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Welsh Government

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



Guidance on the implementation
of The Sunbeds (Regulation) Act 2010
(Wales) Regulations 2011

ISBN 978 0 7504 6718 6
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1. Purpose of the guidance

The purpose of this non-statutory guidance is to support local authority authorised officers in Wales in successfully implementing The Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011. The Regulations come into force on 31 October 2011.

The Regulations were made under powers conferred by the Sunbeds (Regulation) Act 2010, which came into force on 8 April 2011. The Regulations secure additional controls on sunbed use in Wales, as set out in this guidance. This guidance should be read in conjunction with the guidance that was developed to assist local authority authorised officers to implement and enforce the Act (a link to that guidance appears below):

www.wales.gov.uk/topics/health/protection/environmental/publications/sunbeds/?lang=en

This guidance has been developed by the Welsh Government in association with local authority representation and the Chartered Institute of Environmental Health Wales.

2. Background to the legislation

The health case for legislation in the area of artificial tanning devices is clear. Skin cancer incidence is increasing. The main cause of skin cancer is over-exposure to ultra-violet (UV) rays. This may be from natural sunlight or artificial rays from the use of sunbeds and sunlamps. Skin cancer typically takes decades to develop, so may not become apparent until years after the damaging exposure.

Each year there are around 100,000 new cases of non-melanoma skin cancer in the UK. In the UK in 2007 there were over 84,500 non-melanoma incidences, but the majority would have been treatable. Malignant melanoma however is the most dangerous form of skin cancer as it can spread to other organs and is responsible for the most deaths from skin cancer. In 2007 there were over 10,670 incidences of malignant melanoma in the UK. Significantly, malignant melanoma is the second most common cancer in 15-24 year olds in the UK.

Growing concerns about the association between skin cancer and sunbeds became evident in 2003 when the World Health Organization (WHO) issued *Artificial Tanning Sunbeds: Risks and Guidance*¹ to assist governments in developing public health policy on sunbeds. This highlighted that increasing evidence showed that cumulative exposure to UV radiation increases the risk of skin cancers, so sunbed exposure added to natural sun exposure would increase the skin cancer risk. The guide also recognised the particular vulnerability of young skins and recommended that young people under 18 should not use sunbeds.

In June 2006 the Scientific Committee on Consumer Products (SCCP) to the European Commission issued an opinion warning of the risks to health of sunbeds².

It noted that the risk of melanoma seemed particularly high when sunbeds were used at a young age. The SCCP also recommended that those under 18 years should not use sunbeds. The European Union adopted the opinion and the European Commission then called upon Member States to ensure the appropriate use of sunbeds.

The Committee on Medical Aspects of Radiation in the Environment, an independent expert advisory committee, which provides advice to Government, looked at the health effects and risks arising from exposure to UV radiation from sunbeds. Its report, *The Health Effects and Risks Arising From Exposure to Ultraviolet Radiation from Artificial Tanning Devices*³, published in June 2009, confirmed that UV radiation from sunbeds was capable of inducing skin cancer and that young people were particularly vulnerable. A main recommendation in its report was that the commercial use of sunbeds by persons aged under 18 should be prohibited.

In July 2009, the International Agency for Research on Cancer Working Group (IARC), an intergovernmental agency of WHO concerned with research into the causes of cancer, raised its classification of sunbeds from 'probably carcinogenic to humans' to 'carcinogenic to humans', the highest risk category⁴.

While the scientific evidence showed the link between sunbeds and skin cancer, a behavioural study commissioned by the Welsh Government undertaken by Cancer Research UK showed a worrying level of sunbed use by young people. The study published in November 2009 showed that around 8.2% of 11-17 year olds in Wales had used sunbeds. The mean age of first use was 15 years in Wales⁵.

¹ www.who.int/uv/publications/en/sunbeds.pdf

² http://ec.europa.eu/health/ph_risk/committees/04_sccp/docs/sccp_o_031b.pdf

³ www.comare.org.uk/documents/COMARE13thReport.pdf

⁴ http://www.iarc.fr/en/media-centre/iarcnews/2009/sunbeds_uvradiation.php

⁵ <http://wales.gov.uk/topics/health/protection/environmental/publications/sunbed/?lang=en>

Prior to the *Sunbeds (Regulation) Act 2010*⁶ there was no legislation in England and Wales that provided specifically for the regulation of sunbeds and it was clear that voluntary regulation by the sunbed industry was not working.

The Legislation

The Sunbeds (Regulation) Act 2010 (“the Act”)

The Act, covering England and Wales, came into force on 8 April 2011. Its main purpose is to prevent the use of sunbeds on commercial business premises by children and young people under the age of 18.

A guidance document, “*Sunbeds (Regulation) Act 2010: Guidance on the implementation of the Sunbeds (Regulation) Act 2010*”⁶, was introduced in April 2011 to support the introduction of the Act on 8 April. Additionally a Guidance document *Sunbeds (Regulation) Act 2010: Guidance on the implementation of the Sunbeds (Regulation) Act 2010 - Information for Sunbed Businesses*⁶ was introduced for sunbed businesses to assist their application of the Act and understanding of the legislation.

The Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011 (“the Regulations”)

The Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011 will come into force on 31 October 2011. The Regulations will:

- require the supervision of sunbed use;
- extend to businesses that operate from domestic premises the requirement that sunbeds are not used, or offered for use, to under 18s on those premises;
- prohibit the sale or hire of sunbeds to under 18s;
- require the provision of prescribed health information to users;
- prohibit the provision or display of any material relating to the health effects of sunbed use, other than material containing health information that has been prescribed; and
- mandate the availability and use of protective eyewear by customers.

Local authorities in Wales have a duty to enforce these legislative controls.

⁶ <http://wales.gov.uk/topics/health/protection/environmental/publications/sunbeds/?lang=en>

3. Duties on sunbed businesses and defences

Key Definitions for the purpose of the Regulations

Sunbed - sunbed means an electrically-powered device designed to produce tanning of the human skin by the emission of ultra-violet radiation. This includes the following devices (but this is not an exhaustive list):

- lie-down sunbeds;
- canopy sunbeds;
- vertical stand-in sunbeds;
- sun showers; and
- portable sun lamps.

Sunbed Premises - means the premises occupied by, or to any extent under the control or management of, a person who carries on a sunbed business.

Sunbed Business - means a business that has sunbeds available for use on the business premises. For the purposes of the Regulations a sunbed business can include:

- domestic premises that are being used as a sunbed business;
- sunbed parlours;
- beauty salons;
- leisure centre gyms;
- sports and fitness clubs;
- hotels; and
- holiday camps.

This list is by no means exhaustive and any business that offers sunbeds for use on the premises is caught by the Regulations. There is no requirement for payment to be made, either directly or indirectly, for the use of the sunbeds in order for the business to come under the definition of a sunbed business.

Restricted zone - means a wholly or partly enclosed space on sunbed premises that contains a sunbed and that space is reserved for users of that sunbed or, if the sunbed is not in a wholly or partly enclosed space, every part of the room that contains the sunbed.

Supervisor - means a person who carries on a sunbed business or an employee or agent of that person.

Application of the duties in respect of sunbed businesses

1. Prevention of sunbed use by children on domestic premises

The Regulations extend to sunbed businesses operating from domestic premises the duty set out in section 2 of the Act to prevent sunbed use by children.

Where a sunbed business is operated from domestic premises the person carrying on the business must secure that:

- (i) under 18s do not use a sunbed on those premises; or
- (ii) they, or anyone acting for them, do not offer a sunbed for use on those premises to a person aged under 18.

Scenario 1

T carries on a sunbed business from her home. T has 2 sunbeds in her converted garage. T has been on a training course and has the requisite notices, leaflets and protective eyewear. T's advertised trading hours are 10.30 am - 4.30 pm, by appointment only. T's daughter A invites a school friend B to her home. Both A and B are 16 years old. They arrive at A's house at 6.00 pm whilst T is out shopping. A invites B to have a sunbed session, as she often does herself once the salon is closed. B accepts the offer and has a 15 minute session. B's parents report the incident to the local authority.

T has committed an offence. T is carrying on a sunbed business and has failed to secure that A and B, who are both under 18, do not use on her premises a sunbed to which the business relates.

2. Supervision of sunbed use

The Regulations require that persons who carry on a sunbed business must secure that:

- the use of the business's sunbeds on the business's premises are supervised;
- a supervisor is competent to fulfill the various supervisory requirements set out in the Regulations.

Supervision means that a supervisor must be present on the premises at any time a person is seeking to use or is using a sunbed, and that the supervisor has fulfilled various requirements in relation to a person who may use or seek to use one of the business's sunbeds.

Scenario 2

T has been operating three high street tanning salons since 2005. The salons are equipped with sunbeds that are operated by the user inserting coins into a timer control. T usually visits each salon to open and close them each day and also drops in during the day to check everything is ok. No other staff are employed at the salons.

If T continues with this business model after the 31 October 2011 he will be committing an offence. T is carrying on a sunbed business and has failed to ensure that a supervisor is present on his premises at any time a person is seeking to use or is using a sunbed. The absence of a competent supervisor also means that he failed to fulfill the various requirements in relation to supervision as set out below.

From 31 October it will no longer be possible to run unsupervised 'coin operated' or remotely accessed pre-paid tanning facilities. It will be necessary for each premises to have a supervisor present on site at all times that sunbeds are being used and whenever customers are seeking to use them. A supervisor is a person who carries on a sunbed business or an employee or agent of that person. The supervisor is required to make a number of specific inquiries and to provide assistance and guidance.

Supervisors are required to:

- (1) verify that the person is aged 18 or over;
- (2) assist the person to assess their skin type;
- (3) provide guidance to the person on use of the sunbed taking into account the person's assessment of their skin type and any skin conditions or other relevant medical conditions apparent or disclosed to them;
- (4) advise the person as to the safe operation of the sunbed;
- (5) provide the prescribed health information as required by the Regulations; and
- (6) ensure the provision and use of protective eyewear.

These requirements are considered in more detail below:

Verify that a person is aged 18 or over. Although not prescribed by the Regulations, the following documents could be used by supervisors to verify the age of the user:

- a passport;
- a European Union photocard driving licence; or
- a photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram.

Assist the person to assess their skin type. The Regulations require the supervisor to assist the person to make their own assessment, not to assess their skin type for them. Skin is broadly classified as being one of six types:

Type I	Often burns, rarely tans. Tends to have freckles, red or fair hair, blue or green eyes.
Type II	Usually burns, sometimes tans. Tends to have light hair, blue or brown eyes.
Type III	Sometimes burns, usually tans. Tends to have brown hair and eyes.
Type IV	Rarely burns, often tans. Tends to have dark brown eyes and hair.
Type V	Naturally brown skin. Often has brown eyes and hair.
Type VI	Naturally brown/black skin. Usually black/brown eyes.

The supervisor should be able to assist the customer to assess their own skin type and guide them as to whether they should use the sunbed and if so how many minutes they should limit their session to. The EU Scientific Committee on Consumer Products has stated that people with skin types I and II should be advised not to use UV tanning equipment. The supervisor should guide people with skin types III, IV, V or VI on how many minutes they should limit their session to, having regard to the correct operation of their UV tanning equipment.

A customer (aged 18 or over) with Type I or II skin advised not to use UV tanning equipment could still choose to use that equipment; but they would be aware of the risks of so doing.

Provide guidance to the person on use of the sunbed taking into account the person's assessment of their skin type and any skin conditions or other relevant medical conditions apparent to the supervisor, or disclosed to them by the person. To do this supervisors in addition to satisfying requirement (2) should ask potential users whether they are suffering from

any skin conditions, or taking any medication that might react to exposure to UVR. They are not required to give advice on whether skin conditions or medication will react to exposure, but should advise that the potential user should not expose their skin until they have obtained medical advice. Supervisors should also make their own assessment of whether potential users are suffering from a skin condition by assessing visible skin, and if the condition is not disclosed on inquiry, making such inquiries as are necessary of the potential user.

Advise the person as to the safe operation of the sunbed. This will include time and manner in which the equipment should be used, use of eye protection, use of medications or creams that make the skin more sensitive to sunlight, and should also include health and safety advice to ensure the safe use of the sunbed.

Provision of prescribed health information. This must be provided by the supervisor to the user on each occasion in the prescribed form (as set out in Schedule 1).

Ensure the provision and use of protective eyewear. The supervisor is required to ensure that protective eyewear is provided, that if it is single use it is disposed of after use, if multi-use it is sanitised before reuse. If the sunbed users have their own protective eyewear with them the supervisor should seek to ensure that it is appropriate. The supervisor should, so far as is practicable, ensure that the eyewear is worn by the sunbed user.

Scenario 3

C, aged 15 years is staying at a hotel with her parents. C visits the hotel leisure facility and asks for a complementary sunbed session. The leisure facility receptionist S asks C how old she is and C tells S she is 18. S asks for proof of age, and C explains that she doesn't have any with her as it is at home. S looks at C and decides she looks at least 18. S helps C assess her skin type and advises C to start with an 8 minute session. S advises C on the safe use of the sunbed, provides her with the prescribed health information and tells C that she must use the protective eyewear provided.

An offence has been committed under both the Act and the Regulations. It doesn't matter that the offer to use the sunbed is complementary (e.g. as part of the hotel package). The receptionist failed to verify that C was aged over 18 when she was seeking to use the sunbed and an offer was made to C to use a sunbed. S did not fully meet the requirements placed on a supervisor.

Competency of the supervisor

The Regulations require the person who carries on a sunbed business to ensure that a supervisor is competent. A supervisor is competent where he or she has sufficient training and experience or knowledge and other qualities to enable him or her properly to fulfill the requirements set out above. It is for the business operator to ensure that the staff designated as supervisors are competent; therefore enforcement officers should establish what steps the business operator has taken to ensure competence of supervisory staff. It will be for the business operators to satisfy the enforcement officer that they have done enough to satisfy themselves of the continuing competence of their supervisors and that ensuring competence and compliance with the supervisory responsibilities is an ongoing activity. Whilst supervisors do not have to undertake training in order to prove competency there are a number of training courses available to assist them to do so.

Scenario 4

S a self employed manicurist who has no experience or training in sunbeds is asked by T to 'supervise' his sunbed salon. S is told by T that she can carry on her manicure service in a spare cubicle whilst supervising the sunbed salon. A customer, D aged 35 attends the salon for a sunbed session. D, who has fair skin and red hair, has never used a sunbed before. After D enters the salon, S, who is carrying out a manicure on a client in her cubicle, puts her head around the door and tells D to go ahead and use the sunbed cubicle as it is empty. S tells D to make sure she reads the safety leaflet provided and to wear goggles before operating the sunbed.

An offence has been committed by T. Whilst S was present on the premises at the time D was seeking to use a sunbed S failed to adequately supervise the use of the sunbed. S did not assist D to assess her skin type or provide guidance to D on use of the sunbed taking into account D's assessment of her skin. D should have been told not to use the sunbed given her fair skin and red hair. T also failed to ensure that S was a competent supervisor.

3. Provision and display of prescribed health information

The Regulations are designed to ensure that any person who is considering using a sunbed, or does use a sunbed, does so with full knowledge of the potential risks to their health.

The Regulations do so in three ways:

- by requiring the provision of prescribed health information to the individual;
- by requiring the posting of more generic information prominently within the premises; and
- by prohibiting the making of beneficial health claims relating to use of the equipment.

The Regulations require that:

- a person who carries on a sunbed business must provide to a person each time that person seeks to use, or uses, a sunbed on the sunbed premises, prescribed health information about sunbed use;
- the prescribed health information must be contained in a document that is flat and rectangular and at least A4 in size and is printed in black characters, which can be easily read, on a yellow background.

This information must be provided every time the person proposes to use the sunbed on those premises. Sunbed businesses may not add to, amend, deviate from or delete any of the prescribed wording.

Scenario 5

E, aged 25, visits a sunbed salon, where she has a regular weekly appointment. E has prepaid for 10 sessions and is about to use the 6th of her 10 sessions. E knows the staff at the salon well, as she has been going there for so long. When E arrives at the salon the supervisor S tells E to go straight into the sunbed cubicle as it is empty. S does not provide the prescribed health information to E as she is aware that E has seen it previously.

An offence has been committed. The prescribed health information must be provided every time the person proposes to use the sunbed on those premises.

Scenario 6

Based on the same facts as Scenario 5, but when E arrives at the salon the supervisor S, who keeps a laminated version of the prescribed health information next to the till, gives E the laminated version which E looks at and returns before entering the sunbed cubicle.

No offence has been committed. The prescribed health information has been provided to E.

A person carrying on a sunbed business must also display a notice in a prominent position where it is readily visible to a person each time they seek to use a sunbed. This means that it must be placed so as to be within the immediate view of a person on entering the sunbed premises and on entering each restricted zone on those premises.

The notice must:

- contain health information, as prescribed in the Regulations;
- be placed so as to be within immediate view on entering the sunbed premises and on entering each restricted zone on those premises;
- be at least A3 in size; and
- be printed in black characters, at least 20 millimetres in size, on a yellow background.

The intention of the Regulations is to provide a simple clear message on the health risks associated with sunbed use, which can be easily seen by those intending to use a sunbed on sunbed premises.

The recent reclassification of UV-tanning devices as Group 1 carcinogens by the International Agency for Research on Cancer (IARC) has re-enforced the COMARE evidence and supports the health information to be displayed on sunbed premises. Sunbed businesses may not add to, amend, deviate from or delete any of the prescribed wording.

A person who carries on a sunbed business must not provide or display any material containing statements relating to the health effects of sunbeds, other than the prescribed health information. The Regulations do however allow for the provision or display of any relevant health and safety information.

Scenario 7

A sunbed business in Wales displays a poster in the waiting area that states 'our sunbeds boost Vitamin D levels, enhance your immune system and improve skin conditions'.

An offence has been committed. A person who carries on a sunbed business must not provide or display any material containing statements relating to the health effects of sunbeds, other than the prescribed health information.

The Welsh Government will provide local authorities with sufficient printed copies of the prescribed health information made under the Regulations in both leaflet and poster formats prior to the commencement of the Regulations. These will be delivered directly to local authorities for their further distribution to sunbed businesses within their areas. PDF format copies have also been made available for download on the Welsh Government website:

<http://wales.gov.uk/topics/health/protection/environmental/publications/leaflet/?lang=en>

4. Protective eyewear

A person who carries on a sunbed business must:

- make appropriate protective eyewear available to a person seeking to use a sunbed on the business's premises; or
- ensure that such a person has with them appropriate protective eyewear; and
- secure, as far as is reasonably practicable, that a person who uses a sunbed on the business's premises wears such protective eyewear.

If the protective eyewear provided by the person who carries on a sunbed business is reusable, it must be appropriately sanitised before being made available for reuse.

Sunbed businesses should not allow any person to use a sunbed without being equipped with eyewear that is safe and appropriate for use with the sunbed, and which protects the eyes of a person using the sunbed from the effects of exposure to radiation emitted by the sunbed. It is also the intention that a person is equipped with protective eyewear on every visit to sunbed premises.

The Welsh Government recognises the difficulties for operators to ensure that the protective eyewear is actually worn by the users during the sunbed session. The Regulations therefore seek to ensure that the user has the protective eyewear in their possession before entering the restricted zone. The Regulations make further provision for the sanitation of reusable goggles provided by the sunbed business.

Where eyewear is provided by the sunbed business, it may be either single-use disposable eyewear, or alternatively multi-use eyewear. There is no requirement that provision must be free of charge, therefore business operators may charge for eyewear should they wish to do so. Disposable eyewear must be discarded after use and multi-use eyewear must be appropriately sanitised before re-use. Enforcement officers should check to ensure salon procedures require sanitising of multi-use eyewear, that appropriate chemical cleaners are used for this purpose in accordance with the manufacturer's instructions, and that the procedure does take place between every use of the protective eyewear.

Protective eyewear is eyewear that is safe and appropriate for use with the sunbed, and which protects the person using the sunbed from the effects of exposure to radiation emitted by the sunbed. Protective eyewear must provide adequate front and side protection for eyes. Where eye protection is provided by the sunbed business it will be for the enforcing officer to determine whether what is provided as 'safe and appropriate' is in fact sufficient for the purposes of the legislation. Some manufacturers of protective eyewear have the boxes for their product CE marked as compliant with relevant standards⁷. For eyewear provided by the operator the enforcement officer could ask to see the manufacturer's data, or some other statement that the eyewear is appropriate for use with the sunbeds provided.

Scenario 8

On visiting a sunbed business a customer, F, is asked by a supervisor S if he has protective eyewear with him, or if he would like to use the disposable eyewear provided free by the salon. F replies that he doesn't wear goggles as he doesn't want panda eyes (white patches around the eyes). S allows F to enter the restricted zone.

An offence has been committed. S must secure, as far as is reasonably practicable, that a person who uses a sunbed on the business's premises wears protective eyewear. F should not have been allowed into the cubicle if he did not have with him protective eyewear that was safe and appropriate for use with the sunbed.

⁷ BS EN 60335-2-27:2010, PPE Directive 89/686/EEC (as modified) [BS EN166 2002, BS EN170 2002]

Defences

A person who carries on a sunbed business who fails to comply with any of the duties commits an offence. The offences are all strict liability offences. But they are tempered by a defence if the person who has committed an offence can prove that they took all reasonable precautions to prevent the commission of the offence, and that these steps were properly carried out.

Examples of reasonable precautions and due diligence that sunbed businesses could take include:

- Training and advising staff on how to check the age of users, including the types of document that can be used to prove age.
- Including an age verification process in sale/hire documentation.
- Having written procedures for supervisors covering all aspects of supervision, training supervisors in these procedures and keeping a record of this training.
- Keeping a written record of any incident (and outcome) where a member of staff challenged a potential user about their age, use of protective eyewear etc.
- Maintaining written records for each user for each session.
- Using till prompts for sunbed use transactions, if the facility is available.
- Undertaking an assessment of the knowledge and understanding of the supervisor against the information and assistance required to be given.
- Providing appropriate training to the supervisor that covers the information required in sufficient depth.
- Undertaking an assessment of the supervisor's ability to communicate the information to customers.
- Undertaking spot checks to ensure requirements are carried out.
- Routinely checking that prescribed notices are in place and stocks of health information leaflets are available.
- Ensuring adequate stocks of appropriate protective eyewear are always available.

4. Sale or hire of sunbeds to persons aged under 18 and defences

The Regulations prohibit:

- the sale of a sunbed to a person who is under 18.
- the hire of a sunbed to a person who is under 18.

A seller or hirer who fails to comply with the prohibition commits an offence; and the key elements of the offence are therefore:

- there is a person who is a seller or a hirer;
- there is an absolute requirement with respect to the age of the person buying or hiring the sunbed; and
- the seller or hirer has a defence if he/she takes all reasonable precautions, and exercises all due diligence to avoid committing it.

When investigating alleged offences, enforcement officers should make inquiries about the method used by the seller/hirer to verify that the person making the contract was at least 18 years of age. If the hirer or seller, or an employee or agent of the hirer or seller, had taken all reasonable steps to verify the age of the person, a defence would be available in any proceedings for such an offence.

Scenario 9

T operates a sunbed salon in Aberystwyth. From the salon, T sells and hires sunbeds for home use. G, who is 16, visits the shop and hires a sunbed for the weekend. He is not asked his age or asked to produce any documentation to verify his age. T claims that G looked at least 18.

T has committed an offence. T has no defence as T did not take all reasonable precautions and exercise all due diligence to avoid committing an offence - T could have asked for proof of G's age (e.g. G's passport).

Remote sale or hire of sunbeds

The Regulations apply only in Wales, but there is potential for the sale and hire of sunbeds between Wales and other countries. The Regulations therefore provide for circumstances where the premises at which an order for the sale or hire of a sunbed is placed are not the same as the premises from which the equipment is despatched. Generally, the sale or hire is to be treated as taking place on the premises at which the order was taken. Where the premises where the order for the sunbed is taken are not in Wales, and the premises from which the sunbed is dispatched are in Wales, the sale or hire is treated as taking place on the premises from which the sunbed is dispatched.

Summary:

What happens if the premises at which an order is taken ("**Premises A**") for the sale or hire of a sunbed are different from the premises from which the item is despatched ("**Premises B**") to the customer?

The general position is that the sale or hire is to be treated as taking place at **Premises A**.

Where **Premises A** is outside Wales but **Premises B** is inside Wales the sale or hire is to be treated as taking place at **Premises B**.

If **Premises A** and **Premises B** are both outside Wales there can be no offence under the Regulations.

The table below summarises the position - it assumes that a young person aged under 18 has purchased or hired a sunbed and the seller has no defence (e.g. the seller did not take steps to verify age):

Premises A [Order taken]	Premises B [Order dispatched]	Relevant Country	Offence?
Wales	Wales	Wales	Yes
Other	Wales	Wales	Yes
Wales	Other	Wales	Yes
Other	Other	Other	No

Scenario 10

T runs Tan.Com Ltd, selling and hiring sunbeds for home use from two shops in Shrewsbury and Aberystwyth. Tan.Com advertise on the internet and are based in Shrewsbury, where the company has its registered office.

H, aged 16, visits the Tan.Com shop in Shrewsbury and hires a sunbed for an end of school term party using her debit card. She is not asked her age. The sunbed is dispatched from Tan.Com's shop in Shrewsbury and is delivered to H's home in Welshpool.

No offence has been committed as the premises at which the order is taken for the hirer of the sunbed and from which it is despatched are both outside Wales.

Scenario 11

Based on the same facts as Scenario 10, except the sunbed is despatched to H from the shop in Aberystwyth.

T has committed an offence as the premises from which the sunbed is despatched to H are in Wales, and the hire is treated as taking place from those premises.

Defence

The person who has committed the offence has a defence if they can prove that they took all reasonable precautions to prevent the commission of the offence, and that these steps were properly carried out. They could do this by taking steps to check the age of the person who intends to buy or hire the sunbed, for example by asking to see the person's passport or similar documentation providing proof of age.

5. Enforcement

Overview

National enforcement priorities for regulatory services describe Government's priorities for local regulatory delivery. National enforcement priorities for Wales were published in April 2010 by the Local Better Regulation Office (LBRO). The priorities were prepared by the LBRO in conjunction with local authorities, national regulators and professional and representative bodies.

Local authorities in Wales are under a statutory duty to have regard to national enforcement priorities when allocating resources to certain of their regulatory functions. Regulatory functions in connection with sunbeds fall into that category. The national enforcement priorities for Wales are:

- Protecting individuals from harm and promoting health improvement.
- Ensuring the safety and quality of the food chain to minimise risk to human and animal health.
- Promoting a fair and just trading environment for citizens and business.
- Improving the local environment to positively influence quality of life and promote sustainability.

Welsh Government is keen for local authorities and those carrying on a sunbed business to work together to resolve issues voluntarily wherever possible. The Government believes that education and guidance should be the first response and that formal enforcement proceedings should be taken only where informal approaches have failed.

Local authorities

The Regulations impose a duty on Welsh local authorities to enforce the Regulations in their respective areas, and to appoint authorised officers for that purpose.

The local authorities responsible for enforcing the Regulations in Wales are:

- a County Council or County Borough Council; and
- a Port Health Authority, to the extent that a local authority's functions under the Act are assigned to it.

Authorised officers

Local authorities will need to appoint appropriate authorised officers to carry out duties to secure compliance with the Regulations.

An 'authorised officer' means all those officers who have been authorised by a local authority to undertake the work of securing compliance with the Regulations.

Existing officers, who are experienced in carrying out enforcement duties in relation to businesses, such as environmental health and trading standards officers, could carry out this work and could incorporate this work into their other inspection activities.

Officers will need to be authorised under the Regulations in accordance with their normal local authority procedures.

Inspection

Authorised officers have the right to enter premises which they believe are sunbed businesses and carry out inspections. Authorised Officers may enter with the consent of the occupier any domestic premises at which the officer has reason to believe that a sunbed business is being carried on.

Inspections by authorised officers will be either:

- reactive, i.e. in response to a complaint; or
- proactive, i.e. compliance visits to check awareness of and compliance with the Regulations as part of a risk-based approach.

Local authorities will need to decide how they deal with complaints and intelligence they receive from various sources.

It will be appropriate for proactive and reactive inspections to be carried out as part of other compliance work. Authorised officers will not need to give notice of their inspection visits for the purposes of these Regulations.

Enforcement powers for the Sunbeds (Regulation) Act 2010 and the Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011 are found in the Act.

6. Schedule 1

HEALTH INFORMATION FOR SUNBED USERS



Llywodraeth Cymru
Welsh Government

Using sunbeds can harm your health in the long term.

They have been linked to:-

- a higher risk of skin cancer – people who use sunbeds for the first time before the age of 35 increase their risk of developing malignant melanoma (the most serious form of skin cancer) by 75 per cent;
- eye damage including a higher risk of cataracts – if appropriate eye protection is not worn; and
- premature skin ageing which means that your skin becomes coarse, leathery and wrinkled at a younger age.

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The health risks of using a sunbed are greater than any possible benefits they might provide in helping the body create Vitamin D.

There are also short term health effects:-

- sunburnt skin, which may become red, painful and blister;
- skin dryness;
- an itchy “heat” rash; and
- itchy eyes or conjunctivitis if appropriate eye protection is not worn.

You should not use a sunbed if you:

- have had skin cancer in the past;
- have a family history of skin cancer;
- have fair or sensitive skin;
- burn easily in sunlight;
- have a large number of freckles and/or red hair;
- have a large number of moles;
- are using medication or creams that make your skin more sensitive to sunlight;
- have a medical condition that is made worse by sunlight;
- have an immune system which is weakened;
- fail to protect your eyes – never use a sunbed without wearing appropriate eye protection; or
- are under 18 (and no person under 18 may use a sunbed on these premises).

Some women find their skin is more sensitive during pregnancy. This could mean that your skin may be more likely to burn in the sun or if you use a sunbed.





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HEALTH INFORMATION

**SUNBED USE CAN
DAMAGE YOUR SKIN
AND EYESIGHT AND
INCREASE YOUR RISK
OF SUFFERING FROM
SKIN CANCER.**



Summary of offences under the Regulations

Offence	Statutory Defence	Maximum Fine
<p>Regulation 3.—(1) (a) A person who carries on a sunbed business on sunbed premises that are domestic premises must secure that no person aged under 18 uses on those premises a sunbed to which the business relates.</p>	It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.	Level 5 (currently £5,000)
<p>Regulation 3.—(1) (b) A person who carries on a sunbed business on sunbed premises that are domestic premises must secure that no offer is made by him or her or on his or her behalf to make a sunbed to which the business relates available for use on those premises by a person aged under 18.</p>	It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.	Level 5 (currently £5,000)
<p>Regulation 4.—(1) A person who carries on a sunbed business must secure that the use of sunbeds to which the business relates is supervised by a supervisor.</p>	It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.	Level 5 (currently £5,000)
<p>Regulation 4.—(3) A person who carries on a sunbed business must ensure that a supervisor is competent and a supervisor is competent where he or she has sufficient training and experience or knowledge and other qualities to enable him or her properly to fulfil the requirements of paragraph (2) of regulation 4. – (2) (b).</p>	It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.	Level 5 (currently £5,000)
<p>Regulation 5.—(1) A person (“seller”) must not sell a sunbed to a person who is under 18.</p>	It is a defence for the seller to prove that they (or an employee or agent of the seller) took all reasonable precautions and exercised all due diligence to avoid committing it.	Level 5 (currently £5,000)
<p>Regulation 5.—(2) A person (“hirer”) must not hire a sunbed to a person who is under 18.</p>	It is a defence for the hirer to prove that they (or an employee or agent of the hirer) took all reasonable precautions and exercised all due diligence to avoid committing it.	Level 5 (currently £5,000)

Offence	Statutory Defence	Maximum Fine
<p>Regulation 7.—(1) A person who carries on a sunbed business must provide to a person each time that person seeks to use or uses a sunbed on sunbed premises the prescribed health information set out in Schedule 1 which must be contained in a document that is flat and rectangular and at least A4 in size and is printed in black characters, which can be easily read, on a yellow background.</p>	<p>It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.</p>	<p>Level 5 (currently £5,000)</p>
<p>Regulation 7.—(2) A person who carries on a sunbed business must display in a prominent position where it is readily visible to a person each time that person seeks to use or uses a sunbed on sunbed premises a notice which— (a) contains the prescribed health information set out in Schedule 2 of the Regulations; (b) is at least A3 in size; and (c) is printed in black characters, at least 20 millimetres in size, on a yellow background.</p>	<p>It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.</p>	<p>Level 5 (currently £5,000)</p>
<p>Regulation 7.—(4) A person who carries on a sunbed business must not provide or display any material that contains statements relating to the health effects of sunbeds other than the prescribed health information under paragraphs (1) and (2) of regulation 7.</p>	<p>It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.</p>	<p>Level 5 (currently £5,000)</p>
<p>Regulation 8.—(1) A person who carries on a sunbed business must make protective eyewear available to a person each time that person seeks to use a sunbed on sunbed premises; or ensure that a person has with them protective eyewear each time they seek to use a sunbed on sunbed premises, and must secure as far as reasonably practicable that a person who uses a sunbed on sunbed premises wears such protective eyewear.</p>	<p>It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.</p>	<p>Level 5 (currently £5,000)</p>
<p>Regulation 8.—(3) Protective eyewear made available in accordance with paragraph (1) (a) of regulation 8 may be single-use eyewear, which must be disposed after use; or multi-use eyewear which must be appropriately sanitised before reuse.</p>	<p>It is a defence for a person charged with this offence to prove that they (or an employee or agent of the person) took all reasonable precautions and exercised all due diligence to avoid committing it.</p>	<p>Level 5 (currently £5,000)</p>