

DRAFT

Regulatory Impact Assessment

1. Title of proposal

VIOLENT CRIME REDUCTION BILL - New power for a head teacher to search a pupil for a concealed weapon, on reasonable suspicion

2. Purpose and intended effect

- Objective

The aim of this measure is to keep knives and other offensive weapons out of schools in England and Wales.

- Background

It is illegal to carry knives or other offensive weapons on and around school premises, but this does not always deter a minority of young people who sometimes carry knives to “defend” themselves or threaten others. Knife carrying in school is thankfully rare overall, but the Government wishes to accommodate varying local circumstances. Head teachers can request, and police do provide, searches of as many pupils as is necessary where credible intelligence indicates that someone somewhere in a school is concealing a weapon. The Government encourages head teachers and local police commanders to take such action, and to use supporting strategies, to help LEAs, schools, Youth Offending Teams and the police work more closely together to identify, assess and manage risks, and tackle the small minority of pupils carrying weapons. The Government also recognises that the long-term solution is a ‘listening’ culture where pupils and their communities take action themselves to keep knives out of school.

Outside school the MORI 2004 youth survey found over one in four 11-16 year olds (28%) and over half (57%) of excluded 11-16 years olds reported carrying a knife at some time in the past year though a large proportion of this knife-carrying related to pen-knives, which are not illegal knives. The same survey found that 30% of young people who reported committing an offence within the past year said they had carried a knife (increase from 29% in 2003). More boys than girls reported carrying knives (40% and 15% respectively). Young people who have been the victim of violence are more likely to carry a knife. Over a third of young people who had been a victim reported carrying a knife (36%) compared to only 18% of those who had not been victims.

- Rationale for government intervention

This proposal was included in a speech by the then Secretary of State for Education and Skills on 18 November 2004. At present, legislation exists which gives a head teacher power to keep order in their school, and makes it illegal to carry an offensive weapon in school. A head teacher, with reasonable suspicion, can search a desk or locker without a pupil’s consent, search a bag or jacket with consent, and ask the police to do a personal search. The police can, with reasonable suspicion, enter a school to search without a head teacher’s consent, do a personal search without a pupil’s consent, and do an unannounced search of more than one pupil in a school. Offenders may, however,

escape detection by refusing consent for a school staff search of a bag or jacket, or by disposing of a weapon while the school asks the police to attend and a police officer makes their way to the school to do a personal search. The Government wants to further deter the small minority of young people who might still be tempted to carry a weapon in school, by making it clear that the school has the authority to search them on reasonable suspicion.

3. Consultation

- Within government

To date, consultation has taken place between DfES and the Home Office; and relevant near-to-government bodies, the Youth Justice Board, HSE, Local Government Association and Employers' Organisation, and ACPO.

- Public consultation

DfES has extensively consulted through the members of its Working Group on School Security (WGSS), which has a wide constituency including school staff unions and parents' representatives. In particular the WGSS formally considered this proposal at a meeting on 9th March 2005, and considered the wider issue at two meetings in 2004.

When canvassing the views of the school staff unions who sit on the Working Group on School Security the DfES asked them to take the opinions of their memberships. DfES has received no negative response to the favoured option of schools being able to search on suspicion. DfES expects that the Home Office consultation on clause 35 of the draft Violent Crime Reduction Bill will be further targeted at schools and that an idea of take-up and of practical measures will develop from that. However, it should be stressed that this is a power, and take-up would depend on how far head teachers wished to use their latitude. The DfES is looking at typical training costs of those volunteering to exercise the power.

4. Options

The main alternatives to this proposal would be:

Option A - Do nothing - to rely solely on guidance and existing powers;

In view of the MORI findings quoted above and research published by the Youth Justice Board in 2004 which showed that 2% of secondary school pupils had taken a knife to school for "defensive" reasons at some time in the past year, and 1% for offensive reasons, the Government believes that head teachers need more power to keep knives out of our schools. DfES also considered the do-nothing option (of relying on police powers) but did not favour it given the strong demand by school staff unions for some deterrent action following a fatal pupil-on-pupil stabbing in November 2003.

Option B - to propose a power to undertake random searches

Since parents generally are obliged to hand over their children of compulsory school age into the care of school staff, the element of choice available to e.g. visitors to night-clubs or passengers of airlines (who are often randomly searched on entry to a club or an airplane) is not available to school pupils. Due to the skills of school staff, the cooperation of parents, and the good behaviour of most children, schools in England are generally

sufficiently well-ordered and disciplined that carrying of an offensive weapon is rare. Given that general level of good order, the Government believes that we are a long way from circumstances that would justify the intrusion into personal privacy that random searching of pupils would, given the lack of choice, represent.

Encouraging schools to use screening devices at the school entrance was rejected for a number of reasons including: screening suitable at optional night clubs or airports would not be suitable in schools at which pupils are compelled to attend; uncertainty over who would implement the screening of pupils; the potential impact on staffing levels; and radioactivity issues. DfES also considered the option of schools using 'wands' but this could better be seen as a sub-set of the statutory power to search without consent.

Option C – to propose a new power of search for headteachers

It is currently permissible for a headteacher to search a pupil's desk or locker without the pupil's consent, to search a bag or jacket with consent, and to ask the police to do a personal search. The police can, with reasonable suspicion, enter a school to search without a head teacher's consent, conduct a personal search without a pupil's consent, and conduct an unannounced search of more than one pupil in a school. But there remains a gap which allows pupils to avoid such a search by refusing to allow a member of school staff to search a bag or jacket, or by disposing of a weapon while the school asks the police to attend and a police officer makes their way to the school. A new power of search for headteachers will be a useful addition to the legislation currently in force, will demonstrate the Government's commitment to tackle knife crime, and will help bolster public confidence and personal safety.

5. Costs and benefits

- **Sectors and groups affected**

Those affected will be [a] the small minority of pupils tempted to carry an offensive weapon; [b] school managers who will have more power to keep good order; [c] staff and pupils in schools who will benefit from enhanced measures to keep knives out of our schools.

- **Benefits**

The provision would have a social benefit by deterring young people from carrying an offensive weapon in school; by protecting other pupils and staff; and by demonstrating that carrying of offensive weapons will not be tolerated.

It should result in savings to the Government by reducing the number of calls by schools for urgent police assistance; by helping front-line delivery staff to improve discipline and so spend less resource on managing misbehaviour, allowing more resource to go on raising educational standards, and thus improving the quality of the service that schools provide to pupils and their parents. By enabling earlier removal from circulation of more of the few knives that come into schools, it should reduce the number of knife offences and so help to reduce the number of offences that courts have to deal with. For most pupils, it should improve the quality of their daily experience by making it less likely that they will be subject to intimidation by fellow pupils with knives. By helping to reduce the numbers of young people tempted to carry a knife or other offensive weapon, it should

reduce the rate of crime and help crime prevention, supporting schools in improving community cohesion and quality of life for all those in a school and its local community.

- **Costs**

The likely cost to schools in training selected staff in searching techniques and possibly in upgrading existing behaviour management skills should be marginal. Responsibility and budgets for training of school staff are delegated to schools.

The cost of doing nothing would be to increase the possibility, albeit small, of another violent incident by a pupil with a knife in school, and of undermining DfES's other actions to improve standards of pupil behaviour in schools. The cost of proposing random searches would be a considerable likelihood of legal challenge on the grounds that current risks from weapon-carrying to the safety of pupils and staff in schools do not justify that level of intrusion into personal liberty - entailing legal costs for local education authorities and others.

- **Unintended consequences**

School staff, especially senior management, are highly skilled and experienced in managing the behaviour of young people in their charge, including ensuring that potentially difficult confrontations are successfully resolved. The Government believes that with guidance and with suitable training, the power to search should be used only where there is reasonable suspicion, and should not have any unintended consequences. We would ask our partners, at the time of the post-implementation review [see below], if there had been any unforeseen unintended consequences.

6. Small Firms Impact Test

The provision should have no impact on small firms.

7. Competition assessment

The provision will not affect competition.

8. Enforcement, sanctions and monitoring

Not applicable. The Government would not propose to add to burdens on schools by monitoring the uptake of this power.

9. Implementation and delivery plan

Following Royal Assent, it is proposed to:

- I. hold further discussions with DfES to set up a plan to disseminate details of the new power, so that schools are informed of the new legislation
- II. consider what if any wider dissemination is necessary
- III. issue guidance, and advice on training, to LEAs, governing bodies, headteachers and staff

10. Post-implementation review

The DfES will lead a review of the legislation after it has been in force for 3 years to assess the level of awareness in schools and views on its usefulness, mainly by consulting members of the DfES-chaired Working Group on School Security, on which HO, ACPO, school staff unions, employers, governors and parents bodies are represented.

11. Summary and recommendation

It is currently permissible for a headteacher to search a pupil's desk or locker without the pupil's consent, to search a bag or jacket with consent, and to ask the police to do a personal search. The police can, with reasonable suspicion, enter a school to search without a head teacher's consent, conduct a personal search without a pupil's consent, and conduct an unannounced search of more than one pupil in a school. But there remains a gap which allows pupils to avoid such a search by refusing to allow a member of school staff to search a bag or jacket, or by disposing of a weapon while the school asks the police to attend and a police officer makes their way to the school. A new power of search for headteachers will be a useful addition to the legislation currently in force, will demonstrate the Government's commitment to tackle knife crime, and will help bolster public confidence and personal safety.