be disclosed. This is any information that the child him/herself could not lawfully be given under the Data Protection Act 1998, or to which s/he would have no right of access under that Act or by virtue of any order made under Section 30(2) or Section 38(1) of it. Further detail on what data contained in educational records may be disclosed is contained in the Welsh Assembly Government's guidance on Educational Records, School Reports and the Common Transfer System - the keeping, disposal, disclosure and transfer of pupil information, Circular 18/2006. When recording such incidents, staff should bear in mind that, if this information is later passed to the police, it may be included in a Criminal Records Bureau disclosure. Schools should retain records of such incidents until the member of staff involved has reached normal retirement age or for 10 years from the date of the allegation if that is longer.

3.36 After any recordable incident, parents should always be informed. Wherever possible, it is best to telephone parents as soon as possible after the incident before confirming details in writing. It is also good practice for parents to be given a copy of the school's policy on the use of force and information on post-incident support.

3.37 All injuries should be recorded in accordance with school procedures. The school should take action to report relevant injuries to staff or pupils to the Health and Safety Executive's Incident Contact Centre www.hse.gov.uk/riddor/index.htm.

3.38 It is good practice for governors to monitor incidents where force has been used. Head Teachers have an important role in reporting such incidents to the Governing Body.

3.39 Members of staff who have been assaulted will wish to consider reporting that to the police.

Post-incident support

3.40 Serious incidents that require use of force can be upsetting to all concerned and may result in injuries to the pupil or to staff. Immediate action should be taken to provide first aid for any injuries and to access medical help for any injuries that go beyond first aid. It is also important to ensure that staff and pupils are given emotional support.

3.41 The letter to parents informing them about the use of force can also be used to engage them in discussing the incident and for setting out subsequent actions and support. It is good practice for parents to be involved in agreeing appropriate support arrangements. For parents of pupils whose behaviour is associated with SEN and/or disabilities, it is advisable to agree an individual behaviour plan. Such plans would include strategies to prevent and deal with any recurrence of behaviour that could lead to the use of force.

3.42 Schools are also advised to:

- Decide whether multi-agency partners need to be involved and, if so, which partners. This could include local authority children's services, Child and Adolescent Mental Health Services or the Youth Offending Team (if the pupil is already under their supervision or has been identified by the YOT as being at risk of becoming engaged in criminal or anti-social behaviour).
- Where a pupil is responsible, hold the pupil to account so that he or she recognises and repairs the harm caused or which might have been caused. In addition to punishing the pupil, this may involve giving them the opportunity to repair the relationships with staff and pupils affected by the incident and/or to develop their social and emotional skills. In some cases, an incident might lead to a decision to exclude a pupil. In these circumstances Head Teachers must have regard to the Welsh Assembly Government's guidance on Exclusion from Schools and Pupil Referral Units, Circular 1/2004.
- Help the pupil and staff develop strategies to avoid such crisis points in future and inform relevant staff about these strategies and their roles.
- Ensure that staff and pupils affected by an incident have continuing support for as long as necessary in respect of:
 - i) Physical consequences.
 - ii) Support to deal with any emotional stress or loss of confidence.
 - iii) Opportunity to analyse, reflect and learn from the incident.

Dealing with complaints and allegations

3.43 Parents and pupils would have a right to complain about actions taken by school staff. This might include the use of force. Schools need to make that clear. If a specific allegation of abuse is made against a member of staff then the school needs to follow the guidance set out in the three Welsh Assembly Government letters about the independent investigation service dated 9 November 2006, and 30 March and 31 August 2007. Also the guidance in Welsh Assembly Government Circular 45/2004 – ‘ Staff Disciplinary Procedures in Schools’ Other complaints should be dealt with under the school's complaints procedure which is normally set out in the school's published prospectus or website. The Welsh Assembly Government has also issued two guidance documents to schools on dealing with complaints. Circular 03/2004 ‘School Governing Bodies Complaints Procedures’ and Circular 39/2006 ‘ Guidance for School Governing Bodies on Procedures for Complaints Involving Pupils.

3.44 In such circumstances it would be for the Head Teacher to respond to the complaint in the light of school policy and procedure. Parents may choose to appeal against the Head Teacher's response. At this point a panel of governors may be convened.

3.45 The full involvement of those with parental responsibility following the incident should minimise the chances of a complaint about use of force but it will not prevent all complaints or allegations. Allegations can be made from a variety of sources, not just from the parents or children involved.

3.46 A dispute might lead to an allegation against a member of staff, made to the school, other agencies or even the police. These should be dealt with in accordance with agreed policy and procedure for handling allegations against staff. Schools can find guidance on safeguarding children and on dealing with allegations of abuse against teachers and other staff in the Welsh Assembly Government letters and circulars listed in paragraph 3.43 above. The Welsh Assembly Government has also issued Guidance in Circular 05/2008 - Safeguarding Children in Education: The role of local authorities and governing bodies under the Education Act 2002.

3.47 The school policy and the degree to which it had been followed will be at the core of any investigation. Such complaints may also be investigated under the school's disciplinary procedure.

Physical contact with pupils in other circumstances

3.48 There are occasions when physical contact with a pupil may be proper or necessary other than those covered by Section 93 of the Education and Inspections Act 2006. Some physical contact may be necessary to demonstrate exercises or techniques during PE lessons, sports coaching, or CDT, or if a member of staff has to give first aid. Young children and those with SEN may need staff to provide physical prompts or help. Touching may also be appropriate where a pupil is being congratulated or praised, or where the pupil is in distress and needs comforting. Teachers will use their own professional judgement when they feel a pupil needs this kind of support.

3.49 There may be some pupils for whom touching is particularly unwelcome. For example, some pupils may be particularly sensitive to physical contact because of their cultural background or because they have been abused. It is important that staff who may come into contact with these pupils or groups of pupils should have the relevant information and that the school has a system for informing them. In addition, the school will need to develop clear common practice towards particular groups of pupils and events. There should be a common approach where staff and pupils are of different sexes. Physical contact with pupils becomes increasingly open to question as pupils reach and go through adolescence, and staff should also bear in mind that even innocent and well-intentioned physical contact can sometimes be misconstrued.

4. The use of restrictive physical interventions for pupils with severe behavioural difficulties

Introduction

4.1 The guidance in this Part is intended to provide clear, practical advice for LAs and schools on drawing up policies on the use of restrictive physical interventions for pupils with severe behavioural difficulties. In the main the guidance is intended primarily for special schools but may also be useful for mainstream schools with such pupils. The guidance is divided into three main areas:

- Model policy guidelines for local authorities.
- Model policy guidelines for special schools.
- Advice on risk assessment and a suggested risk assessment proforma.

4.2 These guidelines have been published to assist LAs and special schools to respond appropriately in situations where the management of pupil behaviour requires the use of restrictive physical interventions. It is the Welsh Assembly Government's policy that the use of force should be avoided wherever possible. Nonetheless, there will be occasions where its use is necessary. Section 93 recognises that, in certain specific circumstances, necessary reasonable force can be used by teachers and others authorised by the Head Teacher to control or restrain pupils. The guidelines for model policies are designed to be helpful but are not intended to be followed rigidly. Rather, they are designed to provide a broad structure on which policies might be based and highlight some questions and issues to be explored or clarified. There might be other questions and considerations according to local circumstances.

4.3 Assessing and managing risk is central to the process of deciding whether to use restrictive physical intervention and ensuring that it is both reasonable and proportional to the circumstances. Where it is known that a pupil is likely to present severe behavioural difficulties, a formal risk assessment will assist staff in judging the benefits and risks of any proposed intervention for staff, the pupil concerned and others. This section offers a suggested format for a risk assessment proforma. This material has been developed in consultation with teachers and other professionals. Although not intended to cover all forms of extreme behaviour in all settings, LAs may wish to bring the principles set out in this guidance to the attention of mainstream schools in their areas.

Model Policy Guidelines for Local Authorities

4.4 The following guidelines are designed to help LAs draw up policies where they do not already exist, or to review them where they do. The LA policy on the use of restrictive physical interventions should reflect an ethos of respect, care and safety in schools. It should be designed to:

- Provide, with the guidance, a framework within which schools can develop their own policies.

- Promote a coherent consistent and co-ordinated approach across different schools and, where appropriate, with other agencies.
- Form a basis for monitoring the implementation of policies in schools.
- Provide advice to schools on how to monitor and evaluate their own use of restrictive physical interventions so that practice is improved both locally and across the authority.

Formulating a policy

4.5 It is important that the LA policy on use of restrictive physical interventions is developed in consultation with schools, other agencies and professional bodies including local safeguarding children boards. The LA should make clear the extent to which its own policy reflects collaboration within the local authority and with other agencies. The greater the degree of collaboration, the greater the sense of joint ownership and common purpose. At the heart of the LA policy should be the clearly stated expectation that the use of physical intervention in schools should be **reasonable** and **proportionate** in the circumstances.

4.6 The LA policy should identify one or more named contact points able to offer schools advice and information on physical intervention, both on a routine basis and in the event of specific incidents/emergencies.

Expectations of schools

4.7 The LA policy should make explicit the issues and topics that it would like to see covered by schools making provision for pupils with extreme behaviour. These might include:

- The name of the person(s) responsible for implementing policy on restrictive physical interventions and monitoring and co-ordinating their use.
- The balance required between the needs of the pupils and the needs and responsibilities of schools towards staff.
- The measures to be put in place to ensure that, where physical intervention is used, it is reasonable and proportional to the circumstances.
- The relevance of Health and Safety legislation, including guidance on manual handling and violence reduction in relation to staff, pupils and visitors.
- The way in which schools should integrate policies on using physical intervention with policies on more general aspects of improving behaviour/a whole-school approach to improving behaviour.
- How schools should communicate with parents/carers and pupils about their policies on the use of physical intervention.
- The procedures which the LA expects schools to follow when planning, implementing, monitoring, reviewing and revising their own policies.

Issues for the LA to address

- How will the LA policy be introduced and disseminated to schools and relevant agencies?
- What procedures should schools follow when recording incidents¹? A consistent approach across the authority will be desirable and will aid training.
- What avenues should schools follow when reporting incidents to the LA?
- Are schools clear as to the circumstances in which they should report incidents?
- Ensuring that reporting and recording procedures for schools are straightforward in nature and kept to a manageable level.
- How should the LA respond to school policies and practice which are found to be at significant variance with the LA's own policy?
- How challenging children are managed outside the school, for example on school transport.

Supporting the policy

4.8 It is important that structures exist to assure schools that they are not alone in dealing with pupils with severely challenging behaviour and potentially dangerous situations. As well as helping schools to draw up their own policies in the context of the LA policy, there are a number of areas where the LA can offer practical help.

Monitoring the implementation of policies and their impact upon practice

4.9 Without imposing excessive administrative burdens on schools, it is important that LAs collect a range of information in order to identify issues and trends, evaluate the effectiveness of their approach to the use of physical intervention in special schools, and the effectiveness of policies adopted by individual schools. This might include:

- How schools put into practice their policies and who co-ordinates, monitors and evaluates the process.
- The extent to which schools' policies are consistent with the culture and practices the LA wishes them to achieve whilst allowing for differences which properly reflect to the individual needs of schools (and thus aid ownership).
- To what extent the LA policy and school policy have been shared with other providers, and the compatibility of policies on the use of restrictive physical interventions operated by other agencies.
- What role governors have in the evaluation and review of the school's policies and procedures.

Issues for the LA to address

- What help will be available to schools to ensure that policies are effective, e.g. will the LA provide advice and support to schools after an incident involving the use of force?
- What steps can be taken to ensure that good practice is shared across the authority?
- What training and professional development is provided to school staff and to LA personnel dealing with incidents requiring physical intervention and/or their aftermath? How are such needs identified?
- What are the most appropriate ways of introducing parents/carers and pupils to new policies, or to revised versions of existing policies. This might occur at the time a pupil is admitted to the school or be ongoing during the placement.
- More generally, what steps can be taken to secure the active support of parents/carers for both the LA policy and the policies adopted by individual schools? Can parent partnership services help with this?
- To what extent there is an integrated approach to training staff in the use of restrictive physical interventions across the LA area how successfully schools respond to complaints.
- What criteria should schools use when evaluating their policies? Would schools find it helpful to have authority-wide criteria?
- Which agencies should be involved in working with schools to review and evaluate policy and practice, for example the Local Safeguarding Children Board, parent partnership groups and social services departments?
- Are there opportunities for sharing good policies, for example by making them available to other schools, independent and non-maintained, as well as schools in adjacent areas?
- Similarly, is there scope for LAs in adjacent areas to develop common approaches to evaluation, share experience and perhaps collaborate, for example on training?
- If changes to the LA policy are made, what are the implications for schools?
- What avenues do schools have to alert LAs of problems encountered in their use of physical intervention?
- How are schools supported when discussions between an individual school and an LA point to the need for improvements?

Model Policy Guidelines for Special Schools

4.10 These guidelines are designed to help special schools to draw up policies covering the use of restrictive physical interventions with pupils with severe behavioural difficulties. A policy on restrictive physical interventions should be an integral but discrete element of the school's wider behaviour management policy. It

is recommended that a policy should be organised into sections covering the following:

- Introduction.
- School expectations.
- Positive behaviour management.
- Risk assessment and planning for use of restrictive physical interventions.
- Use of restrictive physical interventions in unforeseen and emergency situations.
- Post-incident support.
- Reporting and recording use of restrictive physical interventions.
- Monitoring use of restrictive physical interventions.
- Responding to complaints.
- Staff training.

4.11 Each of these are considered in turn in the sections below.

4.12 Each section points to good practice and identifies issues to be addressed. It is anticipated that the guidance will be of practical assistance to schools when examining current school practice and procedures, and developing a policy suited to local circumstances. It should be possible to draw wording for school policies directly from these guidelines (by, for example, changing "the school should" to "the school will").

4.13 In special schools there are children with severe behavioural difficulties who present behaviour that may necessitate the use of restrictive physical interventions to prevent injury, damage to property, or the breakdown of discipline. Section 93 of the Education and Inspections Act 2006 clarifies the position about use of restrictive physical interventions by teachers and others authorised by the Head Teacher to control or restrain pupils. Teachers and other authorised school staff are reminded that use of physical force must be reasonable and comply with:

- Local authority policies.
- The Children and Young People's Plan.
- School discipline and behaviour policies.

School expectations

4.14 The use of restrictive physical interventions should always be considered within the wider context of other measures. These include establishing and maintaining good relationships with children and using diversion, diffusion and negotiation to respond to difficult situations. Use of physical force that is unwarranted, excessive or punitive is not acceptable. Failure to comply with this principle, when considering or using physical force, should be dealt with under school disciplinary procedures.

Issues for schools to address

- Which staff other than teachers will be authorised to use restrictive physical interventions in your school?
- By what process will staff be selected and authorised to use restrictive physical interventions in your school?
- In what situations would the school consider it appropriate for teachers and other authorised school staff to use restrictive physical interventions?
- What kinds of actions would be viewed as using reasonable physical intervention in your school?
- What kind of actions involving use of physical intervention would be viewed as unwarranted, excessive or punitive in your school?
- What course of action will be taken in the event of staff failing to comply with this policy?

Positive behaviour management

4.15 All staff should adopt a positive approach to improving behaviour in order to reward effort and application, and to build self-esteem. The school should work in partnership with those who know the child to help those concerned:

- Find out why this child behaves as he or she does.
- Understand the factors that influence this child's behaviour.
- Identify early warning signs that indicate foreseeable behaviours are developing.

4.16 This approach will help to ensure that early and preventative intervention is the norm. It should reduce the incidence of extreme behaviours and make sure that the use of physical force is rare.

4.17 School staff should refer to the school's behaviour policy when developing and implementing behaviour management plans 2. All behaviour management plans should be formally agreed and ratified before implementing them in school. Plans should be formally recorded in accordance with school procedures and set out the action taken to:

- Meet the pupil's needs.
- Encourage the pupil to make positive choices and develop self-control.
- Support the pupil in difficult situations.
- Safely manage crises if and when they occur.

Risk assessment and planning for use of restrictive physical interventions

4.18 Schools should acknowledge that some children behave in ways that make it necessary to consider the use of restrictive physical intervention as part of a

behaviour management plan. All identified behaviours necessitating use of physical intervention should be formally risk assessed: see para 4.28. The resulting risk management strategy must be compatible with a positive behaviour management approach.

Issues for schools to address

- How will the school involve parents and others who know the child in the process of developing behaviour management plans?
- What process is to be used to agree and ratify behaviour management plans for use in school?
- How are behaviour management plans to be recorded?

4.19 Intervention must be clearly shown to be in keeping with the pupil's statement and his or her individual education plan. It should also be properly documented within school records. All staff should be aware of the distinction between physical contact or touch, used appropriately in everyday situations to support, encourage, guide or comfort a pupil, and the use of force to restrict movement or to disengage from pupils whose behaviour presents a clear risk of injury.

4.20 Techniques and methods for controlling and restraining pupils using restrictive physical interventions must be assessed to ensure they are safe, suitable and appropriate for use with the named pupil. They should be agreed in partnership with the pupil, his /her parents (or those with parental responsibility) and other statutory agencies working with the pupil. This is especially the case when children are looked after by the local authority, in respite care, or cared for by others with legal responsibility in order to ensure that there is a consistent approach to the use of force in and out of school. In the event of disputes over, or concerns about, techniques and methods being considered, an interim school strategy should be agreed and the matter referred to the LA. If necessary, adjudication might be offered by an independent officer nominated by the Local Safeguarding Children Boards.

Issues for schools to address

- For what kinds of behaviours would the school view it necessary to consider planned use of physical intervention?
- What action does the school intend to take to assess and manage the risks
- Presented by pupils? What steps does the school take to ensure that all staff coming into contact with pupils who may present a risk have necessary information on the pupil concerned?
- How will the school ensure that planned use of physical intervention is compatible with a positive approach to improving behaviour and in keeping with the pupil's statement and pastoral support plan?
- What action will the school take to assess techniques and methods for implementing planned use of physical intervention?

- Who will the school work in partnership with to agree the techniques and methods to be used to implement planned use of physical intervention?
- What process is in place for you to refer disputes or concerns to the LA?

Use of restrictive physical interventions in unforeseen and emergency situations

4.21 Schools should acknowledge that, on occasion, staff may find themselves in unforeseen or emergency situations when they have no option but to use reasonable force to manage a crisis. It is recommended that:

- Before using force - staff attempt to use diversion or diffusion to manage the situation.
- When using force - staff must use techniques and methods with which they are familiar, confident and are permitted by the school.
- In exceptional circumstances (where permitted techniques are ineffective or staff are unfamiliar with the action they should take) – staff manage the situation as best they can to comply with Section 93 of the Education and Inspection Act 2006.

4.22 Staff should always report and record use of physical force that occurs in unforeseen or emergency situations using school procedures.

Post-incident support

4.23 Incidents that require use of restrictive physical interventions can be upsetting to all concerned and result in injuries to the child or staff. After incidents have subsided, it is important to ensure that staff and children are given emotional support and basic first aid treatment for any injuries. Immediate action should, of course, be taken to ensure that medical help is accessed for any injuries that require other than basic first aid. All injuries should be reported and recorded in accordance with school procedures. The school should take action to report any injuries to staff or pupils in accordance with RIDDOR. (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, HSE Books, PO Box 1999, Sudbury, Suffolk, CO10 6FS. HSE website: <http://www.hse.gov.uk>. HSE information line: 0541 545500 HSE Information Centre, Broad Lane, Sheffield, S3 7HQ.)

Issues for schools to address

- What kinds of unforeseen or emergency situations might staff find themselves in within your school?
- What techniques and methods for implementing use of physical force to control or restrain pupils will be acknowledged as suitable for use in typical emergencies?
- What actions are staff required to take to report and record use of physical force in unforeseen and emergency situations?
- Who will provide staff and children with support after incidents?

- Who will check for injuries, provide first aid and arrange for medical aid?
- Who will report injuries to HSE?

Reporting and recording use of restrictive physical interventions

4.24 After incidents in which physical intervention is used, staff should report and record the matter in accordance with school procedures. All incidents requiring the use of physical intervention should be thoroughly and systematically documented within school records such as registers, logs, and incident books. The school should take action to ensure that parents and the local authority are informed about these incidents in accordance with agreed local procedures and time scales.

Issues for schools to address

- How are incidents to be reported and recorded?
- What action will the school take to inform parents and the local authority about incidents?

Monitoring use of restrictive physical interventions

4.25 Use of physical intervention in school should be monitored in order to help staff learn from experience, promote the well being of children in their care, and provide a basis for appropriate support. Monitoring can help schools to determine what specialist help is needed for children and to assess the appropriateness of the child's placement at the school. Information on trends and emerging problems should be shared within the school using local procedures. Monitoring information should be reported on a regular basis to school governors.

Issues for schools to address

- How will you monitor and evaluate the use of physical intervention?
- How will incident monitoring inform risk assessment and management?

Responding to complaints

4.26 The use of restrictive physical intervention can lead to allegations of inappropriate or excessive use. In the event of a complaint being received by a school in relation to use of force by staff, the matter should be dealt with in accordance with agreed procedures for handling allegations against members of staff. Revised guidance about such procedures, prepared jointly by the National Employers Organisation for School Teachers and the six teacher unions, was published in September 2002. The document "Education Staff and Child Protection: Staff Facing an Allegation of Abuse".

Issues for schools to address

- How will complaints be investigated and by whom?

Staff training

4.27 Training in physical intervention methods that are acceptable within the school is available and teachers and support staff should be encouraged to take up such opportunities.. This training is intended to help staff to link meeting children's needs with positive behaviour management. Staff involved in implementing planned use of physical intervention, as part of a behaviour management strategy within the school, should be provided with training in the range of intervention techniques they are expected to use in their day-to-day work. On successful completion of training, staff should be expected to practice their skills and periodically attend updates.

Issues for schools to address

- How will you choose training for your school and what is the training to include?
- How will staff be assessed and updated?

Assessing and Managing Risks for Children Who Present Challenging Behaviours

4.28 The risk assessment and management proforma included in this section has been designed to help teachers, learning support assistants and other adults working in special schools to improve practice in relation to the assessment and management of risk posed by pupils with severely challenging behaviour. The risk may be to the pupils themselves, other pupils, teachers, other adults or property.

What is meant by "risk" and "risk assessment"?

4.29 The term "risk" refers to any circumstances which could lead to adverse outcomes for the child or others. Risks may arise in relation to a number of factors, such as the health care and social support arrangements for the child; interactions between the child and his or her environment; the direct impact of behaviour(s) presented by the child; measures and interventions employed to reduce, limit or manage the risks presented to the child and others. Risk assessment and management is a process that helps staff and others to consider risk issues, to act reasonably, and to learn from what happens in everyday practice. In the main, risk assessment and management involves:

- Using what is known, in the light of experience, to make rational judgements about risk issues.
- Weighing up options and taking reasonable risks.
- Taking action to implement a range of approaches to support and safeguard children. By working in this way it is possible to make decisions and take actions to:
- Limiting the level of inherent risk to which children and others are exposed.
- Taking calculated risks to broaden the child's experience and maximise his or her individual potential.

- Avoiding unreasonable risks for this child and others.
- Ensuring that strategies used to respond to challenging behaviour are reasonable, and proportionate to the risks presented by the behaviour.

4.30 Using a structured approach to risk assessment and management will help staff to make decisions about what can reasonably be done to limit risks. At the same time it will help prepare them for times when things go wrong. Challenging behaviours are often foreseeable, even though it may be difficult to predict exactly when they will occur or the degree of challenge they will pose. As a general rule, schools should:

- Explore why children behave in ways that pose a risk.
- Try to understand the factors that influence the behaviour.
- Recognise the early warning signs that indicate that the child's behaviour is beginning to emerge.
- Develop the skills to manage difficult situations competently and sensitively. The measures agreed for managing identified risks should be set out in an agreed behaviour management plan for the individual child. Risk assessment and management can also be used in emergency situations when unforeseen risks occur.

Assessing the risk

4.31 Risk assessment involves a consideration of potential and actual risk. Key steps are:

- **Assessing the context for risk** - trying to predict the situations in which risks do/may occur. For example, situations where pupils might feel frustrated, pupils being near open roads, on transport or in crowded places.
- **Assessing probability** - trying to estimate how likely it is that the risk situation will occur and whether any injury or harm is very likely to occur, likely to occur, or unlikely to occur.
- **Assessing seriousness** - trying to gauge the kind of injury and harm that could result. For example: choking, bruises, bleeding, sprains, broken bones, stress, burnout, panic attacks, nervous breakdowns and post traumatic stress disorder.

4.32 In this part, it is assumed that the school will apply the risk assessment and management proforma. For some pupils, it will be appropriate for the LA to conduct the initial assessment, followed by updating by the school.

4.33 When assessed, all risks should be recorded in accordance with relevant requirements such as LA or school policies. In the event that risks are thought to be serious for the child or others, the school may need to use formal risk assessment frameworks and tools, such as the Health and Safety Executive's "Five steps to Risk Assessment".

Exploring risk reduction options

4.34 Risk reduction involves an examination of risk management options and consideration of the benefits and drawbacks of each option for the child, staff and others concerned. After weighing up the options available, some may be discarded as unsuitable. This will usually be because they have insufficient impact on the risk or have too many drawbacks. A record should be kept of risk reduction options examined and discounted as well as those adopted for each pupil. Risk reduction should include:

- Proactive measures to support the child effectively and prevent difficulties emerging.
- Early interventions to help the child in difficult situations and avert problems.
- Planned measures to manage the child and others safely, when unavoidable.
- Difficulties arise. In circumstances where there are concerns that the risk reduction options being considered may themselves give rise to risk to the pupil or others, it would be prudent for schools to seek advice from other bodies. These may include:
 - The Local Safeguarding Children Board (LSCB) for concerns in relation to children.
 - Health and Safety Executive for concerns in relation to school staff and others.
 - Medical advisers.
 - Legal advisers.
 - The LA education and/or social services.

Deciding risk management measures

4.35 The measures selected to prevent risks occurring, manage risks that arise and respond to injuries and harm that occur should be based upon a full appraisal of all the risk management options. In agreeing the risk management strategy, it is important to be explicit about inherent risks that continue to exist, even when the strategy is fully implemented; risks that can be reduced by implementing the strategy; and the risks that can be prevented by implementing the strategy, and any risks inherent in the strategy. The agreed risk management measures should form the basis of the child's behaviour management plan and the school's risk management strategy. All decisions made about risk management options should be recorded in accordance with school procedures. When selecting risk management procedures for the child's behaviour management plan and the school risk management strategy, schools should involve parents, or those with parental responsibility. Both sides benefit from such an approach; parents can examine measures for supporting their child within a broader context, while schools find out things that might otherwise be overlooked. Professionals from other agencies should also be consulted in the process of deciding the best options to eliminate, reduce or

limit the risk, without placing unreasonable restrictions on the child, children, school staff or others, or putting others at unreasonable risk. Accommodation and resources will influence the strategy employed. In the event that there are disputes or concerns about the measures employed, it would be prudent for schools to seek advice from the people or bodies listed in the preceding section.

Sharing and communicating an agreed approach

4.36 Once agreed, the behaviour management plan and risk management strategy should be shared with all those responsible for implementing or monitoring the impact of the plan. This is important as it will help to ensure that those concerned know how children are to be supported and why, which behaviours are to be managed and how they are to be managed; and which risk reduction measures are to be employed and when. The risk management strategy can be shared through discussion groups, meetings and circulating information. Those who should be informed include:

- The child.
- His/her parents or those with parental responsibility.
- Members of the teaching team and other school staff.
- Other professionals involved with the child, child protection teams and other agencies. Schools should keep a record of those informed about the strategy.

Staff training

4.37 The plan and risk management strategy have been shared with those who work with and support the child, consideration should be given to the ability of staff to implement the strategy. In particular, steps should be taken to determine what training may be required prior to implementation. This is key, because successful implementation will be dependent on staff competence and expertise. School records should show training needs identified as a result of the strategy and how training was provided to enable staff to implement it. Where it is apparent that there are staff with significant training needs, implementation of the risk management strategy should be modified until relevant staff training has been provided. In some instances, staff training will be required as a matter of urgency so that implementation can take place without delay.

Evaluating impact and effectiveness

4.38 Along with other aspects of their approach to restrictive physical intervention, schools should regularly review risk assessment and management measures. All evaluations of plans and strategies should be reported using school procedures and recorded in school records. These will make an important contribution to informing future planning and improving day-to-day practice.

Annex 2.A: Suggested Framework for School Policies

Situations involving decisions about whether to use force can occur in any school. Both using force and deciding not to can entail significant risks for pupils and staff. Establishing a clear school policy on the use of force by staff is an important part of minimising these risks.

Each school needs to develop a policy tailored to its particular circumstances. It is good practice to do this in consultation with governors, staff, parents and pupils. Schools may find the framework below helpful in developing or reviewing their own policies.

School Policy on The Use of Force by Staff to Control or Restrain Pupils

Objectives

These could include statements about:

- The key objective of maintaining the safety of pupils and staff.
- Preventing serious breaches of school discipline.
- Preventing serious damage to property.

Minimising the need to use force

This section could include material about:

- Creating a calm environment that minimises the risk of incidents that might require using force arising.
- Using social and emotional well-being approaches to teach pupils how to manage conflict and strong feelings.
- De-escalating incidents if they do arise.
- Only using force when the risks involved in doing so are outweighed by the risks involved in not using force.
- Risk assessments and positive handling plans for individual pupils.

Staff Authorised to use force

- This section could deal with both permanent and temporary authorisation.
- On permanent authorisation, it could make clear that all teachers and staff the head has authorised to have control or charge of pupils automatically have the statutory power to use force and identify which categories of staff this covers.
- On temporary authorisation, it could explain:
 - The circumstances in which staff whose jobs did not normally.

- Involve supervising pupils and volunteers working with pupils will be authorised to be in control or charge of pupils and therefore have statutory power to use force; and how teachers and other staff with permanent authorisation will know who has temporary authorisation.

Deciding whether to use force

- This section could set out guidelines to help staff decide whether or not to use force in particular circumstances. For example, it could suggest that staff should only use force when:
 - The potential consequences of not intervening were sufficiently serious to justify considering use of force.
 - The chances of achieving the desired result by other means were low.
 - The risk associated with not using force outweighed those of using force.
- This section could also make clear
 - How staff (including people with temporary authorisation to have charge or control of pupils) will be kept informed about and advised how to deal with pupils who present particular risks to themselves or others (as a result of SEN and/or disabilities and/or other personal circumstances, such as domestic violence).
 - How staff should minimise the highest risks, for example by calling the police if a pupil suspected of having a weapon seems likely to resist a search.

Using force

- This section could emphasise the importance of only using the minimum force necessary to achieve the desired result.
- The section could also:
 - Advise giving a clear oral warning to the pupil that force may have to be used.
 - Suggest types of force that could be used, making it clear that any form of restraint that is likely to injure a pupil (particularly anything that could constrict breathing) should only be used in extreme emergencies and where there was no viable alternative.
 - Advise staff that, as far as possible, they should not use force unless or until another responsible adult is present to support, observe and call for assistance.

Staff training

- This section could deal with:
 - How decisions about training are made.
 - How training is provided.

Recording incidents

- This section could set out the school's arrangements for deciding which incidents to record and how to record them.
- Schools may wish to use their own version of the attached incident.
- Recording form (Annex 2.B).

Reporting incidents

- This section could set out the school's arrangements for reporting recordable incidents to parents.
- It could also deal with reporting to external agencies such as other local authority children's services, the local Children's Safeguarding Board, the Health and Safety Executive, youth offending teams and the police.

Post-incident support

- This section could set out arrangements for supporting staff and pupils involved in incidents, including meeting immediate physical needs and rebuilding relationships, and ensuring that lessons are learned from the incident.

Complaints and allegations

- This section could set out the school's arrangements for dealing with complaints and allegations of misconduct arising from incidents.

Monitoring and review

- This section could set out the school's arrangements for monitoring the impact of its policy on use of force and for reviewing and developing the policy, including the roles of senior leaders and governors.

Annex 2.B: Use of Force to Control or Restrain Pupils: Incident Record

Details of pupil or pupils on whom force was used by a member of staff (name, class).	
Date, time and location of incident.	
Names of staff involved (directly or as witnesses).	
Details of other pupils involved (directly or as witnesses), including whether any of the pupils involved were vulnerable for SEN, disability, medical or social reasons.	
Description of incident by the staff involved, including any attempts to de-escalate and warnings given that force might be used.	
Reason for using force and description of force used.	
Any injury suffered by staff or pupils and any first aid and/or medical attention required.	
Reasons for making a record of the incident.	
Follow up, including post-incident support and any disciplinary action against pupils.	
Any information about the incident shared with staff not involved in it and external agencies.	
When and how those with parental responsibility were informed about the incident and any views they have expressed.	
Has any complaint been lodged (details should not be recorded here)?	
Report compiled by: Name and role: Signature: Date:	Report countersigned by: Name and role: Signature Date:

Annex 2.C Proforma for assessing and managing foreseeable risks for children who present challenging behaviours

Name of child

Class group

Name of teacher

School

Identification of Risk	
Describe the foreseeable risk.	
Is the risk potential or actual?	
List who is affected by the risk.	
Assessment of Risk	
In which situations does the risk usually occur?	
How likely it is that the risk will arise?	
If the risk arises, who is likely to be injured or hurt?	
What kinds of injuries or harm are likely to occur?	
How serious are the adverse outcomes?	

Assessment completed by:

Print Name

Signature Date

Annex 2.C (continued)

Risk Reduction Options			
Measures	Possible options	Benefits	Drawbacks
Measures Proactive interventions to prevent risk			
Early interventions to manage risk			
Reactive interventions to respond to adverse outcomes			

Agreed Behaviour Management Plan & School Risk Management Strategy		
Focus of Measures	Measures to be employed	Level of Risk
Measures Proactive interventions to prevent risk		
Early interventions to manage risk		
Reactive interventions to respond to adverse outcomes		

Agreed by:

.....

Relationship to child

.....

Date:

.....

Annex 2.C (continued)

Communication of Behaviour Management Plan & School Risk Management Strategy		
Plans and strategies shared with	Communication Method	Date Actioned

Staff Training Issues		
Identified training needs	Training provided to meet needs	Date training completed

Annex 2.C (continued)

Evaluation of Behaviour Management Plan & School Risk Management Strategy		
Measures set out	Effectiveness in supporting the child	Impact on risk
Proactive interventions to prevent risks		
Early interventions to manage risks		
Reactive interventions to respond to adverse outcomes		
ACTIONS FOR THE FUTURE		

Plans and strategies evaluated by:

.....

Relationship to child

.....

Date:

.....

Section 3: Screening and Searching of Pupils for Weapons

1. Introduction

1.1 The Welsh Assembly Government, as part of its measures both to reduce violent crime and to maintain safety in schools, wants schools in Wales to be able to screen any pupil for a knife or other weapon, and search pupils suspected of carrying a weapon. The draft guidance in this section would accompany the commencement of these powers within the Violent Crime Reduction Act 2006.

1.2 The main ways to keep knives out of schools continue to be educating young people in better behaviour and in the dangers of illegally carrying a knife. A range of activities should contribute: programmes in school on improving behaviour; curriculum opportunities for learning about responsibility, conflict, and safety; police school liaison officers are a key source of help. The powers to screen and to search fit with these programmes, and are two more options which schools can use.

1.3 Schools generally remain safe places. Only a small percentage of children, at any time, wrongly carry knives or other weapons in school. It is already a criminal offence to bring a knife or other weapon to school. School staff can already search a pupil, with consent, as part of their authority to discipline. The power to screen without suspicion will help to deter pupils from carrying a weapon in the first place. The new statutory search power, under education law, allows schools to search without consent, though within a range of safeguards: it will help schools remove weapons from the small minority who break the law. It is not intended that the power will be something which a large number of schools will be expected to or wish to use but it is an extra option which might be useful in some schools to help prevent a serious incident and support the efforts of the police to reduce crime by and against young people on the streets around schools.

1.4 Schools are not compelled to use these powers – a power is just that, it is not a duty. The power to search on suspicion adds another option which schools can choose when they suspect a knife or other weapon may have been carried onto the premises or may be carried on an off-site educational visit. It has the advantage of immediacy. But schools retain the option of calling the police, who may decide to conduct a search.

1.5 This section advises schools in Wales on:

- The power to screen pupils for weapons without suspicion.
- The statutory power (it is not a legal duty) for Head Teachers, and staff they authorise, to search pupils without consent, when they have reasonable grounds for suspecting that a pupil has a knife or other weapon. They can search a pupil on school premises or anywhere else where pupils are under the charge of the member of staff conducting the search, such as during an off-site educational visit. When school staff decide to conduct a search under this power, they *must* comply with conditions specified in the statutory power.

1.6 The section is primarily aimed at all maintained schools, including pupil referral units, and will help other schools, including independent schools, when they consider whether or not to screen pupils or to use the new search power, or both. It will also help schools to comply with the law and follow good practice if they decide to search pupils on suspicion and without consent. This section explains:

- What schools can do to screen pupils.
- What schools *must* do if and when choosing to search a pupil or the pupil's possessions for a knife or other weapon without consent.
- What schools must not do.
- Good practice that can help a school to comply with the law and make a search effective.

Consultation with pupils

1.7 The introduction of screening and searching is intended to safeguard pupils (UNCRC Article 19). At the same time, care must be taken to avoid arbitrary or unlawful infringement of the right to privacy (UNCRC Article 16). In introducing these measures schools should gather the views of children and young people in a school community. Particular care should be taken to ensure that pupils are given as much information as possible in a manner which is impartial, and in a form which is accessible to them. They should also have the opportunity to understand and discuss any ramifications and impacts which the introduction of such procedures would have on them.

2. Scope of powers

No-contact or low-contact Screening

2.1 Schools can require pupils to undergo screening for weapons without suspicion and without consent, by a walk-through or hand-held metal detector (arch or wand) which is “no-contact” or “low-contact” - it does not involve “patting down”, though it may involve minimal contact of the wand with the pupil’s clothing. A requirement for such screening can be imposed under a school’s statutory power to make rules on behaviour policy and the school employer’s duties to manage the safety of staff, pupils and visitors.

2.2 Where a school decides that screening would be useful, it is recommended:

- Occasional screening of randomly-selected pupils while on the premises – for example, a class or a year-group - should normally be enough to deter and prevent.
- Screening all pupils on entry only in exceptional circumstances and/ or for limited periods.

2.3 If a pupil refuses to be screened, the school may refuse to have the pupil on the premises or on an off-site educational visit. The school has a statutory power to make reasonable rules as a condition of admission. If the pupil fails to comply, and the school does not let the pupil in, it is unauthorised absence: the school has not excluded the pupil. The pupil’s duty is to comply with the rules, and attend. Any refusal to attend should be investigated by the welfare officer in the same way as any other unauthorised absence. If the pupil continues to refuse to be screened the Head Teacher may wish to consider the use of exclusion on the basis that this is a persistent and open defiance of the school’s behaviour policy.

2.4 Non-contact screening is not subject to the same conditions as with-suspicion searches under the statutory power to search. Schools can screen in view of other pupils. Schools should still take care to conduct screening reasonably, and should obtain training in the use of arches and wands (see Part 6, Training, below). Authorisation of staff, required for no-consent searches, would not be required for screening. Staff should require pupils to remove from their pockets, before screening, any metallic object that could cause a ‘beep’. Wands are relatively low-cost, and can be as little as £30.

2.5 Searches on suspicion and without consent can also start by screening. If a wand or arch “beeps”, showing it has detected metal, after a pupil has initially said that no metallic objects remain in their pockets, then this detection might help the searcher to gain consent, cooperation, or surrender of the object.

Without-consent search

2.6 The statutory power to search applies where there are reasonable grounds for suspecting that a pupil has with him or in his possessions any of the following:

- Anything referred to in this guidance as a ‘knife’ – to be precise, any article which has a blade or is sharply pointed. The definition does not include a folding pocket knife other than one whose cutting edge exceeds three inches or one which is not readily foldable at all times (such as a locking knife). This definition is taken from Section 139 of the Criminal Justice Act 1988.
- An object referred to in this guidance as an offensive weapon – to be precise, any article made or adapted to injure a person, or any article which is intended by the person carrying the article for such use by him or by another person. This is taken from section 1 of the Prevention of Crime Act 1953. Three types of article are covered:
 - A weapon made for causing injury, such as a gun.
 - An article adapted for causing injury, such as a bottle broken deliberately for the purpose.
 - An article not made or adapted for causing injury but which the person who has it intends to be used for the purpose of causing injury, e.g. a baseball bat.

2.7 The power includes a power to search where there are reasonable grounds to suspect that a pupil is in innocent possession of a weapon. The power does not allow without-suspicion (whether random or blanket) searches, but see also the separate section in this guidance on “screening”.

Note: It is a criminal offence to have a knife or offensive weapon on school premises. It is a defence to be carrying one for an educational or other lawful purpose.

Human Rights Act 1998

2.8 We believe that the exercise of these powers is unlikely to engage any of the Convention rights within the meaning of the Human Rights Act 1998. If such rights are engaged, any interference is capable of being justified for the purpose of keeping pupils and staff safe at school.

3. Role of school employer: school statement of policy

Managing Safety

3.1 School employers must ensure, so far as is reasonably practicable, the health and safety of pupils and staff in their schools; and Head Teachers of maintained schools must determine measures to ensure acceptable behaviour by pupils. The employer must provide guidance, training and policy on health and safety matters. For example, an employer could instruct a Head Teacher to direct authorised security staff to search pupils whenever the security staff have a reasonable suspicion of a weapon being carried.

School policy

3.2 If a Head Teacher plans to use the power to screen or the statutory power to search, the Head Teacher should take the views of, for example, the employer, governing body and staff. The school's profile should include relevant information about these school security measures in the narrative section about health and safety. The Head Teacher can present the information as a school policy which sits alongside, and complements, a school's policies on behaviour and on the use of force (a Head Teacher has the option of using powers to screen or search in support of measures to ensure acceptable behaviour by pupils). The policy should:

- Remind pupils and parents that it is a criminal offence to have a knife or offensive weapon in school and that the penalties for a pupil on conviction can be severe.
- Include how, when a pupil is suspected of carrying a weapon but school staff choose in this particular instance to call the police instead of using the power to search, school staff will manage the pupil in order to keep other pupils and staff reasonably safe while the police are not present.

3.3 If the Local Authority chooses to draw up a model policy, maintained schools should refer to it, and it might be helpful to other schools, as might advice from professional associations. The policy should be based on safety management, including risk assessment. It should include advice given by trainers on, for example, weapons awareness, searching, likely scenarios and control measures.

3.4 Some schools might feel reluctant to publicise an intention to screen or search, if they feel it implies admitting a problem which could reduce admissions; but if some pupils are carrying weapons then parents probably already know, and will give credit to the school for acting to stop it. Publicity could also deter pupils from bringing a weapon to school.

3.5 As part of school rules, schools can also ban folding penknives, which could be used to cause harm. Schools can screen pupils for these but cannot search pupils without consent on suspicion that they are carrying a folding penknife as these are not classified as weapons under the Act.

4. Options before a without-consent search

4.1 Schools normally should use the power of without-consent search only if they have first exhausted other options:

- a. The main way to persuade pupils not to carry a weapon is educating them in how to behave well, how to resolve conflicts without violence, and about the dangers as well as the illegality of, and penalties for, carrying a weapon, whether in school or elsewhere. In particular:
- b. Police school liaison officers have a key role to play in helping schools devise and implement alternative approaches.
- c. Where staff suspect a pupil is carrying a weapon, they can seek to confirm or allay their suspicion by questioning the pupil.
- d. If questioning confirms suspicion, staff should ask the pupil to surrender the weapon, reminding the pupil about key points of the school policy and school rules and that it is a criminal offence, with severe penalties, to carry a weapon in school. As from 12 February 2007 the penalty for carrying a knife or offensive weapon is up to 4 years imprisonment and/or a fine. Comparable youth penalties are based on, among other factors, carrying a knife being classified as a crime of medium seriousness.
- e. If suspicion remains and the pupil does not surrender the weapon, staff should ask the pupil to consent to a search. In a with-consent search, the statutory constraints on a without-consent search do not apply, but we recommend that a school follow them.

In (c) – (e), staff should use “talking down” techniques to calm the pupil and prevent or reduce any risk of their exchange escalating.

- f. A member of school staff may have reasonable grounds to suspect that a pupil is in innocent possession of a weapon (e.g. the pupil is unaware that it has been “planted” on him): in that case the pupil may be searched, but is most likely to surrender the weapon willingly if asked.
- g. **If a school decides a search would not be safe, they should call the police.** As this guidance emphasises, the power to search is not a duty: it should only be used where school staff judge that it is safe to do so. In particular, if members of staff believe that a pupil is carrying a weapon and is likely to resist a search physically, they should call the police rather than try to overcome him. Other factors that school staff can consider in deciding whether they judge that a search would be safe include:
 - School staff, especially senior managers, are highly skilled and experienced in managing the behaviour of young people in their charge. This includes the ability to resolve difficult confrontations.
 - The law requires a second adult to be present for a search.
 - This guidance recommends training before any staff do a search.

4.2 A suspected pupil might not stay to be searched and might flee the scene. If staff believe that the pupil's running away indicates he would physically resist a search, then whether or not he stays on school premises, and whether or not a weapon has been found, staff should call the police at once and seek to identify the pupil's whereabouts, rather than look for the pupil themselves.

5. During a search: practical aspects

Staff

5.1 As mentioned above, the power to search should be used only as a last resort. It is not a duty. A Head Teacher cannot require anyone other than a member of the security staff to carry out a search where they have reasonable grounds for suspecting that a pupil has a knife or offensive weapon with him or in his possessions. Security staff are staff employed entirely or mainly for school security purposes. (such staff, on the payroll of the school or local authority, are not licensable, as are contracted security guards, but Head Teachers or employers can check licensability issues with the Security Industry Association at <http://www.the-sia.org.uk/home/licensing/>).

5.2 A head can if it is reasonable in the circumstances, direct a member of staff to be present at a search. It is recommended that this “second person present” should be someone already authorised and trained to search.

5.3 On training, insurance, and managing safety, it is recommended that:

- Training for searchers should include how to reduce any search-related risk to the searcher, as well as to others.
- Before undertaking a search or authorising staff to do so, the Head Teacher should check that the employer’s Employers’ Liability insurance covers any possible claims by staff in the event of any injury to staff as a result of their work in searching a pupil for a weapon; should only proceed if it does cover this; and should inform any authorised staff of this cover. A local authority school employer may self insure if it wishes, but any other employer must take out Employers’ Liability insurance.
- If school staff decide it is not safe for them to search, but they still suspect a weapon is present, they should not search and should call the police – especially if they believe that pupils or staff are at serious risk.
- Staff who undertake a search according to the law and who follow their employer’s guidelines are protected by the law. Staff in practice are not sued, because the employer is “vicariously” liable when their actions are “in the course of employment”, which is usually the case where staff follow their employer’s guidance.

5.4 Two members of staff must be present at a without-consent search of a pupil or his possessions (even where the search is conducted by the Head Teacher, who is then one of the two).

5.5 During a weapons search of a pupil without consent, the searcher and the required “second person present” must be of the same sex as the pupil searched. This means that a school without two male staff must not search male pupils without consent, and should instead call the police if it does not have a security contractor immediately available. A pupil’s possessions can be searched without consent (and the search witnessed) by staff of the opposite sex to the pupil; the pupil must be present.

5.6 For a weapons search without consent, the "second person present" must be a member of the school staff, defined as any teacher who works at the school or anyone who, by the authority of the Head Teacher, has lawful control or charge of the pupils.

5.7 School staff can search a pupil outside the school premises where the pupil is under their lawful control or charge, e.g. during an offsite educational visit. On school visits, staff should normally rely on calling the police rather than seek to have a member of staff authorised to search on every visit where suspicion might arise.

5.8 While the law on the power to search would not explicitly prevent more than two persons being present at a search, we recommend that only in exceptional circumstances should a school allow more staff to be present than the two who must be present. For example, searching a pupil with particular Special Educational Needs might be helped by support from a further adult with expertise on the pupil's needs; or, where particular religious or cultural sensitivities might apply, an adult with knowledge of those aspects might help.

5.9 Some searches might be helped by a parent's presence where that is practicable. A search can in principle be conducted with other persons present (that is, as well as the pupil and two members of staff of the same sex), though the pupil's privacy and dignity should be safeguarded. In some cases it might be advisable to take the pupil to a separate room, for example if the pupil is to be asked to remove a religious head covering.

6. Training for school staff

6.1 The Head Teacher should undertake training if intending to search pupils for a weapon on suspicion and without consent, and should arrange training (including refresher training) for any school staff whom the Head Teacher will authorise to search. No-one should do a search before being trained.

6.2 Members of school staff voluntarily undertaking a search of pupils in their own school are not required to hold a licence under the Private Security Industry Act 2001. So a full 'door supervision' course of 30 hours would not be appropriate. That said, training should be wide enough to cover all topics in this guidance, and should include, for example, awareness of what constitutes a weapon; the issue of any protective clothing for searchers; recording an evidence trail; confiscation of illegal items; and detaining a pupil after a weapon is found.

6.3 Local trainers in weapons-awareness and search techniques could help to assess a school's needs and arrange suitable training with a Head Teacher, or with a group of heads and relevant staff. Such training can take into account the school environment and circumstances. It can also build on staff knowledge of the pupils and their existing disciplinary and talking-down skills. Some providers charge per trainee. Others charge by the day for any number of trainees (a typical charge could be £250-£400 per day for a whole group). Head Teachers seeking training for themselves and staff could in the first place contact <http://www.skillsforsecurity.org.uk> for advice and the names of trainers listed under Products and Services – Basic Weapons Awareness. About 40 trainers, accessible through Skills for Security, hold a Skills for Security certificate and adhere to a code of practice agreed with the Association of Chief Police Officers. Head Teachers seeking training from other training providers should check credentials and the contents of the course advertised.

6.4 Training should include questions to ask of, and information to give to, the searched pupil; e.g. the searcher should explain the reason for the search, what the power entitles the searcher to do, and what will or could happen during the search.

6.5 When staff decide to call the police, they should implement the procedures in the school's policy (see above) on how to deal with a suspected pupil while the police are not present.

7. Liaison between the school and local police

7.1 Whether or not schools use the new power to search without consent, school and local police should mutually establish and develop strong partnerships. This could result in better and more cost-effective search arrangements and security procedures. The Police School Liaison Officers can help develop an effective mechanism for ensuring structured joint working between schools, police and other local agencies.

8. Use of Staff from Security Firms

8.1 It is recommended that, where a school wishes to use a security firm, screening without suspicion in order to deter and prevent is the more cost-effective way. That is likely to provide better value for money than paying a firm to keep trained staff permanently on call to attend at short notice to conduct with-suspicion searches – which would require the Head Teacher to give them lawful charge of the searched pupils, and authorise them to search.

8.2 If, despite the above (or in conjunction with no-suspicion screening), a school's managers decide that it would be cost-effective for staff of a security firm to search pupils on suspicion, then:

- The Head Teacher should give written lawful control or charge of pupils, for the purposes of a search, to any security guard they will authorise to search, as part of the contract between the security firm and the school.
- If a security firm employee searches a pupil, it is recommended that the second person who must be present should be a permanent member of the school staff (who is authorised to search), because security-firm staff are likely to be less familiar with the school and its pupils.

8.3 Some schools or local authorities might already pay a firm to supplement or provide security services – e.g. mobile patrols at night-time. By law, security guards must have a licence to operate from the Security Industry Authority (SIA). A licence means that the guard has a formal qualification with (for front-line security guards) training in personal searches and coping with conflict and risk, though not necessarily in working with children. The SIA states that licence-holders will have had their identity and probity (mental health and non-criminality) checked. Further information is on <http://www.the-sia.org.uk/home> which carries a register of licence-holders.

8.4 Schools can find information on firms offering security guards from national or local advertising or from the British Security Industry Association (whose 500-plus members do over 70% of security business in the UK), at: <http://www.bsia.co.uk/companyfinder>. The SIA also has a register of security service providers who have achieved the Approved Contractor Scheme at http://www.the-sia.org.uk/home/acs/roac_intro.htm.

9. Authorisation

9.1 A Head Teacher needs no authorisation to conduct a weapons search without consent. Other school staff must be authorised by their Head Teacher before they can do so. Authorisation may be on a long term or permanent basis, or for a stated shorter period, and should be in writing.

9.2 It is advised that the “second person present” at a search should be authorised and trained to search, because while they are witnessing the propriety of a search, the member of staff conducting the search might ask the member of staff witnessing to help more actively. They *must* be authorised if they join the search. The second person can use reasonable force to restrain a pupil if the pupil unexpectedly seeks to assault the person undertaking the search, though such instances would be rare; the statutory power of members of staff to use force applies (see Section 13 below).

9.3 Head Teachers who choose to authorise staff should usually authorise staff generally, to allow a search at any time, at short notice, of any suspected pupil. Authorising just for a particular search could only be done at the time when suspicion arises, which could unhelpfully delay the search. A Head Teacher could decide to authorise a member of staff to conduct a particular type of search, e.g. during an offsite educational visit (though for practical reasons this might be rare), or for a group of pupils whom the staff member knows well. Head Teachers should consider carefully whether to authorise short-term staff or others, especially volunteers, who may not know pupils so well as permanent staff do. School staff not authorised to conduct a search and who suspect the presence of a weapon should tell the Head Teacher or an authorised colleague, or call the police.

9.4 Heads should keep a log of staff authorised, type of authorisation (general, particular type of search, or a particular search) and training achieved.

9.5 When the Head Teacher is not on the premises, if there is an acting Head Teacher (who may be a deputy Head Teacher in some instances), then they can take over the head’s powers to conduct a search or authorise another member of staff to conduct a search.

9.6 An authorised member of staff of a ‘host’ school can search pupils from another school who are engaged in learning at the host school.

10. Reasonable Suspicion (which allows a search to take place)

10.1 If authorised staff suspect a weapon is somewhere in a school or on an offsite educational visit, they can search any of their school's pupils if they have reasonable grounds for suspecting that he has the weapon with him or in his possessions. This is a legal standard and not a subjective one; the searcher must assess what constitutes, in each particular case, reasonable grounds for suspicion that a pupil may have a weapon with him or in his possessions. The searcher should, in reaching a decision, take account of the following factors.

- a.** No-contact or low-contact screening with a wand or arch might establish suspicion.
- b.** Suspicion should be based on facts relevant to the likelihood of finding a weapon. Reasonable suspicion will rarely be supported on the basis of personal factors alone, without reliable supporting intelligence or information about some specific behaviour by the pupil to be searched. For example, a pupil's race, age, appearance, or any isolated instance of misbehaviour in the distant past must not be used alone or in combination with each other as the reason for suspecting that pupil. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of pupils as more likely to be in possession of a weapon. However, schools will normally be able to make reasonable decisions, based on their knowledge of pupils and their past habitual behaviour.
- c.** Where a member of staff reasonably suspects a knife is somewhere on the premises, though one has not yet been found, then suspicion may move from initially more suspect pupils to initially less suspect ones to the suspicion (who may, for example, have been bullied into 'storing' a knife).
- d.** As a result of questioning, the reasonable grounds for suspicion may be confirmed or be eliminated. Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected. But while staff who suspect a pupil can, before searching, question the pupil (and as a result confirm or eliminate their reasonable grounds for suspicion), staff would not use the result of a search to provide grounds for suspicion retrospectively.

See below on suspicion about objects found during a search.

11. Location

11.1 While pupils can be screened in a public part of the school, we recommend that schools do what they can to conduct a no-consent, on-suspicion search in a private place - that is, out of view of other persons than those who must or may be present. Where this is not possible – for example because the pupil refuses to co-operate – the police should be called. See Part 4[g].

12. Extent of Search – clothes and possessions

12.1 The power to search on suspicion and 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.

12.2 The searcher can pat down a person's clothing, without directly touching the body. If patting down finds an object in, for example, a trouser pocket, the pupil can be asked to bring out and show the object. If this is refused, the searcher can search the pocket. A pocket should not be searched when the member of school staff believes the pupil may interpret the search as an assault. The police should be called instead.

12.3 The searcher can require the pupil to remove outer clothing (e.g. a coat, jacket or pullover - see also the definition and examples of outer clothing in the legislation) if it is necessary for the search. If the pupil refuses, the searcher can use reasonable force to remove outer clothing (see Part 13). If reasonable force is not enough to remove the outer clothing and staff still suspect a weapon, they should call the police. This option is always available: the school can stop the search at any point and call the police instead. (Resisting a police search can be a criminal offence.)

12.4 Staff must not require a searched pupil to remove, and must not themselves remove, clothes beneath outerwear: e.g. trousers, skirt, sari, shirt, blouse, shalwar-kameeze (tunic and trousers), socks, and tights. Nor should staff seek the voluntary removal of such clothes. Pupils volunteering to remove such clothes should be required not to do so. Staff must be careful not to touch or hold a pupil indecently.

12.5 When schools search they should take reasonable steps to preserve the dignity and privacy of any searched pupil:

- Some of these safeguards are required by the new law: the person who carries out a search of a pupil and the other person who must be present at a search must be of the same sex as the pupil being searched (see above). Failure to take proportionate steps to preserve the dignity and privacy of any searched pupil may lead to a breach of the pupil's rights under the Human Rights Act. The advice below deals with the issues involved:
- As stated under **Location**, we recommend searching out of sight of other pupils or staff passing by – though privacy may not always be possible, e.g. where school staff decide to search a line of pupils waiting to board a coach.
- Searchers should be sensitive to issues of race, culture or religion, e.g. where a pupil's customary head covering or other outer clothing has religious or cultural associations. In this respect, the previous two steps should help. See also Section 14 on Special Educational/Medical Needs:

- Boys who are Sikhs might carry, as a religious duty, a ceremonial knife (kirpan). Since this is a legitimate item, school staff should ask a Sikh pupil to declare it before being screened or searched in the same way as other legitimate metallic objects (e.g. keys or coins) should be declared.

12.6 A pupil's possessions include any goods over which the pupil has or appears to have control, e.g. a bicycle, panniers, motorbike, car (including family car). A school can already search a pupil's locker, since lockers or other storage facilities are school. The new power expressly preserves existing powers.

13. Use of Force

13.1 The power of school staff to use reasonable force to prevent a pupil committing an offence, injuring themselves or others, damaging property, or prejudicing the maintenance of good order and discipline applies to a search without consent. While it is legally permissible to use force, we advise that when a pupil suspected of carrying a weapon is likely to physically resist, school staff call the police rather than using force to continue a search (see Section 4[f] above). See also Section 9 on when the second person present can use reasonable force (to oppose an unexpected assault on the searcher).

14. Special Educational Needs/Medical Needs

14.1 Any pupil may be upset by being searched without consent. Some pupils with behavioural problems might react strongly to being searched or confined in a private room. School staff should take account guidance on use of restrictive physical interventions for pupils with severe behavioural difficulties (see Section 2, Part 4 of this document). Schools should not conduct a search themselves, but should call the police, when they expect a pupil may violently resist being searched.

14.2 Head Teachers and other staff should not normally exempt pupils from a search solely on grounds of their special educational or medical needs. However, schools should take account of any additional sensitivities, e.g. by spending more time discussing their suspicion with a child with learning difficulties or medical needs, before a search, and should involve the special educational needs co-ordinator. Any 1-to-1 supervisor of a pupil being searched should also be present at the search.

15. Consequences

After the Search

15.1 If no weapon is discovered by a search, the school can decide to take no further action, but should still:

- Briefly record the outcomes.
- Inform the pupil's parent.
- Inform the school's governing body annually of how many searches or screenings took place under the school's policy, and the results.

a. Power to seize

The searcher can seize:

- Any knife or offensive weapon or anything that could be used as an offensive weapon. See below on storing and surrendering.
- Any knife or other weapon found 'accidentally' - when, for example, a mobile phone is being confiscated. It should be treated as if it has been sought.
- Anything which provides reasonable grounds for suspecting that an offence has been committed – for example, an offence relating to drugs or to stolen property. See below on found items other than suspected weapons.
- When school staff find and seize a knife which they suspect is illegal, they should promptly inform the police. Since staff must pass the seized knife to the police, they should ask if the police are willing to collect it from the school. The police, when they learn of the alleged offence, might also wish to come to the school to question the pupil from whom the knife was seized.
- When the authorised member of staff has seized a suspected illegal knife or other weapon found on a pupil's person, he and the second person present should arrange for someone to call the police. If the police say they will come to the school to question the pupil, staff should guard the pupil with reasonable force as necessary until the police arrive. Staff should similarly guard a pupil when they have called the police to attend in order to search that pupil.

b. Storing and surrendering a confiscated weapon

If a suspected illegal weapon is seized it *must* be delivered to the police as soon as is reasonably practicable. This would usually happen at the school, if the police come in response to the school's call. It is lawful for staff to keep a seized weapon (we recommend securing it in a locked cupboard) until delivering it to the police. The Head Teacher should also arrange for a written note to the police recording delivery of a seized item.

c. Other found items

A weapon search might find items on the pupil that are against school rules or even illegal such as drugs or stolen property, which the searcher can seize – see power to seize, above. For general powers for schools to draw up and enforce disciplinary measures, which could include confiscation powers, see Section 1, Part 7 of this document. Anything which the searcher suspects is evidence in relation to an offence and seizes must, as with weapons, be delivered to the police.

Records

15.2 Given that a pupil holding an illegal knife or other weapon on school premises is committing an offence, it is possible that the pupil will be arrested by the police, and that members of staff involved in the search will be called as witnesses in a criminal prosecution. The Head Teacher should require authorised staff to make and keep a written or electronic record of any search as soon as possible, e.g. in an incident book. It may help prevent any misunderstanding or later misrepresentation. Such records, together with evidence trails, could be of use to the courts. Schools can decide how long to retain a file for the purpose of discerning trends. The record should include:

- Name, year, sex, ethnicity of every pupil searched.
- Grounds of suspicion.
- Time and place.
- Who searched.
- Who else was present.
- What if any reasonable force was used, and if so why.
- How the search began and progressed.
- The pupil's responses and how staff managed them (e.g. steps taken to calm the pupil).
- Outcomes and follow-up actions.

Staff might find it helpful to seek advice from a senior colleague or a representative of their professional association when compiling a report.

Informing Parents; complaints

15.3 Schools are not required in law to inform a parent before a search or seek parental consent, but a parent might feel concerned about their child being searched. As well as publicising the school's policy in advance (above), we recommend that the school should generally inform parents of pupils other than 18 year olds when their child has been searched, and offer an opportunity to discuss the matter. A parent might complain about a screening or search, to the Head Teacher, governing body or employer. Schools must have a complaint procedure (in general, not search-specific) and must publicise it.

15.4 In a few circumstances, it is not recommended informing parents. An example might be where something found could be evidence of an offence involving the parent as well. Another situation might be where, although nothing was found, a parent might be abusive towards the child on the mistaken assumption that the child “must have” done something wrong because staff had grounds for suspicion (which, in fact, does not follow).

Exclusion

15.5 “There will be circumstances where, in the Head Teacher’s judgement, it is appropriate to permanently exclude a child for a first ‘one-off’ offence. These might include ... carrying an offensive weapon.” (*Exclusion from Schools and Pupil Referral Units Circular 1/2004.*)

Finance

15.6 The power to screen and the power to search are powers which schools may choose to implement or not, using funds already available to them for training staff, for equipment, or for security, or from elsewhere within the school’s delegated budget share.

Annex 3.A: Violent Crime Reduction Act 2006, Sections 45-46

45 Power of members of staff to search school pupils for weapons

After section 550A of the Education Act 1996 (c. 56) insert—

“550AA Power of members of staff to search pupils for weapons

(1) A member of the staff of a school who has reasonable grounds for suspecting that a pupil at the school may have with him or in his possessions—

(a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc.), or

(b) an offensive weapon (within the meaning of the Prevention of Crime Act 1953),

may search that pupil or his possessions for such articles and weapons.

(2) A search under this section may be carried out only where—

(a) the member of the staff and the pupil are on the premises of the school; or

(b) they are elsewhere and the member of the staff has lawful control or charge of the pupil.

(3) A person may carry out a search under this section only if—

(a) he is the Head Teacher of the school; or

(b) he has been authorised by the head teacher to carry out the search.

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

(5) A person who carries out a search of a pupil under this section—

(a) may not require the pupil to remove any clothing other than outer clothing;

(b) must be of the same sex as the pupil; and

(c) may carry out the search only in the presence of another member of the staff who is also of the same sex as the pupil.

(6) A pupil’s possessions may not be searched under this section except in his presence and in the presence of another member of the staff.

(7) If, in the course of a search under this section, the person carrying out the search finds—

(a) anything which he has reasonable grounds for suspecting falls within subsection (1)(a) or (b), or

(b) any other thing which he has reasonable grounds for suspecting is evidence in relation to an offence,

he may seize and retain it.

(8) A person who exercises a power under this section may use such force as is reasonable in the circumstances for exercising that power.

(9) A person who seizes anything under subsection (7) must deliver it to a police constable as soon as reasonably practicable.

(10) The Police (Property) Act 1897 (disposal of property in the possession of the police) shall apply to property which has come into the possession of a police constable under this section as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.

(11) An authorisation for the purposes of subsection (3)(b) may be given either in relation to a particular search or generally in relation to searches under this section or to a particular description of such searches.

(12) In this section—

‘member of the 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;

‘member of the security staff’ means a member of the 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;

‘possessions’, in relation to a pupil of a school, includes any goods over which he has or appears to have control.

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