Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

Sunbeds Bill:
Departmental Officials

24 June 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Jim Wells (Chairperson)
Mrs Mary Bradley
Mr Thomas Buchanan
Dr Kieran Deeny
Mr Alex Easton
Mr Sam Gardiner
Mr John McCallister
Mrs Claire McGill

Witnesses:

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

The Chairperson (Mr Wells):

Today's departmental witnesses are Mr Craig Allen from the legislation equality branch, Mr Seamus Camplisson and Julie Stewart from the health protection branch and Mr Nigel McMahon, the Chief Environmental Health Officer. The officials are here to answer questions as they arise and to provide any necessary clarification.

Members have a table of the responses to the Bill from the Department of Health, Social Services and Public Safety (DHSSPS) and various consultees. That extremely helpful table was produced by Committee staff. We will follow the clause-by-clause procedure. Some concerns, expressed in written submissions and oral evidence, have been received by the Committee, and we invite the officials to state the Department's position on those. After questioning the officials on each clause, I will open the discussion to members. Members will then have to decide whether they are generally content with the clause or proposed amendment as drafted, or whether there is potential for a further amendment, in which case the Department will be asked to consider the matter and report back on its position by 30 July 2010. That will make for happy summer holidays.

If members consider an amendment to be necessary, we can invite the Department to state whether it would be willing to undertake its drafting. If the Department is unwilling to support the amendment, but we wish to proceed, we will ask the Committee staff to provide an amendment to be presented to us at a later date. That will destroy the Twelfth fortnight for them as well.

Let us start with clause 1. As this is new ground for the Committee, we will take it slowly, rather than getting it wrong. I refer members to the Department's submission on the potential use of the Children (Northern Ireland) Order 1995 as a remedy should a child use a sunbed in a private home. Members are familiar with the context: although the proposals place strict controls on sunbed establishments, a parent could hire or buy a sunbed and allow his or her children to use it without protection or supervision. Some people suggested that there should be regulations to control that, but the Department was not too concerned, because the parents could be prosecuted through the Order. We asked the Department to explore that issue, and members have now received its evidence.

The process is a turgid but necessary one of summarising what the Committee has decided. It would be confusing to do it any other way. We thought that the wording could be improved to make it clear that an offence is committed as soon as anyone under the age of 18 is authorised to use a sunbed. That means that the enforcing officer does not need to catch the under 18 in the act of using a sunbed, which would not be appropriate. At last week's evidence session, Kieran Deeny used a phrase similar to "have their kit off". I am sure that someone will explain to me what that means. If someone is on a sunbed, he or she may be in a state of undress; therefore, it

might not be appropriate to ask a council officer to find that person using the sunbed. The suggestion is that the offence should start when the young person is authorised to use the sunbed. That would make it much easier for all concerned.

We also felt that enforcement would be improved by the introduction of a restricted zone in premises on which sunbeds are in use. In other words, once a young person crossed into that restricted zone, the offence would start. We explored that with the representative of the environmental health officers at the last evidence session.

There is a general concern about fines, and we will return to that issue frequently during this session. The Committee's view is that allowing anyone under the age of 18 to enter a salon to use a sunbed is a major breach of the legislation and that the severity of the offence is not matched by the size of the fine. We have, therefore, suggested that the fines should go up to £20,000, which would be commensurate with the English legislation. We are also concerned about the wording of clause 1(4), which could be amended to remove the words "any document appearing to be". That is a drafting issue.

The Committee does not consider that a level 4 fine of £2,500 is sufficient. Instead, we think that the fine should be set at level 5. We frequently raised the issue about the discharging of the fine as a fixed penalty of £50. During last week's evidence session, the representative of the Chief Environmental Health Officers Group explained that a fixed penalty notice is often much easier to implement and avoids the complexities of a court case that may not impose a particularly high fine anyway. He also said that the introduction of the licensing scheme and the possibility of an operator losing his licence might be a more effective deterrent than any fine.

The crucial question, which the Committee flagged up, is whether there will be a substantial gap between the introduction of the legislation and the introduction of the subordinate legislation or licensing. Will there be a window of opportunity for malpractice, or will licensing or subordinate legislation come into force quite soon after the Act has been implemented?

Mr Seamus Camplisson (Department of Health, Social Services and Public Safety): Thank you, Chairman. On the question about the potential use of the Children Order 1995, members will have seen the letter that I sent to the Committee Clerk outlining the protection that is afforded by that Order.

The Chairperson:

Members have a copy of that letter, which is dated 17 June 2010. It is important that members read that in conjunction with the evidence.

Mr Camplisson:

Are members of the Committee content with the explanation of the level of protection that is afforded by the Children Order 1995? In general terms, protection is afforded to any child or young person who sustains an injury that would bring him or her to the attention of social services, causing them to intervene. An intervention could constitute anything from the provision of parenting support to the instigation of care proceedings. Are members content that that general provision affords adequate protection against the kind of abuse that would involve parents allowing their children and other children in their homes to use sunbeds?

The Chairperson:

Your letter states:

"it includes the wilful or neglectful failure to prevent physical injury or suffering."

The simple point is that, if the police were to respond to a report and find that two eight-year-olds had been badly burned by a sunbed as a result of being left without supervision, one would like to think that a judge would consider that to be wilful neglect.

Mr Camplisson:

Yes.

The Chairperson:

The Order appears to give the courts the powers to control the use of sunbeds by children without it having to be included in the legislation. However, that will become clear only when such a case comes before the court.

Mr Camplisson:

We do not know how else such a case might come to the attention of the Health Service and social services and come before the court.

The Chairperson:

I presume that that has not happened.

Mr Camplisson:

We have no examples of that having happened.

The Chairperson:

Therefore, we will not know what will happen until someone reports the offence to the police. They, in conjunction with social services, will take the case to court, and a judge will make a decision. From reading the wording, it strikes me as obvious that such a case would constitute wilful neglect, but one never knows in those situations.

Mr Camplisson:

The difficulty is in ascertaining whether there is a gap in the Order that the Bill should fill. The absence of cases from which to draw evidence makes it difficult to visualise that gap. Therefore, it is difficult to assess what provision might be missing from the Sunbeds Bill or what aspects it could reach that the Order does not.

The Chairperson:

In addition, drafting a provision to cover that eventuality would be a nightmare. I hope that the Order is watertight, because I do not have a clue about how one would start trying to enforce it.

Mr Camplisson:

We have been trying to visualise the scenarios to which each clause might apply and what the outworking of the legislation will be. We have been trying to imagine scenarios that do not already engage the Order, but would engage the Sunbeds Bill.

Mrs McGill:

Seamus, your correspondence, as far as I understand it, states that the Order applies to children who are at "risk of significant harm" and that it defines neglect as the "persistent failure" to meet a child's needs, which will "result in significant harm". Therefore, it does not cover situations in which a parent or a guardian allows their child to use a sunbed occasionally. The Order appears to deal with the more extreme situations. Would it cover what we want it to cover?

Mr Camplisson:

You are right in saying that the Order would deal with extreme cases in which, for example, children get badly burned as a result of being left at home unsupervised with a sunbed. One can imagine how that would come to the attention of the authorities, starting with A&E, or if social workers were already involved with the family. Legislation on the casual and occasional use of sunbeds in the home would be extremely difficult to enforce, and it is difficult to prevent their use in the home. Not only will we ensure that health information is displayed on machines and in sunbed premises but, in the near future, the Public Health Agency will run an awareness campaign to get the message across. I hope that parents will heed that message and not allow their young children to use sunbeds. However, we are approaching the limits of enforceability.

Mrs McGill:

Thank you, Seamus. The Children Order 1995, as you outlined it, would not fully cover the use of sunbeds in a private situation. Your letter refers to the:

"harm caused to children by sunbeds".

How would "significant harm" and "persistent failure" be identified? Does the 1995 Order cover that?

Mr Camplisson:

I agree that the casual, low-level and occasional use of sunbeds by children in the home is unlikely to come to the attention of social services or the Health Service. How do you address that issue other than by educating the public through the kind of health information that we publish?

The Chairperson:

If someone were convicted of an action that would be illegal in a suntanning establishment, might that constitute wilful neglect? Would the fact that a parent had allowed a child to do something that would be illegal in another establishment trigger wilful neglect? Alternatively, would the case have to be of such severity that the child was injured or badly burned? I cannot see how to bridge the gap legally. In the absence of a clear report of abuse, we cannot have people knocking on doors to ask parents what they are doing with their children.

Mr Camplisson:

Over time, as people become more aware of the links between sunbeds and cancer, one hopes that

behaviours will change. Not that long ago, parents might not have thought twice about allowing their children to smoke at an early age. However, people's understanding of the link between smoking and cancer is now such that for a parent to allow a 10-year-old to smoke would be regarded as wilful neglect by a court. Possibly, in due course, that type of attitude will be taken to those who allow children to use sunbeds.

Mrs M Bradley:

The 1995 Order does not cover very much. We have to depend on the parents, because when they bring a sunbed into their home, no one else has any control over the situation, which is worrying.

Dr Deeny:

We are in danger of trying to remove parental responsibility. We are legislators, and we can only do so much. We cannot have officials arriving on doorsteps, storming homes and checking up on parents. There is too much of that kind of behaviour as it is, and too many interventions are being made in the rearing of children. As Seamus said, the solution is advertising that is aimed at adults and children. Advertisements should be placed in schools to make children aware of the risks.

On sunbeds that are purchased by members of the public, there should be notices in red ink that read: "Danger to health: not to be used by anyone under 18", as with packets of cigarettes. Young kids aged 15 and 16 would be able to see those notices. We must emphasise the importance of parental responsibility and of educating the public, as opposed to advocating the storming of people's houses.

Mrs M Bradley:

Are we depending on the parents?

Dr Deeny:

Absolutely, and we should not lose sight of that.

Mr Camplisson:

On that point, we followed the Committee's evidence sessions in the past couple of weeks and considered the concerns that were raised. The Minister has agreed a number of further amendments to be tabled.

One of those amendments is to add "and such other information" to the existing prescribed information. That could, for example, require sunbed sellers to place prominent stickers on their sunbeds stating that it is illegal to allow anyone under the age of 18 to use it in commercial premises. That kind of information could also raise parental awareness of the dangers.

Mr McCallister:

I fully accept Kieran's point that people's houses must not be stormed for the purpose of policing sunbed use. Would it not be better simply to state that it is illegal for anyone under the age of 18 to use a sunbed, regardless of whether that is in a commercial or private setting?

Mr Camplisson:

We considered the question of how the law could be enforced in private houses, but we ran into difficulties on the rights of entry. The policing of what goes on —

Mr McCallister:

I accept what Kieran Deeny said about parental responsibility. I was not suggesting that the use of sunbeds should be policed; I meant only that anyone under the age of 18 should be warned not to use them. Seamus, your sentence ended with "in commercial premises", and I was just trying to emphasise that a better warning would be one that simply stated that it is illegal for anyone under the age of 18 to use sunbeds, full stop.

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

John, the difficulty is that the legislation does not make such use illegal, and, therefore, what you suggest would be incorrect. As Kieran said, that is where parental responsibility comes in. Even were your suggestion to be implemented, the use of sunbeds by under 18s would still be likely.

The Chairperson:

If we carry on at this rate, we will break out 7.05 pm record, because we are still at the first part of clause 1.

Mrs M Bradley:

We hear horror stories about children being encouraged to use sunbeds before becoming bridesmaids. I do not know whether such stories are true, but our only option is to place the

responsibility for what happens to children who use sunbeds on their parents.

The Chairperson:

My only fear is that, if the Bill is to be cutting edge, as we hope that it will, and we clamp down on the operators who have been breaking the law, there is more likely to be an increase in the abuse of sunbeds in the home. If, because of licensing and the penalties for non-compliance, operators do not let under 18s anywhere near their sunbeds, the temptation will be for parents to hire sunbeds and use them at home. You would need the wisdom of Solomon to work out how a ban on under 18s using sunbeds could be enforced in private homes. I also agree with Kieran about parental responsibility, but it is worth flagging up that concern.

I am encouraged to hear that more departmental amendments are coming through, which will help us as the Bill progresses.

We need to deal with three or four further issues in clause 1, the first of which is, I hope, an easy one. Clause 1(4) refers to "any document appearing to be" a passport or a driving licence, et cetera. That phrase is a wee bit strange. If I was flying with Ryanair and produced something that appeared to be a passport, but was not, I would not be allowed to board the plane. Should the clause not simply state that the required document must be a passport or a driving licence?

Mr Camplisson:

We chose passports and driving licences, because they are incredibly difficult to fake. However, there could be an instance in which someone has such a good fake that it would convince any reasonable person who looks at it properly, rather than just glancing at it, of its authenticity. If a responsible operator takes care to check a passport or driving licence, and it looks and feels like the real thing on close inspection, that person must have a defence of due diligence should the document turn out to be fake. If a responsible operator were to inspect a convincing fake passport and be taken in by it, it would not be fair for that person to be regarded as guilty of breaking the law. Therefore, we went back to the Office of the Legislative Counsel, and it confirmed the view that we need to have that offence to protect someone who takes all necessary precautions to check the authenticity of the document.

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

The Office of the Legislative Counsel advised that clause 1(4) is linked to clause 1(3)(b):

"that document would have convinced a reasonable person."

If we removed one, we would have to remove the other.

The Chairperson:

The PSNI will tell you that eastern Europeans produce what looks like a driving licence, but because it is in a foreign language, they cannot verify it. I understand that yours is a reasonable response to that.

With respect to enforcement, would it not be better to create a restricted zone within premises on which sunbeds are used? That issue arose during an earlier evidence session. I asked why we could not make it illegal for anyone under the age of 18 to be found in a sunbed establishment. It was explained to me clearly why that was not practical. Is there any merit in considering that as an option for the legislation?

Mr Camplisson:

There is, and the Minister has agreed to table an amendment to create restricted zones in sunbed premises.

Ms Stewart:

We will share the amendment with the Committee as soon as we can. It introduces restricted zones, as does the legislation in England and Wales.

The Chairperson:

That quick result silenced us all. No one will argue with that.

Ms Stewart:

There are, I hope, a few more like that.

Mr Camplisson:

That amendment is in addition to the offence that was already in the Bill. One of the questions was: at what moment is the offence committed? Again, we went back to the Office of the Legislative Counsel, and its advice was that when the operator has taken the person's money and provided the health information the offence of allowing the person to use the sunbed is

committed. The person does not need to have used the sunbed. The acceptance of money constitutes allowing a person to use a sunbed.

Therefore, there are now two offences. One is committed at the point of transaction, rather than when the person goes into the booth. As a safeguard, the amendment will create restricted zones. We borrowed the definition from the legislation in England and Wales. We hope that our definition is shorter, simpler and clearer.

The only exception to the restricted zone rule is when a person aged under 18 works there as, for example, a cleaner or electrician's apprentice. However, he or she is permitted to be in the restricted zone only to provide a service to the operator. It is an offence to be in the restricted zone for any other reason.

The Chairperson:
That helps us greatly, because it knocks out a further issue on which members were going to quiz you.

A recurring theme will be the use and level of fines. Some members were concerned when licensing was not on the table, but we have now reached the welcome situation whereby that is a definite. The prospect of losing a licence and being unable to practise is the ultimate deterrent and much more effective than any fine. Clause 1 sets the maximum fine at level 4. Should that not be higher, at, say, £20,000? Is that level 5?

Mr Allen:
No. A level 5 fine is £5,000.

The Chairperson:
In England, it is £20,000. In practice, as we know from building control and planning cases, when a case comes before the courts, the fine imposed always disappoints the person taking the prosecution. Would a £20,000 fine not send out a clearer signal?

Mr Camplisson:
We asked the Department of Justice whether we could raise the level to £20,000, and it said that we could. The questions now are whether we should and whether that would be reasonable and

proportionate. The risk is that, once we depart from the standard scales, fines can become disproportionate or even arbitrary. Why stop at £20,000? Why not push it to £100,000? There is merit in sticking to the standard scale, and we are considering pushing all the fines bar one to level 5 and letting the courts decide because those levels are ceilings.

The fines are strong and are, for the most part, heavier than fines for offences against tobacco control regulations. The introduction of a licensing scheme whereby an operator would be barred from providing sunbeds should act as a major deterrent. Level 5 fines and the threat of losing a licence to operate sunbeds would be an effective deterrent for each offence.

The Chairperson:

That is good news. Does the increase in the level of fines apply to all the clauses?

Mr Camplisson:

It applies to all but clause 7, which is the subject of a letter from the Human Rights Commission.

The Chairperson:

That will save much time.

Mr Easton:

Therefore, the fine will be £5,000?

Mr Allen:

Yes; the level 5 fine is £5,000.

Dr Deeny:

What is the fine for selling cigarettes or alcohol to someone who is under 18 years of age?

Mr Allen:

I suspect that it is level 3 or level 4, which is £1,000 or £2,500. The Smoking (Northern Ireland) Order 2006 includes fines at those levels.

Dr Deeny:

Is that a sufficient deterrent for selling tobacco products to persons who are under 18 years of

age? Does it put people off? If people are caught, are their licences threatened in any way?

Mr Nigel McMahon (Department of Health, Social Services and Public Safety):
At present, there is no licensing for tobacco products. Seamus was referring to the smoking ban, which is the Smoking (Northern Ireland) Order 2006. In that case, smoking in a smoke-free place is a level 3 fine of up to £1,000, and, for a manager or owner who allows smoking in a smoke-free place, there is provision for a level 4 fine.

Dr Deeny:
What about selling alcohol to people who are under 18 years of age? Is a licence threatened in that case?

Mr McMahon:
I am not sure. That is not DHSSPS legislation.

The Chairperson:
That leaves one issue to which I already referred: fixed penalty notices of £50. If licensing is brought in, is a series of fixed penalty notices recorded in any consideration of whether the licence should be revoked? Are fixed penalty notices similar to parking fines, where people pay the fine but it is not held against them and is not on their criminal record? What happens to those £50 fines? Assuming that we accept such fines, will they be recorded? If an operator had 20 fines, would that have any implications for his or her licence?

Mr McMahon:
It could have implications. The details of the licensing scheme would have to be prescribed in the regulations, and we could introduce that. We could make a comparison with the smoke-free regulations. In Scotland, the licensing regime for alcohol has a provision that allows for offences under the smoking ban to be taken into account when considering a licence for selling alcohol. It depends on how the provisions are structured in the licensing regime.

The Chairperson:
If someone is caught in a serious breach of legislation, a £50 fixed penalty does not seem to be commensurate with the offence. It is similar to a parking fine; people could simply shrug their shoulders, say that it is not a shooting offence and take it on the chin. However, a child could be

left on a sunbed for an inordinate length of time and suffer severe skin damage. The £50 fixed penalty fine seems low.

Ms Stewart:

The £50 and £100 fines have not yet been determined; that will come in the regulations. Although such fines have been suggested, they will be subject to full consultation. The Assembly will have control over that. Based on advice that we received and the Committee's view on the matter, it is thought that £50 and £100 fixed penalties are insufficient, so we will reconsider those fines when we draw up the regulations.

The Chairperson:

I worry about the concept of fixed penalties. Even if a fine were set at £200, it would still set alarm bells ringing in my head. The offence is more serious than a parking offence.

Ms Stewart:

It is good to have the option of using fixed penalties. In Committee last week, Sean Martin from the Chief Environmental Health Officers Group said that, if there were no fixed penalty for an offence, cases would have to be taken to court. Courts do not always impose a level of fine with which everyone is happy. It is good to have the option, but a fixed penalty does not have to be used. If the option is available, it might be a better deterrent than taking people to court. Last week, the Committee heard evidence that it cost Larne Borough Council £1,800 to take a case to court and it got only £300 back, and the fine was £100. A fixed penalty could be a higher sum than that, and the court system could be used only when people are persistent offenders.

Mr Camplisson:

It is an option for local councils; an operator has no automatic entitlement to a fixed penalty. Local authority enforcement officers will make the determination. There was an interesting case in Wales concerning the operator of an unsupervised premises in which a young girl sustained severe burns. Nigel has the details of that case.

Mr McMahon:

A case was taken in Wales under existing health and safety legislation, before sunbed legislation was introduced, and the owner of an unsupervised coin-operated premises was taken to court. In that case, the magistrate fined the gentleman £6,000, and he also received 90 hours' community

work. According to media reports, he narrowly missed a custodial sentence. The case was taken very seriously. Our existing health and safety legislation should also apply in such a scenario.

The Chairperson:

Are members generally content with clause 1?

Members indicated assent.

The Chairperson:

We will now move on to clause 2, which concerns the prohibition of the sale or hire of sunbeds to persons under 18 years of age. There are few major concerns with clause 2. Some concern was expressed about the words "any document appearing to be" in clause 2(5). However, you have explained the reasons for using that wording to the Committee.

Do members have any problems apart from that? John has mentioned the issue of clear labelling so that the person selling or hiring out a sunbed, and the person buying or hiring a sunbed, knows that it is illegal to allow anyone who is under 18 years of age to use it. The documentation for the sunbed, including the contract, also needs to bear that warning.

Are members generally content with clause 2?

Members indicated assent.

The Chairperson

Clause 3 covers the remote sale or hire of sunbeds, and members have no major concerns. In a letter dated 17 June 2010, the Department briefed the Committee that the Children (Northern Ireland) Order 1995 is available as a remedy if a child is harmed using a sunbed in a private home. We will give that some more thought, but I see the difficulties involved. The Department has probably made the right decision, but it is a difficult issue. If anyone wishes to comment, feel free to come back to me about it. We are not trying to railroad the Bill through.

Are members generally content with clause 3?

Members indicated assent.

The Chairperson:

We move to clause 4, which concerns the prohibition on allowing the unsupervised use of sunbeds. The Department has already provided an amendment to clause 4 that changes the fine from level 3 to level 4.

The way in which you draw our attention to the relevant amendments as we go along is a welcome and extremely helpful development. It is much better than waiting until the end and receiving a raft of amendments, and it will help us greatly in our deliberations. I said as much on the Floor of the House the other day.

There are a few major outstanding issues. The Bill still does not sufficiently define the level of supervision required. It states only that someone must be present on the premises when sunbeds are in use. During an earlier evidence session, the point was made that the person on the premises might be the cleaner or another individual who is inexperienced and has no knowledge of the regulations. Is there any way to deal with that?

Mr Camplisson:

There are two points to be made on that matter. First, it is important not to read clause 4 or any other clause in isolation, because other requirements, such as having appropriately trained staff, will also kick in. Therefore, a salon may have a cleaner as the supervising person, but, when the regulations that specify training are introduced, that person will have to be trained. Also, the presence of a cleaner or anyone else does not absolve the operator from the Bill's other requirements, such as the provision of protective eyewear and health information or the ban on making spurious claims about the health benefits of using sunbeds. The other provisions in the Bill still apply. Whoever supervises the sunbeds must meet the requirements.

Secondly, members should bear in mind the intention behind clause 4. In England, children have sustained severe burns through using coin-operated machines in unsupervised premises, because there was simply no one in a responsible role there to prevent them from doing so. The purpose of clause 4 is to ensure that no one in Northern Ireland thinks that it would be a great idea, and a nice cash-spinner, to open a sunbed equivalent of an ATM, which would allow people simply to help themselves.

The defining of the level of supervision in clause 4 is to ensure that operators do not get away with some kind of non-supervisory presence. It is important to bear in mind the other provisions that also apply.

The Chairperson:

In that case, how do you react to the evidence from Ballymena Borough Council and the Chief Environmental Health Officers Group? Neither considers that clause 4(2) is required. Their view is that a suitable defence is available under clause 4(3). Is that a drafting issue?

Ms Stewart:

The inclusion of clause 4(2) is based on everything that Seamus said. We wanted to define supervision to require someone to be on the premises. The aim is to prevent the setting up in Northern Ireland of the kind of walk-in salons that exist in England. Operators will have to put in place systems to ensure that their clients are aged 18 or over and that they are provided with protective eyewear and health information. They will have to change their operating practices to ensure that they comply. Technically, therefore, the premises must be supervised. We would be reluctant to remove that definition.

The Chairperson:

What about extremely large sunbed premises? A supervisor could be at the front of the premises while something quite unsavoury was going on 100 yards away.

Ms Stewart:

Again, users would have to get their tokens and receive their health information. Should they have to walk to the other end of the premises to use a sunbed, they could not do so irresponsibly because they will have bought their tokens, been given their health information and protective eyewear and have shown proof that they are over 18 years of age. We regard such changes in practice as supervision. At the moment, people can just turn up and use a sunbed.

Mrs McGill:

Could a trained supervisor be under 18 years of age?

Ms Stewart:

The details of the training requirement provided for in clause 9 will be made under regulations;

we will have to prescribe that. As I think it through, they probably could be under 18 years of age.

Mrs McGill:

In referring to earlier evidence, the Chairperson questioned whether a cleaner could be the designated supervisor, so there may be some conflict; for example, it could throw up some difficulties in the restricted zone, and so on.

Ms Stewart:

Provided the staff member did everything that was required, I do think there would be a need for an age requirement.

Mrs McGill:

Might that not create a problem? If a supervisor has authority but is under 18 years of age and in the restricted area —

Ms Stewart:

Such people would be allowed into the restricted zone to do their work as a cleaner. I do not see a problem with that. I think that a trained supervisor could be under 18 years of age, but that will be prescribed in the regulations.

Mr McMahon:

A comparison could be drawn with the sale of tobacco products. Sales are made to people who are over 18 years of age, but the person behind the counter in the garage, shop, and so on, need not be over 18 years of age.

Ms Stewart:

The Department would be reluctant to remove that definition because it believes that premises must change their working practices and provide sunbed users with health information and protective eyewear, and proof of age must also be checked. Eventually, staff will have to be trained. If we were to insert the words “appropriately trained staff” into clause 4 now, it could not be commenced until a training course was sorted out. As it stands, we can commence clause 4 right away, even though we have not yet sorted out accredited training courses. We could not do so if we were to include a phrase such as “adequately trained staff” now.

Mrs McGill:

It may still be an anomaly to have a supervisor who is under 18 years of age — the authority — in the restricted zone organising, operating, and so on. However, the outworking of the Bill may mean that that will not create a problem. An example has been given, but even in that, I believe that the anomaly exists.

The Chairperson:

When I go to my supermarket at night, the vast majority of staff are under 18 years of age, and I notice them selling cigarettes. That does not seem to have given rise to any issue.

Mrs McGill:

However, they are handing inanimate goods — a packet of cigarettes — over the counter.

The Chairperson:

Cigarettes are lethal.

Mrs McGill:

I still think that that is different from being in a position of authority over someone who will be using a sunbed, which may cause horrendous burns. However, the issue has yet to be properly sorted out.

The Chairperson:

Does the Committee share Claire McGill's views? Do members believe that a supervisor should be over 18 years of age?

Mrs McGill:

The fact that the issue is so important and that the Royal College of Nursing (RCN) is calling for a ban on the private use of sunbeds cannot be ignored. I am not saying that under-18-year-olds are any less capable of supervising sunbed use, but, to some extent, the absence of an age limit reduces the importance that we attach to the role. However, that matter may be included in the regulations.

Mr Camplisson:

The Committee may run the risk of falling foul of age discrimination legislation governing access to employment and training.

Mrs M Bradley:

In the same way that parents must take responsibility, so must managers or owners of sunbed premises.

Dr Deeny:

There may be a way round that. All supervisors should be qualified. If supervisors do not have a clue about the damage that can be caused to somebody's skin from overuse of sunbeds, they may as well not be there. They will not know what time period is safe, and they will have no idea about skin types. There could be a qualification that deals with the age issue; some people will not have that qualification until they are over 18 years of age.

The Chairperson:

We cannot do that because such legislation would close all sunbed operators. We do not have a training scheme up and running to allow that to happen. We will eventually have one.

Mr McMahon:

In a scenario in which an offence has been committed and the operator or owner of a premises had a supervisor who was under 18 years of age and who wanted to contest the offence, he or she would go to court and say that he or she had met the due diligence requirement and had taken all reasonable steps. He or she would have to demonstrate that the person whom they left in control was trained and aware of all the issues, regardless of his or her age. In a sense, the issue is covered, without necessarily specifying an age. The owner would have to be able to demonstrate that the person who is in a supervisory position is fit and properly trained to undertake that role.

Dr Deeny:

I will put the cat among the pigeons. Are we taking it that the word "supervision" could refer to anyone? If someone is supervising a swimming pool in a leisure centre, for example, I would hope that he or she could swim. If my kids are using the pool — let us say they are 19 years of age — I would like to think that a supervisor knows what to look out for.

Ms Stewart:

Under clause 9, there will be a requirement under regulations to ensure that staff who provide sunbed sessions will be trained to a certain requirement. That requirement has not yet been specified; we have no accredited training, but that will come in once a training course is sorted out. Anyone who provides a sunbed session will have to be adequately trained, but we cannot implement that just now. If we insert in clause 4(2) the requirement that the supervision must be done by an adequately trained person, that cannot be commenced until a training course is sorted out.

The Chairperson:

That is a well-made point. Are members generally content with clause 4?

Members indicated assent.

The Chairperson:

We will now move on to clause 5, which deals with the duty to provide information to sunbed users or buyers. We are moving into the area of subordinate legislation, of which we will obviously have sight, and we hope that it will eventually be made by affirmative resolution. We will get a chance to deal with many issues at a later stage. It is a concern that there is no definitive start date for the subordinate legislation. Although we do not want to get into the specifics of the SL1s at this stage, perhaps the witnesses could indicate what they will cover and when they will start. We do not want a huge gap between the commencement of the legislation and the subordinate legislation.

Mr Camplisson:

That is why I have Julie working overtime on the regulations already. Clauses 1 to 8 will be commenced almost immediately.

Ms Stewart:

Subordinate legislation should commence within 12 months of Royal Assent. We have to produce regulations and consult on them, consult on the information being issued, make sure that everyone is happy and invite comments. We are working on that.

Mr Camplisson:

We aim to do it as quickly as possible, and we are keen to move on. Along with the other Health Departments in the UK, we commissioned the Committee on Medical Aspects of Radiation in the Environment (COMARE) study in the first place. The only reason why I am reluctant to commit to a particular commencement date is that last year, for example, we had swine flu, and it was all hands on deck to deal with that. That forced us to leave other important work temporarily to the side. It is possible that, if something similar happened, we would get shanghaied by that particular pressure. However, we are keen to have most of the Bill enacted and commenced within 12 months, or more quickly if we possibly can.

Ms Stewart:

We have tabled an amendment that affects clause 5. Clause 5 states that "health information" must be provided, and the Committee wants the fact that those under the age of 18 should not use a sunbed to be included in that health information. However, such information does not fall into the category of "health information", so we have added the words "and such other information", which allows us to include all information in that notice. We have a similar amendment for clause 6, where the words "and such other information" will be added.

Mrs McGill:

The words "the Department may prescribe" are used in clause 5(11). Some respondents — the RCN, Action Cancer and, perhaps, others — want the word "may" to be changed to "shall" or "will". Have we dealt with that?

Mr Camplisson:

I am happy to deal with that. "May" is the standard word that is used for creating a power.

Mr Allen:

When a power is to be conferred on a Department, the word "may" is used. It shows the Department's intention to do something. It is general drafting practice.

The Chairperson:

The difference is that "may" is enabling, whereas "shall" means that the Department has to do something. If there is an unexpected event and all hands are on deck, the fact that the Department intended, rather than had, to do something means that it cannot be taken to court or to the

ombudsman because it is discretionary.

Mr Camplisson:

I would only add that you do not need to compel an angler to go fishing. We want the power, and we will push the Bill and the regulations through as quickly as possible. If, for reasons outside our control, we fail to make a particular deadline for bringing regulations into force, it will not be for want of trying. We aim to press them through as quickly as possible.

Mrs McGill:

Thank you, Chairperson, for your clarification. The RCN and Action Cancer say that they would prefer "the Department may prescribe" replaced with the "the Department shall prescribe" or "the Department will prescribe". I take into account the Chairperson's clarification. I still cannot understand why "shall" or "will" cannot be used.

Mr Allen:

I take your point. I fully appreciate why the RCN wants that change and that, logically, it makes sense. However, there are other examples such as the Taxis (Northern Ireland) Act 2008, which was sponsored by the Department of the Environment. Sections 16 to 18 of that Act deal with taxi fares, which must be displayed in such form and manner "as may be prescribed". It is a general drafting provision. In the Smoking (Northern Ireland) Order 2006 —

The Chairperson:

If the Department intends to do something, what is wrong with "shall" or "will"?

Mr Allen:

The difficulty is that, if we cannot do something, we will be in breach of the law. We may intend to do something and want to do it, but there may be an unexpected event, as happened last year with swine flu, and we may be physically prevented from doing something through no fault of our own and despite our own best practices.

Therefore, the danger is that inserting "shall" would put us in danger of breaching the law.

Mr Buchanan:

So, is that a get-out clause? *[Laughter.]*

Mr Allen:

I know what you mean, but it is not a question of mañana. Rather, the use of "may" is to avoid backing ourselves into a corner by committing to doing something that, at some point, we may not, physically, be able to do.

Mr Camplisson:

We have no real problem with the word "shall"; we simply do not think it necessary.

Ms Stewart:

If we were to replace "may" with "shall", it would not make any difference, because the entire clause is dependent on the information that we will prescribe. We cannot commence the clause without having the information to prescribe. If we were to commence the Bill without the information, it could not come into play because we would have nothing to disseminate.

The Chairperson:

That issue of the use of the words "shall", "may" or "will" comes up in several other clauses.

Ms Stewart:

It does not matter whether "shall" or "will" is used. Once we commence the Bill, the clause will not work unless we have the information to provide.

Mr Buchanan:

In that case, what is the problem? If the Department will be ready to provide the information, where would a problem arise? Why leave yourselves a get-out clause?

Mr Camplisson:

At the moment, we do not foresee a problem. However, that is not to say that an unforeseen problem will not get in the way.

The Chairperson:

You have gone on public record, through the Hansard report, to say that you will enact subordinate legislation within 12 months. To some extent, therefore, we have you.

Mr Camplisson:

Absolutely, and we are happy to be on record as saying that we will use our best endeavours and work extremely hard to get the subordinate legislation through as quickly as possible. We are keen to see those protections established in law as soon as is practicably possible.

The Chairperson:

Claire, you raised the issue. Are you happy with the response?

Mrs McGill:

Thank you for giving me a further opportunity to speak. If it does not matter, I still do not understand why the clause does not use the definitive "will" or "shall". I will finish on that point.

Ms Stewart:

The draftspeople advised that "may" is the term that is commonly used when a Bill provides a power.

Mr Camplisson:

We need the power to make the regulations, and the clause as drafted gives us that power.

Mrs McGill:

Clause 5(11) concerns only the provision of information.

Ms Stewart:

Yes, but the entire clause will not work unless we prescribe the information to be issued.

The Chairperson:

The same issue will come up in the next clause.

Mr Camplisson

We know that, if the subordinate legislation is not in place within 12 months of the Bill becoming law, the Committee will invite us here to explain why.

The Chairperson:

We certainly will.

Mrs M Bradley:

Yes, we certainly "shall". *[Laughter.]*

The Chairperson:

Not certainly "may"; certainly "shall".

The Committee will formally agree the clause later. Are members generally content with clause 5?

Members indicated assent.

The Chairperson:

The Committee will now consider clause 6, which deals with the duty to display information notices. Clause 6(4) also contains the word "may", and the same principles apply. We have heard the arguments. We may want to revisit the issue, because clause 6(4) states:

"The Department may prescribe -

(a) the health information which the notice is to contain;

(b) the form and manner of display of the notice."

The Committee regards that as extremely important, and our view is that the Department "should" prescribe that information, rather than taking a "may" — or may not — approach.

Ms Stewart:

However, we cannot commence clause 6 without prescribing the information. If we were to try, operators would not have any information to distribute. The scenario is the same as in clause 5.

The Chairperson:

We move to subsection 3 of the clause. Some people have suggested that there is no need for a "due diligence" defence. Clause 6(3) states:

"it is a defence for the operator to prove that the operator (or an employee or agent of the operator) took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence".

Why is that required?

Mr McMahon:

In principle, the defence of due diligence is included to strike a balance between the protection for consumers and the right of traders not to be convicted of an offence that they took all reasonable care to avoid committing.

Again, I refer members to the example of an enforcement officer who took action on the basis of a sign not being displayed. The trader concerned chose to argue the case in court. The measure is designed simply to give the trader in that example the opportunity to put a case to a magistrate that everything reasonable was done to ensure that the sign was displayed. Whether the court accepts that everything reasonable was done is another matter. However, again, it is a principle of law that, where an offence is defined, that opportunity should be made available to traders.

Mr Camplisson:

If that opportunity was removed, the clause may not be compatible with article 6 of the Human Rights Act 1998, which is the right to a fair trial.

The Chairperson:

You are pushing at an open door on the issue of ensuring that health information is displayed on the equipment and supplied to the person who purchases or hires a sunbed. In other words, the equipment should display the clear sticker that John McCallister mentioned, and the documentation that people receive should include an explicit paragraph stating that nobody under the age of 18 should use a sunbed. I got the impression that you were going to do that.

Ms Stewart:

Clause 10 allows us to place any requirements that we want on sunbeds. Initially, those requirements related to technical standards, but the draftspeople told us that they apply to any requirements connected to a sunbed. Therefore, every sunbed will have to have a sticker advising people of the health risks and stating that it is illegal for people under the age of 18 to use them. That is where the sticker that you talked about will be placed.

The Chairperson:

Could the documentation also be included at that stage?

Ms Stewart:

We have changed the wording and other information in the documentation that will allow us to include the statement that it is illegal to for those aged under 18 to use sunbeds. We had to use slightly different words, and that amendment has been tabled.

The Chairperson:

Is there a commitment from the Department that the documentation that people receive when they hire a sunbed will include health information?

Ms Stewart:

The documentation will include health information and any other such information. When we go out to consultation, we will start off with a draft, but we will include text that anyone, such as the Committee, may wish to add, such as "it is illegal for under 18s to use this sunbed".

The Chairperson:

I was thinking about going further than that and trying to make the general public aware of just how dangerous it can be to abuse sunbeds.

Ms Stewart:

That is the health information, which will be displayed on the sunbeds and given out to everyone who buys or hires a sunbed.

The Chairperson:

Are members generally content with clause 6?

Members indicated assent.

The Chairperson:

The Committee will now consider clause 7, which deals with prohibition on the provision or display of other information. We need to refer to the submission from the Northern Ireland Human Rights Commission, particularly paragraph 15, which states that the level of fine is proportionate. That leaves one concern. We have already mentioned our concern about the level 1 fine. The Department has received legal advice that indicates that the £200 fine is regarded as proportionate.

Mr Camplisson:

Yes, we have. From the Human Rights Commission's advice, we can be confident that level 1 is proportionate. We do not have that same confidence about a higher level of fine. We could consider amending that to increase the level of fine, but we have the Human Rights Commission's blessing for level one. It said that a court would find a level 1 fine to be a proportionate and reasonable sanction for that offence. We do not know whether we could push the level much higher.

The Chairperson:

You said that you might revisit that issue and have another look at level 1.

Mr Camplisson:

We could go back to the Human Rights Commission and ask for its views on whether higher level penalties would be proportionate.

Ms Stewart:

However, our own legal advice is to not go any higher.

The Chairperson:

Again, the issue of the licence would be far more of a deterrent than a level 1 fine.

Are members generally content with clause 7?

Members indicated assent.

The Chairperson:

Clause 8 deals with protective eyewear. Again, the clause was welcomed, and no major concerns were expressed by the consultees. Some felt that eyewear should be provided free of charge to encourage its use and that making it a duty to provide protective eyewear would be no guarantee that it would be used. The suggestion is that eyewear should be handed to customers free of charge as part of the deal when hiring a sunbed, rather than the present situation in which people may be expected to bring it with them. What is the Department's reaction to that suggestion?

Ms Stewart:

That would mean that the operator would have to incur the charge of the eyewear for every session. Most sunbed users who buy a set of eyewear hold on to it and use it repeatedly. If operators were required to provide it free of charge for every session, there would be a mountain of eyewear somewhere.

The Chairperson:

That is an interesting point. However, people who go to a 3D cinema have to buy or hire the appropriate eyewear.

Ms Stewart:

I have not been to a 3D cinema, but I believe that those glasses are made of paper. For sunbeds, people use plastic eyewear that can be used time and time again. Once purchased, they are generally reused. If there was a requirement on operators to provide eyewear free of charge every time, and a customer attended weekly, he or she would build up a lot of eyewear, the cost of which would be added to the cost of the session. We see no need for that provision.

I must add that we have tabled an amendment to add a duty on the seller or hirer to provide clients with protective eyewear. That requirement was missing from the Bill. The wording will come to the Committee shortly. Whether it will be used, we do not know.

The Chairperson:

That is one we did not spot. Are members generally content with clause 8?

Members indicated consent.

The Chairperson:

Clause 9 deals with the requirement for training. Overall, the clause has been warmly welcomed, and there are no major concerns. There may be some problems with the subordinate legislation that we will receive later. Our query was whether the requirement for training could be extended to those persons who hire or sell sunbeds for use in private homes. Implicit in what you said is that the Department has considered that issue.

Ms Stewart:

The table has been amended and is ready to come to the Committee. Sellers and hirers will, therefore, be subject to the same training requirement.

The Chairperson:

That is very good, and heads our questions off at the pass. Have members any questions or issues with clause 9? Are members generally content with clause 9?

Members indicated assent.

The Chairperson:

Clause 10 outlines the requirements in relation to sunbeds. The Committee had concerns about the clause, and the Department has taken account of them. It will now ensure that sunbeds sold or hired will be subject to the same requirements as those used in sunbed premises. That is yet another welcome development. Please explain the nature of that amendment. What exactly will it do, and what is the intention behind it?

Ms Stewart:

The amendment to clause 9 and the amendment that you have received to clause 10 extend the provisions to sellers and hirers. Originally, the provisions on training and requirements, such as technical standards, applied only to commercial premises. The amendment simply extends the provisions to sellers and hirers. If we prescribe that sunbeds should not exceed a certain strength or power, that requirement will apply to sellers and hirers.

The Chairperson:

Interestingly, the Sunbed Association and the representative of the Environmental Health Officers' Association gave evidence that few operators even knew the UV strength of the machines that they hired.

Mr Camplisson:

Their evidence tallies with what emerged from the Northern Ireland sunbed survey of 2007. Few people who operated sunbeds had much of clue about the nature of the machines.

The Chairperson:

Are members generally content with clause 10?

Members indicated assent.

The Chairperson:

Clause 11 deals with the exemption for medical treatment. No concerns were raised about the contents of the clause.

Ms Stewart:

I wish to point out that clause 11 will be amended to provide a definition of a "registered medical practitioner". Changes to the rules required us to define that, and we have done so.

The Chairperson:

Does the amendment change the substantive meaning of the clause?

Ms Stewart:

No, it does not. I simply pointed that out to ensure that the Committee knows about it.

Mr Camplisson:

The amendment closes one very small potential loophole.

The Chairperson:

Are members generally content with clause 11?

Members indicated assent.

The Chairperson:

We now move to clause 12, which deals with enforcement by councils. The only concerns expressed were in connection with licensing. However, that has been addressed in an amendment to clause 15, which seems to have squared that circle. Are members generally content with clause 12?

Members indicated assent.

The Chairperson:

We move on to clause 13, which deals with fixed penalties for certain offences. The main concerns raised were in connection with the rights of council staff to enter properties and issue a fixed penalty notice, if they have reason to believe that:

"a person has committed an offence under section 1, 2 or 5 to 10".

Clause 4, which deals with the prohibition on allowing unsupervised use of sunbeds, is excluded from that. Why does that offence attract a fine that is excluded from fixed penalties?

Ms Stewart:

The offence has been excluded from attracting a fixed penalty notice because of its severity. Anyone who allows the unsupervised use of sunbeds cannot discharge their liability by fixed penalty; they must go straight to court.

Mr Camplisson:

Anyone who opens an unsupervised sunbed outlet does not have the option of paying a fixed penalty and must go straight to court.

The Chairperson:

Are you talking about coin-operated sunbeds?

Mr Camplisson:

Yes.

The Chairperson:

I see the logic in that, because that is a particularly serious offence. I would have thought that the same logic would have applied to one or two other offences. However, I am happy enough with that. We have explored the issue of fixed penalties before. It is a balanced judgement, and I appreciate why fixed penalties are not applicable in this instance. Are members generally content with clause 13?

Members indicated assent.

The Chairperson:

We move on to clause 14, which deals with the obstruction of officers, who, in nearly every case, will be environmental health officers from the council. Are members generally content with clause 14?

Members indicated assent.

The Chairperson:

Clause 15 is a bit more complicated. After the Committee raised its concerns about the clause, the Minister provided an amendment that adds a power to introduce a licensing scheme, which we welcome. A new clause, which has been produced, now replaces clause 15. The amendment also provides for the option of licensing either the sunbed premises or the operating of the sunbed premises.

I refer members to the advice of the Examiner of Statutory Rules in the tabled items. The Examiner has completed his examination of the powers to make subordinate legislation. At the end of paragraph three, he is clear that it is a matter of principle:

"that a provision to create an offence in regulations should be subject to draft affirmative procedure, and it seems to me that the provision for creating defences is inextricably linked to the provision for creating offences and should be subject to the same procedure."

That relates to clause 15(2)(a) and 15(2)(c). What is the mechanism for deciding whether subordinate legislation should be subject to affirmative or negative resolution?

Ms Stewart:

An amendment to clause 17 means that the entire clause 17 is subject to affirmative resolution.

Mr Allen:

The slight amendment to clause 17 means that it will now state:

"Regulations under section 15 will be approved by resolution of the Assembly".

Therefore, the regulations will be subject to draft affirmative procedure.

The Chairperson:

Is that why the Examiner of Statutory Rules initially thought that the regulations would be subject to negative resolution?

Ms Stewart:

I think that he must have missed that.

Mr Allen:

I am not sure. However, all I can say is that all regulations made under clause 15 will be subject to draft affirmative procedure.

The Chairperson:

We are extremely pleased with that move. We have not had a chance to study the amendment properly, but the principle is one that we strongly welcome.

Mr Camplisson:

I am not sure of the actual conventions for deciding which form of Assembly control to use. However, in this case, we are putting the power to create a licensing scheme, in bald terms, into primary legislation with virtually no details of the features of that scheme. Therefore, we considered that a higher level of Assembly control was necessary, because all the detail will be in the regulations.

The Chairperson:

That has headed us off at the pass again, and it is good news. Are members generally content with clause 15?

Members indicated assent.

The Chairperson:

We will now move on to clause 16, which deals with offences by bodies corporate. There were no concerns expressed on the clause. Are members generally content with clause 16?

Members indicated assent.

The Chairperson:

We will move on to clause 17. We are building up a head of steam now. Clause 17 deals with regulations. Again, no concerns were expressed about the contents of the clause, but the

Association of Personal Injury Lawyers raised a point about the lack of information on what will be in the subordinate legislation. Of course, that will all be in the public domain, so the association will not be kept in the dark. In the next mandate, we will have an opportunity to consider the SL1, and I assure you that we will scrutinise that with great care.

The Examiner of Statutory Rules stated that the level of Assembly scrutiny of the subordinate legislation is appropriate, other than his comments on offences, which we have already addressed The Department has tabled a minor amendment to the clause. Perhaps you would explain the amendment again in the context of clause 17. It is a minor amendment referring to "section 15".

Mr Allen:

Clause 17(3) will now read:

"Regulations under section 15 or paragraph 4 of Schedule 2 shall not be made unless a draft of the regulations has been before, and approved by a resolution of, the Assembly."

The Chairperson:

Are members generally content with clause 17?

Members indicated assent.

The Chairperson:

We are doing well. There were no concerns raised about the content of clause 18, which deals with interpretation. Are members generally content with clause 18?

Members indicated assent.

Mr Camplisson:

There will be two amendments to that. One will define restricted zones, and the other will define registered medical practitioners.

Ms Stewart:

The amendments are not to clause 18. Restricted zones will be defined in clause 1, and registered medical practitioners will be defined in clause 8.

The Committee Clerk:

So there is no amendment?

Ms Stewart:

There are no amendments.

Mr Camplisson:

My apologies.

The Chairperson:

A series of strands are coming together to make up the document. Will we receive a single document or a draft and a series of papers?

Mr Allen:

I have a draft that shows what the amendments will be in red. I am happy to share that with you.

Mr Wells:

When the Assembly was debating the wildlife legislation, it was a nightmare trying to follow it. Although your draft has no official status, it would be most helpful. .

Mr Allen:

At least it will let the Committee see what the Bill will look like.

The Chairperson:

Again, there are no concerns about the content of clause 19. Are members generally content with clause 19?

Members indicated assent.

The Chairperson:

Clause 20 is the short title. Again, no concerns were raised. Are members generally content with clause 20?

Members indicated assent.

The Chairperson:

Schedule 1 deals with the powers of authorised officers. Again, no concerns were raised about the contents. Are members generally content with schedule 1?

Members indicated assent.

The Chairperson:

Schedule 2 deals with fixed penalties. There are no concerns about the contents of schedule 2. Are members generally content with schedule 2?

Members indicated assent.

The Chairperson:

I have a few additional comments, some of which relate to the legislation and others to the policy of which it is a part. On the matter of public awareness, I presume that when the Bill is finalised there will be some way of informing the public and the sunbed operators about the new legislation. I am concerned that, although the Sunbed Association gave evidence, it, by its own admission, represents only one in five operators throughout Northern Ireland. I am worried that many operators who are not members of Sunbed Association may not realise that licensing is coming, and that is why we have not heard from them. Perhaps they shrugged their shoulders, thinking that licensing would not affect them, and are preparing to live with whatever the legislation brings. Has the Department had any contact with those operators who are not members of the association?

Mr Camplisson:

Not yet, but we will contact them.

The Chairperson:

How will you do that?

Ms Stewart:

They did not respond to the consultation, but we plan to issue letters to as many as we can capture to inform them of the implications of the legislation.

The Chairperson:

That heads me off at another pass, as that was to be my next question.

Ms Stewart:

That is in the offing. We also have plans to work with the Public Health Agency in running a campaign to advise the public about the risks, particularly to young people, of using sunbeds. That will probably happen this year.

The Chairperson:

Will the first letter be issued in time to allow the operators to know —

Ms Stewart:

That will happen after the Bill achieves Royal Assent. When we have started to draft the regulations, we will send out letters to inform operators of the implications of the Act.

The Chairperson:

I have a slight concern about what will happen when we are happy with the legislation and introduce it to the Assembly. I might walk into the Chamber, only for some Back-Bencher to say that Willie John from Castlederg — no, not somewhere in West Tyrone; let us say Willie John from Buckna — runs a sunbed premises and had not heard about the new licensing, and it was too late for him to act. Willie John may have seen the original draft legislation and been perfectly happy with it. How would we deal with that situation?

Ms Stewart:

I am not sure, given that the licensing requirement came after the original draft was issued.

Mr Camplisson:

We would simply tell him that there are limits to how far we should consult people and whom we should consult. If we were to ask only the operators of sunbed premises whether they were for or agin licensing, those who replied would, probably be 100% agin. The purpose of the legislation is to protect public health, and it is our responsibility to ensure that the operators of sunbed premises are aware of what is happening.

The Chairperson:

On Tuesday night, I had a painful experience in the Chamber. After I moved an amendment, the obvious point was made that it came out of the blue to those who would have been affected by it. As it turned out, it would have had no major implications, but that was not what they were thinking. To them, the amendment had suddenly appeared, like a rabbit out of a hat. They had read the original legislation and were perfectly happy with it. They had no expectation of the amendment and felt it had major implications for them. They asked why they had not been told about the amendment before it reached the Chamber. There is some merit in that point.

Ms Stewart:

If we wrote to operators before the Bill received Royal Assent, what would we tell them? It would not yet be law. I suppose that we could warn them of our intentions.

Mr McMahon:

Let me add that licensing was not contained in the original proposal. One of the reasons why it was not included is that the advice was that, without having the details of the licensing regime to consult, we should not include it in the Bill. The subsequent advice was that, in introducing the amendment, we ran the risk of challenge that we had introduced it without consultation and could, therefore, face a legal challenge further down the line. We had to decide whether we should take that risk and attempt to manage it.

The Chairperson:

The definition of licensing powers will be included in the subordinate legislation, so there will be an opportunity to consult at that stage. However, the operators may argue that the principle has already been accepted. The Bill does not have to be enacted at that stage, but it would look a bit strange if the legislation made provision for licensing that never arrived. Perhaps I am paranoid about that.

Ms Stewart:

It is only an enabling power to do it in the future. We could not do it any other way.

The Chairperson:

On the general awareness campaign, you say that you are going to send information to all sunbed premises. Presumably the only way that you can find them is through ‘Yellow Pages’.

Ms Stewart:

Local councils might help us to find sunbed premises. They carried out a survey in 2007, so we might use that to get us started.

Mr McMahon:

We referred to the case in Wales and the provisions of existing health and safety legislation. Councils are responsible for enforcing that legislation in all known sunbed premises, and they will claim to know where they are located in their areas unless some premises are not on the radar.

The Chairperson:

There is a concern about what constitutes "sunbed premises". Some premises are clearly identifiable as being exclusively for suntanning. Could there be a scenario in which a sunbed is an ancillary to a main function? That could be anything from a video store to an ice-cream parlour to all sorts of strange premises. How definitive is your definition of "sunbed premises"?

Mr Camplisson:

In clause 18, "sunbed premises" means:

> "premises in which persons are permitted to use a sunbed for payment of any kind (whether direct or otherwise)."

There are no exceptions. The definition does not distinguish between premises that deal only in sunbeds and a video shop that uses space at the side of the shop for a couple of sunbeds. It means any premises in which sunbeds are used and people are permitted to use sunbeds for payment of any kind.

The Chairperson:

Is there no defence whereby people can say that their premises are not sunbed premises?

Mr Camplisson:

No, there is not. If someone has sunbeds on his or her premises, and he or she is charging people to use them, those are sunbed premises.

Ms Stewart:

The definition also applies to premises in which sunbed use is not the primary function.

The Chairperson:

There must be a charge to use them. What if a free sunbed session is offered in a similar way to a free car wash?

Ms Stewart:

Clause 18 states:

"payment of any kind (whether direct or otherwise)".

Therefore, it does not have to be a direct payment. We asked the draftspeople to cover that. For example, if a free sunbed session is offered when someone gets their hair cut, that situation will be covered under the legislation.

Mr Camplisson:

If someone rents 10 DVDs and gets a free sunbed session, that will also be covered.

Ms Stewart:

It is direct payment or otherwise.

The Chairperson:

Are you happy that the definition is tight enough?

Ms Stewart:

The draftspeople have assured us that it is tight enough.

The Chairperson:

I have a few minor miscellaneous points. Will the Bill allow the use of company names such as Safetan?

Mr Camplisson:

We cannot do anything about that issue. Every imaginable name would have to be proscribed, and some silly wrangles could end up in court over the implications or inferences that might be drawn from a name. I have not seen a Safetan van for some time, perhaps because I do not live in the city. They used to be around quite a lot. Whatever message might be intended in a company or product name such as Safetan would be submerged in the welter of proper health information

that would have to be provided.

The Chairperson:

These are minor miscellaneous points that are not serious.

Mrs McGill:

You said that Safetan was probably obsolete. Given that legislation on sunbeds will eventually be in place, will a brand name such as Safetan not contradict the Trade Descriptions Act 1968 or other legislation? Does a brand name have to be registered?

Mr Camplisson:

I am not familiar with that area of the law, but people can be incredibly creative in coming up with names that are just about allowable. Safetan might be in that fuzzy boundary between what is acceptable and what is downright naughty. There could be a name such as "OK Tan". How would we draft legislation that makes a distinction that would ever hold in law? I do not know that it is possible. The law of diminishing returns comes into force for the effort that would be needed to secure a potential tiny increment in the good that is being achieved.

Mrs McGill:

I have no experience of any of those companies. I just wondered whether other legislation covers the issue and whether, with the Sunbeds Bill, a conflict may be exposed.

The Chairperson:

The Irish Association of Dermatologists had concerns over whether the definition of what constitutes a sunbed covers UV-emitting lamps and UV canopies. Do those fall into the definition?

Mr Allen:

Clause 18 defines a sunbed as:

"an electrically-powered device designed to produce tanning of the human skin by the emission of ultraviolet radiation".

That covers a lamp or a canopy.

The Chairperson:

Therefore, no one can use the excuse that a lamp is not a sunbed.

Mr Allen:

It is still ultraviolet radiation.

The Chairperson:

Are you content with that?

Mr Camplisson:

A "sunbed" does not have to be an actual bed.

The Chairperson:

That is the crucial answer. Do members have any questions about the definition of what constitutes a sunbed? This is our last opportunity, and our clause-by-clause discussion has moved more quickly than I had expected.

Dr Deeny:

I want to make a general statement. Much reference has been made to public awareness. What does the Department recommend? The public need to be told about licensing and educated about the dangers, and safe use, of sunbeds. It is important that we get the message out. What is likely to happen in the next few months?

Mr Camplisson:

Julie mentioned the public awareness campaign that the Public Health Agency will run, and we will see the details of that in due course. We will use the publicity that will come with the Bill being enacted. We fully intend to make as much of a splash as we can when the Bill is enacted and at every opportunity with the subordinate legislation.

Dr Deeny:

Have you any ideas about how you will target young people? Health centres may display information, but young people are not often in health centres.

Ms Stewart:

I have already seen posters produced by SunSmart that show a face divided vertically into two halves to highlight the issue of premature ageing — one side showing before sunbed use and the

other showing after sunbed use. However, I have a daughter, and she is not thinking about ageing. She just wants a tan. I do not know how to get the message through.

Mr Camplisson:

We are open to suggestion.

Ms Stewart:

I thought that the SunSmart poster was good.

Mr Camplisson:

The campaign that the Public Health Agency is planning will highlight the dangers for young people.

Ms Stewart:

It will specifically target young people.

Dr Deeny:

Will there be promotions in restaurants and discos, rather than health centres?

Ms Stewart:

Perhaps there could be promotions in schools.

Mr Camplisson:

I have not seen any details of the campaign, but it will address young people. It will be specifically addressed to them rather than being simply about them.

The Chairperson:

Thank you all for your co-operation and help. The Bill has improved as we have gone through the legislative process. It is a good example for the future of how, when the Department and the Committee co-operate, legislation can be developed that we all believe is much better than it was at the start of the process.

As I said, today is the last opportunity for this type of session. We look forward to hearing from you on the relatively minor number of issues that have arisen on which there is still some

doubt. I look forward to seeing the black-and-red Bill with the amendments, which will tell us exactly where we now stand. On 9 September 2010, we will start the next stage of the process, which is the formal clause-by-clause scrutiny of the Bill. It has been a useful session. Thank you very much.