



# Public Health etc. (Scotland) Act 2008

## 2008 asp 5

### PART 8

#### REGULATION OF PROVISION OF SUNBEDS

##### *Offences*

#### **95 Prohibition on allowing use of sunbeds by persons under 18**

- (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;
  - [<sup>F1</sup>(aa) a UK driving licence,]
  - (b) a European Union photocard driving licence; 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.

#### **Textual Amendments**

- F1** S. 95(4)(aa) inserted (31.12.2020) by [The Public Health and Tobacco \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/142\)](#), regs. 1, **2(2)**; 2020 c. 1, Sch. 5 para. 1(1)

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#### Commencement Information

**I1** S. 95 in force at 1.12.2009 by [S.S.I. 2009/404](#), art. 2(1), [Sch. 1](#)

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

- (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;
  - [<sup>F2</sup>(aa) a UK driving licence,]
  - (b) a European Union photocard driving licence; 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.

#### Textual Amendments

**F2** S. 96(5)(aa) inserted (31.12.2020) by [The Public Health and Tobacco \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/142\)](#), regs. 1, [2\(3\)](#); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Commencement Information

**I2** S. 96 in force at 1.12.2009 by [S.S.I. 2009/404](#), art. 2(1), [Sch. 1](#)

### 97 Remote sale or hire of sunbeds

- (1) This section applies where, 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 despatched for delivery in pursuance of the sale or hire.
- (2) Subject to subsection (3), the sale or hire is to be treated, for the purposes of section 96, as taking place on the premises where the order was taken.
- (3) Where—
  - (a) the premises where the order for the sunbed is taken are not in Scotland; and
  - (b) the premises from which the sunbed is despatched are in Scotland,

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the sale or hire is to be treated, for the purposes of section 96, as taking place on the premises from which the sunbed is despatched.

**Commencement Information**

**I3** S. 97 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

**98 Prohibition on allowing unsupervised use of sunbeds**

- (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.

**Commencement Information**

**I4** S. 98 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

**99 Medical use of sunbeds**

- (1) The Scottish Ministers may, by regulations, make provision regarding the application of this Part 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 Part do (and do not) apply.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

**Commencement Information**

**I5** S. 99 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

**100 Duty to provide information to sunbed users**

- (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.

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- (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) The Scottish Ministers may prescribe—
- (a) the information which is to be provided;
  - (b) the form and manner in which that information is to be provided.

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**Commencement Information**

**I6** S. 100 in force at 1.4.2009 for specified purposes by S.S.I. 2009/9, art. 2(b), Sch. 2

**I7** S. 100 in force at 1.12.2009 in so far as not already in force by S.S.I. 2009/404, art. 2(1), Sch. 1

**101 Duty to display information notice**

- (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) The Scottish Ministers may prescribe—
- (a) the information which the notice is to contain;
  - (b) the form and manner of display of the notice.

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**Commencement Information**

**I8** S. 101 in force at 1.4.2009 for specified purposes by S.S.I. 2009/9, art. 2(b), Sch. 2

**I9** S. 101 in force at 1.12.2009 in so far as not already in force by S.S.I. 2009/404, art. 2(1), Sch. 1

*Enforcement*

**102 Power to enter premises**

- (1) An authorised officer of a local authority may enter and inspect any premises in the area of that authority in order to ascertain whether an offence under section 95, 96, 98, 100 or 101 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.

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- (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 Part; 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 document subject to legal privilege means a communication—
  - (a) between a professional legal adviser and the adviser's client; or
  - (b) made in connection with or in contemplation of legal proceedings and for the purpose of those proceedings,which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.
- (8) 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).
- (9) In proceedings for an offence under subsection (8), 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.

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**Commencement Information**

**I10** S. 102 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

### **103 Power to enter premises: entry to dwellinghouses**

- (1) Where an authorised officer proposes, in the exercise of the power conferred by section 102(1), to enter a dwellinghouse, the condition set out in subsection (2) must be satisfied.
- (2) The condition is that the authorised officer has obtained a warrant from the sheriff in the month preceding the date of entry.
- (3) The sheriff may issue a warrant only if satisfied by evidence on oath that there are reasonable grounds for suspecting that—
  - (a) an offence mentioned in section 102(1) 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.

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**Commencement Information**

**I11** S. 103 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

**104 Power to require identification of operator**

- (1) Where an authorised officer of a local authority has reason to believe that an operator of sunbed premises in the area of that local authority is committing or has committed an offence under section 95, 98, 100 or 101, 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 section 95, 98, 100 or 101; 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.

**Commencement Information**

**I12** S. 104 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

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

- (1) Where an authorised officer of a local authority has reason to believe that an operator of sunbed premises in the area of that authority has committed an offence under section 95, 98, 100 or 101, 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—
    - (i) person to whom; and
    - (ii) address at which, payment may be made;
  - (d) the method or methods by which payment may be made;

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- (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—
  - (a) in the case of an offence under section 95, £100;
  - (b) in the case of an offence under section 98, 100 or 101, £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 local authority may extend the period for payment of the fixed penalty in any particular case if they consider it appropriate to do so, by giving notice to the operator.
- (7) No proceedings for an offence under section 95, 98, 100 or 101 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 local authority after the end of that period.
- (9) In proceedings for an offence under section 95, 98, 100 or 101, a certificate which—
  - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority; 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 a local authority under this section accrues to that authority.
- (11) The Scottish Ministers 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 (4) so as to substitute a different amount (not exceeding level 2 on the standard scale) for an amount for the time being specified there;
  - (e) modify subsection (5) so as to substitute a different period for the period for the time being specified there;
  - (f) provide for the keeping of accounts, and the preparation and publication of statements of account relating to fixed penalties under this section.

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**Commencement Information**

**I13** S. 105 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

## 106 Withdrawal of notices

- (1) The local authority 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) Where a fixed penalty notice is withdrawn in accordance with subsection (1)—

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

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**Commencement Information**

**I14** S. 106 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

## 107 Penalties for offences under Part 8

Any person who commits an offence under this Part is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

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**Commencement Information**

**I15** S. 107 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1

### *Interpretation*

## 108 Interpretation of Part 8

In this Part—

- “authorised officer” means an officer of a local authority authorised for the purposes of this Part;
- “operator” means the person having management or control of sunbed premises;
- “sunbed” means an electrically-powered device designed to produce tanning of the skin by the emission of artificial ultraviolet radiation; and
- “sunbed premises” means premises in which persons are permitted to use a sunbed for payment.

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**Commencement Information**

**I16** S. 108 in force at 1.12.2009 by S.S.I. 2009/404, art. 2(1), Sch. 1



**Changes to legislation:**

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