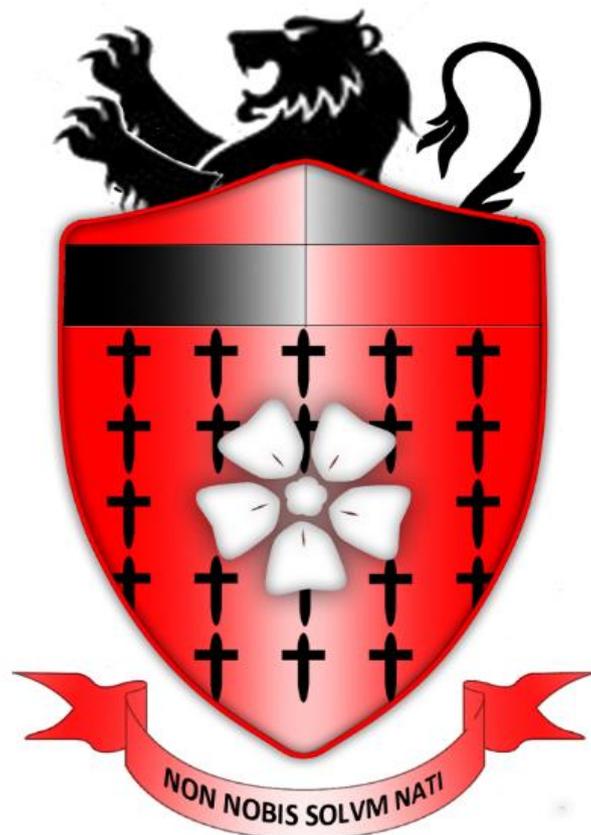


# Hornsea School & Language College



## Searching, Screening and Confiscation Policy

|                             |                              |                                 |
|-----------------------------|------------------------------|---------------------------------|
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## 1. Introduction

Hornsea School and Language College (HSLC) is proud of having an inclusive ethos and places the utmost emphasis upon maintaining a safe, settled and positive learning environment, where every member of the school community feels valued and able to participate.

Keeping Children Safe in Education (DfE September 2021) - (KSCiE) - is statutory guidance that clearly outlines the responsibilities and expectations of school in terms of safeguarding the school community. KSCiE, along with associated government advice and guidance (e.g. Use of reasonable force, DfE July 2013) and HSLC Policies have informed the development of this Policy.

This Policy is based heavily upon advice *DfE January 2018, Searching, screening and confiscation, Advice for headteachers, school staff and governing bodies*. It is designed to outline and clarify the approach of HSLC and ensure transparency and best practice is maintained in what is a potentially difficult and challenging area for all concerned.

On occasions it will be necessary to investigate concerns related to alleged possession of 'prohibited items' and items banned under school rules and it is unavoidable that again on occasions this may involve the need to search pupils and their belongings in school. Such a course of action will be undertaken to safeguard and protect the wider school community – students and staff - and ensure that HSLC is fulfilling relevant legal obligations and expectations in terms of any potential criminal activity, as well as school behaviour expectations.

As is the case with the use of any physical intervention in school, the need to resort to searching / screening / confiscation will always be viewed as a last resort as we look to work in positive partnership with students and parents / carers

## 2. Key points

### **Searching**

School staff can search a pupil for any item if the pupil agrees.

Headteachers and staff authorised by them have a ***statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that the pupil may have a prohibited item.*** Prohibited items are:

- **knives or weapons**
- **alcohol**
- **illegal drugs**
- **stolen items**
- **tobacco and cigarette papers**
- **fireworks**
- **pornographic images**
- **any article that the member of staff reasonably suspects has been, or is likely to be used:**
  - **to commit an offence, or**
  - **to cause personal injury to, or damage to the property of, any person (including the pupil).**

Headteachers and authorised staff can also search for any item banned by the school rules which has been identified in the rules as an item which may be searched for.

## 3. Confiscation

School staff can seize any prohibited item found as a result of a search. They can also seize any item, they consider harmful or detrimental to school discipline and items that clearly have no relevance or purpose in school.

#### **4. Schools' obligations under the European Convention on Human Rights (ECHR)**

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

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

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

#### **5. Screening**

What the law allows:

- Schools can require pupils to undergo screening by a walk-through or hand-held metal detector (arch or wand) even if they do not suspect them of having a weapon and without the consent of the pupils.
- Schools' statutory power to make rules on pupil behaviour and their duty as an employer to manage the safety of staff, pupils and visitors enables them to impose a requirement that pupils undergo screening.
- Any member of school staff can screen pupils.

If a pupil refuses to be screened, the school may refuse to have the pupil on the premises.

Health and safety legislation requires a school to be managed in a way which does not expose pupils or staff to risks to their health and safety and this would include making reasonable rules as a condition of admittance.

If a pupil fails to comply, and the school does not let the pupil in, the school has not excluded the pupil and the pupil's absence should be treated as unauthorised. The pupil should comply with the rules and attend.

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

#### **6. Searching WITH consent**

Common law powers to allow school to search:

- School staff can search pupils with their consent for any item.
- Schools are not required to have formal written consent from the pupil for this sort of search – it is enough for the teacher to ask the pupil to turn out his or her pockets or if the teacher can look in the pupil's bag or locker and for the pupil to agree.
- Schools should make clear in their school behaviour policy and in communications to parents and pupils what items are banned.
- If a member of staff suspects a pupil has a banned item in his/her possession, they can instruct the pupil to turn out his or her pockets or bag and if the pupil refuses, the teacher can apply an appropriate punishment as set out in the school's behaviour policy.
- A pupil refusing to co-operate with such a search raises the same kind of issues as where a pupil refuses to stay in a detention or refuses to stop any other unacceptable behaviour when instructed by a member of staff – in such circumstances, schools can apply an appropriate disciplinary penalty.

## **7. Searching WITHOUT consent**

### **What the law says in terms of what can be searched for without consent**

- Knives or weapons, alcohol, illegal drugs and stolen items
- Tobacco and cigarette papers, fireworks and pornographic images
- Any article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or to cause personal injury, or damage to property
- Any item banned by the school rules which has been identified in the rules as an item which may be searched for.

### **7.1 Who can search without consent?**

The Headteacher or a member of school staff and authorised by the Headteacher in the following circumstances:

- Staff must be the same sex as the pupil being searched; and there must be a witness (also a staff member) and, if possible, they should be the same sex as the pupil being searched.
- The requirement that the searcher is the same sex as the pupil and that a witness is present will continue to apply in nearly all searches. Where it is practicable to summon a staff member of the same sex as the pupil and a witness then the teachers wishing to conduct a search must do so
- There is a limited exception to this rule. Staff can carry out a search of a pupil of the opposite sex and / or without a witness present, but only where there is a reasonable belief that there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.

### **7.2 When can a search without consent be done?**

- If staff have reasonable grounds for suspecting that a pupil is in possession of a prohibited item.
- The law also says what must be done with prohibited items which are seized following a search.

### **7.3 Authorising members of staff to search without consent**

The Headteachers will decide who to authorise to use these powers. There is no requirement to provide authorisation in writing. In most cases and where at all possible, it will be routine for a member of the SLT or Head to PD to support any searches

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

- Teachers can only undertake a search **without consent if they have reasonable grounds for suspecting that a pupil may have in his or her possession a prohibited item.** The teacher must decide in each particular case what constitutes reasonable grounds for suspicion. For example, they may have heard other pupils talking about the item or they might notice a pupil behaving in a way that causes them to suspect that the pupil is concealing a prohibited item.
- In the exceptional circumstances when it is necessary to conduct a search of a pupil of the opposite sex or in the absence of a witness, the member of staff conducting the search should bear in mind that a pupil's expectation of privacy increases, as they get older.
- The powers allow school staff to search regardless of whether the pupil is found after the search to have that item. This includes circumstances where staff suspect a pupil of having items such as illegal drugs or stolen property which are later found not to be illegal or stolen.
- School staff may wish to consider utilising CCTV footage in order to make a decision as to whether to conduct a search for an item.

#### **7.4 Searches without consent for items banned by the school rules**

An item banned by the school rules may only be searched for under these powers if it has been identified in the school rules as an item that can be searched for.

#### **7.5 Location of a search without consent**

**Searches without consent** can only be carried out on the school premises or, if elsewhere, where the member of staff has lawful control or charge of the pupil, for example on school trips in England or in training settings but the powers only apply in England.

#### **7.6 Extent of the search without consent – clothes, possessions, desks and lockers**

- The person conducting the search **may not require the pupil to remove any clothing other than outer clothing.**
- ‘Outer clothing’ means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear but ‘outer clothing’ includes hats; shoes; boots; gloves and scarves.
- ‘**Possessions**’ means any goods over which the pupil has or appears to have control – this includes desks, lockers and bags.
- A pupil’s possessions can only be searched in the presence of the pupil and another member of staff, except where there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.
- The power to search without consent enables a personal search, involving removal of outer clothing and searching of pockets; but not an intimate search going further than that, which only a person with more extensive powers (e.g. a police officer) can do.

#### **7.7 Use of force for search without consent**

- Members of staff can use such force as is reasonable given the circumstances when conducting a search for Prohibited Items - knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm. Such force cannot be used to search for items banned under the school rules.

#### **7.8 The power to seize and confiscate items on a ‘without consent’ search**

- Schools’ general power to discipline, as circumscribed by Section 91 of the Education and Inspections Act 2006, enables a member of staff to confiscate, retain or dispose of a pupil’s property as a disciplinary penalty, where reasonable to do so.
- Staff can use their discretion to confiscate, retain and/or destroy any item found as a result of a ‘with consent’ search so long as it is reasonable in the circumstances. Where any article is reasonably suspected to be an offensive weapon, it must be passed to the police.
- Staff have a defence to any complaint or other action brought against them. The law protects members of staff from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.

#### **7.9 Items found as a result of a ‘without consent’ search**

- A person carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited item or is evidence in relation to an offence.
- Where staff conducting a search finds alcohol, they may retain or dispose of it. This means that schools can dispose of alcohol as they think appropriate but this should not include returning it to the pupil.
- Where staff find controlled drugs, these must be delivered to the police as soon as possible but may be disposed of if the person thinks there is a good reason to do so.

- Where staff find other substances which are not believed to be controlled drugs these can be confiscated where a teacher believes them to be harmful or detrimental to good order and discipline. This would include, for example, so called 'legal highs'. Where staff suspect a substance may be controlled they should treat them as controlled drugs as outlined above.
- Where staff find stolen items, these must be delivered to the police as soon as reasonably practicable – but may be returned to the owner (or may be retained or disposed of if returning them to their owner is not practicable) if the person thinks that there is a good reason to do so.
- Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. As with alcohol, this means that schools can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the pupil.
- Fireworks found as a result of a search may be retained or disposed of but should not be returned to the pupil.
- If a member of staff finds a pornographic image, they may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case it must be delivered to the police as soon as reasonably practicable.
- Where an article that has been (or is likely to be) used to commit an offence or to cause personal injury or damage to property is found it may be delivered to the police or returned to the owner. It may also be retained or disposed of.
- Where a member of staff finds an item which is banned under the school rules they should take into account all relevant circumstances and use their professional judgement to decide whether to return it to its owner, retain it or dispose of it.
- Any weapons or items which are evidence of an offence must be passed to the police as soon as possible.

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

- It is up to the teachers and staff authorised by them to decide whether there is a good reason not to deliver stolen items or controlled drugs to the police. In determining what is a "good reason" for not delivering controlled drugs or stolen items to the police the member of staff must have regard to the following guidance issued by the Secretary of State:
- In determining what is a 'good reason' for not delivering controlled drugs or stolen items to the police, the member of staff should take into account all relevant circumstances and use their professional judgement to determine whether they can safely dispose of a seized article.
- Where staff are unsure as to the legal status of a substance and have reason to believe it may be a controlled drug they should treat it as such.
- With regard to stolen items, it would not be reasonable or desirable to involve the police in dealing with low value items such as pencil cases. However, school staff may judge it appropriate to contact the police if the items are valuable (iPods/laptops) or illegal (alcohol/fireworks).

## **9. Statutory guidance for dealing with electronic devices**

- Where the person conducting the search finds an electronic device that is prohibited by the school rules or that they reasonably suspects has been, or is likely to be, used to commit an offence or cause personal injury or damage to property, they may examine any data or files on the device where there is a good reason to do so. They may also delete data or files if they think there is a good reason to do so, unless they are going to give the device to the police.
- Staff may lawfully search electronic devices, without consent or parental permission, if there is a suspicion that the pupil has a device prohibited by school rules, or the staff member has good reason to suspect the device may be used to:
  - cause harm,
  - disrupt teaching,
  - break school rules,
  - commit an offence,

- ☐ cause personal injury
- ☐ damage property.
- Any data, files or images that are
- This power applies to all schools and there is no need to have parental consent to search through a young person's mobile phone if it has been seized in a lawful 'without consent' search and is prohibited by the school rules or is reasonably suspected of being, or being likely to be, used to commit an offence or cause personal injury or damage to property.
- The member of staff must have regard to the following guidance issued by the Secretary of State when determining what is a "good reason" for examining or erasing the contents of an electronic device:
- In determining a 'good reason' to examine or erase the data or files the staff member should reasonably suspect that the data or file on the device in question has been, or could be, used to cause harm, to disrupt teaching or break the school rules.
- If an electronic device that is prohibited by the school rules has been seized and the member of staff has reasonable grounds to suspect that it contains evidence in relation to an offence, they must give the device to the police as soon as it is reasonably practicable. Material on the device that is suspected to be evidence relevant to an offence, or that is a pornographic image of a child or an extreme pornographic image, should not be deleted prior to giving the device to the police.<sup>4</sup>
- If a staff member does not find any material that they suspect is evidence in relation to an offence, and decides not to give the device to the police, they can decide whether it is appropriate to delete any files or data from the device or to retain the device as evidence of a breach of school discipline.
- All school staff should be aware that behaviours linked to sexting put a child in danger. Governing bodies should ensure sexting and the school's approach to it is reflected in the child protection policy. The UK Council for Child Internet Safety (UKCCIS) Education Group has recently published the advice - sexting in schools and colleges - responding to incidents and safeguarding young people

## **10. Telling parents and dealing with complaints**

- Schools are not required to inform parents before a search takes place or to seek their consent to search their child.
- There is no legal requirement to make or keep a record of a search.
- Schools should inform the individual pupil's parents or guardians where alcohol, illegal drugs or potentially harmful substances are found, though there is no legal requirement to do so.
- Complaints about screening or searching should be dealt with through the normal school complaints procedure.