



Northern Ireland
Assembly

**COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY**

**OFFICIAL REPORT
(Hansard)**

Sunbeds Bill

3 June 2010

NORTHERN IRELAND ASSEMBLY

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HEALTH, SOCIAL SERVICES
AND PUBLIC SAFETY**

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Members present for all or part of the proceedings:

Mr Jim Wells (Chairperson)
Mrs Michelle O'Neill (Deputy Chairperson)
Mrs Mary Bradley
Dr Kieran Deeny
Mr Alex Easton
Mr Tommy Gallagher
Mr Sam Gardiner
Mr John McCallister
Mrs Claire McGill
Ms Sue Ramsey
Mr Jim Wells

Witnesses:

Mr Craig Allen)	
Mr Seamus Camplisson)	Department of Health, Social Services and Public Safety
Ms Julie Stewart)	

The Chairperson (Mr Wells):

I welcome Julie Stewart and Seamus Camplisson — a name that I have not come across before — from the Department's health protection branch and Craig Allen from the legislation equality branch. Please outline your latest thinking on the Sunbeds Bill, after which we will ask questions.

Mr Seamus Camplisson (Department of Health, Social Services and Public Safety):

I am just changing the script from “good afternoon” to “good evening”.

The Chairperson:

If you do not stop soon, it will be “good morning”.

Mr Camplisson:

I will be brief, in the interest of being humane.

We are pleased that the Assembly has brought the Sunbeds Bill this far, and we are pleased to have this opportunity to go through the Bill in some detail with the Committee. I pass on the apologies of our chief environmental health officer, Nigel McMahon, who was keen to be here but had to attend another engagement. I will address the concerns that Committee members have already raised, after which we can get as quickly as possible to your comments and questions.

I will deal first with the question of licensing. Following the Second Stage debate, the Minister has decided to table an amendment that will add a power enabling the Minister to introduce a licensing scheme, the details of which will be in subordinate legislation. This will enable the Minister to require all commercial sunbed premises, or operators of such premises, including those that sell or hire sunbeds, to hold a licence. We have instructed the Office of the Legislative Counsel to draft such a clause. The new clause will replace clause 15. It will keep open the option of introducing a registration scheme and will add the option of licensing.

I will explain the background to this. In our original instructions for the drafting of the Bill, we asked for an enabling power to be included to allow the Minister to bring forward proposals for a licensing scheme in future. We were advised by our solicitors and the Office of the Legislative Counsel (OLC) that we should not do that before developing enough detail of the licensing scheme. The advice was that the key features of the scheme should be contained in the Bill. In the time available during the current mandate it was not possible to develop those details and consult on them.

After the Second Stage debate, we went back to the solicitors and OLC to clarify the legal position on including a power for licensing. We wanted to clarify whether the original advice

was a categorical no, or just a strong recommendation. We were advised that the original advice was a recommendation. We expect the new draft clause to be ready next week, and we will be happy to share it with the Committee as soon as it is available. If the Committee is content, the Minister will table an amendment to the Bill.

I want to reassure the Committee that we will ensure that any licensing scheme is well designed. We will make the most of the consultation on the subordinate legislation and do our very best to assist the Committee in its scrutiny of that legislation.

During the Second Stage debate, Chairman, you mentioned the Committee's surprise on learning that the Department was bringing forward a Sunbeds Bill for introduction before the summer recess. You said that the Committee would have welcomed more notice. I should like to explain to the Committee how it came about that the Bill seemed to drop out of a clear blue sky. Last year, when we were expecting the Committee on Medical Aspects of Radiation in the Environment (COMARE) report, we asked the legislative programme secretariat in the Office of the First Minister and deputy First Minister (OFMDFM) if it would be possible for a sunbeds Bill to complete its passage during the current mandate. We were advised, in effect, that there was not enough room in the legislative programme; the Department already had four substantial Bills in the programme, and OLC and the Committee would be busy with those.

As there was little prospect that a sunbeds Bill would get through every stage before the end of March 2011, the Minister agreed that we should proceed with the necessary preparatory work, including a public consultation, survey research on the prevalence of sunbed use in Northern Ireland and whatever other preparatory work could be done before introducing a Bill early in the next mandate. We issued the consultation document on 19 November 2009, and the closing date was 19 February 2010.

In early December 2009, some of the cancer charities expressed concern that Northern Ireland was falling behind Scotland and England and Wales in respect of banning sunbed use by under-18s. At that stage, the indications were that regulation of the sunbed industry would be widely supported. Julie Stewart went back to OFMDFM to explore again the possibility of a sunbeds Bill completing its passage during the current mandate. At that point, the legislative programme secretariat advised us that, if we got our skates on and got a sunbeds Bill introduced before the summer recess, it had a fair chance of completing the passage if it was supported and was not

contentious. We were also advised that there was little margin for slippage in that timetable.

Since then, we have moved as quickly as possible. We took the unusual step of presenting the final policy and the draft Bill to the Executive at the same time to speed the Bill's passage. At the first opportunity, we wrote to the Committee to advise it of the plans to introduce the Bill. I am proud of what Julie and Craig, and Stefani Johnston in our legislation unit, have achieved in a short period. I am grateful to the solicitors and to colleagues in OFMDFM, both in the legislative secretariat and in OLC, for helping us to move quickly and for getting back to us promptly on our every request for advice.

During the Second Stage debate, the issue of whether there should be a ban on sunbed advertising was raised. We have taken legal advice on that and been told that an outright ban would almost certainly be incompatible with article 10 of the European Convention on Human Rights and, therefore, not within the legislative competence of the Assembly. Article 10 concerns the right to freedom of expression. We can go into that in some detail.

My colleagues and I are genuinely pleased with the Committee's response to the Bill. There is a strong consensus that the Bill is necessary, and we welcome the support that Committee members have expressed for its provisions. So far, we have done what we can to address the concerns that the Committee has raised, including your suggestions for improving the Bill. We have tried to do that promptly, and we will continue to do that. We are conscious that we are here not just to explain but to listen. I welcome your comments and questions.

The Chairperson:

The Committee strongly welcomes the amendment that the Minister has suggested on licensing. As you may have caught from the tenor of the debate at Second Stage, that was by far the Committee's major concern. We got a hint of that when, in response to my interjection towards the end of his winding-up speech, the Minister seemed to indicate that he was sympathetic to it being done by means of subordinate legislation. I am pleased about that. That will cut out a lot of the questions that we would have asked. Maybe we will be home for supper.

One or two other issues were raised on the Floor of the House. Conall McDevitt, who is no longer a member of the Committee, raised the issue of a parent hiring a sunbed. Say, for example, my daughter is getting married. It would not happen in our house, because I am too

mean to hire a sunbed, but in a normal household, the bridesmaids might gather round and lie under a sunbed that they had hired to get a nice tan for the wedding. If they are under 18 years old, is there anything in the legislation that makes that illegal?

Mr Camplisson:

There is nothing in this legislation that makes that illegal. The Minister's response to Mr McDevitt's proposal was that that would be unenforceable. We have looked into it, and we discussed it with our social services colleagues to see whether there is protection with regard to parents who habitually allow younger children to use sunbeds, because Mr McDevitt raised the question about parents' duty of care. The Children (Northern Ireland) Order 1995 makes general provision for parents to protect their children from neglect and abuse. A parent wilfully allowing young children to use sunbeds could come under the 1995 Order.

The Chairperson:

What is likely to happen is that mum and dad are out working, and the young girl is alone in the house. To some extent, the parents may be oblivious to what is going on.

Mr Camplisson:

That might arguably undermine the duty of care that Mr McDevitt proposed. A parent cannot be there supervising all the time.

The Chairperson:

A compromise that someone suggested to me could be a sticker on the hired sunbed or on the paperwork stating in very bold type stating "It is illegal to allow an under-18 to use this sunbed". Is that potentially a way round that issue?

Ms Julie Stewart (Department of Health, Social Services and Public Safety):

Yes, potentially we can put whatever we want in the information that is supplied.

Mr Camplisson:

We will certainly look at whether we can add a provision to the Bill to that effect, to make that illegal.

Ms Stewart:

It could just be in the information notes.

The Chairperson:

I am going to steal a question that Alex whispered over to me, which I thought was a cracker.

Mr Easton:

It was. *[Laughter.]*

The Chairperson:

Why is it against article 10 of the European Court of Human Rights to stop someone from advertising sunbeds, but perfectly acceptable to ban the advertising of cigarettes?

Ms S Ramsey:

That was my question, too.

Mr Camplisson:

That is a question of proportionality. About 750 people in Northern Ireland die from smoking-related lung cancer every year. We think, extrapolating from the UK figures, that two to three people may die from sunbeds. The latest figures from the Public Health Agency suggest that 2,400 people in Northern Ireland die as a direct result of all the conditions that are caused by smoking.

The article 10 right is a qualified right. There are absolute rights, such as the right to life and the right not to be subjected to torture or inhuman and degrading treatment. Then there are qualified rights, and freedom of expression is a qualified right. There is the famous quote of Oliver Wendell Holmes Jnr, the American jurist, who said that you have a right to free expression, but that does not extend to you standing up in a crowded cinema and shouting “fire”.

A state authority can curtail the article 10 right for certain purposes, including the protection of public health. The judgement then is to what extent it is reasonable to curtail that right. The legal advice that we sought said that in this case it would probably not be compatible with the article 10 right.

The Chairperson:

Since this issue has come onto the table of the Committee, as it were, I have been driving around and looking out for these things. I have never been in one in my life, and I have no idea what they are like inside. What I do notice, however, is that almost everywhere they are between the video shop and the chippy, often in very deprived areas. Their users are clearly those who perhaps do not have access to all the medical stats. Therefore, the advertising is targeted at those who have the least knowledge to make a sensible decision about it.

They have very gaudy signage that is quite bright, and often fluorescently lit, to try to lure people in. People with other health problems such as addictions to cigarettes, drugs or alcohol are the very people who use those facilities. It is a pity that we cannot at least restrict advertising, if not ban it completely.

Mr Camplisson:

From what we can make out, virtually all advertising of sunbeds is through point-of-sale signage. There is very little advertising in newspapers or magazines, except for the odd offer of three sessions for the price of two. We have no survey evidence to show the additional harm of advertising. We hope that all these provisions will go through, including the requirement on operators to put up prominent signs saying that sunbeds are harmful to health. Those should be at least as prominent as the signs that take up half of cigarette packets so that they cannot be missed. We hope that the written information will be more prominent to users and will have more resonance with them than the signs and posters in windows that simply say “sunbeds here”.

The Chairperson:

Does clause 4 completely eliminate the possibility of coin-operated sunbeds being available in Northern Ireland?

Mr Camplisson:

Yes. That is the unsupervised coin-operated beds.

The Chairperson:

People can go to nicer hotels in Northern Ireland where there are sunbeds that they can use under general gym supervision. They could lie in there all day and nobody would notice. Will there be a requirement on operators of such facilities to inspect regularly to see whether the sunbeds are

being abused? A 10-year-old could walk in and use that.

Mr Camplisson;

Yes.

Ms Stewart:

The Bill intends that sunbeds in gym situations are supervised, because people still have to go to someone to get tokens to use the machine; they still have to be provided with health information; and they still have to receive eye goggles. The unsupervised premises we are talking about are the ones in England that are on the street and where people literally put money into a machine, walk in and spend as long as they want in it. To us, a gym situation is supervised, because you still have to get all the information and they have to adhere to the provisions in the Bill. You can literally walk off the street into the coin-operated unsupervised sunbeds. That is the incident where the children got badly burned.

The Chairperson:

That is good news. The fines extend to level four, which is £2,500. That is pretty much a deterrent. However, parts of the fines can be transferable to fixed penalty notices, which, according to paragraph 43 of the delegated powers memo, amount to only £50 or £100. Is that really an appropriate fine? Will the enforcing officer not be tempted, rather than go through the whole issue of the courts, to say “look: £50”?

Ms Stewart:

At that stage, we were following what Scotland had done. Their penalties are £50 to £100. The amounts of fixed penalties are subject to subordinate legislation and consultation, and we will put that through. I think that they are subject to affirmative resolution in the Assembly. It was a figure that was pulled from what is done elsewhere; we could up them.

The Chairperson:

Will a record be kept? We do not want a situation in which an operator pays fines weekly as an occupational hazard. Will an operator face court action after two or three fixed penalties?

Mr Camplisson:

Yes. Fixed penalties are absolutely at the discretion of the district council. If an operator offends

persistently and regards fixed penalties or fines as part of their operating costs, the district council can take action. There is no absolute right to pay a fixed penalty to discharge the offence or liability; the district council can proceed straight to prosecution. Then, with a licensing scheme, the greatest deterrent is the revocation of the licence.

The Chairperson:

How will enforcement work in practice? Do you foresee a “mystery shopper” situation, such as is used in my district for underage drinking? Will officers have the right to ask for proof of age from someone using the tanning shop?

Mr Camplisson:

Yes. That is in the Bill. There are three means of policing. The under-18s is the only part of the enforcement — the rest is pretty straightforward because it is static and visible. An authorised officer can go into sunbed premises to check whether the signage is there and the goggles are available.

Allowing people under 18 to use sunbeds is dynamic; it may or may not be happening at any moment, and there are three ways in which a district council can investigate that. The first is in response to a complaint from, for example, a parent. A complaint by a parent or anyone that an operator has allowed someone under 18 may carry enough weight to secure a conviction.

Secondly, there is test purchasing. I discussed this with Nigel McMahon, who educated me on it. It is well established. Dungannon is the only council in Northern Ireland that has a policy of not using test purchasing; otherwise it is a well-established enforcement method. It is used to enforce the tobacco legislation regulating the age of sale.

The third measure is simply the prospect of an unannounced visit by an environmental health officer happening at the same time as, say, a 13-year-old comes out of a tanning booth. An operator will be conscious that allowing a young person to use a sunbed could, at any minute, coincide with a visit from an environmental health officer. That is an additional deterrent. Those are the three means of policing that provision in clause 1.

The Chairperson:

In the Strabane/Lifford case, say Claire McGill felt that her tan was waning, but she wanted to

impress at some event, say a Sinn Féin ard fheis dinner that she wants to attend with a good tan. If she walks across the bridge to hire a sunbed in the Irish Republic and brings it back to Northern Ireland — for the purpose of the debate, let us assume that she is under 18 — where does that stand legally? Presumably, there is no equivalent legislation in the Republic.

Mr Camplisson:

Not yet.

The Chairperson:

What happens when the offence involves a cross-border element?

Mr Camplisson:

We are pleased to see that our colleagues in the Department of Health and Children have borrowed a lot of what we are doing. Last week, we sent them our Bill and various accompanying documents, including the explanatory and financial memoranda and the regulatory impact assessment. If they were to closely copy us, we would not be surprised; we would be very pleased.

A few scenarios can be imagined in which offences may be committed in the process of the cross-border movement of sunbeds. Hopefully, those scenarios will exist only in the period between our Bill being passed and the Republic following suit. As I said, we are working with our colleagues there, and they have been watching what has been done in Scotland, England and Wales and elsewhere, so I hope that their provisions will mirror ours.

The Chairperson:

I am intrigued by a few inconsistencies in the fines. Clause 7 provides for a level 1 fine — just £200 — which seems out of kilter with the rest of the Bill.

Mr Camplisson:

Clause 7 concerns unfounded claims, and the legal advice was that the fine should be proportionate to the offence.

The Chairperson:

The research papers show that some wild claims are made about the medicinal benefits of

suntanning. Providing false information that encourages people to overuse sunbeds is a bit more serious than a £200 fine.

Mr Camplisson:

We can certainly revisit the fine levels. We discussed this with a solicitor, and again it was the article 10 right and how far we can curtail that. However, we can certainly review the fine level for that offence.

Ms Stewart:

It is to do with restricting what they are allowed to say. Based on legal advice, a level 1 fine of £200 would be proportionate.

The Chairperson:

Clause 4 — allowing unsupervised use of sunbeds — provides for a fine not exceeding level 3, which is £1,000.

Mr Camplisson:

We are definitely planning to revisit level 3 fines. The unsupervised use of sunbeds is the only offence in the Bill for which a fixed penalty is not available as an alternative. We feel that it is a serious enough offence because of the harm. The Committee is aware of the horror stories from Wales and England about young children using their pocket money to use sunbeds and getting badly burned in unsupervised premises. That is a complete dereliction of responsibility on the part of anyone who would want to open and operate such premises. In discussion with solicitors, we decided that that should be a level 3 fine but no fixed penalty. However, we are certainly going to review that to see whether a stiffer fine is warranted.

The Chairperson:

That is good news. We can chalk that up as another Assembly victory.

Mr Camplisson:

Absolutely.

The Chairperson:

We think that secondary legislation is an appropriate route for what you are doing. The provision

and display of information will require subordinate legislation. Have you any indication of when that is going to happen?

Ms Stewart:

Up to 12 months after Royal Assent.

Mr Camplisson:

We will aim to have subordinate legislation within 12 months of Royal Assent, and, if possible, more quickly. We will move as quickly as possible to draw up the prescribed information that has to be provided and the specifications around signage, including size, display, prominence and even colour. Last week, I had a conversation with a colleague from Scotland. Under the Scottish subordinate legislation, health warning signs on sunbed premises have to be yellow. However, the interpretation of “yellow” seems to be very broad, and, these days, to include very pale manila. Therefore, we may decide to be quite specific about a Pantone number, for example, Pantone X. That is one way of saying that they have to be yellow. It has to look like a health warning sign. Experience shows that operators in Scotland are making warning signs that look almost like decoration.

Mr McCallister:

Will the licensing extend to private homes?

Mr Camplisson:

No, it will not extend to private homes.

Mr McCallister:

Will private owners not be required to have some sort of licence or be on some sort of register?

Mr Craig Allen (Department of Health, Social Services and Public Safety):

We have no plans to do that.

Mr McCallister:

I accept the argument that enforcement in private homes, as with anything, is very difficult. I should have thought that having some sort of knowledge or record of where these are would be useful.

Ms Stewart:

There are powers of enforcement to go in and check that the rules are being followed by anyone who is running any kind of commercial business or for exchange of money in their own home, but not if someone privately owns a sunbed for their own use.

Mr Allen:

To an extent, it goes back to the duty of care of parents or others. As the Chairperson said, where a warning is displayed on a sunbed that it is illegal for that sunbed to be used in certain circumstances, there is a responsibility on the people who buy it. We cannot police every home to ensure that that is being done, but there is an element of responsibility and common sense required of people who do that.

Mr McCallister:

I accept that it is very difficult to police and that it is almost intrusive to have to go into someone's home. I am concerned about protecting those who have sunbeds at home and ensuring that the equipment is maintained to the right standard and not being used wrongly. I accept that if a sunbed is being used by a commercial outlet then the Bill kicks in, but I wonder whether there is anything more robust that we could do in relation to private owners.

Ms Stewart:

People who buy or hire a sunbed will get the warning information.

The Chairperson:

The Committee is generally pleased. You have been totally forthright about how this has developed. It means that we will be leading the British Isles and the UK on the issue. The fact that licensing is there will act as a huge deterrent. The ultimate sanction is that if an owner steps out of line, the council will withdraw the licence and the individual can no longer trade. That is a big step forward for public health in Northern Ireland. We will obviously be doing it line by line at a later stage, but we have eliminated the big issues. It is going to get a fair wind from the Committee and the Assembly.

Mr Buchanan:

I want to follow up on John McCallister's point about people who have a sunbed in their home. It

is very difficult to keep a close eye on that. However, if someone under the age of 18 was burned while using a sunbed at home and had to get medical treatment, can it be included in the legislation that the owner of that sunbed could be prosecuted?

Ms Stewart:

If an individual under the age of 18 presented to a hospital with bad burns from a sunbed, other legislation, such as the Children (Northern Ireland) Order 1995, would come into play. It is neglect or harm to the child; the child's health and well-being are at risk.

Mr Camplisson:

Social services could become involved at that point.

Ms Stewart:

There is other legislation that will deal with that, rather than put it here.

The Chairperson:

Mr McCallister is about to become a father, so I will let him ask a question for the child.

Mr McCallister:

I am not the owner of a sunbed, and you are too mean to buy us one, as we have established.

I assume that if one council revokes a licence, as the Chairperson said, there are powers to follow that round so that the person could not simply move from Omagh to Banbridge, etc.

Mr Camplisson:

We have asked the legislative draftsman to draft the clause so that it keeps our options as open as possible, as well as keeping open the options of registration and licensing. One of the first questions that you ask when thinking up a licensing scheme is what you license — is it the premises or the operator? We want to keep both those options open, because we may find that, after consultation and discussions with various parties, there is quite a strong case for licensing the owner.

There could be licensing of operators as well as premises. At this stage, we do not want to cut off one of those options before we have the chance to explore it. If we license premises, and the

licence for a particular shop is revoked, it would be easy enough, in theory, for an operator to simply move the sunbeds to another shop a few doors away and start up again. Operators might take that as part of the cost of operating. If somebody in, for example, Killyleagh owns three shops and one of them loses its sunbed licence, they could just get a new licence for one of the other shops. I was going to say a bakery and sunbed shop, but there is only one bakery in Killyleagh, and I should like to anonymise.

As I say, there may be advantages to that approach. If we get into a scheme where we are licensing the operator, we will look at whether councils should have the right to consider whether or not to grant a licence to an operator who has had a licence revoked elsewhere.

Mr McCallister:

You would be worried about someone moving to another council area or even registering in his or her partner's name.

Mrs McGill:

I am just wondering why the authorised officer does not have to be an officer of the council.

Mr Camplisson:

You will remember the discussion that you had with Nigel McMahon on 18 March. We want to leave councils the freedom to decide who to use as authorised officers. We fully expect that it will be the environmental health officers in all cases, but it may be that some councils may decide to use somebody else, either from inside or outside the council. However, that will be a matter for the councils themselves to decide.