

**TO: LICENSING AND SAFETY COMMITTEE
12 JANUARY 2012**

**ADOPTION OF BYELAWS FOR SPECIAL TREATMENTS
Chief Officer: Environment and Public Protection**

1 PURPOSE OF REPORT

- 1.1 The Committee is asked to consider adopting Byelaws to regulate cosmetic piercing and semi permanent skin colouring, acupuncture, tattooing, electrolysis and ear piercing under one set of consolidated model Byelaws. Frequently the registered practitioners and premises undertake treatment for more than one activity and so by consolidating the Byelaws the effect will be to improve operational efficiency and help local businesses to more easily understand the regulatory activity.
- 1.2 It is important for this industry to be effectively regulated due to the risks associated with the treatments being offered. There is the potential risk of transmission of blood borne viruses (BBV), for example HIV, Hepatitis B and C, as well as other infections, potential physical damage and bleeding if the treatment is completed incorrectly.
- 1.3 The Local Government Act 2003 amended the Local Government Miscellaneous Provisions Act 1982 to include cosmetic (body) piercing and semi permanent skin colouring within the list of treatments the Local Authority can regulate. In 2004 the Committee approved the making of Byelaws to register practitioners and premises undertaking cosmetic piercing and semi permanent skin colouring. Earlier Byelaws adopted in 1986 covering acupuncture, tattooing, electrolysis and ear piercing were not updated. The proposal seeks to bring all requirements up to the current standards.

2 RECOMMENDATION(S)

- 2.1 **That the Committee recommends the Council pass a resolution to adopt the Byelaws as set out in Appendix A to this report.**

3 REASONS FOR RECOMMENDATION(S)

- 3.1 To update and consolidate two existing sets of Byelaws into one set to improve operating efficiency and reduce burden on businesses.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5 SUPPORTING INFORMATION

- 5.1 The special treatments industry has undergone rapid change in recent years because of rising demand for the piercing of parts of the body other than ears and the use of semi-permanent skin colouring which last approximately 8-10 years. All these processes, and in particular tattooing and ear piercing, carry a potential risk of BBV transmission if infection control procedures are not observed (e.g. use of sterile equipment for each client).
- 5.2 Within Bracknell Forest at present we have 28 premises and 82 practitioners registered for conducting cosmetic piercing and/or semi permanent skin colouring,

tattooing, ear piercing, electrolysis and acupuncture. Both sets of current Byelaws control standards of those activities.

- 5.3 Officers inspect on application and then inspect on a risk assessed frequency cycle to ensure standards of cleanliness and procedures are maintained in line with the Byelaws. Officers also offer advice and good practice guidance to lessen the risk of BBV transmission in respect of any other activity not regulated by the Byelaws. Matters not covered by the Byelaws can often be covered by the Health and Safety at Work etc Act 1974 and associated Regulations.
- 5.4 Certificates of Registration are issued subject to compliance with the Byelaws that relate to each special treatment and subject to the satisfaction of the local authority as to the person's skills, knowledge and suitability to carry out these treatments. The model Byelaws exist to secure the hygiene of the treatment, the practitioner and the treatment room.
- 5.5 Training to ensure the competency of practitioners is not set out within the Byelaws. It is instead specified in non statutory advice and guidance that is frequently issued by a range of trade organisations. The report therefore does not ask the Committee to approve competency guidelines prior to registration of practitioners as it has no statutory basis. Officers will, as is the practice in other industries, cover competency of practitioners by using the powers within the Health and Safety at Work Act 1974 which places a duty on business not to expose customers to risk. In practice the practitioner would informally be asked to obtain suitable training and/or supervision, and as a last resort served with a legal notice requiring training.
- 5.6 The Byelaws for acupuncture, tattooing, electrolysis and piercing were adopted by this Council on 11 November 1986.
- 5.7 In 2003 the Department of Health produced new model Byelaws to cover all "special treatments". The proposal to merge the two sets of Byelaws will update the 1986 Byelaws and will provide a similar and consistent standard across all treatments. It will reduce the burden for businesses for complying with and displaying several sets of Byelaws where more than one type of treatment is offered. Existing businesses will not be charged for updating the Byelaws and therefore there will be no financial impact on business.
- 5.8 If agreed by Committee, and subsequently Council, there is a prescribed procedure to be followed by the local authority prior to adoption of the model Byelaws. In summary the procedure involves advertising the intention to adopt the Byelaws in a local newspaper, and having a copy available for the public to view at no charge in named Council offices. After not less than a calendar month the submission can then be made to the Secretary of State for confirmation.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is satisfied that the relevant legal provisions are contained within the body of the report.

Borough Treasurer

- 6.2 The Borough Treasurer is satisfied that no significant financial implications arise from this report.

Equalities Impact Assessment

- 6.3 The activity is regulatory and the plan is covered by the overarching document entitled Enforcement Policy 2008 and Equalities Impact Assessment (Executive November 2008).

Strategic Risk Management Issues

- 6.4 There are no strategic risk management issues arising from the report.

Other Officers

- 6.5 The Head of Trading Standards and Licensing has been consulted and contributed to the report.

7 CONSULTATION

Principal Groups Consulted

- 7.1 There is a prescribed method of consultation which is summarised in item 5.8 above.

Method of Consultation

- 7.2 Notice of intention to apply to the Secretary of State to adopt the Byelaws is to be advertised in the local newspaper one month before the application is made. Relevant businesses and persons will also be directly notified of the impending changes.

Representations Received

- 7.3 Not applicable.

Background Papers

Department of Health: Regulation of Cosmetic Piercing and Skin-colouring businesses – February 2004.

Contact for further information

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Research

Charlotte Scott, Environmental Health Officer

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 Bracknell Forest Borough Council 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—
 - (i) is clean and in good repair and, so far as is appropriate, is sterile;
 - (ii) 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—
 - a) cleansing; and
 - b) 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 ear piercing, electrolysis, tattooing and acupuncture that were made by the District Council of Bracknell on the 10th January 1986 and were confirmed by the Secretary of State for Social Services on 10th September 1986 are revoked.
- 7. The Byelaws relating to cosmetic piercing and semi-permanent skin colouring that were made by Bracknell Forest Borough Council on the 5th July 2004 and were confirmed by the Secretary of State for Health on 15th December 2004 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).***