

Welsh Assembly Government

Consultation Document

The Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011



A response by the Association of Personal Injury Lawyers

December 2010

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has around 4,700 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

Stephen Lawson – APIL Secretary;

Cenric Clement-Evans – APIL Executive Committee Member; and

Brian Dawson – Co-ordinator APIL Wales.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Katherine Elliott, Legal Policy Officer

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 958 0585; Fax: 0115 958 0885 E-mail: Katherine.elliott@apil.org.uk

Introduction

APIL's long-standing position has been one of support for the Sunbeds (Regulation) Act 2010, which comes into force on 8 April 2011. However, in light of evidence presented by the Committee on Medical Aspects of Radiation in the Environment (COMARE); World Health Organisation's International Agency for Research into Cancer (IARC); the Health and Safety Executive (HSE); Cancer Research UK; and the National Assembly for Wales' Health, Wellbeing and Local Government Committee we believe there is still more which can be done to prevent skin cancer and eye damage caused by radiation from artificial tanning devices and raise awareness of the dangers of using these devices.

Executive Summary

APIL welcomes the opportunity to respond to the Welsh Assembly Government's consultation regarding the Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011 and has made the following recommendations:

- There is sufficient evidence to take forward the regulation making powers under the Sunbeds (Regulation) Act 2010 and introduce further controls in this area by way of Regulations for Wales.
- The use of sunbeds on sunbed premises should be supervised at all times.
- In Regulation 2 there should be a definition of "competent" as it appears in Regulation 4.
- Supervisors should maintain a record that they have requested proof of identification from those seeking to use a sunbed that the supervisor believed to be under the age of 25.
- The sale or hire of sunbeds to persons aged under 18 should be prohibited.
- Detailed written information about the health effects of sunbed use should be provided to all persons looking to use a sunbed prior to equipment being used. This information should be provided on carbon copy paper and signed by the

- sunbed user. One copy should then be kept by the salon and a further copy given to the sunbed user.
- Schedule 1 could also detail what to look for when trying to identify skin cancer and what to do if a person suspects they may have one of the symptoms detailed, for example seek medical advice immediately from a GP.
 - Protective eyewear should be universally available for all sunbed users, and that eyewear should be provided free of charge, and this eyewear should meet European standards.
 - In addition to the proposals within the draft Regulations and those detailed above, we also suggest the following:
 - A central register of sunbed providers in Wales should be held.
 - Companies responsible for the manufacture and distribution of sunbed equipment should have a duty placed on them to prevent equipment being provided to salons that are not registered with the relevant authority.
 - There should be a duty placed upon the operator of the sunbed premises to ensure that all staff are trained to specific standards.
 - There should be a duty placed upon the operator to ensure that all sunbeds adhere to specified British and European standards.
 - The Assembly should initiate a public health campaign about the dangers of sunbeds.

Consultation Questions

Q. 1 Do you consider that there is sufficient evidence to take forward the regulation making powers under the Sunbeds (Regulation) Act 2010 and introduce further controls in this area by way of Regulations for Wales?

We believe that there is sufficient evidence presented in reports by:

- COMARE;
- IARC;
- HSE;
- Cancer Research UK; and
- and the National Assembly for Wales' Health, Wellbeing and Local Government Committee

to take forward the regulation making powers under the Sunbeds (Regulation) Act 2010. APIL fully supports the introduction of further controls in this area by way of Regulations for Wales.

Q. 2 (a) Should a person who carries on a sunbed business on domestic premises be required to prevent access to and use of a sunbed on those premises by a person aged under 18?

Yes. We believe that there is sufficient evidence of the dangers to those initially using a sunbed before the age of 35¹ to suggest that a person carrying on a sunbed business on domestic premises should be required to prevent access to and use of a sunbed on those premises by a person aged under 18.

Q. 3 (a) Do you think that the use of sunbeds on sunbed premises should be supervised at all times?

Yes. The potential health problems which may arise from the use of sunbeds makes it essential that there are always staff available to assist users with any questions that customers may have. Staff should also have responsibility for ensuring that premises are kept clean for hygiene reasons.

^{1 1} IARC. *A review of human carcinogens – Part D: radiation*. Lancet Oncology Vol 10 August 2009.

It is necessary for staff to be in attendance when sunbeds are in use to avoid customers spending too much time on a sunbed, which could lead to skin being burnt, and may lead to severe health difficulties not only at the time of use, but also in later life. There have been a number of stories of young people being injured after a session on an unsupervised sunbed, and it is imperative that these cases are not repeated in the future².

It is essential, therefore, that all sunbed salons are appropriately staffed at all times, and the use of any sunbeds in unsupervised commercial premises should be prohibited.

Q. 3 (b) Do you think the list of supervisory requirements as set out in Regulation 4(2)(b) is adequate?

We agree that there should be a clear set of requirements of the supervisor within the Regulations. In order to make Regulation 4 clearer, we believe that there should be a definition of competent (as detailed in Regulation 4(3)) provided in Regulation 2, Interpretation. We suggest that the definition that should be provided within Regulation 2 should match that which is provided in the Management of Health and Safety at Work Regulations 1999 Regulation 7(5). This regulation states,

A person shall be regarded as competent for the purposes of paragraphs (1) and (8) where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the measures referred to in paragraph (1)³.

Therefore we submit that in Regulation 2, it should state,

“competent” means a person, for the purposes of Regulation 4 paragraph (3), where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the measures referred to in Regulation 4 paragraph (2).

² <http://news.bbc.co.uk/1/hi/wales/8141263.stm>

³ Management of Health and Safety at Work Regulations 1999, Regulation 7(5).

We also suggest that it may be difficult for a supervisor to present evidence of their attempts to verify that a person is over the age of 18 and thus provide a defence that they took all reasonable precautions to prevent the use of sunbeds by persons aged under 18 years. In an image conscious society, where persons under the age of 18 may feel pressurised into trying to appear tanned, as we have seen with the sale of alcohol, some will still try unscrupulously to attain entry to a tanning device. Therefore, we submit that there should be a requirement of the supervisor to maintain a record that the age of people seeking to use a sunbed has been checked. The current 'Challenge 25' system that is in place, for the sale of goods prohibited to persons under the age of 18, is already well established. We would advocate customers being obliged to produce recognised proof of identity, such as a passport or driving licence, if a salon staff member is not satisfied that the customer is above a certain age. This could be similar to the 'Challenge 25' campaign when anyone suspected of being aged under 25 is asked to provide proof of age prior to a purchase. The salon would then keep a record stating that person had been asked for proof of age.

Q. 4 Do you think that the sale or hire of sunbeds to persons under 18 should be prohibited?

We believe it is right that under-18s should be banned from using sunbeds altogether, and have been campaigning for such a measure to be introduced for some time. We submit that this extends to the sale and hire of sunbeds too.

The potential damage to the health of sunbed users is well established, and it is vital that young people are protected from an activity which could, ultimately, lead to skin cancer. The consultation document estimates that around 100 people in the UK die every year as a result of cancer directly attributable to sunbeds⁴. Many of these deaths could be

⁴ Welsh Assembly Government Consultation Document, The Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011, A consultation on the draft Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011, Ministerial Foreword Page 1 Paragraph 3.

prevented, if the sunbed industry were to be regulated effectively. The consultation document includes research carried out by IARC, showing that using sunbeds under the age of 35 can increase the risk of developing melanoma in later life by up to 75 per cent⁵. The Committee on Medical Aspects of Radiation in the Environment (COMARE) has suggested that damage to the skin in the first 20 years of life could be even more damaging in the long term than damage suffered in later life⁶.

The first duty of any administration must be to protect the vulnerable people in society, especially from avoidable harm. It is essential, for this reason, that the Welsh Assembly Government moves to ban under-18s from purchasing or hiring sunbeds.

Q. 5 (a) Do you agree that information about the health effects of sunbed use should be provided to persons looking to use a sunbed?

We agree that detailed written information about the health effects of sunbed use should be provided to all persons looking to use a sunbed prior to equipment being used.

Q. 5 (b) Are you content with the detail of the proposed health information (as set out in Schedule 1 to the draft Regulations) for provision to sunbed users?

We suggest that the eight bullet point of schedule 1, which states that *you may be at increased risk of harm from sunbed use if you are under 18 (and no person under 18 may use a sunbed on these premises)*, should be changed to,

you may be at increased risk of harm from sunbed use if you are under 35 (and no person under 18 may use a sunbed on these premises).

⁵ World Health Organisation(WHO)/International Agency for Research on Cancer Working Group (IARC) Exposure to artificial UV radiation and skin cancer 2006.

⁶ COMARE 13th Report: The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices 2009.

This then reflects the evidence provided by IARC in their report⁷ that use of sunbeds under the age of 35 can increase the risk of developing melanoma later in life by up to 75 per cent.

Q. 5 (c) Do you consider any further health information is required in Schedule 1? If so, what?

We propose that Schedule 1 could also detail what to look for when trying to identify skin cancer and what to do if a person suspects they may have one of the symptoms detailed, for example seek medical advice immediately from a GP.

Skin cancer, when diagnosed at an early stage, has an excellent prognosis for cure by surgical removal. Most skin cancers can be removed with very little harm, however, the longer a cancer remains, the greater the chances are that it will spread and appear in other organs of the body. Therefore, it is very important that skin cancer is detected as early as possible⁸.

The information on how to detect skin cancer could, therefore, help to reduce the number of skin cancers which develop further or lie unnoticed for a period of time. In addition to this, we would also recommend that sunbed operators should provide each individual with health information for their skin type, and information about the strength of the sunbeds in the salon.

Q. 5 (d) Are you content with the proposal that this information is provided in a handout leaflet, and with the proposed style and format of that leaflet?

We agree that this information should be provided in an easy-to-read handout leaflet. There should be a requirement for persons seeking to use a sunbed to sign and date this

⁷ World Health Organisation(WHO)/International Agency for Research on Cancer Working Group (IARC) Exposure to artificial UV radiation and skin cancer 2006

⁸ Consultation Version of Skin Cancer Prevention Strategy and Action Plan 2010-2020, Department of Health, Social Services and Public Safety, Page 28 Early Detection.

document on carbon copy paper. The signature should confirm that the information has been read and understood and verify that the person signing has been asked for identification to prove they are aged 18 or over. The salon will then retain a copy of the signed document on the premises as evidence that the information has been delivered and give one copy to the customer to keep. Therefore, if the information is presented as one sheet of A4 as suggested in Regulation 7, the person seeking to use the sunbed will easily be able to take their copy of the information with them as they leave. Thus the customer retains the information on signs of early detection of skin cancer and what to do if they suspect they may be suffering from one of the symptoms.

Q. 5 (e) Do you agree that information should be visibly on display in the sunbed premises as described in the draft Regulations?

If cigarette boxes can carry explicit health warnings, it is only right that before using sunbeds, which also carry a significant health risk, people should be fully informed of the potential risks.

We agree that information notices displayed in sunbed salons should be in a prominent location, and staff should draw the customers' attention to the information, prior to the equipment being used.

Q. 5 (f) Are you content with the detail of proposed health information (as set out in Schedule 2 to the draft Regulations) to be on display for sunbed users?

We agree that the information included within Schedule 2 should be retained and on display for sunbed users.

Q. 5 (g) Do you consider any further health information is required in Schedule 2? If so, what?

The information should include the potential health risks of using sunbeds, and the strength of the sunbeds in the salon. People who are using sunbeds must be in possession of the facts about the equipment, and the potential harm it may cause.

These provisions are already in place in Scotland, under the Public Health etc Act 2008, and were included in the recommendations of the COMARE report, published in 2009⁹.

Q. 5 (h) Are you content with the proposal that this information is contained in a display notice, and with the proposed style and format of that display notice?

We are content that this information is contained in a prominent display notice and that the information is easy-to-read.

Q. 6 (a) Do you agree that protective eyewear be made available to sunbed users via the sunbed business?

Protective eyewear should be universally available for all sunbed users, and that eyewear should be provided free of charge. Businesses that make a profit from sunbeds have a duty of care towards customers, which should extend to providing eye protection free of charge. The COMARE report in 2009 recommended that 'adequate protective eyewear' should be provided and the use of the eyewear should be compulsory¹⁰.

Q. 6 (b) Is it reasonable that supervisors should ensure (as far as reasonably practicable) that such eyewear be worn by sunbed users?

⁹ COMARE 13th Report: The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices 2009.

¹⁰ COMARE 13th Report: The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices 2009.

It has been stated that sunbed use gives rise to three health concerns, relating to eyes¹¹. Although all three health concerns (conjunctivitis, photokeratitis and the formation of cataracts) are treatable, cataracts can only be effectively treated through an operation, and often cause severe discomfort. IARC has also published the following within its report,

*'several case-control studies linked the sunbed use to a raised risk of developing melanoma of the eye.'*¹²

All of these health risks would be significantly reduced by wearing protective eyewear whilst using sunbeds and therefore, we believe it is reasonable for supervisors to ensure that protective eyewear is worn by sunbed users.

Q. 6 (c) Do you agree that as an alternative, sunbed users should be allowed to use their own eyewear if they so wish?

A 2007 survey of sunbed providers in Northern Ireland by the Environmental Health Practitioners found that in almost 30% of the premises surveyed the eyewear did not meet European standards¹³. With this in mind, we would suggest that it would be simple for a person seeking to use a sunbed to purchase their own protective eyewear which would not meet the European standards. If there is a requirement for the salon to provide the protective eyewear, and that this eyewear should meet European standards, there may be increased prevention of damage to sunbed users' eyes.

Q. 6 (d) Do you agree that supervisors should ensure (as far as reasonably practicable) that a sunbed user's personal eyewear is worn by those sunbed users?

¹¹ *Regulation of the Sunbed Industry in Northern Ireland A Public Consultation*, Department of Health, Social Services and Public Safety, 19 November 2009, Page 6.

¹² IARC. A review of human carcinogens – Part D: radiation. *Lancet Oncology* Vol 10 August 2009.

¹³ *Regulation of the Sunbed Industry in Northern Ireland A Public Consultation*, Department of Health, Social Services and Public Safety, 19 November 2009, Page 14.

As detailed above, we believe that the protective eyewear should be provided free of charge by the salon, they should meet European standards and, as far as is reasonably practicable, the supervisor should ensure that the sunbed user wears the protective eyewear provided.

Q.7 We have asked a number of specific questions of you, but if you have any specific issues which we have not addressed in the above questions, please use this space to report them.

In addition to the proposals within the draft Regulations and those detailed above, we also suggest the following:

- A central register of sunbed providers in Wales should be held.
- Companies responsible for the manufacture and distribution of sunbed equipment should have a duty placed on them to prevent equipment being provided to salons that are not registered with the relevant authority.
- There should be a duty placed upon the operator of the sunbed premises to ensure that all staff are trained to specific standards.
- There should be a duty placed upon the operator to ensure that all sunbeds adhere to specified British and European standards.
- The Assembly should initiate a public health campaign about the dangers of sunbeds.

Central register of sunbed providers

We are concerned that there is no centrally held register, administered by a public body, of sunbed providers in Wales. It would be unthinkable that providers of any other activity which could have such a detrimental effect on the user's health would not be centrally regulated, and we call on the Welsh Assembly Government to set up a public register as a matter of urgency.

The 2007 survey of sunbed providers in Northern Ireland by the Environmental Health Practitioners, detailed above at question 6 (c), found that the Sunbed Association (TSA), acting as the trade industry body, does not currently maintain a satisfactory register of sunbed providers. The survey revealed only 16 per cent of sunbed providers in Northern Ireland knew that they were members at that time¹⁴. A further 79 per cent were not registered, and 5 per cent were unaware of their membership status.

We suggest that the local authorities that will be responsible for the implementation of these regulations, as per Regulation 9 paragraph 1 of the draft Regulations, should be responsible for establishing and maintaining a register of sunbed providers, and that the Assembly, or another body it may appoint to the task, should also be responsible for the regulation of the sunbed industry.

Duty on manufacturers and distributors

Companies responsible for the manufacture and distribution of sunbed equipment should also have a duty placed upon them in order to prevent equipment being provided to salons that are not registered with the relevant authority. A failure to place such a duty on the manufacturers may render many of the measures unworkable.

Sunbed operators to ensure that staff are trained to specific standards

Staff must be sufficiently trained in order to be able to deal with individual sunbed users, and answer the most common questions regarding the equipment, or health concerns, which may arise. We suggest that the Assembly should set criteria for the training of staff to ensure that necessary standards are maintained throughout the industry.

Sunbeds adhere to specified British and European standards

We are troubled that there is not currently a duty on sunbed operators to ensure that sunbeds conform to relevant British and European standards. We submit that, while there should be a duty upon the operator of the sunbed to ensure that sunbeds adhere to the

¹⁴ *Regulation of the Sunbed Industry in Northern Ireland A Public Consultation*, Department of Health, Social Services and Public Safety, 19 November 2009, Page 14.

standards, the Assembly should be responsible for ensuring that sunbeds which do not conform should no longer be available for public use.

It was a concern from the 2007 Northern Ireland sunbed survey results that 62.1 per cent of salons did not know the strength of the sunbeds they offered, and 25 per cent were offering sunbeds stronger than the internationally agreed standards of practise¹⁵. We believe that the so called 'type 4' devices, which are against internationally agreed standards, should be prohibited immediately.

A public health campaign

We think that it would be beneficial for the Assembly to launch a public health campaign about the dangers of sunbeds particularly, and UV exposure generally. There may be some people using sunbeds who are unaware of the potential harm overuse may cause, and may not take necessary notice of health information provided in salons, even if these draft Regulations are implemented. A public health campaign, which could be fronted by a popular figure, could educate not only people who use sunbeds, but also family members, who may wish to discuss the dangers of sunbeds with the user.

On the Regulatory Impact Assessment:

Q. 1 Do you agree with the preferred option (Option 3)? If no, what would you recommend and why?

We agree with the preferred option, Option 3.

- Ends -

¹⁵ *Regulation of the Sunbed Industry in Northern Ireland A Public Consultation*, Department of Health, Social Services and Public Safety, 19 November 2009, Page 13.

Association of Personal Injury Lawyers

▶ 11 Castle Quay, Nottingham, NG7 1FW ● T: 0115 958 0585

● W: www.apil.org.uk ● E: mail@apil.org.uk