



**Ward: N/A**

## **Regulation of Cosmetic Piercing and Skin Colouring Businesses**

### **Report by the Head of Housing, Health and Community Safety**

#### **1.0 Summary**

- 1.1 Currently, the Council has used adoptive powers, under the Local Government (Miscellaneous Provisions) Act 1982, to require the registration of certain activities: acupuncture, tattooing, ear-piercing and electrolysis, (collectively referred to as “skin piercing”) and has made byelaws specifying the standards of cleanliness of premises, fittings and operators, together with the appropriate cleaning arrangements for instruments, materials and equipment, so as to protect customers from the risk of infectious disease.
- 1.2 The Local Government Act 2003 amended this so that additional activities came within the registration scheme, namely the cosmetic piercing of other parts of the body and semi-permanent skin colouring, however no byelaws applied to these activities.
- 1.3 The report seeks to replace the existing byelaws, which have separate byelaws for each activity, with one all encompassing byelaws for all these activities, including the additional activities.

#### **2.0 Background**

- 2.1 Local Authorities have adoptive powers under the Local Government (Miscellaneous Provisions) Act 1982 Part VIII to regulate acupuncture, tattooing, ear-piercing and electrolysis. This allows for local authorities to require businesses to register with them and the option to introduce byelaws that businesses must observe, relating to cleanliness of persons and premises.
- 2.2 The Council adopted the provisions of Sections 14 to 17 of the Act with effect from 25 April 1983.
- 2.3 Those carrying on the practice of body (cosmetic) piercing, other than of the ears, or semi-permanent skin colouring, such as micro-pigmentation, semi-permanent make up or temporary tattooing, were not included within these provisions and have been outside of this regulatory control, other than by way of application of the Health and Safety at Work etc Act 1974.
- 2.4 Since the adoption of powers under the Local Government (Miscellaneous Provisions) Act 1982, it has become popular to pierce other parts of the body, other

than the ears, and other types of skin colouring have become fashionable, for example temporary tattoos and semi permanent make up. These activities carry a potential risk of infection, including blood borne virus transmission such as hepatitis B, hepatitis C and other infections if infection control procedures are not observed.

2.5 The Local Government Act 2003 amends the Local Government (Miscellaneous Provisions) Act 1982 and allows authorities to regulate businesses that carry on cosmetic skin piercing (piercing of the body *including* the ear) and semi-permanent skin colouring (including micro-pigmentation, semi-permanent make-up and temporary tattooing). Consequently the Council is now able to require such businesses to:

- (i) Register themselves and their premises and,
- (ii) observe byelaws relating to the cleanliness and hygiene of premises, practitioners and equipment.

2.6 However, the Council has not adopted byelaws that cover these additional activities.

2.7 Following on from the amendment of the Local Government (Miscellaneous provisions) Act 1982, the Dept. of Health has issued amended model byelaws. These include the new activities, as well as combing the separate byelaws into one set of byelaws. The new model byelaws also give better recognition to the modern practice of using sterile, single use piercing jewellery.

### **3.0 Proposals**

3.1 It is proposed that the Council uses the adoptive powers in part VIII of the Local Government (Miscellaneous Provisions) Act 1982 to rescind the existing byelaws and simultaneously adopt new byelaws. based on the Dept. of Health's model byelaws.

3.2 Annex 1 shows the proposed byelaws.

3.3 The mechanics of adopting byelaws are covered by section 236 of the Local Government Act 1972.

3.4 This requires that the Council pass a resolution

- (i) authorising the affixing of the Common Seal to the byelaws
- (ii) authorising the appropriate officer carry out the necessary procedure and apply to the Secretary of State for confirmation.

3.5 Part of this process is giving at least one calendar month's formal notice, in one or more local newspapers, of the intention to apply for confirmation..

### **4.0 Financial implications**

4.1 A fee is already established for the registration of premises at which acupuncture, tattooing, ear-piercing or electrolysis is undertaken, currently this is £80.25. It is proposed that the same fee for the new activities of cosmetic piercing and semi-permanent skin colouring will apply.

- 4.2 Any person or premises already registered for acupuncture, tattooing, ear-piercing and electrolysis will be unaffected by the new legislation unless they choose to expand their business and offer other forms of piercing or skin colouring. If they decide to do this then a new registration would be required.
- 4.3 It is not anticipated that many businesses will be affected, consequently there will be negligible effect on fee income or workload.
- 4.4 It is recommended that premises already registered, that wish to extend their registration, receive a 50% discount on the standard fee.

## **5.0 Recommendations**

- 5.1 It is recommended that the Committee recommends to full Council that:-
- (i) the Executive Head of Legal and Democratic Services is authorised to apply the Common Seal of the Council to the byelaws shown in annexe 1.
  - (ii) the Executive Head of Legal and Democratic Services is authorised to carry out the necessary procedure and apply to the Secretary of State for confirmation.
  - (iii) a reduction of registration fee of 50% be given to premises already registered who expand their registration

## **Local Government Act 1972**

### **Background Papers:**

Department of Health Guidance on Section 120 and Schedule 6 of the Local Government Act 2003.

Bylaws made under Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 by Adur District Council in respect of ear piercing, electrolysis and tattooing.

Guidelines for Body Piercing - Professor Norman Noah

Health and Safety Executive, Local Authority Circular (LAC) 76/2- Enforcement of Skin Piercing Activities

Department of Health, model byelaws

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## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 To support and contribute to the health, safety and wellbeing of the area.

### **2.0 Specific Action Plans**

2.1 (A) None  
(B) None

### **3.0 Sustainability Issues**

3.1 In terms of the Council's environmental and sustainable development policies, the information contained in this report will have a beneficial impact on reducing factors contributing to ill health.

### **4.0 Equality Issues**

4.1 Matter considered and no issues identified.

### **5.0 Community Safety issues (Section 17)**

5.1 Matter considered and no issues identified.

### **6.0 Human Rights Issues**

6.1 Considered but none directly identified. Indirectly, the recommendation could affect the way a person runs their business; however this is balanced by preventing the possible spread of infectious diseases that could affect the customer and the community as a whole.

### **7.0 Reputation**

7.1 The adoption of these bylaws will have a positive affect on the Council's reputation due to the appropriate registration and enforcement of a potentially high risk activity.

### **8.0 Consultations**

8.1 (A) All existing registered businesses have been made aware of the proposals and invited to comment. Any responses will be reported to the meeting.

(B) The procedure for adoption of byelaws has a formal period of notice and objections can be made to the Secretary of State.

## **9.0 Risk assessment**

9.1 These measures are intended to increase health protection and reduce the risk of transmission of blood-borne virus infections such as hepatitis B, hepatitis C and other infections.

## **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified

## **11.0 Procurement Strategy**

11.1 Not applicable

## **12.0 Partnership working**

12.1 None

## ANNEX 1

### ADUR DISTRICT COUNCIL

(Draft) Byelaws with respect to the business of -

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 Adur District 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—
    - (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 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 \_\_\_\_\_

[Printed name]

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).***