

REGULATION OF SUNBED USE IN SUNBED PREMISES IN SCOTLAND

**A GUIDE FOR EMPLOYERS,
MANAGERS AND THOSE IN
CONTROL OF PREMISES**

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and those in control of premises**

Scottish Government 2009

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Section 1

Introduction

1.1 On 1 December 2009, sunbed use in sunbed premises in Scotland will be regulated by new legislation - The Public Health etc. (Scotland) Act 2008 ("the Act") and the Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009 ("the Sunbed Regulations")¹.

1.2. The requirements of the new law are in addition to your existing obligations under health and safety legislation and the requirements of local licensing, if there is a local authority sunbed licensing scheme operating in your area.

1.3 The new law has been introduced because of the growing evidence of the health risks associated with sunbed use, including skin cancer, with young people at particular risk.

1.4 The aim of this guidance is to help operators comply with the new law when it comes into effect on 1 December. If you are in any doubt about your legal obligations, you should seek your own independent legal advice.

¹ The Public Health etc. (Scotland) Act 2008 and the Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009 - <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/publicact>

Section 2

What does the new law do?

2.1 The Act:

- prohibits operators from allowing persons under 18 to use sunbeds on their premises;
- prohibits operators from allowing unsupervised sunbed use on their premises;
- prohibits the sale and hire of sunbeds to persons under 18;
- requires operators of sunbed premises to provide prescribed information to a person each time that person proposes to use a sunbed;
- requires operators of sunbed premises to display a prescribed information notice in a position where it is readily visible to persons proposing to use a sunbed.

2.2 An operator of sunbed premises who, without reasonable excuse, fails to comply with the law commits a criminal offence. It is also an offence, without reasonable excuse, to intentionally obstruct an authorised officer from entering and inspecting premises; failing to comply with a requirement to produce records and information; and failing to provide the name and address of the operator of sunbed premises.

2.3 In the Act:

- ‘operator’ means the person having management or control of sunbed premises;
- ‘sunbed’ means an electrically-powered device designed to produce tanning of the skin by the emission of artificial ultraviolet radiation;
- ‘sunbed premises’ means premises in which persons are permitted to use a sunbed for payment.

2.4 The information to be provided to sunbed users (and the form and manner in which it is to be provided) and the information notice (and the form and manner of display) is contained in the Sunbed Regulations and replicated in **Annexes A and B**. The Scottish Government has issued you with supplies of information materials and display notices, which comply with the new law, for your use. We have also supplied stickers which you may wish to consider putting on your sunbeds to help raise awareness that they should not be used by people under 18 years of age.

Section 3

What you need to do to comply

Sunbed operators

3.1 You are required to take the following minimum action:

- Take reasonable steps to ensure that a person who intends to use a sunbed on your premises is 18 years old or over. Under the law, you are treated as having taken reasonable steps if you (or an employee or agent) were shown any of the following documents, and the document would have convinced a reasonable person:
 - a passport;
 - a European Union photocard driving licence; or
 - a photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram.
- Ensure that you, an employee, or agent is present on the sunbed premises at any time a person is using a sunbed on those premises.
- Ensure that you, an employee, or agent provides the information in **Annex A** to a person each time he or she proposes to use a sunbed on your premises. Whilst you need not use the materials provided by the Scottish Government, it may be helpful for you to do so. Any alternative materials which you may use must comply fully with the requirements in Annex A.
- Ensure that the required information notice set out in **Annex B** is displayed on your premises in a position where it is readily visible to people proposing to use a sunbed on your premises. Whilst you need not use the display notices provided by the Scottish Government, it may be helpful for you to do so. Any alternative materials which you may display must comply fully with the requirements in Annex B.
- Co-operate fully with authorised officers of the local authority who will be enforcing the new law.

Those who sell or hire sunbeds

3.2 You are required to take the following minimum action:

- Take reasonable steps to ensure that a person who intends to buy or hire a sunbed from you is 18 years old or over. Under the law, you are treated as having taken reasonable steps if you (or an employee or agent) were shown any of the following documents, and the document would have convinced a reasonable person:
 - a passport;
 - a European Union photocard driving licence; or

- a photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram.

3.3 If the premises where the order for a sunbed was taken are not the same as the premises from which the sunbed is despatched for delivery, then the sale or hire is treated as taking place on the premises where the order was taken. If, however, the order was taken outwith Scotland, and the premises from which the sunbed is despatched are in Scotland, then the sale or hire is treated as having taken place on the premises from which the sunbed is despatched.

Recommended management controls: sunbed premises

3.4 Whilst not a requirement of the law, it is recommended that you have the following management controls in place which will demonstrate how you are complying with the new law:

- have written procedures for staff for dealing with people who may be under 18;
- train staff in these procedures and keep records of this training;
- keep a written record of any incident (and outcome) where a responsible member of staff challenges a potential user about their age; this should include evidence that one of the prescribed proof of age documents has been provided by the user and verified by the operator;
- maintain written records for each user for each session including a signature from the user acknowledging they have been provided with the required information;
- ensure checks for signage and sufficient supplies of information for sunbed users is included in any premises/equipment check procedures;
- use till prompts for sunbed use transactions, if the facility is available.

Recommended management controls: sale and hire

3.5 It is recommended that those who hire or sell sunbeds:

- have written procedures for checking the age of customers, including any who book via the telephone or the internet;
- train staff in these procedures and keep records of this training;
- maintain a record of these checks in retrievable form; this should include evidence that one of the prescribed proof of age documents has been provided by the user and verified by the seller or hirer, or an employee or agent. An agent may include a delivery agent in the case of the remote sale of goods.

Recommended procedures

3.6 It is recommended that operators, sellers and hirers prepare and implement written procedures to demonstrate their compliance with the new law. These procedures should contain:

- a copy of the information notice to be displayed, together with an instruction of where it is to be located on the premises;
- a copy of the information to be provided to each user each time they propose to use a sunbed;
- advice to staff on challenging users who may be under 18, including details of the specific documents which a potential user can use to demonstrate their age;
- a detailed procedure for recording cases where potential users have been challenged and the outcome;
- a procedure for verifying that each user has been provided with the prescribed information each time they propose to use a sunbed.

3.7 These procedures may, of course, be incorporated into a more wide-ranging document addressing other relevant issues relating to the operation of sunbed premises and/or sale or hire businesses.

Staff Training

3.8 Operators, sellers and hirers should ensure that all staff, including new members of staff, are trained in relation to the sunbed legislation. Regular staff training should reinforce the procedures on an on-going basis.

For premises subject to local licensing under the Civic Government (Scotland) Act 1982

3.9 Your local authority should ensure that the requirements of the new Act are included in your licence conditions. Existing licensing arrangements can continue to include additional requirements over and above those specified in the Act. For the avoidance of doubt, however, you must comply with the Act whatever your licence says.

Section 4

Enforcing the law and penalties

4.1 The law will be enforced by Environmental Health Officers and Trading Standards Officers, who have been authorised by local authorities to carry out this work. These officers already work closely with businesses in areas like Health and Safety. A similar approach will be used to implement the new sunbed law – providing advice and support to businesses wherever possible.

4.2 Authorised enforcement officers have the power to enter sunbed premises and the premises of those selling or hiring sunbeds to determine whether the law is being upheld. The power may only be used at a reasonable time. They'll assess whether operators or those in charge have taken all reasonable steps to ensure compliance with the law.

4.3 Inspections carried out by enforcement officers will either be pro-active (to advise businesses and to confirm compliance with the law), or re-active (in response to a complaint). Inspections may also be incorporated within other health and safety inspections and with inspections under local licensing schemes.

4.4 Enforcement officers may carry out inspections in a number of different ways. This could include inspections:

- where officers will announce themselves prior to assessing the situation within the premises; or
- where officers will assess the situation by observation, before identifying themselves; or
- by formal test purchase, where a person who is under 18 is sent to the premises to try to procure use of a sunbed.

Penalties for committing an offence

4.5 Failure to comply with the law is a criminal offence. Operators may be fined a fixed penalty of £100 for allowing a person under 18 to use a sunbed on their premises; and a fixed penalty of £50 for allowing unsupervised sunbed use, for failing to provide the required information to sunbed users, or for failing to display the required notice.

4.6 Fixed penalties are an alternative to prosecution. Refusal or failure to pay the fixed penalty may result in prosecution and a fine of up to £2,500. Fixed penalty fines are not available for the offences of intentionally obstructing an authorised officer from entering and inspecting premises; failing to comply with a requirement to produce records and information; and failing to provide the name and address of the operator of sunbed premises.

ANNEX A

Information for sunbed users and the form and manner in which it is to be provided

The Sunbed Regulations specify the information to be provided and the format in which it is to be provided, as follows:

- (a) contains the information set out below;
- (b) is at least A5 in size, and
- (c) is printed in black characters, which can be easily read, on a yellow background.

“HEALTH WARNING

INFORMATION FOR SUNBED USERS

You should be aware that using sunbeds may harm your health in the long term. They have been linked to:-

- a significantly higher risk of skin cancer, including malignant melanoma (the most serious form of skin cancer);
- eye damage, including a higher risk of cataracts - if appropriate eye protection is not worn;
- accelerated skin damage, including premature ageing of the skin.

These health risks outweigh any potential benefits in using sunbeds to supplement Vitamin D.

There are also short term health effects:-

- sunburnt skin, which may become red, painful and blister;
- skin dryness;
- an itchy “heat” rash;
- eye irritation or conjunctivitis - if appropriate eye protection is not worn.

You may be at increased risk from sunbed use if you:-

- have a history of skin cancer or someone in your close family has a history;
- have fair or sensitive skin that burns easily in sunlight;
- have a history of sunburn especially in childhood;
- have a large number of freckles and/or red hair;
- have a large number of moles;
- already have skin damage due to sunlight;
- have a medical condition that is made worse by sunlight;
- are taking medication or using certain creams that may sensitise the skin to sunlight;
- have an immune system which is suppressed.”

ANNEX B

Information for Display Notice in sunbed premises and the form and manner of display

The Sunbed Regulations require that a notice displayed in sunbed premises:

- (a) contains the information set out below;
- (b) is at least A3 in size, and
- (c) is printed in black characters, at least 20 millimetres in size, on a yellow background.

“HEALTH WARNING

Sunbed use may damage your skin and will increase your risk of skin cancer.”



The Scottish
Government

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