

PUBLIC HEALTH ETC. (SCOTLAND) ACT 2008

EXPLANATORY NOTES

THE ACT – OVERVIEW

Part 8

Regulation of Provision of Sunbeds

Offences

Section 95 Prohibition on allowing use of sunbeds by persons under 18

189. This section bans allowing the use of sunbeds by under 18s on commercial premises. An operator who allows a person who is under 18 to use a sunbed on sunbed premises commits an offence.
190. Subsections (2) and (3) provide a defence for the operator. Subsection (4) lists the documents that may be used to demonstrate proof of age. Subsection (5) allows the operator to rely on steps taken by an employee or agent.

Section 96 Prohibition on sale or hire of sunbeds to persons under 18

191. This section bans the sale or hire of sunbeds to persons under 18.
192. Subsection (1) sets out the offence of sale and subsection (2) sets out the offence of hire. Subsection (3) provides a defence for a seller or hirer, if the seller or hirer believed a person to be 18 or over and had taken reasonable steps to establish a person's age.
193. Subsection (5) provides a list of documents that can be used to demonstrate proof of age. Subsection (6) allows the operator to rely on steps taken by an employee or agent.

Section 97 Remote sale or hire of sunbeds

194. This section concerns the situation where a sale or hire of a sunbed takes place in circumstances where the premises that receive an order are not the same as the premises from which the sunbed is despatched for sale or hire. Subject to subsection (3), the sale or hire is to be treated as taking place on the premises where the order was taken. Subsection (3) provides that, whereas the premises where the order is taken are not in Scotland but the premises from which the sunbed is despatched are in Scotland, the sale or hire is to be treated as taking place on the premises from which the sunbed is despatched.

Section 98 Prohibition on allowing unsupervised use of sunbeds

195. This section prohibits allowing the unsupervised use of sunbeds. It is an offence for an operator of a sunbed premises to allow a person to use a sunbed on those premises without supervision, unless the operator can provide a reasonable excuse.

196. Under subsection (2) sunbed premises are regarded as being supervised 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.

Section 99 Medical use of sunbeds

197. This section allows the Scottish Ministers to make regulations in relation to sunbeds used for medical purposes. This future proofs the legislation against the possibility that operators may try to circumvent the provisions by offering 'medical devices', which produce tanning of the skin, rather than 'sunbeds'. Subsection (2) sets out that the regulations may make provision regarding what is to be considered a sunbed or sunbed premises as well as the circumstances in which the provisions of this Part do and do not apply. Regulations will be made by affirmative procedure.

Section 100 Duty to provide information to sunbed users

198. Under this section sunbed operators must provide sunbed users with information on the effects on health of sunbed use. It is an offence to fail to provide the information but subsection (4) provides a defence. Subsection (2) states that the information to be provided must be the information prescribed by the Scottish Ministers in regulations. This information is to be provided on each occasion a person uses a sunbed on sunbed premises. Under subsection (5), the Scottish Ministers may prescribe the information that is to be provided and the form and manner in which it is to be provided.

Section 101 Duty to display information notice

199. This section requires sunbed operators to display an information notice on sunbed use in a position which is clearly visible to anyone proposing to use a sunbed on the premises. The notice must contain the information prescribed by the Scottish Ministers in accordance with subsection (4). It is an offence to fail to display the notice but subsection (3) provides a defence. Under subsection (4), the Scottish Ministers may prescribe the information that the notice is to contain and the form and manner in which the information is to be provided.

Enforcement

Section 102 Power to enter premises

200. This section gives authorised officers of the local authority power to enter and inspect premises in order to ascertain whether or not an offence under section 95, 96, 98, 100 or 101 has been or is being committed. Subsections (2) and (3) require that entry must take place only at a reasonable time and that documentation showing the authority of the local authority officer must be produced if requested.
201. Subsection (4) enables the authorised officer to be accompanied by a police constable if there is reasonable cause to expect serious obstruction in obtaining access. Subsection (5) enables the officer to have access to, and inspect any relevant records as part of the investigation. However this does not extend to documents which carry legal privilege, which are defined in subsection (7). Subsections (8) and (9) create offences of obstructing an officer and failure to comply with a requirement made under subsection (5), and a defence to such offences.

Section 103 Power to enter premises: entry to dwellinghouses

202. This section places a further condition on the exercise of the power of entry in section 102 where the premises are a dwellinghouse. Subsection (2) requires the authorised officer to obtain a warrant from the sheriff. Entry under the warrant must take place within a month of the warrant being obtained.

203. Subsection (3) provides that the sheriff may only issue a warrant if satisfied by evidence on oath that there are reasonable grounds for suspecting that an offence under section 95, 96, 98, 100 or 101 has been, or is being, committed, and that evidence of the commission of that offence may be found in the dwellinghouse.

Section 104 Power to require identification of operator

204. In the event of a local authority officer having reason to believe an offence under section 95, 98, 100 or 101 has been, or is being committed, this section enables the local authority officer to require any person on the sunbed premises to give the name and address of the operator. Failure to do so, without reasonable excuse, is an offence.

Section 105 Fixed penalties for offences under section 95, 98, 100 or 101

205. This section enables the local authority officer to issue a fixed penalty notice to the operator of the premises where the officer has reason to believe an offence has taken place under section 95, 98, 100 or 101. The fixed penalty notice gives the operator the opportunity of discharging liability to conviction for that offence by payment of the fixed penalty.
206. Subsections (2) and (3) set out the details the fixed penalty notice must contain. The fixed penalty notice must identify the offence to which it relates, give reasonable particulars of the circumstances of the alleged offence and details in relation to payment. Subsection (4) states the amount of the fixed penalty fine: £100 for an offence under section 95 (allowing use of sunbeds by persons under 18); and £50 for an offence under section 98, 100 or 101. Subsection (5) provides the period for payment of the fixed penalty, which is 28 days beginning with the day on which the notice was given. Subsection (6) sets out that a local authority may extend the period for payment of the fixed penalty if appropriate, by giving notice to the operator. Subsection (7) prohibits proceedings for an offence under section 95, 98, 100 or 101 from commencing before the end of the period for payment of the fixed penalty.
207. Subsection (11) gives the Scottish Ministers the power to make regulations, by affirmative procedure, to amend the fixed penalty scheme in relation to the circumstances in which FPN's may not be given, the form of a FPN and the method for payment of fixed penalties. It also enables Scottish Ministers to make regulations to modify the amount of fixed penalty (subject to a maximum of £500), to alter the period in which the penalty may be paid, and to provide for the keeping of accounts etc. by local authorities in relation to fixed penalties under this section.

Section 106 Withdrawal of notices

208. Under this section, following representations on behalf of a recipient of a fixed penalty notice a local authority may decide to withdraw a notice. In doing so it must inform the person to whom the fixed penalty notice was given and repay any amount that may have already been paid and no proceedings may be taken against that person in connection with that offence.

Section 107 Penalties for offences under Part 8

209. Any person who commits an offence under Part 8 is liable on summary conviction to a fine not exceeding level 4 on the standard scale, currently £2,500.

Interpretation

Section 108 Interpretation of Part 8

210. This section sets out the interpretation of the words “authorised officer”; “operator”; “sunbed” and “sunbed premises”.