

**AGENDA ITEM NO 5**

**TITLE: ADOPTION OF REVISED BYELAWS IN RESPECT OF ACUPUNCTURE, TATTOOING, SEMI PERMANENT SKIN COLOURING, COSMETIC PIERCING AND ELECTROLYSIS AND INCREASE OF FEES.**

Committee: Licensing

Date: 9<sup>th</sup> March, 2011

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[K293]

1.0 ISSUE

1.1 To seek approval of the adoption of revised byelaws in respect of acupuncture, tattooing, semi- permanent skin colouring, cosmetic piercing and electrolysis, and for an increase in the fees charged for registration of skin piercing within the District.

2.0 RECOMMENDATION(S)

2.1 That Members approve the adoption of the revised Byelaws, and the proposed increase in registration fees.

3.0 BACKGROUND/OPTIONS

3.1 The Local Government (Miscellaneous Provisions) Act 1982 introduced specific controls for certain skin piercing activities such as ear piercing, tattooing, acupuncture and electrolysis.

3.2 The controls enabled Local Authorities to require the registration of such activities to ensure that operators meet hygienic standards. The principal reason for the introduction of the controls relates to the risks of transmission of blood borne diseases such as Aids and Hepatitis.

3.3 Since the initial controls were introduced by the 1982 Act, a number of developments in skin piercing primarily associated with fashion trends then followed.

3.4 Consequently the practices known as cosmetic body piercing for studs, rings etc. on parts of the body other than the ear lobes, and also semi-permanent skin colouring, became very fashionable, but remained unregulated.

3.5 Local Authorities expressed concern for a number of years that these practices pose potential health risks for the transmission of blood borne diseases, due to skin being pierced, yet were unregulated.

- 3.6 In recognition of these concerns the Government introduced through Section 120 and Schedule 6 of the Local Government Act 2003, powers to require the registration of businesses providing cosmetic piercing and skin colouring services.
- 3.7 The powers were to be adopted by Local Authorities, to enable regulation and compliance with the new byelaws.
- 3.8 The Council adopted the model byelaws as a result of the revisions brought in by the 2003 Act, and introduced separate conditions for the practices of semi permanent skin colouring and cosmetic body piercing.
- 3.9 The Department of Health have since revised the Model Conditions for skin piercing.
- 3.10 The revised conditions consolidate into one set, conditions to cover all the various types of skin piercing activities, and have updated specific provisions to reflect infection control advice and industry practice. (Appendix 1)
- 3.11 The general procedure for adopting the byelaws is contained within Section 236 of the Local Government Act 1972. The specific powers to make byelaws in respect of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis are contained in Sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- 3.12 All byelaws must be confirmed by the relevant Secretary of State. The Government department with responsibility for confirming byelaws in this instance is the Department of Health.
- 3.13 If the Council agrees to adopt the byelaws, the Council Seal will be applied to the conditions.
- 3.14 If adopted by the Council, an advertisement will be published in a local newspaper giving notice that the Council intends to apply for confirmation to the Department of Health. A copy of the byelaws will be held on deposit at the Council for inspection by the public for one month after the date of the newspaper publication. Any person will have the right to object to the Department of Health before the byelaw is confirmed.
- 3.15 The byelaws will usually come into force one month after they have been confirmed.
- 3.16 The current charges made by the Council for skin piercing registration is £175.00.
- 3.17 It is proposed that the current fee be increased in line with the Consumer Prices Index for January 2011, which was 4%, meaning an increase of £7.00 per registration. Total cost of registration to be £182.00

#### 4.0 ARGUMENTS/CONCLUSIONS

- 4.1 The revised model byelaws, whilst consolidating separate byelaws into one document, also enhance provisions relating to infection control, which is extremely important for public health protection in terms of blood borne disease and infection control.
- 4.2 In the event of a premises carrying out one or more types of activity, one set of consolidated set of byelaws will apply; rather than different sets of conditions.
- 4.3 The revised guidance is less onerous on businesses in that it has relaxed standards relating to walls, floors and ceilings, and instead concentrates the focus on infection control in relation to the actual treatment processes.
- 4.4 Byelaws regarding the use of hand gels have been introduced, reflecting current practice in infection control.
- 4.5 The byelaws clarify the terminology on piercing equipment, to include equipment used to pierce areas of the body other than just ears.
- 4.6 Registration of a person and a premises is a one off fee, which lasts indefinitely. The businesses are subject to inspection and complaint investigations, including any follow up action which could be a formal letter, statutory improvement notice and further revisits. On application an initial advisory visit /inspection and any follow up action to ensure byelaws are met are required.

#### 5.0 FINANCIAL IMPLICATIONS

- 5.1 The cost of publishing an advertisement in a local newspaper.

#### 6.0 APPENDICES

- 6.1 Appendix 1 – Proposed revised Model Byelaws, Department of Health.

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**Background Documents****Location****Contact Officer**

Local Government  
(Miscellaneous Provisions) Act  
1982

The Grange,  
Ely

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Local Government Act 2003

Local Government Act 2003  
Regulation of Cosmetic piercing  
and skin colouring business  
guidance on section 120 and  
schedule 6. [www.dh.gov.uk](http://www.dh.gov.uk)

HSE LAC 76/2 Health and safety  
issues related to body piercing, tattooing  
and scarification

<http://www.hse.gov.uk/LAU/LACS/76-2.htm>

HSE LAC 14/1 Micropigmentation

<http://www.hse.gov.uk/lau/lacs/14-1.htm>

## MODEL BYELAWS

### Acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis

Byelaws for the purposes of securing the cleanliness of premises registered under sections 14(2) or 15(2) or both of the Local Government (Miscellaneous Provisions) Act 1982 and fittings in such premises and of persons registered under sections 14(1) or 15(1) or both of the Act and persons assisting them and of securing the cleansing and, so far as appropriate, sterilization of instruments, materials and equipment used in connection with the practice of acupuncture or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis, or any two or more of such practice and businesses made by ..... in pursuance of sections 14(7) or 15(7) or both of the Act.

#### Interpretation

1.—(1) In these byelaws, unless the context otherwise requires—

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982;

“client” means any person undergoing treatment;

“hygienic piercing instrument” means an instrument such that any part of the instrument that touches a client is made for use in respect of a single client, is sterile, disposable and is fitted with piercing jewellery supplied in packaging that indicates the part of the body for which it is intended, and that is designed to pierce either—

- (a) the lobe or upper flat cartilage of the ear, or
- (b) either side of the nose in the mid-crease area above the nostril;

“operator” means any person giving treatment, including a proprietor;

“premises” means any premises registered under sections 14(2) or 15(2) of the Act;

“proprietor” means any person registered under sections 14(1) or 15(1) of the Act;

“treatment” means any operation in effecting acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis;

“the treatment area” means any part of premises where treatment is given to clients.

(2) The Interpretation Act 1978 shall apply for the interpretation of these byelaws as it applies for the interpretation of an Act of Parliament.

2.—(1) For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor shall ensure that—

- (a) any internal wall, door, window, partition, floor, floor covering or ceiling is kept clean and in such good repair as to enable it to be cleaned effectively;
- (b) any waste material, or other litter arising from treatment is handled and disposed of in accordance with relevant legislation and guidance as advised by the local authority;
- (c) any needle used in treatment is single-use and disposable, as far as is practicable, or otherwise is sterilized for each treatment, is suitably stored after treatment and is disposed of in accordance with relevant legislation and guidance as advised by the local authority;

- (d) any furniture or fitting in premises is kept clean and in such good repair as to enable it to be cleaned effectively;
- (e) any table, couch or seat used by a client in the treatment area which may become contaminated with blood or other body fluids, and any surface on which a needle, instrument or equipment is placed immediately prior to treatment has a smooth impervious surface which is disinfected—
  - (i) immediately after use; and
  - (ii) at the end of each working day.
- (f) any table, couch, or other item of furniture used in treatment is covered by a disposable paper sheet which is changed for each client;
- (g) no eating, drinking, or smoking is permitted in the treatment area and a notice or notices reading “No Smoking”, and “No Eating or Drinking” is prominently displayed there.

(2)(a) Subject to sub-paragraph (b), where premises are registered under section 14(2) (acupuncture) or 15(2) (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the 1982 Act, a proprietor shall ensure that treatment is given in a treatment area used solely for giving treatment;

(b) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear-piercing or nose-piercing using a hygienic piercing instrument.

(3)(a) Subject to sub-paragraph (b), where premises are registered under section 15(2) (tattooing, semi-permanent skin-colouring and cosmetic piercing) of the 1982 Act, a proprietor shall ensure that the floor of the treatment area is provided with a smooth impervious surface;

(b) Sub-paragraph (a) shall not apply if the only treatment to be given in such premises is ear-piercing or nose-piercing using a hygienic piercing instrument.

**3.—(1)** For the purpose of securing the cleansing and so far as is appropriate, the sterilization of needles, instruments, jewellery, materials and equipment used in connection with treatment—

- (a) an operator shall ensure that—
  - (i) any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such article used in treatment—
    - (aa) is clean and in good repair and, so far as is appropriate, is sterile;
    - (bb) has not previously been used in connection with another client unless it consists of a material which can be and has been adequately cleansed and, so far as is appropriate, sterilized.
  - (ii) any needle, metal instrument, or other instrument or equipment used in treatment or for handling such needle, instrument or equipment and any part of a hygienic piercing instrument that touches a client is sterile;
  - (iii) any jewellery used for cosmetic piercing by means of a hygienic piercing instrument is sterile;
  - (iv) any dye used for tattooing or semi-permanent skin-colouring is sterile and inert;
  - (v) any container used to hold dye for tattooing or semi-permanent skin-colouring is either disposed of at the end of each treatment or is cleaned and sterilized before re-use.
- (b) a proprietor shall provide—
  - (i) adequate facilities and equipment for—
    - (aa) cleansing; and
    - (bb) sterilization, unless only pre-sterilized items are used.
  - (ii) sufficient and safe gas points and electrical socket outlets;
  - (iii) an adequate and constant supply of clean hot and cold water on the premises;

- (iv) clean and suitable storage which enables contamination of the articles, needles, instruments and equipment mentioned in paragraphs 3(1)(a)(i), (ii), (iii), (iv) and (v) to be avoided as far as possible.

4.—(1) For the purpose of securing the cleanliness of operators, a proprietor—

- (a) shall ensure that an operator—
  - (i) keeps his hands and nails clean and his nails short;
  - (ii) keeps any open lesion on an exposed part of the body effectively covered by an impermeable dressing;
  - (iii) wears disposable examination gloves that have not previously been used with another client, unless giving acupuncture otherwise than in the circumstances described in paragraph 4(3);
  - (iv) wears a gown, wrap or protective clothing that is clean and washable, or alternatively a disposable covering that has not previously been used in connection with another client;
  - (v) does not smoke or consume food or drink in the treatment area; and
- (b) shall provide—
  - (i) suitable and sufficient washing facilities appropriately located for the sole use of operators, including an adequate and constant supply of clean hot and cold water, soap or detergent; and
  - (ii) suitable and sufficient sanitary accommodation for operators.

(2) Where an operator carries out treatment using only a hygienic piercing instrument and a proprietor provides either a hand hygienic gel or liquid cleaner, the washing facilities that the proprietor provides need not be for the sole use of the operator.

(3) Where an operator gives acupuncture a proprietor shall ensure that the operator wears disposable examination gloves that have not previously been used with another client if—

- (a) the client is bleeding or has an open lesion on an exposed part of his body; or
- (b) the client is known to be infected with a blood-borne virus; or
- (c) the operator has an open lesion on his hand; or
- (d) the operator is handling items that may be contaminated with blood or other body fluids.

5. A person registered in accordance with sections 14 (acupuncture) or 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Act who visits people at their request to give them treatment should observe the requirements relating to an operator in paragraphs 3(1)(a) and 4(1)(a).

6. The byelaws relating to *state subject matter* that were made by *insert name* on the *insert date* and were confirmed by *insert name of confirmation authority* on *insert date* are revoked.

COUNCIL'S SIGNATURE

COUNCIL'S SEAL

The foregoing byelaws are hereby confirmed by the Secretary of State for Health  
on \_\_\_\_\_ and shall come into operation on \_\_\_\_\_

Member of the Senior Civil Service

Department of Health

## NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

Proprietors shall take all reasonable steps to ensure compliance with these byelaws by persons working on premises. Section 16(9) of the Local Government (Miscellaneous Provisions) Act 1982 provides that a registered person shall cause to be prominently displayed on the premises a copy of these byelaws and a copy of any certificate of registration issued to him under Part VIII of the Act. A person who contravenes section 16(9) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale (see section 16(10)).

Section 16 of the Local Government (Miscellaneous Provisions) Act 1982 also provides that any person who contravenes these byelaws shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale. If a person registered under Part VIII of the Act is found guilty of contravening these byelaws the Court may, instead of or in addition to imposing a fine, order the suspension or cancellation of the person's registration. A court which orders the suspension of or cancellation of a person's registration may also order the suspension or cancellation of the registration of the premises in which the offence was committed if such premises are occupied by the person found guilty of the offence. It shall be a defence for the person charged under the relevant sub-sections of section 16 to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

Nothing in these byelaws extends to the practice of acupuncture, or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis by or under the supervision of a person who is registered as a medical practitioner, or to premises in which the practice of acupuncture, or business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis is carried out by or under the supervision of such a person.

Nothing in these byelaws extends to the practice of acupuncture by or under the supervision of a person who is registered as a dentist, or to premises in which the practice of acupuncture is carried out by or under the supervision of such a person.

The legislative provisions relevant to acupuncture are those in section 14. The provisions relevant to treatment other than acupuncture are in section 15.

The key differences in the application of requirements in respect of the various treatments are as follows:

*The references in the introductory text to provisions of section 14 (acupuncture) of the Local Government (Miscellaneous Provisions) Act 1982 **only apply to acupuncture.***

*The references in the introductory text to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Local Government (Miscellaneous Provisions) Act 1982 **do not apply to acupuncture.***

*The references in paragraph 1(1) in the definition of "premises" to provisions of section 14 (acupuncture) **only apply to acupuncture.***

*The references in paragraph 1(1) in the definition of "premises" to provisions of section 15 (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) **do not apply to acupuncture.***

*The requirement in paragraph 2(2) that treatment is given in a treatment area used solely for giving treatment **applies to acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis but not to ear-piercing or nose-piercing using a hygienic piercing instrument.***

*The requirement in paragraph 2(3) that the floor of the treatment area be provided with a smooth impervious surface **applies to tattooing, semi-permanent skin-colouring and cosmetic piercing but not to acupuncture or electrolysis or ear-piercing or nose-piercing using a hygienic piercing instrument.***

*The requirements relating to dye or a container used to hold dye used for treatment in paragraphs 3(1) (a) (iv) and (v) **apply to tattooing and semi-permanent skin-colouring.***

*The requirement in paragraph 4(1)(a)(iii) that an operator wears disposable examination gloves that have not previously been used with another client **does not apply to acupuncture otherwise than in the circumstances described in paragraph 4(3).***

*The provisions of paragraph 4(2) in relation to washing facilities **apply to cosmetic piercing using only a hygienic piercing instrument.***

*The exception whereby the byelaws do not apply to treatment carried out by or under the supervision of a **dentist** applies only to **acupuncture (see section 14(8) of the Act).***