

SUNBEDS (REGULATION) ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Sunbeds (Regulation) Act 2010 which received Royal Assent on 8 April 2010. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Act seeks to prevent persons aged under 18 from using sunbeds. Businesses which offer sunbeds for use on their premises would be banned from allowing persons aged under 18 to use or have access to their sunbeds, and from offering their sunbeds for use by persons aged under 18. The Act includes regulation-making powers which would allow the further regulation of sunbed use.
4. The incidence of skin cancer is increasing; malignant melanoma is among the five most common cancers in 15-24 year olds in England and Wales. Approximately 80% of melanomas are thought to be caused by exposure to ultraviolet (UV) light – both natural (from the sun) and artificial. In 2003, the World Health Organisation (WHO) issued the guide “Artificial Tanning Sunbeds: Risks and Guidance” to assist government health authorities in the development of public health policy relating to sunbeds. The guide says that there is increasing evidence from both experimental and epidemiological data that cumulative exposure to UV radiation increases the risk of skin cancers. Therefore, the added exposure from UV tanning appliances is likely to add to the detrimental consequences of natural solar exposure. The guide includes a recommendation that no one under the age of 18 should use a sunbed.
5. The Scientific Committee on Consumer Products (SCCP) to the European Commission issued an opinion in July 2006 warning of the risks to health of sunbeds, noting that the risk of melanoma seemed particularly high when sunbeds were used at a young age. The SCCP recommended that those under 18 years should not use UV tanning devices. The EU adopted the opinion and the European Commission has called upon Member States to ensure an appropriate use of sunbeds.

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6. The Committee on Medical Aspects of Radiation in the Environment (COMARE), an independent expert advisory committee which advises Government and the devolved authorities on the health effects of natural and man-made radiation, considered the health effects and risks arising from exposure to UV radiation from sunbeds. Their thirteenth report, published in June 2009, confirmed that UV radiation from sunbeds was capable of inducing skin cancer and that young people were particularly vulnerable. One of the recommendations in the report is that the commercial use of sunbeds by persons aged under 18 is prohibited.
7. The International Agency for Research on Cancer Working Group (IARC), an intergovernmental agency of the World Health Organisation who conduct and coordinate research into the causes of cancer, announced in July 2009 that it was raising the classification of sunbeds from 'probably carcinogenic to humans' to 'carcinogenic to humans'.
8. Presently, in England and Wales there is no legislation that provides specifically for the regulation of sunbeds. Legislation was enacted in Scotland in 2008 to prohibit the use of commercial sunbeds by persons aged under 18, the sale or hire of sunbeds to persons aged under 18, and the use of commercial sunbeds without supervision (see Part 8 of the Public Health etc. (Scotland) Act 2008 asp 5).

THE ACT

9. The Act has 14 sections and a Schedule. Section 1 contains the main interpretative provisions. Section 2 imposes a duty on a person carrying on a sunbed business to ensure that sunbeds are not used, or offered for use, or accessed by a person aged under 18. Section 3 contains an exemption for medical treatment. Sections 4 to 6 contain powers to make regulations in connection with sunbed use. Section 7 and the Schedule to the Act relate to enforcement of the provisions of the Act. Section 8 concerns further offences supporting the enforcement provisions of the Act. Section 9 concerns offences committed by companies and other incorporated bodies. Sections 10 and 11 make further provision about regulations made under sections 4 to 6. Sections 12, 13 and 14 cover interpretation, financial provisions, the short title, commencement and extent respectively.

TERRITORIAL EXTENT AND APPLICATION

10. The Act extends to (that is, forms part of the law of) England and Wales.
11. The regulation-making powers in sections 4, 5 and 6 of the Act are exercisable by the Welsh Ministers in respect of Wales independently of the exercise of those powers by the Secretary of State in respect of England. The Act confers regulation-making powers on the Welsh Ministers in respect of the matters covered by those powers. The Welsh Ministers will have executive competence in respect of these matters, but the Act does not transfer legislative competence to the National Assembly for Wales.

COMMENTARY ON SECTIONS

Section 1: Main interpretative provisions

12. Section 1 sets out the meaning of “sunbed” and a “sunbed business”, the two key terms used in the Act.
13. A “sunbed”, for the purposes of the Act, encompasses all types of electronic devices which emit ultra-violet (UV) radiation where the purpose of the emission is tanning. The size of the device or the precise mechanism it uses for emitting the UV radiation does not matter. So traditional lie-down sunbeds are caught as well as those in which a person receives UV radiation whilst standing up. Portable devices such as UV sun lamps are also caught. Electrically-powered devices which spray the skin with a substance that gives the appearance of a tan without the use of UV radiation are not “sunbeds” for the purposes of the Act.
14. A “sunbed business” is a business which offers sunbeds for use on the business premises. The business may be exclusively about providing sunbeds for use on the premises (such as a tanning salon) or it may provide sunbeds for use as a complementary or peripheral activity (such as gyms or hotels offering sunbeds for use by members or guests). Either way it is a “sunbed business”. A business can be a “sunbed business” irrespective of whether the sunbed is made available for use in return for payment.

Section 2: Duty to prevent sunbed use by children

15. Section 2 requires a person who carries on a sunbed business (P) to ensure that no person aged under 18 uses, or is offered the use of, one of the business’s sunbeds on the business premises, except where those premises are used wholly or mainly as a person’s home (subsection (1)(a) and (b)). P must also ensure that no person aged under 18 accesses a “restricted zone” (see the definition of that term in subsections (4) and (5)), unless the person is providing services to P for the purposes of the business. If P breaches the duty in subsection (1), P commits a criminal offence (see subsection (3)).
16. A “restricted zone” is defined in subsections (4) and (5). If the business keeps its sunbed in a wholly or partly enclosed space (such as a private room, or a changing cubicle, or a booth or pod) that it reserves for people who use the sunbed, every part of that reserved space is a restricted zone. So, for example, if a sunbed in a beauty salon is kept in a private room reserved for sunbed users, and the sunbed itself is in turn contained in a booth, then the whole of the private room and the booth inside it would be a restricted zone.
17. If the business keeps its sunbed in a room which is not reserved for people who use the sunbed and the sunbed is not enclosed in any way in a reserved area, the whole of that room would be a restricted zone.

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18. A person aged under 18 is allowed to be present in a restricted zone where the person is there for the purposes of providing a service to P which relates to the sunbed business. So, for example, P would not commit an offence under subsection (1)(c) if a person aged under 18 entered a restricted zone in order to clean or repair the sunbed, or to put fresh towels out, or paint the room in which the sunbed is kept. Any such service could be provided by one of P's employees, but they could also be provided by a self-employed person contracted to work for P, or a member of staff from an agency or a person gaining unpaid work experience with the business.
19. By imposing criminal liability on the person carrying on the business if a person aged under 18 is present in a restricted zone, the section enables a prosecution to be brought in a case where a person aged under 18 enters the zone with an adult, but it is not possible to show which person actually used the sunbed. For example, if Emma (aged 19) and her friend Elizabeth (aged 17) both enter a private cubicle containing a sunbed, it would be difficult to know which of them used the sunbed.
20. By making it an offence for an offer of use to be made to a person aged under 18, prosecutions are able to be brought even where the person aged under 18 did not go on to use the sunbed because, for example, the sunbed failed to work or the person changed their mind.
21. If the person carrying on a sunbed business (P) fails to comply with the requirements in subsection (1), P commits a criminal offence punishable on summary conviction by a fine of up to £20,000 (subsection (6)). The offence is a strict liability offence, which means that P commits the offence if a person aged under 18 uses, or is offered the use of, one of the business's sunbeds, or if a person aged under 18 enters a restricted zone (except where the person is in the restricted zone for the purposes of providing services to P for the purpose of the sunbed business). It does not matter whether P intended this to happen. However, the strictness of this approach is tempered by the availability of a 'due diligence defence' (subsection (7)). If P can demonstrate that P took all reasonable steps and exercised all due diligence in trying not to commit the offence then P has a defence to the offence. So, for example, P may show that the sunbed business has a strict policy requiring proof of a person's age before allowing the person to use a sunbed and that the policy was properly implemented but was circumvented by a high quality fake 'proof of age' document which would fool a reasonable person. Or P might show that the use which was the subject of the offence occurred at night when the properly-secured business premises were subject to a break-in.

Section 3: Exemption for medical treatment

22. Section 3 provides for an exemption from the duties in section 2(1) where a sunbed is used for the purposes of medical treatment under the supervision or direction of a registered medical practitioner, the sunbed is in, or provided by, a healthcare establishment (as defined) and the sunbed is made available only for the purpose of medical treatment. Where the conditions for the exemption are met, a person aged under 18 may be allowed to use, or be offered the use of the sunbed, or be present in a restricted zone containing the sunbed, without an offence being committed by P.

Section 4: Power to make further provision restricting use, sale or hire of sunbeds

23. Section 4 (like sections 5 and 6) contains regulation-making powers exercisable by the “appropriate national authority”, which is the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (see the definitions of “regulations” and “appropriate national authority” in section 12). Subsection (1)(a) allows regulations to be made requiring that the use of commercial sunbeds is supervised. The regulations may make provision about the supervision required.
24. Subsection (1)(b) and (c) enable regulations to be made to extend the duties in section 2(1)(b) and (c) (the duties to ensure that sunbeds are not used, or offered for use, by a person aged under 18) so that they apply in respect of sunbed businesses where the sunbeds to which that business relates are located in domestic premises, that is premises used wholly or mainly as someone’s home.
25. Subsection (2) enables regulations to be made banning or restricting the sale and hire of sunbeds to persons aged under 18. The regulations may cover face-to-face and remote transactions (for example internet transactions).
26. Under subsection (3), the Secretary of State and the Welsh Ministers must consult with interested parties before making regulations requiring the use of sunbeds to be supervised or prohibiting or restricting the sale or hire of sunbeds.

Section 5: Power to require information to be provided to sunbed users

27. Regulations under subsection (1) may require any person carrying on a sunbed business to provide and display information about the health risks of using sunbeds to those who use or may seek to use a sunbed. The nature of the information to be provided or displayed and the manner and circumstances in which it has to be provided or displayed will be set out in the regulations (see the definition of “prescribed” in section 12).
28. Regulations under subsection (3) may ban a person carrying on a sunbed businesses from providing or displaying any material containing statements relating to the health effects of sunbed use, other than information that is required or authorised by regulations made under this section.

Section 6: Protective eyewear

29. Regulations under section 6 may place a duty on a person carrying on a sunbed business to ensure that protective eyewear is made available to users of the business’s sunbeds, and to ensure, so far as reasonably practicable, that protective eyewear is worn by users of those sunbeds. The guide “Artificial Tanning Sunbeds: Risks and Guidance” produced by the World Health Organisation found that acute effects of UV radiation on the eye include inflammation of the cornea and the iris, and long term effects could include cancer of the conjunctiva. Any regulations made under section 6 would be for the purpose of protecting the health of sunbed users.

Section 7 and the Schedule: Enforcement by local authorities

30. Section 7 imposes a duty on local authorities (as defined in section 12) to enforce in their area the provisions of section 2, and to appoint officers (“authorised officers”) for this purpose. By virtue of section 12(2), if a local authority assigns any functions under this Act to a port health authority by an order under section 2 of the Public Health (Control of Disease) Act 1984, references in the Act to a “local authority” would be read as references to a “port health authority” for the purpose of those functions.
31. The Schedule sets out the enforcement powers available to authorised officers.
32. Paragraph 2 enables an authorised officer to enter premises (other than domestic premises as defined in section 12) where the officer believes a sunbed business is being carried on (paragraph (a)). Additionally, to the extent necessary to enforce section 2, paragraph 2 enables the authorised officer to (i) carry out inspections of the premises (paragraph (b)), and to require the production, inspection, taking copies and taking possession of any book, document or record, request information (paragraphs (c) and (d)) and (ii) require a person to give information, or afford such facilities and assistance as the officer thinks necessary (paragraph (e)). If the authorised officer takes possession of anything under paragraph (d), the officer must leave on the premises a statement explaining what the officer has taken and the fact that possession of it has been taken (see paragraph 8). The requirement to give information under paragraph (e) does not extend to information which a person could refuse to give in Court. This includes legally privileged material and information which is self-incriminating (see paragraph 4).
33. The enforcement powers under paragraph 2 are only exercisable where, if asked to do so, the authorised officer produces his written authority.
34. Paragraph 3 enables the authorised officer to carry out ‘test-purchasing’ exercises.
35. Paragraph 5 enables a Justice of the Peace to issue a warrant authorising an authorised officer to enter any premises (using reasonable force if necessary), other than premises used wholly or mainly as someone’s home.
36. Paragraph 6 enables an authorised officer entering premises under paragraph 2 or under warrant to take with him or her such other people, or bring with him or her such equipment as he or she thinks necessary.
37. Paragraph 7 requires that an authorised officer who has entered permanently or temporarily unoccupied premises under a warrant must effectively secure those premises against trespassers on leaving.

Section 8: Obstruction etc of authorised officers

38. Section 8 provides that any person who without reasonable excuse obstructs an authorised officer acting in the exercise of the officer’s functions under this Act

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commits an offence. By subsection (2), a person who fails to give to an authorised officer any facilities, assistance or information which the authorised officer reasonably requires for the purposes of enforcement commits an offence. By subsection (3), a person commits an offence if the person makes a statement which is false or misleading, and either the person knows that it is false or misleading or is reckless as to whether it is false or misleading.

Section 9: Offences by bodies corporate

39. Section 9 provides that, if an offence under this Act, or any regulations made under it, which is committed by a body corporate is committed with the consent or connivance of, or is attributable to the neglect of, an officer of a body corporate, then that officer as well as the body corporate is guilty of the offence.

Section 10: Regulations: general

40. This section makes further provision relating to the regulation-making powers conferred by the Act (that is, the powers in sections 4, 5 and 6). Subsection (3) allows regulations under the Act to create offences punishable on summary conviction by a fine of up to £20,000. Subsection (4) allows regulations under the Act to include provision requiring local authorities to enforce in their area the provisions of the regulations.

Section 11: Regulations: control by Parliament or National Assembly for Wales

41. Section 11 sets out the control applicable by the relevant legislature to regulations made under the Act.
42. Regulations are subject to the affirmative resolution procedure if they contain one or more of the following: (i) provisions made under section 4, (ii) provisions creating offences or increasing the penalty for existing offences, or (iii) provisions in relation to enforcement under section 10(4).
43. All other regulations made under the Act are subject to the negative resolution procedure.

COMMENCEMENT DATE

44. Section 14 provides for the Act to come into force a year after it is passed.

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HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	16 December 2009	Vol. 502 Col 978
Second Reading	29 January 2010	Vol. 504 Cols 1054-1084
Committee	10 February 2010	Hansard Public Bill Committee
Report and Third Reading	12 March 2010	Vol. 507 Cols 535-560
House of Lords		
Introduction	15 March 2010	Vol. 718 Col 456
Second Reading	30 March 2010	Vol. 718 Cols 1336-1347
Order of Commitment Discharged	8 April 2010	Vol. 718 Col 1669
Third Reading	8 April 2010	Vol. 718 Col 1669
Royal Assent	8 April 2010	House of Lords Hansard Vol. 718 Col 1738 House of Commons Hansard Vol. 508 Col 1256

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