



Northern Ireland
Assembly

Research and Library Service Bill Paper

21 May 2010

Sunbeds Bill

NIAR 205

This paper considers the issues surrounding the introduction of a Bill preventing the use of sunbeds by persons under-18 years of age and providing a legislative framework to which all commercial sunbed premises will be required to adhere.

Research Paper 59/10

21 MAY 2010

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Key Points

There has been expert advice available for many years to the effect that the cosmetic use of sunbeds, especially by children, should be discouraged because of the associated increased risk of skin cancer and other health problems. Over a 25 year period, malignant melanoma skin cancer cases have nearly trebled. Skin cancer is now the most common cancer in Northern Ireland and accounts for 28% of all individuals diagnosed with cancer.

The increased skin cancer rate is not entirely due to the use of sunbeds, but also to direct exposure to the sun's ultraviolet rays. However, there is now substantial evidence of the increased risks caused by sunbed use. Research shows that using sunbeds before the age of 35 can increase the risk of developing melanoma skin cancer by up to 75% and the mortality from melanoma due to sunbed use alone is estimated to be about 100 deaths per year in the UK.

The Department has introduced the proposed Bill with the primary policy objective of preventing the use of sunbeds by persons under 18 years of age. The Bill is also intended to ensure that those over 18 years of age who intend to use sunbeds are better informed about the attendant health risks. Furthermore, the Sunbed Bill seeks to provide a clear legislative framework to which all sunbed premises will be required to adhere.

Local authorities are to be empowered to enforce the duties imposed upon sunbed premises in their areas, and the proposed Bill also gives the Department powers to make regulations imposing further conditions on commercial sunbed use.

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1 Introduction

The primary policy objective of the Department which underpins the proposed Bill is the prevention of the use of sunbeds by persons under 18 years of age. The Bill is also intended to ensure that those over 18 years of age who intend to use sunbeds are better informed about the health risks of using sunbeds and are better protected against harm caused by ultraviolet radiation. The purpose of government intervention is to address the rise in the incidence of skin cancer. Over a 25 year period, malignant melanoma skin cancer cases have nearly trebled. Skin cancer is now the most common cancer in Northern Ireland, accounting for 28% of all individuals diagnosed with cancer.¹

Furthermore the department cites a failure of self-regulation as necessitating a clear legislative framework. Self-regulation is enacted through voluntary codes of conduct, such as that of the Sunbed Association, however only some 16% of NI premises are registered with the Association.² This Bill follows, in proposing regulation of the sunbed sector, different forms of legislation which have been implemented in Scotland, and recently in England and Wales, both of which ultimately seek to prevent use by under-18s.

2 Background Issues

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 more than 11% of 15 to 17-year-olds have used a sunbed.³ Ulster Cancer Foundation (UCF) research has shown that sunbed availability has tripled in Northern Ireland between 1991 and 2006 while sunbed franchises have risen remarkably by more than 600% in the ten years from 1991 – 2001⁴. Furthermore, Cancer Research UK research has shown that tanning businesses across the UK tend to be concentrated in deprived urban areas.⁵

Tanning businesses within the UK can range from fully staffed and supervised facilities to basic installations of minimally supervised or unsupervised coin-operated machines. While the latter type is not, as far as the Department is aware, as yet used in NI, they have been a high profile source of concern elsewhere. 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. While some UV is filtered by the atmosphere, UVA and UVB reach the earth's surface in a ratio of 95% to 5%.⁶ Sunbeds tend to be designed to emit mainly UVA and smaller amounts of UVB. However, in recent years, lamps of sunbeds have been manufactured that produce higher levels of UVB to mimic the solar spectrum and

¹ The Department of Health, Social Services and Public Safety (DHSSPS), Regulation of the Sunbed Industry in Northern Ireland, [Consultation Report](#): A summary of responses and Departmental Decisions. 12 April 2010 p.5

² Ibid p.7

³ House of Commons [Hansard Debates](#) for Second Reading of Sunbeds (Regulation) Bill - 29 January 2010

⁴ Ulster Cancer Foundation, '[Health Experts gather in Belfast for sunbed seminar](#)' 18th May 2007

⁵ 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

⁶ House of Commons Library, *Sunbeds (Regulation) Bill.*, Bill 19 of 2009-10. [Research Paper 10/07](#)

speed the tanning process. While UVB has well known carcinogenic properties and whose excessive exposure is known to lead to the development of skin cancers, recent scientific studies suggest that high exposures to the longer wavelength UVA could also have an impact on skin cancer occurrence.⁷

2.1 Effects of Sunbeds on Health

UV radiation is a known cause of damage to body tissues through 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.⁸

A key UK report on the health effects and risks of sunbed exposure, as requested by the four UK Departments of Health, 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.

The four key recommendations within the report⁹ broadly sought:

*'Regulation of these services, including the prohibition of commercial use, sale or hire of sunbeds to under 18s; the prohibition of unsupervised or self-determined use of sunbeds; the requirement for operators to provide adequate protective eyewear and for its use to be compulsory; for all staffed salons to be licensed and registered; for detailed written information on the health risks to be provided to clients; for commercial outlets to be prohibited from using information promoting unproven benefits and for all sunbeds to conform to appropriate national standards. We recommend that inspection of outlets should be carried out to determine compliance with regulations. Enforcing authorities should have sanctioning powers if licensing is imposed. Staff at commercial outlets should be trained to a standard level of competence. COMARE recommends that Public Health campaigns on the risks from UV radiation exposure should be enhanced and particular effort should be targeted at children. An appropriate authority should review the advertising by the sunbed industry. COMARE recommends further research into areas such as sunbed use and the risk and aetiology of melanoma and non-melanoma skin cancers (NMSCs); the correlation between skin damage and sunbed exposure and the psychology of tanning.'*¹⁰

2.1.1 Skin Cancer

There are two main types of skin cancer. **Malignant melanoma** is the most serious type of skin cancer and it usually develops in cells in the outer layer of the skin. **Non-melanoma skin cancer** is more common and the majority are either basal cell carcinomas or squamous cell carcinomas, both of which are highly treatable and survival rates are very high. Both

⁷ World Health Organisation webpage, exposure [Sunbeds, Tanning and UV exposure](#)

⁸ The 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, p 11

⁹ These are included in full in *Annex A*

¹⁰ [Press Release](#); COMARE 13th Report: The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices – 19 June 2009

types tend to be slow growing, appearing commonly on sun-exposed areas. Malignant melanomas are less common but are more frequently fatal.¹¹

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

A variety of national and international official advisory bodies and professional organisations argue that exposure to UV radiation is potentially dangerous, chiefly due to its link with skin cancers. The predominant skin type of the indigenous population of NI – known as Celtic skin – is understood as having a higher risk factor than other skin types of developing cancer from ultraviolet radiation.¹² 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 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) alongside substances like 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".¹³

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, this estimate is subject to many caveats and the true effect could be substantially lower or higher.¹⁴

2.1.2 Possible Benefits

Certain types of sunbed 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:

¹¹ DHSSPS Regulation of the Sunbed Industry in Northern Ireland: [Initial Public Consultation](#) – November 2009 p. 6

¹² Ibid p.4

¹³ International Agency for Research on Cancer, 'A review of human carcinogens—Part D: radiation', *Lancet Oncology*, August 2009

¹⁴ 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 means 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.¹⁵

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.¹⁶

2.2 The Current Debate and Statistics

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.

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.

In NI skin cancer is the most common cancer accounting for 28% of all individuals diagnosed with cancer. In 2007, 233 cases of malignant melanoma and 2,772 cases of non-melanoma skin cancer were recorded. In 2007, malignant melanoma caused 55 deaths, and left many people with extensive scarring as a result of surgery carried out to remove melanomas.¹⁷

¹⁵ The Sunbed Association webpage, Frequently asked questions (19th May 2010)
<http://www.sunbedassociation.org.uk/faqs.php>

¹⁶ COMARE, 'The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices', 19 June 2009, p 8

¹⁷ NI Cancer Registry

In an audit of 248 patients with melanoma by the NI Cancer Registry, 24% had significant sun exposure recorded in their notes. This exposure arose as a consequence of sunny holidays, multiple sunburn, previous sunbed use, and sun exposure in youth.

A further report, published in the British Journal of Dermatology, in which 332 tanning salons in NI took part, reported that only 51% of salons vetted clients for age; within 20% of salons skin type was not discussed with clients; and in only 31% of cases patients with a history of skin cancer were advised not to use a sunbed.¹⁸

3 Current Regulation of Sunbeds in NI

In NI, at present, the indoor tanning industry is not subject to any form of direct statutory regulation. However, under health and safety at work legislation, employers and self-employed people have a duty to assess the risks to workers and any other people who may be affected by their work or business.

Sunbed machines themselves are regulated by 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 “medical use only” devices) is widely used by Member State regulatory bodies and sunbed manufacturers.¹⁹

A UK wide industry association, The Sunbed Association (TSA), provides voluntary regulation via a code of practice, adherence to which is a condition of membership. The code places a requirement on salons to be supervised, restricts sunbed use to those aged over 16 (or whatever age is legally required in the jurisdiction), and specifies other aspects of best practice such as advising against sunbed use for those with very fair skins or other known cancer risks. However, only approximately 20% of sunbed operators in the UK²⁰, and only 16% of operators in NI²¹, are currently members of TSA.

The COMARE report summarises the main features and enforcement of the code as follows:

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

¹⁸ A. Gavin, C. Donnelly, A. Devlin,* C. Devereux, G. O’Callaghan, G. McElwee, S. Gordon, T. Crossan, N. McMahon, P. Loan, S. Martin, L. McPeak, J. Caughey & A.H. O’Hagan., ‘Public at risk: a survey of sunbed parlour operating practices in Northern Ireland’ Northern Ireland Cancer Registry, Queen’s University Belfast, Belfast, November 2009

¹⁹ 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

²⁰ House of Commons Library Service, [Sunbeds \(Regulation\) Bill Research Paper 10/07_27](#)th January 2010.

²¹ [Northern Ireland Sunbed Survey, 2007](#)

*information for customers. Members must demonstrate compliance with the code of practice during inspections of their premises.*²²

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.²³

In NI, district councils have recognised the health risks posed by sunbeds and have removed all sunbeds from their premises.²⁴

4 Legislation in other jurisdictions

4.1 Scotland

Scotland was the first UK jurisdiction to enact specific 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:

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

Regulations enacting these provisions came into force in late 2009 following public consultation.²⁵

4.2 England and Wales

The Sunbeds (Regulations) Act was a Private Member's Bill which gained Royal Assent on the 8 April 2010. The Act's primary objective is the creation of a duty on sunbed businesses to prevent the use of sunbeds by under-18s specifically on business premises. It achieves this aim through the creation of 'restricted zones'. These are the smallest enclosed area around the sunbed and could, in practice relate to a cubicle in which the sunbed is housed or equally the entire room in which it is located if there is no smaller enclosure. The Act defines the presence of someone under-18 within a restricted zone as an offence equal to actual sunbed use, thus easing the burden of proof. This is enforced by local authorities.

The Act also allows for further Regulations to be made by the appropriate English and Welsh authorities²⁶ regarding the conditions of commercial sunbed use, and the selling and hiring of sunbeds to under-18s. These regulations are currently subject to consultations.

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*). Regulation modelled on existing local authority licensing systems, which typically involve annual inspections, proportionate sanctions for persistent non-compliance, and the

²² COMARE, 'The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices,' 19 June 2009, p 45

²³ Ibid p.49-51

²⁴ DHSSPS [Initial Public Consultation](#) p.10

²⁵ Consultation on the draft *Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009*

²⁶ In England this is the Secretary of State and in Wales, the Welsh Ministers.

ability to specify training standards for licensees and operators, has been suggested as a possible alternative to direct statutory control within the COMARE Report.²⁷

4.2 EU jurisdictions and the USA

The Department of Health and Children in the Republic of Ireland launched a public consultation in 2008 on proposed legislation to regulate sunbeds, including a ban on the use of sunbeds by the under 18s; controls on the sale and/or rental of sunbeds; inspections to ensure compliance; registration with the competent authority; and exemptions for medical use. Recent media reports citing department officials have stated that 'a memo would be submitted to Government for approval of the policy proposals... by the end of the second quarter [June] in 2010'²⁸ and that legislation could be anticipated within the next two years.

There is specific legislation on sunbed use in Belgium, Finland, France, Norway, Portugal, Spain and Sweden and the majority of legislative regimes specify age thresholds for sunbed use.²⁹

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.³⁰

Twenty nine states within the USA operate a system whereby those under particular age thresholds are required to obtain parental permission prior to using sunbeds. The age limits for these restrictions differ between states; covering under-15s to under-18s.

5 Options Considered

Option 1: Do Nothing

This would allow persons under 18 years of age to continue to use, buy and hire sunbeds. It would also allow persons over 18 years of age to continue to use sunbeds without knowing the potential health risks of sunbed use and perhaps not wearing adequate protective eyewear. It would also allow sunbed operators to operate unsupervised outlets, with the associated risk of children and young people sustaining serious burns.

It would do nothing to protect the public from the risk of skin damage and the increased risk of developing skin cancer as a result of sunbed use. It would mean that many people, especially younger members of the population, would remain unaware of the serious risks of sunbed use and the longer term implications for their health.³¹

This option would provide no health benefits to the population of NI.³²

Option 2: Introduce a Bill Including Several Specific Measures.

²⁷ The COMARE Report p.51

²⁸ The Irish Times, '[Cancer society calls for regulation of sunbeds](#)' 10 April 2010

²⁹ House of Commons [Hansard Debates](#) for Second Reading of Sunbeds (Regulation) Bill - 29 January 2010

³⁰ COMARE, 'The health effects and risks arising from exposure to ultraviolet radiation from artificial tanning devices', 19 June 2009, p 47-49

³¹ DHSSPS, [Regulation of the Sunbed Industry In Northern Ireland Regulatory Impact Assessment](#) p.4

³² Ibid p.5

This option was viewed by the Department as the best way to achieving its main aim at present, that is, to protect persons under 18 years of age, try to change public behaviour towards sunbed use and ensure they are fully aware of the associated health risks. It is considered a necessary step to regulating the industry. The Measures to be included would:

- prohibit operators of sunbed premises from allowing anyone under 18 years of age to use a sunbed on their premises;
- prohibit the sale or hire of sunbeds to anyone under 18 years of age;
- prohibit an operator of sunbed premises to allow a sunbed to be used in unsupervised premises;
- place a duty on the operator of sunbed premises to ensure that the user of a sunbed is equipped with adequate protective eyewear on every occasion;
- place a duty upon the operator of sunbed premises to display a public information notice on the health risks associated with sunbed use;
- place a duty on the operator of sunbed premises to provide the user of the sunbed with detailed written information on the health risks associated with sunbed use; and
- prohibit an operator of sunbed premises from making unfounded or unproven claims attributing health benefits to sunbed use.

This option would result in a significant reduction of persons under 18 years of age being able to use sunbeds, would ensure that those adults intending to use sunbeds do so fully informed of the risks to their health and it is expected to reduce overall the use of sunbeds by adults. The measures would ensure a positive impact on public health in the longer term, especially amongst young people.³³

There may be savings in relation to the costs associated with treating those with cancer and other potential effects of sunbed use such as dermatology treatment costs. Unfortunately it is not possible to tell what proportion of cancer related appointments are associated with prior use of sunbeds and to therefore place a cost value on the treatment.³⁴

Option 3: Include a further licensing scheme for sunbed premises.

One other possible option would have been to include a licensing scheme along with the current policy proposals. However, the additional licensing scheme would have incurred set-up and administration costs for the Department and district councils. Furthermore, it would have had cost implications for sunbed operators, many of whom run small businesses. A licensing scheme would also have placed an onus on local authorities to regularly inspect premises to ensure compliance with licence requirements.

It was felt that the introduction of a licensing scheme could be viewed as an unnecessary burden to place on councils at this stage in the local government reform process. The potential additional benefits afforded by a licensing scheme were not evident and the Department is not convinced that a licensing scheme is an effective and proportionate response to the problems identified. This is particularly true when the additional costs associated with any form of licensing regime would fall on small businesses.

The policy proposals informing the Bill should result in a significant reduction of persons under 18 years of age being able to use sunbeds, and should ensure that those adults intending to use sunbeds do so fully informed of the risks to their health. The measures

³³ DHSSPS [Regulatory Impact Assessment](#), p.5

³⁴ Ibid

should also ensure a positive impact on public health in the longer term, especially amongst young people.

Result: Following the Regulatory Impact Assessment Consultation the Department considered whether 2 of the measures which had been included in the initial consultation but excluded from Options 2 and 3, could be added to the proposed Bill, namely, a requirement for accredited staff training and ensuring that sunbeds adhere to certain requirements. These measures are now included in the Bill, however, would need to be explored further before any future implementation in subsequent subordinate legislation.

6 Overview of the Bill

The Bill has 20 clauses and 2 Schedules. It comprises 3 headings:

- I. **Offences** - Consists of 11 clauses and covers the prohibition of the use, sale or hire of a sunbed to persons under the age of 18 with an exemption for medical treatment. It also places certain duties on operators of sunbed premises such as:
 - A duty to display information notices and providing sunbed users/buyers with information about the risks associated with sunbed use;
 - A duty to make protective eyewear available to users;
 - A duty to secure that those who allow people to use sunbeds are trained to a required standard; and
 - A duty that all sunbeds for use in the sunbed premises meet required standards;
- II. **Enforcement** – comprises 4 clauses and relates to the enforcement of provisions of the Bill, outlines fixed penalties for particular offences, deals with the obstruction of officers in exercise of their functions under the Bill and provides for the registration of sunbed premises.
- III. **General** – consists of 5 clauses and deals with offences committed by corporate bodies and makes provisions in respect of subordinate legislation. It also sets out the title, commencement dates and includes interpretation provisions.

Clause 1: Prohibition on allowing use of sunbeds by persons under 18

Provides that it is an offence for an operator of sunbed premises to allow a person under the age of 18 to use a sunbed on the sunbed operator's premises. It also describes circumstances which would constitute the operator of sunbed premises as having taken all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

The measure herein received full support from consultees³⁵ as it was recognised that self-regulation would not be an effective way forward.³⁶ Some respondents highlighted the increased risk of developing melanoma among young sunbed users as their skin is more susceptible to UV radiation damage as adult levels of the protective pigment, melanin, was yet to develop. Other respondents highlighted a report from Wales in which it was found that more than half of sunbed premises allowed children under the age of 16 to use a sunbed.

³⁵ A Full list of Respondents to the Department's consultations is available in Annex B.

³⁶ Ibid p.12

This report was undertaken by the National Assembly of Wales, Health, Wellbeing and Local Government Committee in their *Inquiry into the Use and Regulation of Sunbeds*.³⁷

This clause also includes a power for the Department to prescribe forms of identification to ensure that a sunbed user is in fact over 18. The rationale of including this power within subordinate legislation is to allow the Department to take account of documents which may in the future become widely recognised and accepted forms of identification. It will be subject to negative resolution by the Assembly.

Clause 2: Prohibition on sale or hire of sunbeds to persons under 18

Provides that it is an offence for a person to sell or hire a sunbed to a person under the age of 18. It also describes circumstances which would constitute the seller or hirer as having taken all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

Many respondents within the consultation believed that omitting this area of the sector from the Bill would weaken its efficacy. Others highlighted the difficulty in enforcing this measure, and linked powers regarding eyewear and over-use, where the sunbed was originally hired by an adult.

The Department has also included a power for subordinate legislation under this clause again with regards to forms of identification based on the same rationale as that under Clause 1.

Clause 3: Remote sale or hire of sunbeds

Provides that where a sale or hire of a sunbed takes place in circumstances where the premises that receive an order are not the same as the premises from which the sunbed is despatched for sale or hire. Subject to subsection (3), the sale or hire is to be treated as taking place on the premises where the order is taken. Subsection (3) provides that, where the premises where the order is taken are not in Northern Ireland but the premises from which the sunbed is despatched are in Northern Ireland, the sale or hire is to be treated as taking place on the premises from which the sunbed is despatched.

This area was highlighted within the consultation in terms of measures to limit purchase and hiring of sunbeds by under-18s. It was suggested that the problem of enforcement is exacerbated when considering internet purchases³⁸ and the Department determined to include particular measures for remote purchases which mean that there was clearer understanding of where an offence is committed in these cases.

Clause 4: Prohibition on allowing unsupervised use of sunbeds

Provides that it is an offence for an operator of sunbed premises to allow a person under the age of 18 to use a sunbed without supervision on the sunbed operator's premises. It also provides that there is a defence for the operator of sunbed premises to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

³⁷ National Assembly of Wales, Health, Wellbeing and Local Government Committee in their '*Inquiry into the Use and Regulation of Sunbeds*' <http://www.assemblywales.org/cr-ld7779>

³⁸ DHSSPS [Consultation Report](#), p.15

While unsupervised sunbed salons are thought not to have transferred to NI as yet,³⁹ the measure received strong support for implementation within the Consultation. Many respondents highlighted the potential to misuse sunbeds and the impossibility of ensuring adequate safety measures in unsupervised premises.

Clause 5: Duty to provide information to sunbed users, or buyers, etc

Places a duty on operators of sunbed premises and hirers/sellers of sunbeds to provide information about the health risks associated with using sunbeds to those who seek to use, buy or hire a sunbed. It also provides that failure to provide such information is an offence.

This measure also received strong support for implementation. Many respondents added that this information should also be made available when customers hire or buy a sunbed. Some respondents suggested that customers should sign a document to clarify they have read and understood the risks.

The Department proposes that it will prescribe the form and manner of such information within subordinate legislation; the detail of which will be developed by the Department following consultation and standard practices. The Department rejected the call to enforce signed declarations as it would place an unnecessary bureaucratic burden on operators to retain these records.

Clause 5 includes several powers delegated to the Department. The first through Clauses 5(2) & 5(11), allow the Department to prescribe the detail of the health information to be given to sunbed users, and its form and manner. The second through Clauses 5(5) and 5(11) is regarding the manner and form of health information given to sunbed purchasers. The third is regarding those hiring sunbeds through Clauses 5(7) and 5(11). The rationale for doing all three is that it is anticipated that the health information would be relatively detailed and it is very likely that this would require updating as new research and information on this matter becomes available. For this reason it is felt that it would be more appropriate to include this information in subordinate legislation rather than on the face of the Bill.

The information to be prescribed would be developed from consultation responses, expert bodies and scientific research. For this reason these regulations would be subject to negative resolution.

Clause 6: Duty to display information notice

This clause places a duty on operators of sunbed premises to display an information notice about the health risks associated with using sunbeds in a position which is readily visible to anyone proposing to use a sunbed on the premises. It also provides that failure to display such an information notice is an offence.

This area was described in the Department's consultation report as receiving 'strong support for implementation'⁴⁰ due to the failure of many operators to provide information on the health risks and the prevalence of claims regarding the health benefits of sunbed use. Ensuring that those using sunbeds were fully informed in making a decision was seen as key. Some respondents suggested the information on these notices should be developed 'by recognised expert health bodies.'⁴¹

³⁹ DHSSPS [Initial Public Consultation](#) p.4

⁴⁰ DHSSPS, [Consultation Report](#), p.17

⁴¹ Ibid

The Department determined that such notices will have to be placed in a position where it will be clearly visible to those using sunbeds on the premises. The information will be provided by the Department in subordinate legislation following normal consultation processes.

Clause 6(2)(a) & 6(4) includes powers for the Department to issue subordinate legislation again to prescribe the detail of the health information which must be displayed and the form and manner on the same rationale as those under Clause 5. These regulations would be subject to negative resolution.

Clause 7: Prohibition on provision or display of other information

Provides that it is an offence for a an operator of sunbed premises from providing or displaying any material containing statements relating to the health effects of sunbed use other than information that may be prescribed by the Department.

There was strong support for the implementation of this measure within the consultation. Some respondents highlighted that 16% of premises claimed health benefits in the NI Sunbed Survey 2007 while others pointed out that operators could legitimately promote Vitamin D synthesis as a potential health benefit.

The Department determined that the Bill would make it an offence for any health benefits to be advertised other than those provided by the Department. With reference to the issue of Vitamin D synthesis, the Department contends that expert organisations have documented that the risks associated with sunbeds outweigh any perceived benefits.⁴²

This clause includes a power for the Department to prescribe through regulations, further to the provisions in clauses 5 & 6, additional information to be displayed or provided to those who propose to use a sunbed, where considered necessary. These regulations would be subject to negative resolution.

Clause 8: Protective eyewear

The provisions herein mean that an operator of sunbed premises who does not make available protective eyewear for a person proposing to use a sunbed commits an offence. It also provides that an operator of sunbed premises should ensure, as far as is reasonably practicable, that protective eyewear is worn by users of sunbeds.

While the measure proposed received full support from consultation respondents, many respondents felt that free eyewear should be kept on site and proactively given to users.

The Department recognised the difficulty faced by operators in forcing their customers to wear eyewear and therefore the duty proposed is focused upon operators ensuring that customers have eyewear in their possession prior to commencing their sunbed session. The operators should be under no obligation to supply it themselves.

The Department retains the right to prescribe through subordinate legislation further requirements for this eyewear as specific standards become available in the future. The rationale behind this decision was that as standards may require updating in light of changes to eyewear design, it was felt that it would be more appropriate to include this information in subordinate legislation rather than on the face of the Bill. Measures would be subject to negative resolution in the Assembly.

⁴² Ibid p.21

Clause 9: Requirements in relation to training

Places a duty on operators of sunbed premises to secure that persons who allow other persons to use a sunbed on those premises meet such training requirements as may be prescribed. Failure to do so is an offence. It also provides that there is a defence for the operator of sunbed premises to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

This measure elicited general support from respondents to the consultation. However, this was qualified by the reality that there were no accredited training courses available. Some district councils advised that local authorities would be willing to apply their expertise and liaise with sunbed businesses and trade associations to develop a syllabus.

This measure was included within the Bill as Introduced to the Assembly following the Regulatory Impact Assessment on the provision that it would be 'explored further before any future implementation in subsequent subordinate legislation.'⁴³

Clause 9(2) includes a discretionary power which allows the Department to prescribe the standards and other requirements which such training must meet. These provisions are not included on the face of the Bill as is anticipated that the detail of this training would require updating as new training industry standards emerge and further research into the damage caused by sunbeds becomes available. These regulations would be subject to negative resolution.

Clause 10: Requirements in relation to sunbeds

Places a duty on operators of sunbed premises to only make available for use sunbeds which meet such requirements as may be prescribed. Failure to do so is an offence. It also provides that there is a defence for the operator of sunbed premises to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

There was strong support for this measure's implementation, but recognition for the challenges such a measure would present. First, the measurement of ultraviolet emissions was difficult and equipment to do so expensive. Furthermore, there could be difficulties in determining whether operators could change bulbs or replace full sunbeds if not compliant. The difficulty is illustrated by the fact that in a recent report, only 62% of salons in the UK knew what level of UV radiation their sunbeds produced and in 71% of tanning salons the sunbeds' operating manual was unavailable.⁴⁴

Clause 10(2) provides the Department with a discretionary power to prescribe the technical requirements to which sunbeds would have to adhere, for example regarding the output of UV bulbs or EU safety standards. The rationale for including these measures in subordinate legislation is it may be necessary to prescribe and update these requirements as new standards become available. In addition, the requirements, by their very nature, are likely to be detailed and/or technical. Resulting regulations would be subject to negative resolution.

Clause 11: Exemption for medical treatment

The proposed Bill provides an exemption for offences under this Act where a sunbed is used for the purposes of medical treatment under the supervision or direction of a registered

⁴³ Ibid p.43

⁴⁴ 'Public at risk: a survey of sunbed parlour operating practices in Northern Ireland' Northern Ireland Cancer Registry, Queen's University Belfast, Belfast, November 2009

medical practitioner and the sunbed is in, or provided by, a healthcare establishment (as defined) and the sunbed is made available only for the purpose of medical treatment.

Clause 12: Enforcement by district councils

Places a duty on district councils to enforce the provisions of the Bill in their area. It also introduces Schedule 1 which makes provision about the powers of authorised officers.

Most of the District Councils that responded to the Consultation stated that they would be best placed to carry out the enforcement of the measures introduced, 'given their extensive experience in regulatory control and their particular interest and proactive approach in this area. Some District Councils advocated a risk based approach to inspection and enforcement rather than a prescriptive frequency of inspection.'⁴⁵

Clause 13: Fixed penalties for certain offences

Provides that authorised officers may give a fixed penalty notice to persons they have reason to believe have committed an offence. It also introduces Schedule 2 which makes further provision about fixed penalties.

Clause 14: Obstruction of officers

Provides that anyone who intentionally obstructs an authorised officer acting in the exercise of the officer's function under this Bill commits an offence.

Some respondents to the Consultation mentioned that 'the consultation document did not investigate or propose how the measures would be enforced.'⁴⁶ The Department responded suggesting that it would address these questions through 'offences in relation to obstruction of an authorised officer, failing to give an authorised officer information which he requires, or making a false or misleading statement.'⁴⁷

Clause 15: Registration of sunbed premises, etc.

This clause provides the Department with a discretionary power to require sunbed premises, or those proposed to be used as sunbed premises, to be registered with District Councils. This would also include those premises on which the sale or hire of sunbeds takes place.

The regulations would also be able to create offences, defences, use of fixed penalty fines and the registration fees which may be charged. This registration scheme would have to be relatively detailed, and may require amendment in response to feedback from District Councils.

Many respondents to the consultation, including the district councils, supported the introduction of a registration and licensing scheme in the responses to the Consultation paper. Some sought specific standards be met in order to obtain and retain a licence, while others preferred registration over licensing at this stage. The Department felt that a licensing scheme would involve substantial cost implications for the Department, district councils and sunbed operators themselves. It would also place an onus on district councils to regularly inspect premises to ensure that there is compliance.

⁴⁵ DHSSPS, [Consultation Report](#) p.34

⁴⁶ Ibid p.36

⁴⁷ Ibid

Clause 16: Offences by bodies corporate, etc.

Provides that, if an offence under this Bill is committed with the consent or connivance of, or is attributable to the neglect of a partner of a body corporate then that partner, as well as the partnership, is guilty of the offence.

Clause 17: Regulations

Contains provision about the required procedures for making subordinate legislation under the Bill.

Clause 18: Interpretation**Clause 19: Commencement**

This clause provides the Department with the power to bring the remaining provisions into operation at an appropriate time.

Clause 20: Short title.**Further areas for Department subordinate legislation.****Schedule 2 paragraph 4 – Levels of fixed penalty notices**

The Bill creates a number of offences which are subject, on summary conviction, to a fine as specified in the standard scale. However, this provision also allows the Department to specify amounts of fixed penalty notices which may be used to discharge liability for offences outlined therein.

It is currently anticipated that the levels of fixed penalty would vary from £50 to £100, according to the offence in question.

The regulations would be subject to scrutiny by the Assembly via affirmative resolution, to ensure that the level of penalty is proportionate to the offence.

Schedule 2 paragraph 14 – Further provision in respect of fixed penalty notices

This clause provides the Department with a discretionary power to prescribe further information in relation to fixed penalty notices. As such information is likely to be relatively detailed, and may require amendment in light of feedback from district councils, it is felt that it is more appropriate to include these specifics in subordinate legislation. The regulations will be subject to negative resolution in the Assembly.

Other areas discussed within the Consultation**Measure 8: A duty to limit the number of and frequency of sunbed sessions provided to an individual.**

Respondents broadly supported the measure but recognised the challenge of determining a 'safe' limit on the number of sunbed sessions and enforcing this across multiple operators. Suggestions discussed a linked database or a restriction on special offers which gave reduced costs sessions within limited timeframes.

The Department determined not to include provisions in this area given the difficulty of establishing a 'safe' threshold and the challenges of enforcing such a measure. If a safe level is determined in future the Department suggests it may seek to insert a clause within the legislation, but would need to be considered at that time.⁴⁸

7 Costs

The Department suggests the Bill would not impose any significant additional costs to the Department or sunbed premises and the enforcement would not have any significant additional costs for local district councils.

The costs to run a campaign, including posters and press releases to raise awareness on the impacts of the legislation are estimated to be in the region of £15,000. The Department/Public Health Agency would supply sunbed premises with initial supplies of the public information notice and written information on the health risks associated with sunbed use that they would be required to display and provide users. Thereafter, these materials would be placed on the Department's website for the operators of sunbed premises to download. It is anticipated that the initial cost to supply these materials would be less than £4,000 for the Department/Public Health Agency.

It is not considered that the proposed measures would result in any significant additional costs for local district councils. The district council Environmental Health Officers already have powers to inspect sunbed premises under health and safety at work legislation, and it is anticipated that inspection of premises to ensure compliance could be incorporated into existing inspection programmes.⁴⁹

The financial losses to businesses due to the removal of demand from under-18s are thought to be 'negligible'⁵⁰. This assertion is difficult to reconcile with the Department's need to introduce legislation in the first place. This was an issue which was raised by Mark Simmonds MP in the Second Reading of the Sunbeds (Regulation) Bill in Westminster when he sought to establish 'whether any research has been done or calculation made about what proportion of a sunbed salon's revenues is generated by under-18s and therefore what impact the Bill would have on the industry.'⁵¹

8 Human Rights and Equality Impact Assessment

The aim of the measures within the Bill is to protect the public's health by restricting certain commercial operations that are injurious to health. The Department carried out an equality screening exercise and concluded that the measures will improve the health for all sunbed users irrespective of any correlation with the nine Section 75 distinctions. Regarding sunbed operators, there was no evidence of any correlation with any of the Section 75 distinctions. As a result, it was decided that a full Equality Impact Assessment (EQIA) would not be required.

Furthermore, the Department holds that the provisions of the Bill are compatible with the European Convention on Human Rights.

⁴⁸ Ibid p.28

⁴⁹ DHSSPS, [Regulatory Impact Assessment](#) p.7

⁵⁰ Ibid

⁵¹ The Sunbeds (Regulation) Bill , [Second Reading](#) in the House of Commons, 29 Jan 2010: Column 1079

9 Regulatory Impact Assessment

The Department had given small businesses and a wide range of stakeholders an opportunity to make comments and suggestions during the formal public consultation on the Regulation of the Sunbed Industry in Northern Ireland. A further consultation was undertaken regarding the Regulatory Impact Assessment by the Department during the period from 11 February 2010 until 11 March 2010.⁵²

As a result, the Department is content that implementation of the measures in the Bill would not have any significant additional costs to the Department or sunbed premises and the enforcement would not have any significant additional costs for local district councils.

ANNEX A: Extract from the COMARE Thirteenth Report. Recommendations in Full⁵³

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, e.g. 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 European Standard (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

⁵³ 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)

maintenance records, staff on duty and accident reports). If licensing is enforced, the local authorities should be provided with sanctioning powers.

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 (i.e. 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.

ANNEX B: List of Respondents to the DHSSPS's Sunbed Bill Consultation.

1. Action Cancer
2. Antrim Borough Council
3. Ards Borough Council
4. Art O'Hagan
5. Armagh City and District Council
6. Association of Personal Injury Lawyers (APIL)
7. Ballymena Borough Council
8. Ballymoney Borough Council
9. Banbridge District Council
10. Belfast City Council
11. British Association of Dermatologists
12. British Medical Association (NI)
13. British Psychological Society
14. Cancer Research UK
15. Chief Environmental Health Officers Group (CEHOG)
16. Coleraine Borough Council
17. Cookstown District Council
18. Craigavon Borough Council
19. Department of Agriculture and Rural Development
20. Department of Enterprise, Trade and Investment
21. Derry City Council
22. Disability Action
23. Dr Fulton & Sister McGroarty, Western Health and Social Care Trust
24. Dungannon and South Tyrone Borough Council
25. Fermanagh District Council
26. Iris Robinson MP MLA
27. Larne Borough Council
28. Limavady Borough Council
29. Lisburn City Council
30. National Association of Councillors Northern Ireland Region
31. Newry and Mourne District Council
32. Newtownabbey Borough Council
33. North Down Borough Council
34. Northern Health and Social Care Trust
35. Northern Ireland Ambulance Service Health and Social Care Trust
36. Northern Ireland Cancer Network/Regional Dermatology & Clinical Governance Group
37. Northern Ireland Cancer Registry
38. Northern Ireland Judicial Appointments Commission (NIJAC)
39. Northern Ireland Melanoma Strategy Implementation Group (NIMSIG)
40. Northern Ireland Practice & Education Council for Nursing & Midwifery (NIPEC)
41. Northern Ireland Sunbed Working Group (sub- group of NIMSIG)
42. Northern Group Systems (Environmental Health)
43. Omagh District Council
44. Public Health Agency
45. Royal College of Nursing
46. Royal College of Physicians
47. Royal College of Physicians of Edinburgh
48. Social Democratic & Labour Party (SDLP)
49. Southern Group Environmental Health Committee (SGEHC)
50. Strabane District Council
51. The Sunbed Association
52. Ulster Cancer Foundation