



Isle of Man

Ellan Vannin

SUNBEDS BILL 2012

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Explanatory Memorandum

1. This Bill is promoted by the Department of Environment, Food and Agriculture.
2. In the view of the member moving the Bill (Mrs Cannell) its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.
3. Clauses 1 to 3 deal with the short title of the resulting Act, its commencement and the interpretation of certain terms used in it.
4. Clause 4 imposes a prohibition on allowing the use of sunbeds by persons under 18, committed by a sunbed operator unless the operator took reasonable steps to establish that the user was 18.
5. Clause 5 prohibits the sale or hire of a sunbed to a person under 18.
6. Clause 6 deals with the remote sale or hire of a sunbed,
7. Clause 7 prohibits the unsupervised use of a sunbed on sunbed premises.
8. Clause 8 enables the making of regulations about the wattage of tanning tubes within a sunbed.
9. Clause 9 permits the Department of Health to make regulations about the medical use of sunbeds and the application of this Act in relation to such use.
10. Clause 10 imposes a duty upon an operator of sunbed premises to provide information to a prospective user of a sunbed.
11. Clause 11 imposes a similar duty on the operator of sunbed premises to display an information notice on those premises.
12. Clause 12 confers a power on an authorised officer to enter premises to ascertain whether an offence has been committed or is being committed there.
13. Clause 13 makes specific provision about the exercise of the right of entry in relation to private dwellings.
14. Clause 14 empowers an authorised officer to require information from persons on sunbed premises about the identity of the operator.
15. Clause 15 empowers the Department to issue fixed penalty notices in respect of offences under the Act and clause 16 deals with their withdrawal.
16. Clause 17 provides the penalty and mode of trial for offences under the Act.
17. Clause 18 provides for the Tynwald control of regulations under the Act.



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SUNBEDS BILL 2012

1 **A BILL** to regulate the use of sunbeds; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

2 **1 Short title**

3 The short title of this Act is the Sunbeds Act 2012.

4 **2 Commencement**

5 (1) This Act, other than section 1 and this section, comes into operation on
6 such day or days as the Department may by order appoint.

7 (2) An order under subsection (1) may include such consequential,
8 incidental and transitional and transitory provision as appears to the
9 Department to be necessary or expedient.

10 **3 Interpretation**

11 In this Act —

12 “**authorised officer**” means an officer of the Department or the Department of
13 Health authorised in writing by the Department to exercise the powers
14 conferred upon such officers under this Act;

15 “**the Department**” means the Department of Environment, Food and
16 Agriculture;

17 “**prescribed**” means prescribed by or under regulations made by the
18 Department;

19 “**sunbed**” means an electrically-powered device designed to produce tanning of
20 the skin by the emission of artificial ultraviolet radiation;

21 “**sunbed premises**” means premises in which persons are permitted to use a
22 sunbed for payment.

4 Prohibition on allowing use of sunbeds by persons under 18

S2008/5/95

- (1) An operator of sunbed premises who, without reasonable excuse, allows a person who is under 18 to use a sunbed on those premises commits an offence.
- (2) In proceedings for an offence under subsection (1), it is a defence for the operator to show that —
 - (a) the operator believed the person to be 18 or over; and
 - (b) the operator had taken reasonable steps to establish the person's age.
- (3) For the purposes of subsection (2)(b), the operator is to be treated as having taken reasonable steps to establish the person's age if (and only if) —
 - (a) the operator was shown any of the documents mentioned in subsection (4); and
 - (b) that document would have convinced a reasonable person.
- (4) The documents referred to in subsection (3)(a) are any document appearing to be—
 - (a) a passport;
 - (b) a photocard driving licence issued by the Department of Infrastructure or by the proper authority in a member State of the European Union; or
 - (c) such other document (or description of document) as may be prescribed.
- (5) In subsections (2)(a) and (b) and (3), references to the operator include an employee or agent of the operator.

5 Prohibition on sale or hire of sunbeds to persons under 18

S2008/5/96

- (1) A person (the "seller") who, without reasonable excuse, sells a sunbed to a person who is under 18 commits an offence.
- (2) A person (the "hirer") who, without reasonable excuse, hires a sunbed to a person who is under 18 commits an offence.
- (3) In proceedings for an offence under subsection (1) or (2), it is a defence for the seller or hirer to show that—
 - (a) the seller or hirer believed the person to be 18 or over; and
 - (b) the seller or hirer had taken reasonable steps to establish the person's age.

- 1 (4) For the purposes of subsection (3)(b), the seller or hirer is to be treated as
2 having taken reasonable steps to establish the person's age if (and only
3 if) —
4 (a) the seller or hirer was shown any of the documents mentioned in
5 subsection (5); and
6 (b) that document would have convinced a reasonable person.
- 7 (5) The documents referred to in subsection (4)(a) are any document
8 appearing to be —
9 (a) a passport;
10 (b) a photocard driving licence issued by the Department of
11 Infrastructure or by the proper authority in a member State of the
12 European Union; or
13 (c) such other document (or description of document) as may be
14 prescribed.
- 15 (6) In subsections (3)(a) and (b) and (4), references to the seller or hirer
16 include an employee or agent of the seller or hirer.

17 **6 Remote sale or hire of sunbeds**

18 S2008/5/97

- 19 (1) This section applies if, in connection with the sale or hire of a sunbed, the
20 premises where the order for the sunbed is taken are not the same as the
21 premises from which the sunbed is dispatched for delivery in pursuance
22 of the sale or hire.
- 23 (2) The sale or hire is to be treated, for the purposes of section 5, as taking
24 place on the premises where the order was taken, but subject to
25 subsection (3).
- 26 (3) If—
27 (a) the premises where the order for the sunbed is taken are not in the
28 Island; and
29 (b) the premises from which the sunbed is dispatched are in the
30 Island,
31 the sale or hire is to be treated, for the purposes of section 5, as taking
32 place on the premises from which the sunbed is dispatched.

33 **7 Prohibition on allowing unsupervised use of sunbeds**

34 S2008/5/98

- 35 (1) An operator of sunbed premises who, without reasonable excuse, allows
36 a person to use a sunbed on those premises without supervision commits
37 an offence.

- 1 (2) In subsection (1), the requirement for supervision is met if the operator
2 (or an employee or agent of the operator) is present on the sunbed
3 premises at any time a person is using a sunbed on those premises.
- 4 (3) In proceedings for an offence under subsection (1), it is a defence for the
5 operator to prove that the operator (or an employee or agent of the
6 operator) exercised all due diligence and took all reasonable steps to
7 avoid committing the offence.

8 **Wattage of tanning tubes in sunbeds**

- 9 (1) After consultation with the Department of Health, the Department may
10 by regulations (“**wattage regulations**”) make provision regarding the
11 maximum wattage of —
- 12 (a) each fluorescent lighting tube used in a sunbed; and
13 (b) all of the fluorescent lighting tubes used in a sunbed.
- 14 (2) A person commits an offence if, without reasonable excuse, the person —
- 15 (a) allows another person to use a sunbed on sunbed premises which
16 does not comply with wattage regulations;
- 17 (b) sells a sunbed which does not comply with wattage regulations;
18 or
- 19 (c) hires a sunbed which does not comply with wattage regulations.
- 20 (3) In proceedings for an offence under subsection (2), it is a defence for the
21 defendant to prove that the defendant (or an employee or agent of the
22 defendant) exercised all due diligence and took all reasonable steps to
23 avoid committing the offence.
- 24 (4) Section 6 (extended concepts of sale) applies for the purposes of this
25 section as it applies for the purposes of section 5.

26 **9 Medical use of sunbeds**

27 S2008/5/99

- 28 (1) The Department of Health may, by regulations, make provision
29 regarding the application of this Act to sunbeds used for medical
30 purposes.
- 31 (2) Regulations under subsection (1) may, in particular, make provision—
- 32 (a) as to what is (and is not) a sunbed;
33 (b) as to what are (and are not) sunbed premises;
34 (c) as to circumstances in which the provisions of this Act do (and do
35 not) apply.
- 36 (3) Regulations under subsection (1) may modify any enactment (including
37 this Act).

10 Duty to provide information to sunbed users

S2008/5/100

- (1) An operator of sunbed premises who, without reasonable excuse, fails to comply with the requirement in subsections (2) and (3) commits an offence.
- (2) The operator must provide a person who proposes to use a sunbed on sunbed premises with such information regarding the effects on health of sunbed use as may be prescribed in accordance with subsection (5).
- (3) That information is to be provided each time the person proposes to use a sunbed on those premises.
- (4) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (5) After consulting the Department of Health, the Department may prescribe —
 - (a) the information which is to be provided; and
 - (b) the form and manner in which that information is to be provided.

11 Duty to display information notice

Scot 2008/5/101

- (1) An operator of sunbed premises who, without reasonable excuse, fails to comply with the requirement in subsection (2) commits an offence.
- (2) That requirement is to display a notice —
 - (a) containing such information as may be prescribed in accordance with subsection (4);
 - (b) in a position where it is readily visible to persons proposing to use a sunbed on the premises.
- (3) In proceedings for an offence under subsection (1), it is a defence for the operator to prove that the operator (or an employee or agent of the operator) exercised all due diligence and took all reasonable steps to avoid committing the offence.
- (4) After consultation with the Department of Health, the Department may prescribe —
 - (a) the information which the notice is to contain;
 - (b) the form and manner of display of the notice.
- (5) For the sake of clarity, obligations imposed by regulations under this section are in addition to those imposed under section 10.

12 Power to enter premises

S2008/5/102

- (1) An authorised officer may enter and inspect any premises in order to ascertain whether an offence under this Act has been or is being committed there.
- (2) The power in subsection (1) may be exercised only at a reasonable time.
- (3) The authorised officer must, if requested to do so, produce a document showing that officer's authority.
- (4) When exercising the power in subsection (1), an authorised officer may take a constable if the authorised officer has reasonable cause to expect any serious obstruction in obtaining access.
- (5) An authorised officer may—
 - (a) require the production of (or, where the information is recorded electronically, the furnishing of extracts from) any records which it is necessary for the authorised officer to see for the purposes of this Act; and
 - (b) inspect and take copies of, or of any entry in, the records.
- (6) Nothing in subsection (5) compels the production by any person of a document subject to legal privilege.
- (7) A person commits an offence if the person, without reasonable excuse—
 - (a) intentionally obstructs an authorised officer in the exercise of powers under subsection (1);
 - (b) fails to comply with a requirement made under subsection (5).
- (8) In proceedings for an offence under subsection (7), it is a defence for the person to prove that the person exercised all due diligence and took all reasonable steps to avoid committing the offence.

13 Power to enter premises: entry to dwellinghouses

S2008/5/103

- (1) If an authorised officer proposes, in the exercise of the power conferred by section 12(1), to enter a dwellinghouse, the condition set out in subsection (2) must be satisfied.
- (2) The condition is that a justice has issued a warrant authorising the entry not more than one month before the entry.
- (3) A justice may issue a warrant only if satisfied by evidence on oath that there are reasonable grounds for suspecting that —
 - (a) an offence under this Act has been, or is being, committed; and
 - (b) evidence of the commission of that offence may be found in the dwellinghouse.

- 1 (4) In this section, “dwellinghouse” means any premises or part of premises
2 which are wholly or mainly occupied as a person’s dwelling.

3 **14 Power to require identification of operator**

4 S2008/5/104

- 5 (1) If an authorised officer has reason to believe that an operator of sunbed
6 premises is committing or has committed an offence under this Act, the
7 authorised officer may require any person on those premises to give the
8 name and address of the operator.
- 9 (2) When making a requirement under subsection (1), the authorised officer
10 must inform the person —
- 11 (a) that the officer has reason to believe that the operator is
12 committing or has committed an offence under this Act; and
- 13 (b) that failure to comply with the requirement may be an offence.
- 14 (3) A person commits an offence if the person, without reasonable excuse,
15 fails to comply with a requirement made under subsection (1).
- 16 (4) In proceedings for an offence under subsection (3), it is a defence for the
17 person to prove that the person exercised all due diligence and took all
18 reasonable steps to avoid committing the offence.

19 **15 Fixed penalties for offences under this Act**

20 S2008/5/105

- 21 (1) If an authorised officer has reason to believe that an operator of sunbed
22 premises has committed an offence under this Act, the authorised officer
23 may give the operator a notice (a “fixed penalty notice”) offering the
24 operator the opportunity of discharging any liability to conviction for
25 that offence by payment of a fixed penalty.
- 26 (2) A fixed penalty notice must —
- 27 (a) identify the offence to which it relates; and
- 28 (b) give reasonable particulars of the circumstances alleged to
29 constitute the offence.
- 30 (3) A fixed penalty notice must also state —
- 31 (a) the amount of the fixed penalty;
- 32 (b) the period within which it may be paid;
- 33 (c) the person to whom and address at which payment may be made;
- 34 (d) the method or methods by which payment may be made;
- 35 (e) the consequences of not making payment before the end of the
36 period for payment of the fixed penalty.
- 37 (4) The amount of the fixed penalty is —
- 38 (a) in the case of an offence under section 4, £100;

- 1 (b) in the case of an offence under any other provision of this Act,
2 £50.
- 3 (5) The period for payment of the fixed penalty is 28 days beginning with
4 the day on which the notice was given.
- 5 (6) The Department may extend the period for payment of the fixed penalty
6 in any particular case if it considers it appropriate to do so, by giving
7 notice to the operator.
- 8 (7) If a fixed penalty notice has been given, no proceedings for an offence
9 under this Act may be commenced before the end of the period for
10 payment of the fixed penalty.
- 11 (8) No such proceedings may be commenced or continued if payment of the
12 penalty is made before the end of the period for payment or is accepted
13 by the Department after the end of that period.
- 14 (9) In proceedings for an offence under this Act, a certificate which —
15 (a) purports to be signed by or on behalf of a person having
16 responsibility for the financial affairs of the Department; and
17 (b) states that payment of the amount specified in the fixed penalty
18 notice was or was not received by the expiry of the period within
19 which that fixed penalty may be paid,
20 is sufficient evidence of the facts stated.
- 21 (10) Any sum received by the Department under this section forms part of the
22 General Revenue.
- 23 (11) After consulting the Department of Health, the Department may by
24 regulations —
25 (a) provide that fixed penalty notices may not be given in such
26 circumstances as may be prescribed;
27 (b) provide for the form of a fixed penalty notice;
28 (c) provide for the method or methods by which fixed penalties may
29 be paid;
30 (d) modify subsection (5) so as to substitute a different period for that
31 specified there;
32 (e) provide for the keeping of accounts, and the preparation and
33 publication of statements of account relating to fixed penalties
34 under this section.

35 16 Withdrawal of fixed penalty notices

- 36 (1) The Department must consider any representations made by or on behalf
37 of the recipient of a fixed penalty notice and decide in all the
38 circumstances whether to withdraw the notice.

- 1 (2) If a fixed penalty notice is withdrawn in accordance with subsection
2 (1)—
- 3 (a) the Department must give notice of the withdrawal to the person
4 to whom the fixed penalty notice was given (“the recipient”);
- 5 (b) the Department must repay any amount which has been paid
6 under the fixed penalty notice; and
- 7 (c) no proceedings are to be commenced or continued against the
8 recipient for the offence in question.

9 **17 Offences**

10 An offence under this Act is triable summarily and punishable with a fine not
11 exceeding £2,500.

12 **18 Regulations**

13 Regulations under this Act must be approved by Tynwald before coming into
14 operation.

IN THE KEYS

SUNBEDS BILL 2012

A BILL to regulate the use of sunbeds; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MRS CANNELL

JUNE 2012