

Department of Health, Social Services and Public Safety

Sunbeds Act (Northern Ireland) 2011 Consultation on Proposed Regulations

Sunbeds (Information) Regulations

Sunbeds (Fixed Penalty) Regulations



A response by the Association of Personal Injury Lawyers

26 August 2011

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 over 4,500 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:

Karl Tonks – APIL Vice President;

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Peter Jack – Co-ordinator APIL Northern Ireland; and

Lois Sullivan – Secretary APIL Northern Ireland.

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Introduction

APIL's long-standing position has been one of support for the Sunbeds Act (Northern Ireland) 2011, which should come into effect by April 2012. 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 Northern Ireland's Department for Health, Social Services and Public Safety's consultation on proposed regulations to accompany the Sunbeds Act (Northern Ireland) 2011 and has made the following recommendations:

- The amounts of fixed penalties as set out in Schedule 1 of the draft regulations are simply not enough and do not reflect the severity of the offence or present themselves as a deterrent in any way. The penalty needs to be proactive rather than reactive and prevent sunbed use in the first instance.
- There needs to be some provision in the regulations regarding repeat offences. A fine may be adequate in the first instance, but a repeat offence must carry a more severe punishment, for example a court appearance, to represent the fact that the initial fine was not a sufficient deterrent for the sunbed operator to commit the offence a second time.
- The fixed penalty notice should be changed to reflect that the alleged offender is most likely to be a trading business and that the offence has been committed by the sunbed operator rather than the sunbed user.

- A good level of information provided in Schedule 1; however, more information should be provided to ensure there is a full understanding of the dangers of using a sunbed in a clear and concise manner.
- Schedule 1 should include details of 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 listed, for example they should seek medical advice immediately from a GP.
- There should be a requirement for persons seeking to use a sunbed to sign and date the proposed Health Warning at Schedule 1 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.
- Schedule 2 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. 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.

Consultation Questions

As our remit only extends to personal injury cases, we have only answered those questions which relate to this field.

Q. 1. Are you content with the detail of the proposed information to be provided to sunbed users, hirers and buyers, as set out in Schedule 1 of the draft regulations in Annex B? If not, please say why and provide details of any changes that you wish to see.

We agree that there is a good level of information provided in Schedule 1; however, more information should be provided to ensure there is a full understanding of the dangers of using a sunbed.

For example, in the first set of bullet points at the top of Schedule 1, there is additional detail provided for the first and third bullet point but no explanation as to what cataracts might be in the second bullet point. It is important that this explanation is provided to prevent any barriers such as language or education.

This notice provides ample opportunity to give a person all of the information they need to know, especially the dangers, prior to using a sunbed, and that information needs to be clear and concise.

The twelfth bullet point of the third set in Schedule 1 which states that *you should not use a sunbed if you are under 18*, should be changed to,

you should not use a sunbed if you are under 35 (and no person under 18 is permitted to use a sunbed on these premises).

This then reflects the evidence provided by IARC in their report¹ 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 (as stated in the very first bullet point of Schedule 1).

This twelfth bullet point should also appear at the top of that list; this will add emphasis to its importance, but also collect the attention of the reader when they begin to read rather than later on in the paragraph when their attention has dwindled. The facts should be blunt, to-the-point and obvious, like they are on cigarette packets.

Schedule 1 should 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 listed, for example they should seek medical advice immediately from a GP.

Skin cancer, when diagnosed at an early stage, has an excellent prognosis for sure by surgical removal. Most skin cancers can be removed with very little harm, however, the

¹ World Health Organisation(WHO)/International Agency for Research on Cancer Working Group (IARC) Exposure to artificial UV radiation and skin cancer 2006

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 possible².

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, which is promoted by the DHSSPS in its publication of a draft Skin Cancer Prevention Strategy and Action Plan 2010-2020³. In addition to this, sunbed operators should provide each individual with health information for their skin type, and facts about the strength of the sunbeds in the salon.

Q. 2. Are you content with the proposed style and format of the information to be provided to sunbed users, hirers and buyers, as set out in section 2 (b-d) of the draft regulations in Annex B? If not, please say why and provide details of any changes that you wish to see.

There should be a requirement for persons seeking to use a sunbed to sign and date the proposed Health Warning at Schedule 1 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 2 of Annex B, 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 facts on signs of early detection of skin cancer and what to do if they suspect they may be suffering from one of the symptoms. This promotes a better education of the dangers of sunbed use to the

² Consultation Version of Skin Cancer Prevention Strategy and Action Plan 2010-2020, Department of Health, Social Services and Public Safety, Page 28 Early Detection.

³ <http://www.dhsspsni.gov.uk/showconsultations?txid=43607>

wider public as the DHSSPS aimed to achieve in their publication of a draft Skin Cancer Prevention Strategy and Action Plan 2010-2020⁴.

In addition to the style and format proposed, there should be added emphasis on the word 'not' at the beginning of the third set of bullet points. Here, the word 'not' should be in bold capital letters, the same as the script at the bottom of the notice.

Q. 3. Are you content with the proposed information to be displayed in sunbed premises, as set out in Schedule 2 of the draft regulations in Annex B? If not, please say why and provide details of any changes that you wish to see.

The phrasing of the Schedule should be changed to reflect the importance of the message it carries. Therefore, we suggest the following amendments as underlined,

Sunbed use has been proven to damage your skin and eyesight.

Sunbed use WILL increase your risk of getting skin cancer.

In addition to this, Schedule 2 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 2009⁵.

Q. 4. Are you content with the proposed style and format of the information to be displayed in sunbed premises, as set out in Schedule 2 of the draft regulations in Annex B? If not, please say why and provide details of any changes that you wish to see.

⁴ <http://www.dhsspsni.gov.uk/showconsultations?txtid=43607>

⁵ COMARE 13th Report: The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices 2009.

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. Are you content with the proposed amounts of fixed penalties as set out in Schedule 1 of the draft regulations in Annex C? If not, please say why and provide details of any changes that you wish to see.

The amounts of fixed penalties as set out in Schedule 1 of the draft regulations are simply not enough and do not reflect the severity of the offence or present themselves as a deterrent in any way. In a previous consultation response published by the DHSSPS, *Regulation of the Sunbed Industry in Northern Ireland Consultation Report – A Summary of Responses and Departmental Decisions*⁶ it was suggested that the fixed penalty amounts would be much higher, ranging from £200 for the offence of advertising any health benefits to the use of sunbeds to £2,500 for all other offences. The fixed penalties originally suggested by the Department were as follows:

Offence	Fixed penalty
An operator of sunbed premises who allows a person who is under 18 to use a sunbed on those premises (section 1(1)(a) of the Act).	£2,500
An operator of sunbed premises who allows a person who is under 18 to be present (except in the course of providing services to the operator for the purposes of the business of the sunbed premises) in a restricted zone on those premises (section 1(1)(b) of the Act).	
A person who sells a sunbed to a person who is under 18 (section 2(1))	£2,500

⁶ *Regulation of the Sunbed Industry in Northern Ireland Consultation Report – A Summary of Responses and Departmental Decisions*, Department of Health, Social Services and Public Safety, 12 April 2010.

of the Act).	
A person who hires a sunbed to a person who is under 18 (section 2(2) of the Act).	£2,500
An operator of sunbed premises who fails to provide a person who proposes to use a sunbed on those premises with such information as is prescribed under section 4(11) of the Act on every occasion (section 4(1) of the Act).	£2,500
A person who sells a sunbed to a person and who fails to provide a person who is buying the sunbed with such information as prescribed under section 4(11) of the Act (section 4(4) of the Act).	£2,500
A person who hires a sunbed to a person and who fails to provide a person who is hiring the sunbed with such information as prescribed under section 4(11) of the Act (section 4(6) of the Act).	£2,500
An operator of sunbed premises who fails to display a notice containing such information as prescribed under section 5(4) of the Act in a position where it is readily visible to persons proposing to use a sunbed on the premises (section 5(1) of the Act).	£2,500
An operator of sunbed premises who provides or displays any material that contains statements relating to the health effects of sunbed use other than that prescribed under sections 4(11), 5(4) or 6(1)(b) of the Act (section 6(1) of the Act).	£200
An operator of sunbed premises who fails to make available protective eyewear for a person who proposes to use a sunbed on those premises and/or fails to secure as far as reasonably practicable that a person who uses a sunbed on those premises wears protective eyewear (section 7(1) of the Act).	£2,500
A person who sells a sunbed to a person and who fails to provide a person who is buying the sunbed with protective eyewear (section 7(4) of the Act).	£2,500
A person who hires a sunbed to a person and who fails to provide a	£2,500

person who is hiring the sunbed with protective eyewear (section 7(6) of the Act).	
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These amounts, as recommended previously by the Department, much more accurately reflect the severity of the offences than those in the current consultation paper. From phoning three sunbed salons, we found an average price of 85 pence per minute on a standard stand-up tanning unit. To generate a turnover of £200, a sunbed salon would, therefore, have to sell 235 minutes at 85 pence. Customers usually purchase between three minutes and 12 minutes each, which could equate to as few as 17 sales of 12 minutes by the sunbed salon. Customers may also purchase block bookings of up to 60 minutes in order to receive a “bulk-buy” discount. A block purchase of 60 minutes costs around £25 and, therefore, can generate £200 in as few as eight customers. A fixed penalty of £200 is not a sufficient deterrent. A sunbed salon can easily generate that kind of turnover with some profit and so would not be deterred by the potential of a £200 fixed penalty. The penalty needs to be proactive rather than reactive and prevent sunbed use in the first instance.

There also needs to be some provision in the regulations regarding repeat offences. A fine may be adequate in the first instance, but a repeat offence must carry a more severe punishment, for example a court appearance, to represent the fact that the initial fine was not a sufficient deterrent for the sunbed operator to commit the offence a second time.

Q. 6. Are you content with the proposed form for issuing fixed penalties by District Councils as set out in Schedule 2 of the draft regulations in Annex C? If not, please say why and provide details of any changes that you wish to see.

We are not content with the proposed form for issuing fixed penalties by District Councils in Schedule 2 of Annex C. The proposed form asks for information such as name of the alleged offender, date of birth and whether the offender is male or female. We presume the alleged offender here to be the sunbed operator, which is likely to be a trading business and, therefore, not likely to have a date of birth or gender. The proposed form in Schedule 2 of Annex C suggests that the alleged offender would be the customer using or

hiring the sunbed rather than the sunbed operator that is permitting its use. This is incorrect; it is the sunbed salon that has committed the offence and, therefore, the sunbed salon that should be served the fixed penalty notice.

The fixed penalty notice should, therefore, be changed to reflect that the alleged offender is most likely to be a trading business and that the offence has been committed by the sunbed operator rather than the sunbed user.

Q.7. The Regulatory Impact Assessment of the Sunbeds Act concluded that the measures in the Act were proportionate steps to protect public health and did not impose an unreasonable burden on businesses. If, having seen the details of the regulations, you are concerned that these may have an adverse impact on businesses that has not previously been identified, please comment and provide any relevant evidence. The Department will consider any amendments to the regulations that are suggested.

The regulations published here in this consultation are not as onerous as the provisions published within the Act, for instance the fixed penalties are not as severe. The regulations as they appear in the consultation document do not pose a sufficient burden on business; the regulations should go further as set out above.

APIL's concern here is not of any additional burden that may be placed on businesses, but of the protection the Act and its regulations aim to provide to sunbed hirers and buyers. Those concerns are at the very heart of why the Act was passed and these regulations created; to protect the individual from the dangers that sunbeds provide.

Q. 8. Do you wish to make any other comments or provide other evidence about possible health, economic or social impacts of the regulations, whether adverse or beneficial?

We suggest the following amendments to the regulations so as to ensure provide sufficient protection to sunbed users and hirers:

- Sunbed operators have a duty to prevent people from using sunbeds excessively, in the same way that pub licensees have a duty to prevent people drinking excessively. Sunbed operators should operate a card system whereby, each individual would be given a record card to be completed by the salon staff prior to every session, so that inadvertent excessive use of sunbeds may be avoided. A new card could then be issued either after a period of time had passed since the previous card had been issued, or when the number of treatments recorded on the card had been completed.
- Sunbed operators have a duty of care towards customers, which should extend to providing eye protection free of charge.
- There should be a duty placed on the manufacturers and distributors of sunbed equipment in order to prevent equipment being provided to salons that are not registered with the relevant authority.

- Ends -

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