

Public Health (Sunbeds) Act 2014 – *(Number 12 of 2014)*

Guidance for Industry

July 2014



Introduction

Skin cancer is the most common type of cancer in Ireland and is a particular problem for Irish people because of their fair skin. Sunbeds and sunlamps used for tanning purposes are the main source of deliberate exposure to artificial ultra-violet radiation (UVR).

There has been a growing body of evidence over recent years that the use of sunbeds, especially by children, should be restricted because of the associated increased risk of skin cancer and other health problems.

In 2003, the World Health Organisation (WHO) published *Artificial Tanning Sunbeds Risks and Guidance* wherein it suggested that Governments should consider comprehensive legislation to govern the operation of sunbeds and this legislation “*should be legally binding and be capable of local enforcement*”.

In June 2006, *A Strategy for Cancer Control in Ireland* was published by the National Cancer Forum which recommended the regulation of sunbeds including restricting their use to adults only.

The WHO’s International Agency for Research on Cancer (IARC), is a recognised leading expert scientific body charged with providing evidence-based science to underpin global cancer control policies. In 2009 they reclassified sunbed use from a group 2A carcinogen (probably carcinogenic to humans) to a Group 1 carcinogen, (carcinogenic to humans), thereby placing it in the same category as environmental tobacco smoke.

In 2009, the Chief Medical Officer’s (CMO) Office conducted an international literature review of the health effects associated with the use of UV-emitting tanning devices. The review concluded that those who used sunbeds before the age of 30 had a 75% greater probability of contracting skin cancer. The CMO’s review concluded that the available medical evidence justified a complete prohibition on the use of sunbeds by those under 18 years of age, based on the significantly increased risks associated with UV exposure in early years.

Taking the above factors into consideration the Minister for Health has introduced the Public Health (Sunbeds) Act 2014 (the Act), the primary policy objectives of which are to:

- protect children and those under 18 years of age from the risk of skin damage, in view of their increased risk of developing skin cancer;
- regulate the use of sunbeds by those over 18 years of age so as to reduce their likelihood of developing skin cancer, premature ageing, damage to their eyes and other health risks from exposure to ultra-violet radiation (UVR); and
- generally promote a greater public awareness across all age groups, with a long term view to reduce the incidence of skin cancers.

Guidance Document

The aim of this publication is to provide guidance in relation to the measures being introduced on **21 July 2014** to persons who have responsibilities under this legislation, including the owner, manager or employee of a sunbed business.

As interpretation of the law is a matter for the Courts, this guidance is intended to provide general information on sunbed legislation and should not be construed as legal advice. It is without prejudice to any other legal obligations under criminal or civil law.

The Department of Health would like to thank the Department of Health, Social Services and Public Safety, Northern Ireland for the use of images and text in this Guidance Document.

What does the new law do?

The Public Health (Sunbeds) Act 2014:

1. prohibits the owner, manager or employee of a sunbed business from allowing a person under 18 years of age to use a sunbed on a sunbed premises;
2. prohibits the owner, manager or employee of a sunbed business from allowing a person under 18 years of age to be in a “restricted area” except where employed or providing services – see definition of “restricted area” on page 7 and examples of ‘restricted areas’ in the Annexes;
3. prohibits the owner, manager or employee of a sunbed business from selling the use of a sunbed on a sunbed premises to a person under 18 years of age;
4. prohibits the sale or hire of sunbeds to a person under 18 years of age;
5. deems transactions made outside the State to have taken place in the State where the despatch centre is in the State (remote sale or hire of a sunbed);
6. provides for an exemption for phototherapy provided under the supervision or direction of a specialist in dermatology or paediatrics in a healthcare establishment;
7. provides for an enforcement regime to enable inspections to be carried out by the Environmental Health Officers in the HSE and for offences and penalties.

The Act will be commenced on a phased basis with the provisions set out above being commenced on 21 July 2014.

The Act also:

8. prohibits the owner or manager of a sunbed business from permitting any person to use a sunbed on a sunbed premises without supervision;
9. prohibits the owner or manager of a sunbed business from employing a person under 18 years of age to supervise the use of a sunbed on a sunbed premises;
10. places a duty on the owner, manager or employee of a sunbed business to make protective eyewear, which complies with the European Standard, available to a person who proposes to use, purchase or hire a sunbed;
11. places a duty on the owner or manager of a sunbed business to maintain a sunbed and sunbed premises in a clean and hygienic condition;
12. prohibits a person from offering the use, sale, or hire of a sunbed free of charge;
13. prohibits the use of certain marketing practices (for example, early bird or “two for the price of one” offers), as may be prescribed by the Minister for the purpose of protecting public health ;
14. prohibits the publication of any material that promotes a health or other benefit from sunbed use other than information prescribed by the Minister;
15. prohibits the owner or manager of a sunbed business (including websites or social media sites) from making available or displaying any material that promotes a health or other benefit from sunbed use other than information prescribed by the Minister;
16. places a duty on the owner or manager of a sunbed business (including websites or social media sites) to display warning signs prescribed by the Minister. Prescribed signs may include information on the adverse health effects of the use of sunbeds and the prohibition on the use of sunbeds by persons under 18 years of age;

17. places a duty on the owner, manager or employee of a sunbed business to ensure that a copy of the prescribed health information is provided to a person proposing to use, hire or purchase a sunbed and a requirement that the person sign the form confirming that they have been provided with a copy of the health information and have had an opportunity to read and consider it;
18. prohibits the owner, manager or employee of a sunbed business from allowing a person, to be in a "restricted area" unless -
 - a. the person concerned has signed the prescribed form,
 - b. they are in the course of their employment or providing a services;
19. places a duty on the owner of a sunbed business to notify the Health Service Executive and pay the required fee (to be prescribed by the Minister);
20. places a duty on the owner or manager of a sunbed business to ensure that a person who supervises sunbed use has completed prescribed training and been awarded the prescribed qualification;
21. provides that the HSE may serve fixed payment notices for offences under sections 8 to 11, 13 to 15 of the Act.

The provisions set out in 8 to 21 above will be implemented later in the year. Regulations will be introduced to set out other measures to be prescribed e.g warning signs. More detailed guidance will be provided when the provisions referred to in 8 to 21 above are implemented.

Commencement of Certain Provisions of the Public Health (Sunbeds) Act 2014

From 21 July 2014 it will be an offence for an owner, manager or employee of a sunbed business to:

- sell or hire a sunbed to any person under 18 years of age;
- allow a person under 18 years of age use a sunbed on a sunbed premises;
- sell the use of a sunbed on a sunbed premises to a person under 18 years of age ;
- allow a person under 18 years of age to be in a restricted area unless in the course of their employment or in the provision of services.

Sections 1 to 5, 12, 16, 17 (except for (1)(l)), 19 and 22 to 25 of the Act will be commenced on 21 July 2014 under the Public Health (Sunbeds) Act 2014 (Commencement) Order 2014 (S.I. No. 299 of 2014). The remaining sections will be implemented at a later date.

Definitions

The following definitions will apply for the purpose of this guidance document.

“authorised officer” means a person appointed under *section 16 of the Act*;

“age card” has the same meaning as it has in Part IV of the Intoxicating Liquor Act 1988;

“employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and includes a fixed-term employee, a temporary employee, a person who is training for employment or receiving work experience and a member of the family of an employer and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

“employer”, in relation to an employee—

(a) means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment,

(b) includes a person (other than an employee of that person) under whose control and direction an employee works, and

(c) includes where appropriate, the successor of the employer or an associated employer of the employer;

“hire” includes to offer for hire or to hire or to supply, whether or not for profit, and cognate words shall be construed accordingly;

“Minister” means the Minister for Health;

“premises” includes a building, a dwelling or other structure, or part of a building, dwelling or other structure, a vessel, a vehicle, a tent, caravan or other temporary or movable structure;

“prescribed” means prescribed by regulations made by the Minister;

“restricted area” means—

(a) a wholly or partly enclosed space on a sunbed premises where there is a sunbed, or

(b) a room, other than a space referred to in *paragraph (a)*, in a sunbed premises where there is a sunbed;

“sale” includes to offer for sale or to sell or to supply, whether or not for profit, and cognate words shall be construed accordingly;

“sunbed” means an electrically-powered device designed to produce tanning of the human skin by the emission of ultra-violet radiation;

“sunbed business” means, as the context requires, a business where one or more than one sunbed is made available for use or a business which sells or hires sunbeds or advertises or promotes the use, sale or hire of sunbeds;

“sunbed premises” means premises on which a sunbed business is carried on.

What does the Act apply to?

Relevant Legislation

Section 3 of the Public Health (Sunbeds) Act 2014 sets out what the legislation will apply to and provides for an exemption for the use of a source of ultra-violet radiation for phototherapy provided under the supervision or direction of a relevant medical practitioner in a healthcare establishment, or provided elsewhere by that establishment under such supervision or direction. *Subsection 3* provides for a definition for the terms used in this section.

The Act applies to:

- the use of a sunbed on a 'sunbed premises' (*"premises where a sunbed business is carried on"*);
- the sale or hire of sunbeds (this will include it being an offence to sell or hire a sunbed to persons under 18 years of age for use in a private dwelling);
- the advertising or promotion of the use, sale or hire of sunbeds.

The Act also applies to remote sale or hire of sunbeds (Section 12).

The sale or hire of a sunbed takes place where the order for the sunbed is placed, **except** where the order is taken from a premises outside the State but is despatched from a premises within the State.

In such cases, the sale or hire is deemed to have taken place from the despatch centre. This brings despatch centres in the State within the scope of the legislation when the order is taken outside the State. For example, if a sunbed is ordered from Northern Ireland for delivery within the State and is dispatched from Dundalk, the sale or hire is deemed to have taken place at the Dundalk dispatch centre and therefore this legislation will apply to such transactions.

The Act does not apply to the use of artificial ultra-violet radiation (UVR) used in phototherapy under the supervision or direction of a specialist in dermatology or paediatrics or speciality as prescribed by the Minister (*"relevant medical practitioner"*) in a *"healthcare establishment"*.

The exemption for medical treatment does not include GP certification of sunbed use for under 18s.

Prohibition on permitting the use of sunbeds in sunbed premises by persons under 18 years of age.

Relevant Legislation

Section 4 of the Public Health (Sunbeds) Act 2014 provides for a prohibition on permitting the use of a sunbed by a person under 18 years of age on a sunbed premises; selling the use of a sunbed to such a person or on permitting such person in a restricted area (except in the course of employment in the business or the provision of services to the business). *Subsection (3)* provides for a defence for any person who contravenes these prohibitions.

What does this mean?

The owner, manager or employee of a sunbed business shall not:

- sell the use of sunbed on a sunbed premises to a person under 18 years of age;
- permit a person under 18 years of age to be in a “restricted area” except where employed or providing services (for example, maintenance);
- permit a person under 18 years of age to use a sunbed on a sunbed premises.

A person who contravenes these prohibitions commits an offence.

Section 4 (3) provides for a defence in any proceedings for a person who contravenes these prohibitions to prove that the person under 18 years of age produced an “age card”, passport or driving license.

Prohibition on the sale or hire of sunbeds to persons under 18 years of age.

Relevant Legislation

Section 5 of the Public Health (Sunbeds) Act 2014 provides for a prohibition on the sale or hire of a sunbed to a person under 18 years of age. *Subsection (3)* provides for a defence for any person who contravenes these prohibitions.

What does this mean?

The owner, manager or employee of a sunbed business shall not:

- sell or hire;
- offer for sale or hire; or
- permit to be sold or hired or offered for sale or hire, a sunbed to a person under 18 years of age.

Section 5 (3) provides for a defence in any proceedings for a person who contravenes these prohibitions to prove that the person under 18 years of age produced an “*age card*”, passport or driving license.

A person who contravenes these prohibitions commits an offence.

Appointment of authorised officers and enforcement.

Relevant Legislation

Section 16 of the Public Health (Sunbeds) Act 2014 provides that the Health Service Executive (HSE) may appoint persons, including members of its staff, as authorised officers for the purposes of the Act. *Subsection (2)* provides that authorised officers appointed by the HSE shall be given a warrant of appointment and shall produce the warrant or copy of it if requested when exercising any power conferred on him or her under the Act.

Section 17 sets out the powers of authorized officers.

What does this mean?

- The authorised officers for the purposes of enforcing this legislation will be the Environmental Health Officers (EHOs) of the HSE.
- An EHO will produce a warrant of appointment or copy of it, if requested, when carrying out an inspection or when exercising any power conferred on him or her under the Act.

The owner, manager or employee of a sunbed business shall:

- allow authorised officers entry into their sunbed premises to facilitate an inspection to verify compliance with the Public Health (Sunbeds) Act 2014;
- allow authorised officers entry into a private dwelling if they have a warrant obtained by a judge of the District Court;
- co-operate with authorised officers in the course of their duties and provide information to the authorised officer.

It will be an offence for a person to obstruct or impede an authorised officer or without reasonable excuse, to refuse to comply with an officer's request or to give false or misleading information to an officer.

Offences.

Relevant Legislation

Section 22(1) of the Public Health (Sunbeds) Act 2014 empowers the Health Service Executive to prosecute summary offences under the Act. *Section 22(2)* provides that notwithstanding section 10(4) of the Petty Session (Ireland) Act 1851, a prosecution for an offence under the Act may be brought within 12 months from the date of the alleged commission of the offence. *Section 22(3)* provides that a person who commits an offence under the Act is liable on summary conviction for a first offence to a Class B fine or imprisonment for up to 6 months, or both. The penalty for a second or subsequent offence is a Class A fine or imprisonment for up to 12 months, or both. *Section 22(4)* deals with offences under the Act committed by a body corporate and provides for the prosecution of executive officers of a body corporate where an offence is proved to have been committed with their consent, connivance or approval or to have been attributable to any neglect on their part.

What does this mean?

Summary proceedings for offences may be brought by the HSE. A person who commits an offence under the Act is liable on summary conviction for:

- a first offence to a Class B fine (not exceeding €4,000) or imprisonment for up to 6 months, or both;
- a second or subsequent offence to a Class A fine (not exceeding €5,000) or imprisonment for up to 12 months, or both.

The classes of fines are set out in the Fines Act 2010 (*Number 8 of 2010*) which may be revised.

Contact Details

For further information or enquiries regarding enforcement or to make a complaint please contact the National Office of the Environmental Service of the HSE at ehnationaloffice@hse.ie, phone +353(0)45 880 442.

For further information regarding the Act please contact the Environmental Health Unit of the Department of Health at EHU@health.gov.ie, phone +353(0)1 635 4184.

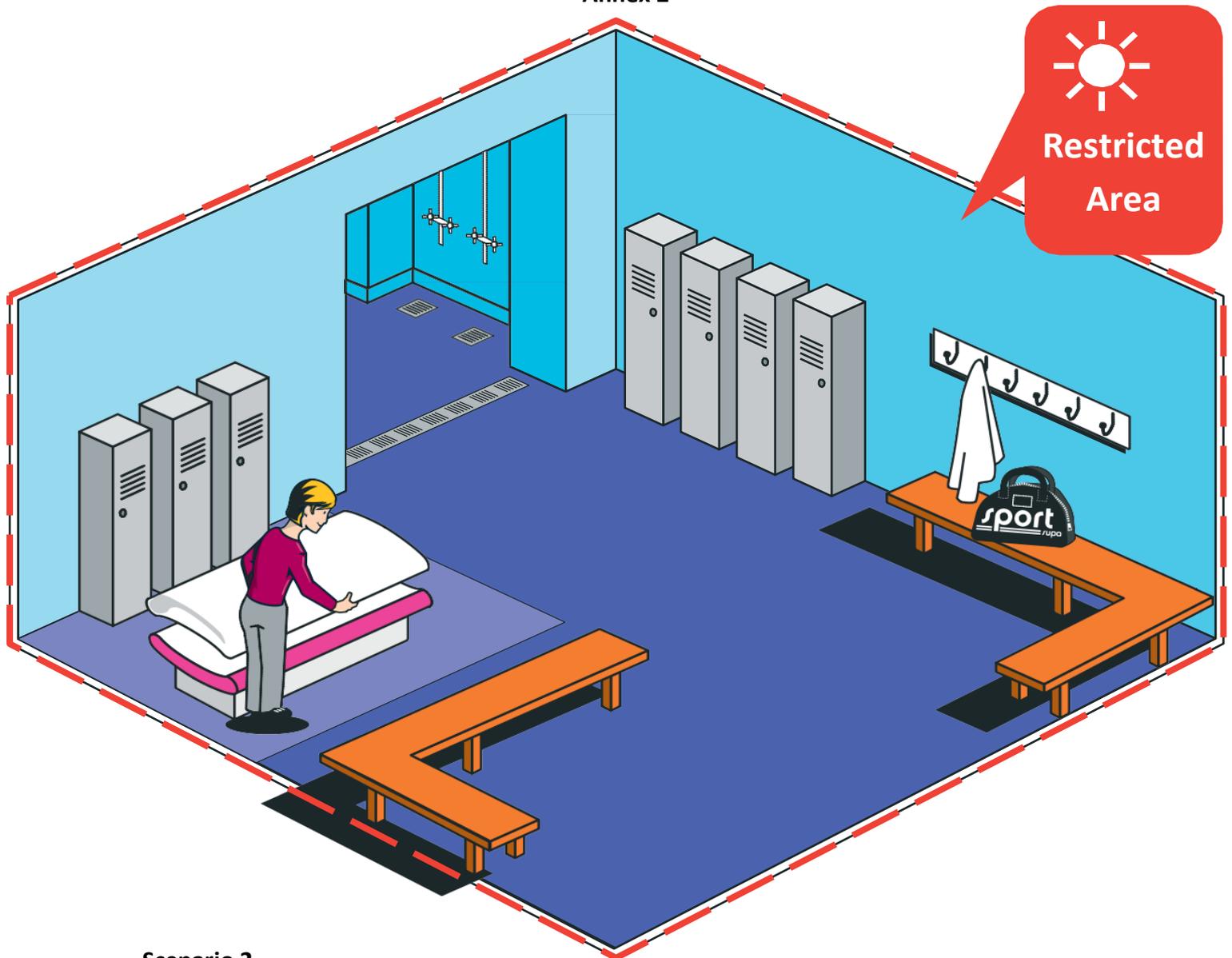
Annex 1



Scenario 1

A health club keeps a cubicle-type sunbed in the corner of its canteen. The cubicle is fully enclosed and has a lockable door. It has space for disrobing and hanging clothes. The canteen is for use by all health club users. The cubicle sunbed is a wholly or partly enclosed space within the canteen and is therefore a restricted area. If a father entered the canteen with his son, who is 10 years old, no offence would be committed as the canteen is not a restricted area, only the sunbed cubicle.

Annex 2



Scenario 2

A fitness centre keeps a freestanding, open tanning canopy sunbed in the corner of its changing room. The changing room is for use by all fitness centre users. The sunbed is not within a wholly or partly enclosed space within the changing room so the whole changing room is a restricted area. If a mother entered the changing room with her daughter, who is 3 years old, an offence would be committed, as the whole of the changing room is a restricted area.

There is a simple remedy to prevent an offence from being committed in Scenario 3. The sunbed operator could erect a partition between the sunbed and the rest of the changing room. The space enclosed by the partition would be a restricted area. A person under 18 could then enter the changing room without an offence being committed as long as they did not go beyond the partition. The partition would not have to be a fixed structure, but its design should be sufficient to provide an enclosed space reserved for the sunbed user and the entrance should be signposted to indicate that those under 18 are not permitted to enter.

Annex 3

Scenario 3

A hotel keeps its sunbed in a room. The room also contains vending machines and toilets. The sunbed is not within a wholly or partly enclosed space within the room so the whole room is a restricted area. The hotel must ensure that no person under the age of 18 enters the room, even if their intention is to use the toilets or buy from the vending machines.

Scenario 4

H, who is 16, has been hired by a sunbed operator to paint the premises. This requires H to enter a restricted area. The sunbed operator would not have committed an offence since H's presence in the restricted area is in the course of providing a service to the sunbed business.

Scenario 5

A sunbed operator asks J, an employee who is under 18, to use the sunbed to test that it works. An offence would not be committed by virtue of J entering the restricted area as he does so in the course of providing a service to the sunbed operator. However, an offence would be committed if J uses the sunbed.