

Children, Young Persons, and Their Families Amendment Act 2001

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Date of assent 27 March 2001

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Children, Young Persons, and Their Families Amendment Act 2001.
- (2) In this Act, the Children, Young Persons, and Their Families Act 1989 is called “the principal Act”.

2 Commencement

This Act comes into force on the 90th day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to include in the principal Act the principal powers of search and seizure currently prescribed in the Children, Young Persons, and Their Families (Residential Care) Regulations 1996 (SR 1996/354);
- (b) to make it explicit that the regulation-making power in section 447 of the principal Act authorises the making of regulations setting out procedures for search and seizure;
- (c) to ensure, for the avoidance of doubt, that including matters relating to search and seizure in the principal Act does not invalidate existing regulations dealing with these matters.

4 New heading and sections 384A to 384K inserted

The principal Act is amended by inserting, after section 384, the following heading and sections:

“Searches

“384A Interpretation

For the purposes of sections 384B to 384K,—

“**harmful item** means any article, drug, or substance that a member of staff has reasonable cause to believe is likely, while a child or young person is in a residence, to harm or to be used to harm that child or young person or any other person

“**mail** includes—

- “(a) a facsimile communication:
- “(b) electronic mail:
- “(c) an envelope or package

“**manager** means the person for the time being in charge of a residence

“**member of staff** means every person employed as a member of staff of a residence; and includes the manager of the residence

“**pat down search** means a search of a clothed child or young person in a residence in which the person conducting the search may do the following

- “(a) run or pat his or her hand over the body of the person being searched, whether inside or outside the clothing (other than any underclothing) of that person:
- “(b) insert his or her hand inside any pocket or pouch in the clothing (other than the underclothing) of the person being searched:
- “(c) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following:
 - “(i) open his or her mouth:
 - “(ii) display the palms of his or her hands:
 - “(iii) display the soles of his or her feet:
 - “(iv) lift or rub his or her hair:
 - “(v) remove, raise, lower, or open any outer clothing (including, without limitation, any coat, jacket, jumper, or cardigan) worn by the person being searched, except where the person has no other clothing, or only underclothing, under that outer clothing:
 - “(vi) turn out any pocket or pouch, and display any hem, cuff, lining, or fold, in any outer clothing worn by that person:

“(vii) remove any head covering, gloves, or footwear (including socks or stockings) being worn by that person:

“(d) conduct a visual examination (whether assisted by any instrument or device designed to illuminate or magnify) of the person’s mouth, nose, and ears (not including the insertion of any instrument, device, or thing into such orifice)

“**regulations** means regulations made under section 447 relating to search and seizure

“**residence** means a residence established under section 364

“**scanner search** means a search of a child or young person by means of an electronic device passed over the clothed body of the person being searched and that does not include any touching (except any accidental touching) of the person being searched

“**strip search** means a search where the person conducting the search may require the child or young person being searched—

“(a) to undress, or to remove any specified items of clothing and underclothing, and be visually examined; and

“(b) to have his or her clothing searched

“**unauthorised item** means any article, drug, or substance—

“(a) that is a harmful item; or

“(b) that may not be lawfully possessed by any child or young person in the residence.

“384B Inspection of mail

The manager may cause to be inspected, in accordance with the regulations, any mail intended to be sent or received by a child or young person in the residence if the manager believes, on reasonable grounds, that the mail contains—

“(a) any unauthorised item; or

“(b) any harmful item or any article, drug, or substance that may not lawfully be possessed by the person for whom the mail was intended; or

“(c) any material that would or might facilitate or encourage the commission of an offence by the person for whom the mail was intended; or

- “(d) any material that would be likely to be offensive or harmful to the person for whom the mail was intended.

“384C Child or young person may be searched to detect unauthorised items

- “(1) A member of staff, who believes on reasonable grounds that a child or young person in the residence has in his or her possession any unauthorised item, may carry out any of the following types of searches for the purpose of detecting that item:
 - “(a) a scanner search of the child or young person;
 - “(b) a pat down search of the child or young person;
 - “(c) a search of any room or sleeping area assigned to the child or young person.
- “(2) Nothing in subsection (1)(c) limits or affects any power or authority to search or inspect any room or sleeping area in the residence for security purposes.
- “(3) A member of staff may not carry out a search unless—
 - “(a) that member of staff requests that the child or young person hand over the unauthorised item that he or she believes on reasonable grounds to be in the child’s or young person’s possession; and
 - “(b) the child or young person refuses or fails to hand the item over.
- “(4) Nothing in subsection (3) requires that a member of staff make a request if the same request has been made to the child or young person within the previous hour.

“384D Use of dogs for searching

- “(1) In exercising a power of search conferred by sections 384B and 384C, a member of staff may have with him or her, and use for the purposes of searching, any dog trained for that purpose.
- “(2) A dog must not be used unless it is under the control of another person (being a member of the police, or a customs officer, or a member of the Armed Forces, or an employee of the Department of Corrections), who may accompany the member of staff for the purposes of the search.

- “(3) A member of staff who uses a dog for the purposes of searching any child or young person must conduct the search with decency and sensitivity and in a manner that—
- “(a) affords to the child or young person being searched the greatest degree of dignity consistent with the purpose of the search; and
 - “(b) prevents the dog coming into physical contact with the child or young person during the search.

“384E Child or young person may be strip searched

- “(1) A member of staff may, if that member of staff believes on reasonable grounds that a child or young person has in his or her possession a harmful item, conduct a strip search of that child or young person for the purposes of detecting the harmful item—
- “(a) if that member believes on reasonable grounds that a strip search is necessary in order to detect the item; and
 - “(b) if a scanner search or a pat down search of the child or young person has already been carried out for that purpose.
- “(2) A child or young person required to undress or remove any clothing and underclothing under subsection (1) may be required to remain undressed or partly undressed only as long as is reasonably necessary for the purposes of the search.

“384F Explanation of purpose and consequences of inspections and searches

- “(1) Before any mail is inspected under section 384B or a search is carried out under section 384C or section 384E, the member of staff who is to conduct the inspection or search must explain to the child or young person—
- “(a) that the purpose of the inspection or search is,—
 - “(i) in the case of an inspection, to detect any item of the kinds referred to in section 384B; or
 - “(ii) in the case of a search carried out under section 384C, to ensure the safety of the child or young person by detecting any harmful item, or to detect any article, drug, or substance that may not be

- lawfully possessed by the child or young person in the residence; or
- “(iii) in the case of a search carried out under section 384E, to ensure the safety of the child or young person and the safety of others by detecting any harmful item; and
- “(b) that any item seized during the inspection or search will, after consultation with the child or young person, be dealt with in the ways provided for by the regulations; and
- “(c) that any item seized during the inspection or search and subsequently handed to a member of the police in accordance with the regulations may be used as evidence in criminal proceedings against the child or young person.
- “(2) The explanation required by subsection (1) need not be given if the member of staff has reasonable grounds for believing that the situation involves a serious and immediate risk to the safety of the child or young person or of any other person.

“384G Restrictions on searches

- “(1) A member of staff must consult with the manager or a senior member of staff before carrying out a search under section 384C or section 384E unless consultation would, in the circumstances, be impracticable.
- “(2) A pat down search or a strip search of a child or young person must be carried out by a member of staff who is of the same sex as the child or young person being searched.
- “(3) A pat down search or a strip search must not be carried out in view of—
- “(a) a person who is not of the same sex as the child or young person, unless the person is a parent or guardian (other than the chief executive) of the child or young person or a person who would otherwise have the care of the child or young person;
- “(b) another child or young person in the residence.
- “(4) A pat down search or a strip search must not be conducted unless 1 of the following persons is also present:
- “(a) another member of staff.

- “(b) a member of the police:
 - “(c) a parent or guardian (other than the chief executive) of the child or young person or a person who would otherwise have the care of the child or young person.
- “(5) A person who conducts a pat down search or a strip search must conduct the search with decency and sensitivity and in a manner that affords the child or young person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.

“384H Use of force in carrying out search

- “(1) A member of staff may not use physical force in carrying out a search authorised by section 384C or section 384E unless that member of staff has reasonable grounds for believing that the use of force is reasonably necessary to avoid or mitigate a serious and immediate risk to the safety of the child or young person or of any other person.
- “(2) A member of staff who uses force for the purpose referred to in subsection (1) must use no more than the minimum amount of force that is reasonably necessary in the circumstances.

“384I Recording of inspections and searches

The manager must ensure that a record is made in the daily log kept in accordance with the regulations of—

- “(a) the details of any inspection or search carried out under any of sections 384B, 384C, and 384E, including the grounds on which the inspection or search was carried out; and
- “(b) in the case of a search carried out under section 384C or section 384E, the details of any physical force used for the purpose of carrying out the search, and of the circumstances giving rise to the use of force.

“384J Child or young person may make complaint

A child or young person who has had his or her mail inspected under section 384B or has been searched under section 384C or section 384E may make a complaint about that inspection or search in accordance with the regulations.

“384K Power to seize articles, etc, found on inspection or search

- “(1) Any unauthorised item found during any inspection or search may be seized in accordance with the regulations by the member of staff referred to in subsection (2).
- “(2) The member of staff of the residence referred to in subsection (1) is,—
- “(a) in the case of an inspection carried out under section 384B, the member of staff conducting the inspection; or
 - “(b) in the case of a search carried out under section 384C, the member of staff who is conducting the search; or
 - “(c) in the case of a search carried out under section 384E, the member of staff who is conducting the search.
- “(3) Any unauthorised item seized must be dealt with in accordance with the regulations.
- “(4) The manager must ensure that a record is made in the daily log kept in accordance with the regulations of the details of the seizure of any unauthorised item and of the action taken in respect of it.”

5 Regulations

Section 447 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) regulating searches conducted under sections 384C and 384E and the inspection of incoming and outgoing mail under section 384B including, without limitation,—
- “(i) prescribing the manner in which the searches and inspections may be carried out:
 - “(ii) prescribing the powers that may be exercised when conducting a search or inspection:
 - “(iii) providing for the seizure, disposal, safe keeping, or return of any article, drug, or substance found during a search or inspection:
 - “(iv) prescribing conditions on the disposal of any seized article, drug, or substance:
 - “(v) prescribing procedures by which a child or young person may lay a complaint in relation to an inspection of mail or a search, and how the complaint is to be dealt with:”.

6 Saving

- (1) The enactment, by section 4 of this Act, of sections 384A to 384K of the principal Act does not invalidate any of the provisions of the Children, Young Persons, and Their Families (Residential Care) Regulations 1996 (SR 1996/354).
- (2) The enactment, by section 5 of this Act, of paragraph (ca) of section 447 of the principal Act does not imply that any regulations made under the principal Act before the commencement of this Act are invalid.

Legislative history

1 June 2000	Introduction (Bill 37-1)
25 July 2000	First reading and referral to Social Services Committee
15 December 2000	Reported from Social Services Committee (Bill 37-2)
28 February 2001	Second reading
1 March 2001	Committee of the whole House
22 March 2001	Third reading
