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Sunbeds (Regulation) Bill

Bill 19 of 2009-10

RESEARCH PAPER 10/07 27 January 2010

This briefing on the *Sunbeds (Regulation) Bill* has been prepared for the Second Reading Debate on the Bill in the House of Commons. The Bill is a Private Member's Bill introduced by Julie Morgan MP and has Government support. It is scheduled to be debated on 29 January 2010.

The Bill seeks to create a duty on sunbed businesses to prevent use of sunbeds by under-18s, to provide for local authority enforcement of this duty, and to give Ministers powers to make regulations imposing further conditions on commercial sunbed use.

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ISSN 1368-8456

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Summary

The *Sunbeds (Regulation) Bill* is a Private Member's Bill introduced on 16 December 2009 by Julie Morgan MP. It has received support from the Government, health charities and professional organisations and is scheduled to have its Second Reading Debate on 29 January 2010. Existing regulation of sunbeds varies significantly within the UK and unsupervised, coin-operated machines are widely used by both adults and children.

The Bill seeks to create a duty on sunbed businesses to prevent use of sunbeds by under-18s, to provide for local authority enforcement of this duty, and to give Ministers powers to make regulations imposing further conditions on commercial sunbed use. These include requirements for supervision, provision of information on health risks, and eye protection. The Bill extends to England and Wales.

Sunbeds are a source of powerful ultraviolet (UV) light and can deliver an intensity of UV radiation equivalent to that experienced in midday Mediterranean sun. UV light is known to cause significant skin burns, accelerated skin ageing, eye damage and allergic skin reactions. Via its ability to damage DNA, UV light is also a widely accepted risk factor for skin cancers, including melanoma. Some evidence suggests that exposure to UV in childhood is more strongly linked to development of melanoma than is exposure as an adult. In 2007 there were 8,809 recorded new cases of melanoma in the UK, with 1,847 deaths attributed to melanoma in 2008.

It has also been argued that the pattern and intensity of UV exposure from sunbeds poses a particular risk compared with exposure to sunlight, although there are many factors complicating this analysis. In light of the suggestive evidence and uncertainty of the true risks of sunbeds, national and international advisory bodies classify both natural sunlight and sunbeds as cancer-causing (carcinogenic) and have recommended a precautionary approach, including banning use by under-18s. A key UK report on the risks of sunbed exposure was published by the Committee on Medical Aspects of Radiation in the Environment (COMARE) in June 2009, also calling for a ban on use by under-18s.

Some UK local authorities have powers to require licensing of tanning salons and all tanning facilities are subject to generic health and safety controls. Only Scotland currently has specific national legislation regulating commercial sunbed use, which includes prohibition of the commercial use, purchase or hire of sun beds by those under 18. Prior to the presentation of the *Sunbeds (Regulation) Bill*, the Welsh Assembly Government had indicated their intent to introduce similar legislation there and a consultation on possible sunbed regulation opened in Northern Ireland in November 2009.

The Health and Safety Executive (HSE) has published non-statutory guidance on sunbed use, which includes a standard health warning poster and recommendations that sunbeds should be supervised by staff and should not be offered to under-18s. Sunbed machines themselves are regulated by EU and British Standards covering aspects such as emission levels and safety features.

An industry association, The Sunbed Association (TSA), provides additional voluntary regulation via a standard code of practice, adherence to which is a condition of membership. The code requires salons to be supervised, restricts sunbed use to those aged over 16 (or over 18 where this is a legal requirement), and specifies other aspects of best practice (including advising against sunbed use for those with very fair skins or other known cancer risks). Approximately 20% of sunbed operators are currently members of TSA.

1 Introduction

The *Sunbeds (Regulation) Bill*[1] has been introduced against a background of significant public pressure for controls on sunbeds, particularly their use by under-18s. The past year alone has seen:

- enactment of sunbed legislation in Scotland
- proposals to introduce sunbed legislation in Wales and Northern Ireland
- new reports from UK and international expert advisory groups highlighting sunbed-related cancer risks
- widespread media interest in the unsupervised use of sunbeds by young people
- sustained lobbying by various health and consumer organisations.

Outside Scotland, commercial use of sunbeds is currently specifically regulated by a small number of local authorities but is otherwise only covered by voluntary guidance or industry codes of practice, and generic health and safety legislation.

A ban on commercial sunbed use by those under 18 was recommended by the World Health Organisation (WHO) in 2004 and the EU in 2006, and was again recommended in June 2009 by the UK Committee on Medical Aspects of Radiation in the Environment (COMARE), whose recommendations also included the prohibition of unsupervised sunbed use and mandatory provision of eye protection and information on risks.[2] [3] [4]

The Bill, a Private Member's Bill introduced by Julie Morgan MP, seeks to create a duty on sunbed businesses to prevent use of sunbeds by under 18s, to provide for local authority enforcement of this duty, and to give Ministers powers to make regulations imposing further conditions on commercial sunbed use. The latter include requirements for supervision, provision of information on health risks, and eye protection. The Bill has received support from the Government, health charities and professional organisations and is due to have its Second Reading on 29 January 2010. It extends to England and Wales.

The Health Secretary, Andy Burnham MP, had signalled in December 2009 that the Government was considering legislation on sunbeds:

> We are also determined to protect young people from the dangers of using sunbeds. We now have evidence that voluntary action by the industry is failing – which points to a need for legislation. It is likely that a ban on sunbed use by under 18 year olds will be necessary, and we are exploring all possible options.[5]

Mr Burnham subsequently announced Government support for the Bill at its Commons launch on 13 January 2010.[6]

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1 The Bill and the associated explanatory notes are at the Sunbeds (Regulation) Bill page on the UK Parliament website. The Department of Health have produced an Impact Assessment dated 15 January 2010 on the Bill.

2 WHO webpage, Sunbeds, tanning and UV exposure [on 27 January 2010]

3 European Commission Scientific Committee on Consumer Products, *Opinion on Biological effects of ultraviolet radiation relevant to health with particular reference to sun beds for cosmetic purposes*, 2006

4 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009

5 Department of Health, Speech by Rt Hon Andy Burnham, Secretary of State for Health at the all Party Parliamentary Group on Cancer, 1 December 2009

6 Department of Health Press Notice, *Government backs sunbed ban*, 13 January 2010

Early Day Motion 537 sponsored by Julie Morgan MP in support of the Bill had 152 signatories on 27 January 2010.

1.1 Background

Sunbeds have become increasingly popular since their commercial introduction in the 1970s. Ultraviolet tanning facilities are now commonplace in UK high streets, spas and health clubs and a 2008 survey by Cancer Research UK suggests 25% of adults and 7-20% of 11-17 year-olds have used a sunbed at some time.[7] It has been estimated that there are now up to 8,000 tanning businesses in the UK, tending to be concentrated in deprived urban areas.[8]

Tanning businesses range from fully staffed and supervised facilities to basic installations of minimally supervised or unsupervised coin-operated machines. Although traditionally the preserve of health clubs and dedicated tanning salons, the development of compact stand-up models and machine leasing or profit-share arrangements has widened the market. Sunbeds can now be found in many non-traditional locations, such as nail bars.

Sunbeds produce skin tanning in broadly the same way as natural sunlight, which is by absorption of ultraviolet (UV) radiation and stimulation of the skin's natural pigment cells (melanocytes). In terms of energy, the UV section of the electromagnetic spectrum occupies the area between visible light and x-rays. The higher energy UV adjacent to x-rays (UVC and far UV) is filtered from the sun's emissions by the atmosphere, allowing primarily UVA and UVB to reach the earth's surface in a ratio of 95% to 5%. Sunbeds tend to be designed to emit mainly UVA and smaller amounts of UVB, although some machines are designed to mimic the balance of natural sunlight.

2 Health effects of sunbeds

Although humans have clearly evolved to tolerate some absorption of UV radiation, and are able to use this to create vitamin D in the skin, UV radiation is a known cause of damage to body tissues after prolonged or intense exposure. UV radiation can result in skin burns, accelerated skin ageing, eye damage and immune effects. UV radiation is also capable of producing mutations of DNA that are thought to be an important part of the development of cancer.[9]

A key UK report on the health effects and risks of sunbed exposure was published by COMARE in June 2009. COMARE is an independent expert advisory committee, administratively supported by the Health Protection Agency, which provides advice to the UK Government and devolved authorities. Their report provides a comprehensive overview of sunbed use in the UK and the evidence regarding health effects, concluding with recommendations for action. [10]

The latter are broadly similar to the provisions of the Bill, with some additionally stringent and more specific proposals for regulation via compulsory licensing. The COMARE recommendations are reproduced in Appendix 1 of this Research Paper.

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7 Cancer Research UK, *Policy Statement: Sunbeds*, October 2009

8 The Scottish Government, The Public Health etc (Scotland) Act 2008 (Sunbed) Regulations 2009: Regulatory Impact Assessment (RIA), 18 November 2009. See also COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 41

9 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 11

10 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009

The following sections outline some of the key issues relating to the health effects of sunbeds, focusing on skin cancer risks, and present a summary of relevant UK skin cancer statistics.

2.1 Sunbeds and skin cancer

Skin cancers, including melanoma, have become much more common in fair-skinned populations since the beginning of the 1970s, with a fourfold increase in reported rates over the past 30 years. This has been linked to the increasing popularity of deliberate tanning by exposure to UV radiation from sunbathing or sunbeds and there is now a significant body of published academic research supporting this link. Exposure to UV radiation in childhood and intermittent exposure with burning are thought to be particular risk factors for melanoma.[11]

Almost all national and international official advisory bodies and professional organisations argue that exposure to UV radiation is potentially dangerous, particularly for fair-skinned groups (typically northern Europeans), chiefly due to its link with skin cancers. While acknowledging areas of conflicting evidence, and weaknesses in our current understanding of cancer, they believe that the balance of available evidence is overwhelmingly in favour of a very significant causal relationship.

The World Health Organisation's International Agency for Research on Cancer (IARC) now classifies solar radiation and UV tanning devices as human carcinogens (causes of cancer) along with substances such as tobacco, asbestos and radioactive materials. In their announcement of the upgraded classification in August 2009, the IARC stated:

> The use of UV-emitting tanning devices is widespread in many developed countries, especially among young women. A comprehensive meta-analysis concluded that the risk of cutaneous melanoma is increased by 75% when use of tanning devices starts before 30 years of age. Additionally, several case–control studies provide consistent evidence of a positive association between the use of UV-emitting tanning devices and ocular melanoma. Therefore, the Working Group raised the classification of the use of UV emitting tanning devices to Group 1, "carcinogenic to humans". [12]

A recent UK report cites research estimating that approximately 370 additional new cases of melanoma and 100 melanoma-related deaths could be due to sunbeds each year (approximately 1% of cases and 5% of deaths). However, the estimate is subject to many caveats and the true effect could be substantially lower or higher.[13]

2.2 Possible benefits of sunbeds

Sunbeds are used in the medical treatment of certain skin conditions, chiefly psoriasis. The main non-medical benefits claimed for sunbed use include improved appearance and psychological well being, enhanced levels of vitamin D, and protection from burning in natural sunlight. These benefits have been promoted to varying extents by tanning businesses, sunbed manufacturers and the Sunbed Association but national and international advisory bodies, professional groups and cancer charities argue that the benefits, if any, are modest and outweighed by the risks of sunbed use.

The Sunbed Association website includes the following statement:

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11 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, pp 14-22

12 International Agency for Research on Cancer, *A review of human carcinogens—Part D: radiation*, Lancet Oncology, August 2009

13 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 27

What are the benefits of using a sunbed?

Sunbeds offer a controlled way to tan and can provide appropriate levels of UV to ensure sufficient levels of vitamin D are achieved and maintained (see section on Vitamin D for more on this subject).

Tanning in sunlight mans the body can be subjected to different levels of UV rays, depending on the time of day, location in the world, month of the year and so on. With a sunbed, a tanning programme can be developed to ensure skin type and the type of sunbed being used, are taken into consideration to ensure that over exposure, including the possibility of burning, is avoided.

Is it true there is no such thing as a safe tan?

No. Tanned skin protects against sunburn, thought to be the main cause of melanoma. If you avoid getting sunburned, the benefits of moderate sun exposure (see vitamin D section) will far outweigh any risks.[14]

The COMARE Report summarises the opposing view:

> 1.8 For the general public using commercial outlets, there are perceived beneficial health effects from exposure to UV radiation, which are largely psychological and cosmetic. There is little value in the use of sunbeds in terms of protection from sunburn. Vitamin D synthesis is promoted by some outlets as justification for the use of sunbeds, yet vitamin D can be nutritionally supplied without the risks associated with exposure to artificial UV radiation. The usefulness of sunbeds in the induction of vitamin D synthesis is dependent on the level of UVB emissions; however, UVA is usually the predominant emission from sunbeds. There is evidence that although use of sunbeds can increase vitamin D levels, this reaches a plateau after a few sessions (Thieden et al, 2008). Given that there are wholly safe alternatives, the benefit of sunbed use as a source of vitamin D is outweighed by the risks.[15]

2.3 Areas of debate

There is widespread scientific consensus on the existence of a health risk from UV radiation and from UV exposure by sunbed use. However, there is some debate over the extent of the risk, particularly for melanoma. This lack of unanimity has been referred to by sunbed proponents in the context of arguments against reduction or elimination of sunbed use (see below).

However, while there is real debate on these matters within sections of the scientific community, advisory bodies reiterate the consistent strong association between UV exposure and melanoma, our increasing understanding of the biological and genetic effects of UV radiation, and the need to adopt a precautionary approach where doubt exists about potentially serious risks. The COMARE Report states:

> 3.2 A particular difficulty of assessing melanoma risk in relation to external factors is that there are a large number of variables, some known, and many unknown, which contribute to risk, both to the population and to the individual. Some of these are understood, and can be used to guide advice. Many are suspected, but not proven, and although evidence may sometimes be of poor quality, adoption of a precautionary

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14 The Sunbed Association webpage, *Frequently asked questions* [on 27 January 2010]

15 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 8

> approach (the precautionary principle) requires all evidence to be critically assessed and taken into account.[16]

By way of example, one area of debate is presented below.

The Sunbed Association stated in 2008 that the rising incidence of melanoma is due mainly to changes in classification and screening, quoting a British Medical Journal (BMJ) study:

> MYTH: Rise in incidence of melanoma
>
> The SunSmart campaign amongst other efforts has seen an exponential increase in the number of worried people having skin screenings. There has been a big increase in reports of melanoma but what is now being called melanoma may in fact be nothing of the sort and the increase can simply be put down to a reclassification of what constitutes malignancy. This is supported by the fact that whilst the incidence of melanoma has increased, it has not been accompanied by a corresponding change in mortality. Skin cancer still lies at the bottom of the mortality table on cancer incidences.
>
> The British Medical Journal published a study in 2005 stating "The growth (of melanoma skin cancer diagnoses) is associated with an increased rate of melanoma detection – a finding that persists even after assuming an increase in the true occurrence of disease … Our data for trend also suggest that the true occurrence of melanoma has not changed."[17]

The BMJ article in question, written by researchers from the USA, suggested that many low grade melanomas then being removed were unlikely to spread and cause death but were responsible for the bulk of the reported increase in the rate of melanoma diagnoses. Responses to the paper suggested this was not true in Europe or that it merely reflected the success of screening programmes. As it would be unethical to conduct a study comparing treatment with non-treatment of low grade melanomas, this debate has continued.[18]

Further complicating matters are suggestions by some dermatologists and pathologists that changes in the microscopic criteria for diagnosis of melanoma have resulted in its diagnosis in lesions which would previously have been diagnosed as benign. This issue was addressed in the BMJ in a debate in the issue of 26 July 2008 on the topic *"Is sun exposure a major cause of melanoma?"*, along with other arguments both supporting and rebutting the proposition. In the absence of a large scale study comparing historical tissue samples with more recent ones this issue too is unlikely to be fully resolved.[19]

2.4 UK statistics on skin cancer

Melanoma is the most serious of the skin cancers as it often spreads throughout the body and once it has done so is very difficult to treat. As a result, melanoma is the cause of 80% of skin cancer deaths in the UK, although it comprises only 11% of the 8,809 new skin cancer diagnoses in 2007. Melanoma, unlike other non-sex specific cancers, is more common in women. A small number of cases of melanoma occur in the eyes (ocular melanoma).

Most non-melanoma skin cancers (NMSCs) are one of two types, basal cell carcinoma and squamous cell carcinoma. These are far more common than melanoma, with 80,000-

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16 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 14

17 The Sunbed Association Press Release, *Cancer Research UK scare tactics on sunbed use are sensationalist*, 8 April 2008

18 See the following paper and subsequent correspondence: Welch G et al, *Skin biopsy rates and incidence of melanoma: population based ecological study*, BMJ 4 August 2005, p 481

19 Menzies S and Shuster S, Is sun exposure a major cause of melanoma?, BMJ 26 July 2008, pp 204-5

120,000 new cases per year, but are usually completely curable. Although these cancers rarely spread they were implicated in 500 deaths in 2007 and their treatment sometimes requires disfiguring surgery. Based on 2007 data the lifetime risk of developing melanoma is 1.5% for males and 1.6% for females. Corresponding rates for NMSCs are 15.7% and 14.8% respectively.[20]

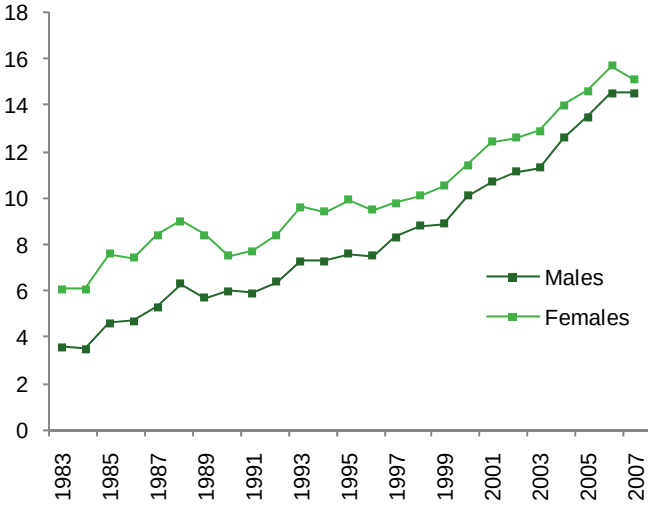
The economic impact of skin cancer is also significant: diagnosis and treatment of NMSCs was estimated to have cost the NHS £58 million in 2002, compared with £13 million for melanoma.[21]

Statistics on malignant melanoma

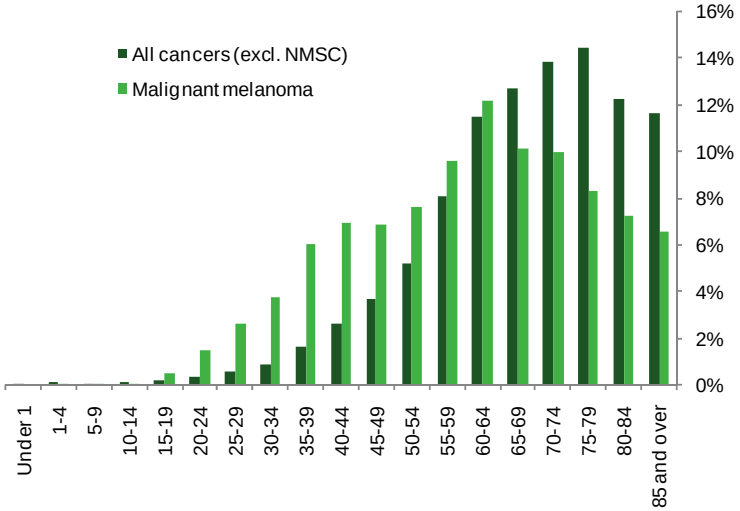
Registration data for malignant melanoma is believed to be complete.

In 2007, there were 8,809[22] new cases of malignant melanoma, 53 per cent of whom were women. The chart on the right shows registration rates of malignant melanoma per 100,000 individuals in England since 1983. These have been standardised to account for the changing age structure of the population over time. Even taking this into account, the incidence of malignant melanoma has increased by over 300 per cent in men, and 150 per cent in women, since 1983.

Malignant melanoma: age-standardised registration rates per 100,000 population, 1983-2007



Age distribution of individuals diagnosed with malignant melanoma and all cancers, per cent of all diagnoses, 2007



The age profile of malignant melanoma sufferers is slightly younger than for cancers generally, with a significant proportion of individuals diagnosed in their late thirties and forties (20 per cent are aged between 35 and 49, compared with 8 per cent of cancers generally).

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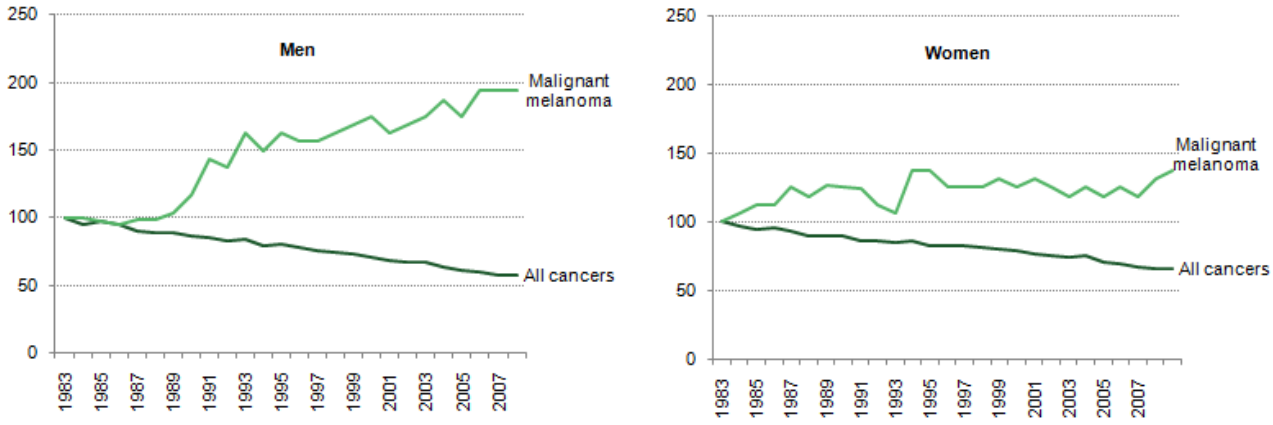
[20] These figures represent the risk that an individual born today, experiencing the same age-specific incidence rates as observed in the population in 2007, will develop melanoma/NMSC during the course of his or her life.

[21] COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, pp 7 and 52

[22] All statistics in this section are derived from ONS Series MB1 (2007): *Cancer Registration Statistics*

Whilst mortality for cancers as a whole has decreased since 1983, mortality rates for malignant melanoma have almost doubled in men and increased by 38 per cent in women.

Change in age-standardised mortality, 1983-2008, malignant melanoma and all cancers, indexed (1983=100)



Statistics on non-melanoma skin cancers

Accurate statistics on NMSCs in the UK are difficult to obtain. Although data on all diagnosed cancers is submitted to the Office for National Statistics (ONS) as part of the cancer registration system, it is known that NMSC is greatly under-registered. This is because individuals with NMSC have in the past been diagnosed and treated in GPs' surgeries, or as hospital outpatients. Cancer registries' access to GP and outpatient records is limited, and as a result many instances of NMSC go unrecorded; indeed, so significant is the under-reporting, that ONS specifically excludes NMSC from aggregate (all-cancer) totals and rates.

Like malignant melanomas, NMSC registrations have also exhibited an upward trend (a 150 per cent increase in the registration rate since 1983), although it is not possible to assess to what extent this is due to more comprehensive registration of the disease over this period.

The most widely cited study of NMSC incidence in the UK comes from the British Journal of Dermatology,[23] which found that the age-standardised incidence rate in West Glamorgan in 1998 was 129.9 per 100,000. The rate in England as measured by the registration statistics in 2007 was 101. Assuming that the rise in registered cases is representative of the true change in incidence, and further assuming that incidence in West Glamorgan is representative of that in England, the rate in 2007 would be 172.4 per 100,000, or 120,000 cases.

Additional analyses of UK skin cancer statistics can be found on the website of Cancer Research UK. [24]

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[23] Holme, S.A., K. Malinovszky, and D.L. Roberts, C*hanging trends in non-melanoma skin cancer in South Wales, 1988-98*. Br J Dermatol, 2000. 143(6): p. 1224-9

[24] Cancer Research UK webpage, *Skin cancer statistics - Key Facts* [on 27 January 2010]

3 Current regulation of sunbeds

This section outlines the regulation of sunbeds by Government legislation, local authority powers, health and safety guidance, and voluntary codes.

3.1 National legislation and local authority powers

Within the UK, only Scotland has specific national legislation under which controls on sunbed use can be enforced. Tanning salons there are subject to provisions of Section 8 of the *Public Health etc. (Scotland) Act 2008*, which:

- prohibit the commercial use, purchase or hire of sunbeds by those under 18
- require sunbed use to be supervised by staff
- establish a duty to provide health information and to display safety notices
- provide for fines on summary conviction of up to £2500 (Level 4).[25]

Regulations enacting these provisions came into force in late 2009 following public consultation.[26] [27]

Prior to the announcement of the *Sunbeds (Regulation) Bill*, the Welsh Assembly Government had indicated that they intended to introduce legislation there and a consultation on possible legislation opened in Northern Ireland in November 2009. [28] [29]

London local authorities are able to require licensing of salons under the *London Local Authorities Act 1991* and certain other local authorities are able to require licensing of tanning salons, for example Birmingham City (under provisions of the *Birmingham City Council Act 1990*).[30]

Regulation modelled on existing local authority licensing systems, which typically involve annual inspections, proportionate sanctions for persistent non-compliance, and the ability to specify training standards for licensees and operators, has been suggested as a possible alternative to direct statutory control.[31]

In addition to controls on use, sunbed machines themselves are regulated by EU legislation and British and European standards covering technical quality and safety issues, including a classification of machines based on the amount of UV reaching the skin (the effective irradiance). Although the highest power machines are recommended only for medical use, there is evidence that some commercial sunbeds exceed this limit. Until recently there was no specified upper limit for sunbed irradiance but a review of the existing European Standard is underway. In the meantime a *de facto* limit (0.3 Wm^{-2}, twice the threshold limit for current

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25 The Scottish Government webpage, Fines [on 27 January 2010]

26 Consultation on the draft Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009

27 The Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009, SI2009/385

28 *Western Mail*, Regulating tanning salons will protect young people in Wales, 20 June 2009

29 Department of Health, Social Services and Public Safety, Consultation on Regulation of the Sunbed Industry in Northern Ireland

30 Birmingham City Council webpage, Licensing Massage and Special Treatments [on 27 January 2010]

31 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 51

"medical use only" devices) is widely used by Member State regulatory bodies and sunbed manufacturers. [32]

3.2 Health and safety legislation and guidance

Tanning salons are also subject to generic health and safety legislation. The Health and Safety Executive (HSE) publishes specific guidance on commercial sunbed salons and in May 2009 published updated guidance, applicable in England and Wales. The HSE guidance includes general advice regarding safe operation of sunbeds but also makes a number of more specific recommendations, including:

- It is good practice to have trained staff present while customers are using your UV tanning equipment.
- You should provide ongoing health and safety training for your staff to make sure they can correctly run the equipment, provide customers with information about the risks and assist as required.
- It is good practice that you provide adequate eye protection (goggles) for customers and staff, when maintaining equipment.
- When carrying out your risk assessment, you are advised to consider the advice of the World Health Organization and EU Scientific Committee on Consumer Products who have recommended that under-18s should never use UV tanning equipment. [33]

The HSE has also produced a standard information sheet for consumers, which it recommends should be displayed in all tanning facilities. [34]

Regarding enforceability of the HSE guidance, the HSE noted:

> Although the guidance is not itself enforceable, operators of UV tanning equipment must comply with the Health and Safety at Work Act 1974 (HSWA) and the Management of Health and Safety at Work Regulations 1999 (MHSWR). Operators must assess the risks caused by their work activity, including risks from exposure to UV radiation and then take measures to control such risks as far as they can. They also must tell their staff about the risk assessment results and make sure staff are competent to act on any dangers.[35]

There has been at least one successful sunbed-related prosecution under health and safety legislation, in December 2009, involving the owner of a tanning salon in which a young girl was extensively burnt after using a coin-operated machine. However, the successful charges were not directly related to this incident but involved other health and safety breaches. This highlights the limitations of generic health and safety legislation as a means to enforce standards of sunbed use by customers.[36]

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32 The relevant Standard is *BS EN 60335-2-27: 2003*. For further details on technical standards see COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, pp 24-25

33 HSE, *Reducing health risks from the use of ultraviolet (UV) tanning equipment*, May 2009

34 Health and Safety Executive Factsheet, UV Tanning Equipment

35 HSE, *Revised guidance for tanning salons and their customers*, 1 May 2009

36 BBC website, Tan salon owner sentenced after girl burned on sunbed, 8 December 2009

3.3 Voluntary regulation

Tanning salons choosing to join the Sunbed Association must adhere to its code of practice or risk losing membership. The COMARE Report summarises the main features of the code and its enforcement:

> All members commit to complying with TSA code of practice, which advises that children under 16 years, people with unsuitable skin types, people with excessive moles or freckles, and people with a history of skin cancer should not use sunbeds. The code requires that all sunbeds must be used under supervision of appropriately trained staff and protective goggles must be provided and worn. TSA provide training courses and the programme includes UV radiation, sunbed lamps and their service life, sunbeds – features, maintenance and cleaning, the skin and how it tans, sunbed sessions and skin types, health and safety guidelines, and the provision of information for customers. Members must demonstrate compliance with the code of practice during inspections of their premises. [37]

3.4 Experience in other countries

The COMARE Report includes a comprehensive survey of international sunbed regulation, which reveals a spectrum from voluntary controls to specific legislation, with an increasing trend towards the latter. The majority of legislative regimes specify an age limit on sunbed use (varying from 13 to 18 years). France is identified as having a particularly developed system, which includes:

- specification of permissible UV emission levels of different machine types
- mandatory operator training and qualifications varying with machine type
- a system of regular inspections and certification of salons
- prohibition of automated (coin-operated) equipment
- a ban on use by under-18s
- compulsory notification of all machines in commercial use
- prohibition of any claims that sunbeds promote health.[38]

3.5 Compliance with existing guidance

Compliance with non-statutory guidance in the UK sunbed industry has been assessed by a number of surveys. These have identified problems in several areas related to safe use, including lack of assessment of customer skin type or cancer risk, absence of eye protection, use by under-16s, lack of safety information, and unregulated session times. Similar findings were reported from a German review of its largely voluntary system of sunbed regulation. [39]

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37 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, p 45

38 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, pp 47-49

39 COMARE, *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009, pp 49-51

4 Main provisions of the Bill

The Bill consists of 14 clauses and a Schedule. These cover four main areas:

- Creating a duty on sunbed businesses to prevent use by under-18s, defining a restricted zone around sunbeds for this purpose, establishing an offence for non-compliance, and exempting sunbed use for medical treatment.

- Creating powers for Ministers to make regulations regarding supervision of sunbed use, prohibition of sale or hire to under-18s, provision of specified information to users, and mandating use of protective eyewear by customers.

- Establishing an enforcement duty on local authorities and providing powers of entry to authorised inspectors.

- Setting out liability of officers of corporate bodies which commit offences and further defining regulation-making powers

Clause 2 creates an offence, applicable to operators of sunbed businesses, of allowing or offering use of a sunbed to under-18s. The clause also removes the need to prove actual use by defining a "restricted zone" around a sunbed within which under-18s may not be permitted unless providing a service for the sunbed business, such as cleaning or repair. This restricted zone could be the cubicle in which the sunbed is housed but could equally consist of the entire room in which an unenclosed sunbed is located. An offence under this clause is subject to a fine on summary conviction not exceeding £20,000.

Clauses 7 and 8 and the Schedule relate to local authority enforcement, providing powers of entry, authority to carry out "test-purchasing" exercises, and creating an offence of obstructing authorised officers.

Clauses 4, 5 and 6 define the scope of additional regulation-making powers. These enable:

- restrictions to be placed on sunbed sale or hire;

- the extension of the Bill's main provisions to sunbed businesses operating in domestic premises;

- definition of standard information to be provided (and prohibition of provision of information on health effects not specified, potentially covering information promoting benefits of sunbed use);

- imposition of additional requirements to provide, and attempt to ensure use of, eye protection by customers.

5 Views of interested parties

Cancer Research UK, the largest UK cancer charity and non-governmental cancer research funder, recommends avoidance of sunbeds and has been instrumental in campaigning for statutory controls on sunbeds, including banning unsupervised use and use by under-18s, in parallel with its advocacy of safe sun exposure (the SunSmart campaign).[40]

In welcoming the Bill, Sarah Woolnough, head of policy at Cancer Research UK highlighted the need to ensure that salons were staffed in order to enforce the under-18s ban:

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[40] Cancer Research UK webpage, Truth about sunbeds, [on 27 January 2010]

> We know that coin-operated sunbeds and un-staffed salons - which offer cheap deals - make using sunbeds extremely appealing to young people. And we are concerned that unless action is taken to ensure salons are staffed, young sunbed users will continue to put themselves at risk of skin cancer. [41]

The British Association of Dermatologists, the professional association of dermatology specialists, also recommends sunbed avoidance. It has previously supported a ban on use by under-18s but has also called for compulsory licensing of sunbed businesses:

> We not only want a ban on sunbeds for under 18s and on coin operated sunbeds, but we also want this to be imposed through a compulsory licensing scheme, so that salons that fail to comply can be banned from providing sunbeds. The current situation shows that recommendations alone are not sufficient and need to be enforceable, as we know that many children and young people have easy access to tanning beds and are therefore at risk.[42]

The Sunbed Association (TSA), the UK industry body that represents approximately 20% of sunbed operators, has focused on promoting its voluntary code of practice and has argued that, for most users, sensible sunbed use is safe. In July 2009 TSA also argued that 16 years is an appropriate lower age limit for sunbed use. [43] [44]

In response to the current Bill, TSA has stated:

> A legal ban on sunbed use by anyone under 18 years has already been introduced in Scotland and governments for Wales, Northern Ireland and England are likely to introduce the same ban. The Sunbed Association (TSA) currently has a minimum age restriction of no-one under 16 years in its Code of Practice and the Code is being amended to 18 years to come into line with legal requirements as they are introduced. However, this legal requirement does not prevent under 18s from tanning outside and going on holiday where excessive UV exposure is more likely to take place. TSA believes that it is essential to consider peoples' outdoor exposure habits if there is to be any positive impact on skin cancer prevention.[45]

A September 2009 editorial in the Lancet Oncology, anticipating the proposal to ban sunbed use by under-18s argued that the Government should go further and implement a complete ban:

> Most of the 100 000 new cases of skin cancer diagnosed in the UK each year are preventable, so why attempt expensive industry regulation and ineffective consumer education programmes? Sunbeds for cosmetic tanning clearly increase the risk of skin melanoma, and probably the risk of ocular melanoma; they should be banned for all ages. WHO, the British Medical Association, and Cancer Research UK already advise against sunbed use completely. In the name of skin-deep beauty, a beast has been unleashed—in face of the recognised health risks, the industry's continued existence can in no way be justified.[46]

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41 Cancer Research UK News Article, Cancer Research UK urges government to take further action on sunbeds, 14 January 2010

42 British Association of Dermatologists Press Release, *Response to proposed sunbed ban in Wales*, 30 September 2009]

43 The Sunbed Association webpage, *Frequently asked questions* [on 27 January 2010]

44 The Sunbed Association Press Release, *TSA Position Statement - COMARE Report*

45 Banks K, The Sunbed Association, Personal communication, 19 January 2010

46 Lancet Oncology, September 2009

Appendix 1 – Extract from COMARE Report

Committee on Medical Aspects of Radiation in the Environment (COMARE), *The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices*, 19 June 2009. Chapter 9: Recommendations (pp 55-6)

In this report we have reviewed the literature regarding the health effects and risks arising from exposure to UV radiation from sunbeds[47] and we have also considered the controls in place in the UK at this time. We wish to make the following recommendations.

Recommendation 1 Regulation is required on the commercial use of sunbeds. Clinically prescribed use of sunbeds should be carried out only under medical supervision. Currently in the UK, legislation is only in place in Scotland. The recommendations presented here may exceed the requirements of this legislation and therefore should be considered by all UK health departments and government departments with an interest in this area. Legislation to regulate the use of sunbeds should focus on the following areas.

> (i) We recommend that the commercial use of sunbeds by the under 18s is prohibited. This is in line with both the Public Health etc (Scotland) Act 2008 and the recommendations of the World Health Organization, and also the proposed legislation by the Department of Health and Children in the Republic of Ireland. Introducing an age restriction of 18 years brings the use of sunbeds in line with the sale of a number of other age-restricted goods, eg tobacco and alcohol. We recommend that the sale or hire of sunbeds to the under 18s should also be prohibited.
>
> (ii) In order to support (i) above we recommend the prohibition of unsupervised use and/or self-determined operation of sunbeds in commercial outlets.
>
> (iii) We recommend that all staffed commercial outlets should be licensed and registered, including registration of the types and power of machines on the premises. Licensing will allow control and checks of adherence to standards. Registration will permit monitoring of trends and distribution of commercial outlets and of machine types.
>
> (iv) We recommend that legislation should include a requirement for commercial outlets to ensure that adequate protective eyewear is provided for users. The use of protective eyewear by clients should be compulsory.
>
> (v) We recommend that detailed written information on the health risks associated with the use of sunbeds must be provided to users and should be clearly and easily visible on machines, both in commercial settings and for home use. Informed consent should be obtained from the clients prior to use. The use of sunbeds by persons in at-risk groups should be discouraged.
>
> (vi) We recommend that commercial outlets and sunbed retailers should be prohibited from using information promoting unproven and/or net health benefits of sunbed use.
>
> (vii) All sunbeds should adhere to both the British and EuropeanStandard (BS EN 60335-2-27: 2003) and the recommendations from the Scientific Committee on Consumer Products, in particular not exceeding a sunbed irradiance of 0.3 W m–2.

Recommendation 2 We believe that it is important that inspections are carried out of commercial outlets to determine compliance with whatever level of regulation is imposed. We recommend that local authorities have a duty to inspect commercial outlets periodically and are given the appropriate powers of entry to premises and access to relevant information (eg maintenance records, staff on duty and accident reports). If licensing is enforced, the local authorities should be provided with sanctioning powers.

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[47] In the report, the term ‘sunbed’ is used to represent all types of artificial UV tanning devices utilised for cosmetic purposes.

We recommend that the need for appropriate operator training is recognised, covering both the technology and safety of the sunbeds. Commercial outlets should be required to show local authorities that a standard level of competence is being met and that the outlet is staffed at all times with trained, competent personnel.

Recommendation 3 Skin cancer is the most common form of cancer in the UK and its incidence is continuing to rise, placing an increasing economic burden on the NHS. Historically, the budget allocated to raising the awareness of risk factors for skin cancer has been small. We recommend that funding for such campaigns is reviewed, taking into consideration that spent on other national health campaigns.

We recommend that stronger publicity campaigns on the risks from UV radiation exposure, and in particular sunbeds, are directed towards children, as users or potential users of sunbeds. Such campaigns could focus on photoageing effects from sunbeds to enhance the message.

We also recommend that the appropriate authorities strictly review the advertising employed by the sunbed industry.

Recommendation 4 The complete risks associated with the use of sunbeds have not been fully established due to the long latency period of skin cancers and the relatively recent widespread usage of sunbeds. We recommend that further research is required into sunbed usage and the risk and aetiology of malignant melanomas and non-melanoma skin cancers (NMSCs). This research should include detailed investigations into skin damage from melanomas and NMSCs, with particular reference to ageing.

Additional research is also recommended into the potential and reported ocular damage resulting from the use of sunbeds without adequate eye protection.

We recommend that population-based research should be undertaken to correlate skin damage and sunbed use (ie number of sessions, duration and strength of machine) and control for holiday exposure. This should investigate socioeconomic factors, access to sunbeds and age of use, where possible.

There is also a requirement for research to establish why some fair-skinned people find tanning desirable and to determine how behaviour may be changed. The recent tanning phenomenon could be correctable with a different approach to body image; however, background knowledge of the psychology for tanning needs to be determined.