



Isle of Man

Ellan Vannin

AT 11 of 2013

SUNBEDS ACT 2013



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SUNBEDS ACT 2013

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AN ACT 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:—

1 Short title

The short title of this Act is the Sunbeds Act 2013.

2 Commencement

- (1) This Act, other than section 1 and this section, comes into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may include such consequential, incidental and transitional and transitory provision as appears to the Department to be necessary or expedient.

3 Interpretation

In this Act —

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

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

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

“**sunbed**” means any 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.

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.
- (4) For the purposes of subsection (3)(b), the seller or hirer is to be treated as having taken reasonable steps to establish the person's age if (and only if) —
 - (a) the seller or hirer was shown any of the documents mentioned in subsection (5); and
 - (b) that document would have convinced a reasonable person.
- (5) The documents referred to in subsection (4)(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.
- (6) In subsections (3)(a) and (b) and (4), references to the seller or hirer include an employee or agent of the seller or hirer.

6 Remote sale or hire of sunbeds

S2008/5/97

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

the sale or hire is to be treated, for the purposes of section 5, as taking place on the premises from which the sunbed is dispatched.

7 Prohibition on allowing unsupervised use of sunbeds

S2008/5/98

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

- (2) In subsection (1), the requirement for supervision is met if the operator (or an employee or agent of the operator) is present on the sunbed premises at any time a person is using a sunbed on those 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.

8 Wattage of tanning tubes in sunbeds

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

9 Medical use of sunbeds

S2008/5/99

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

S2008/5/101

- (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.

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

14 Power to require identification of operator

S2008/5/104

- (1) If an authorised officer has reason to believe that an operator of sunbed premises is committing or has committed an offence under this Act, the authorised officer may require any person on those premises to give the name and address of the operator.
- (2) When making a requirement under subsection (1), the authorised officer must inform the person –
- (a) that the officer has reason to believe that the operator is committing or has committed an offence under this Act; and
 - (b) that failure to comply with the requirement may be an offence.
- (3) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement made under subsection (1).
- (4) In proceedings for an offence under subsection (3), 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.

15 Fixed penalties for offences under sections 10 and 11

S2008/5/105

- (1) If an authorised officer has reason to believe that an operator of sunbed premises has committed an offence under section 10 or 11, the authorised officer may give the operator a notice (a “**fixed penalty notice**”) offering the operator the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.
- (2) A fixed penalty notice must –
- (a) identify the offence to which it relates; and
 - (b) give reasonable particulars of the circumstances alleged to constitute the offence.
- (3) A fixed penalty notice must also state –
- (a) the amount of the fixed penalty;
 - (b) the period within which it may be paid;
 - (c) the person to whom and address at which payment may be made;
 - (d) the method or methods by which payment may be made;
 - (e) the consequences of not making payment before the end of the period for payment of the fixed penalty.
- (4) The amount of the fixed penalty is £50.

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

16 Withdrawal of fixed penalty notices

- (1) The Department must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.
- (2) If a fixed penalty notice is withdrawn in accordance with subsection (1) —

- (a) the Department must give notice of the withdrawal to the person to whom the fixed penalty notice was given (“the recipient”);
- (b) the Department must repay any amount which has been paid under the fixed penalty notice; and
- (c) no proceedings are to be commenced or continued against the recipient for the offence in question.

17 Offences

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

18 Regulations

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