

# REPORT TO THE PERSONNEL, LICENSING & ADMINISTRATION COMMITTEE

Report No. 7

Date of Meeting	6 <sup>TH</sup> November 2006			
Title of Report	Adoption of the Secretary Of States Cosmetic Piercing And Skin Colouring Byelaws			
Link to Corporate Priorities	a)	Corporate Aim No: 4 – “to safeguard and enhance the assets and resources of North Wiltshire District Council and the wider community”		
	b)	Corporate Priority – Buoyant Economy – “to have a diverse and flexible local economy”		
Public Report	YES			
<b>Summary of Report</b>				
The Committee is asked to consider the following:				
<ul style="list-style-type: none"> <li>Adoption of provisions in Section 120 and Schedule 6 of the Local Government Act 2003 on the regulation of cosmetic piercing and skin-colouring businesses which amend Section 15 of the Local Government (Miscellaneous Provisions) Act 1982.</li> <li>Adoption of byelaws relating to cosmetic piercing and semi-permanent skin colouration. See Appendix 1 as attached.</li> </ul>				
Adoption of these provisions will extend the current control of skin piercing establishments to cover body piercing and semi-permanent tattooing. Adoption of the provisions is a matter for Council to decide upon.				
<b>Officer Recommendations</b>				
<ol style="list-style-type: none"> <li>That the provisions of Section 120 and Schedule 6 of the Local Government Act 2003 providing for the regulation of cosmetic piercing and semi-permanent skin colouring in the District be adopted.</li> <li>That the Committee recommend to Council the adoption of model byelaws relating to cosmetic piercing and semi-permanent skin colouring, as set out in the attached Appendix and that the Team Leader Legal Services then be authorised to submit those byelaws to the Secretary of State for approval.</li> <li>That the relevant registration requirements come into effect from the date on which the byelaws referred to in 2. Above are confirmed by the Secretary of State.</li> <li>That the fees for registering a person carrying on a business of cosmetic piecing or semi-permanent skin colouring be set at £75.00 for 2006/2007. This amount to be reviewed annually as part of the general review of licence fees.</li> </ol>				
Other than those implications agreed with the relevant Officers and referred to below, there are no other implications associated with this report.				
Financial Implications	Legal Implications	Community & Environmental Implications	Human Resources Implications	Equality & Diversity Implications
YES	YES	YES	NONE	NONE

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## **1. Introduction**

- 1.1 To recommend the Committee adopt the provisions as stated in the summary report.

## **2. Options and Options Appraisal**

- 2.1 The only way in which the Council can effectively control skin piercing is by adopting the provisions outlined above.
- 2.2 Not to adopt the recommendation above which will result in the Local Authority not being able to legally enforce hygiene standards within cosmetic piercing and skin colouring establishments thus reducing human health protection from the spread of Blood Borne Viral infections within the North Wiltshire district.
- 2.3 The Council may charge reasonable fees for registration of skin piercing. The current fee for ear piercing, tattooing and acupuncture is £75. There are no additional costs involved in these provisions.

## **3. Background Information**

- 3.1 Cosmetic piercing and semi-permanent skin colouration carries a high risk of increased Blood Borne Viral Infections such as Hepatitis B and Hepatitis C if infection control procedures are not observed. (e.g. the use of sterile equipment for each client).
- 3.2 Originally the Local Government (Miscellaneous Provisions) Act 1982 did not regulate these practices. Local authorities in England (outside London) and in Wales did not have the powers to require businesses offering these services to register and observe byelaws relating to the cleanliness and hygiene of premises. Local Authorities powers were limited to regulating ear piercing, tattooing, electrolysis and acupuncture. A joint Department of Health and Welsh Office consultation exercise in 1996 elicited widespread support for changing the law to extend local authorities powers.
- 3.3 The Local Government Act 2003 amended Section 15(7) of the Local Government (Miscellaneous Provisions) Act 1982 so that local authorities may compel persons carrying on the businesses of cosmetic piercing or semi-permanent skin colouring to register themselves and their premises. It also allows local authorities to make byelaws for
- the cleanliness of premises and fittings
  - the cleanliness of the operators
  - the cleansing and, if appropriate, sterilization of instruments, materials and equipment.
- 3.4 The new legislation provides a consistent level of health protection across England and Wales.
- 3.5 Confirmation of accepted byelaws must be applied for to the Secretary of State for Health under section 236 of the Local Government Act 1972. When the Council has formally resolved to adopt a byelaw it must be prepared and made under the common seal of the Council. The Secretary of State has produced model byelaws (attached as Appendix 1) which Local Authorities are recommended to adopt. Any deviation from the model byelaws may result in the Secretary of State not confirming a Local Authority's proposal.
- 3.6 Section 120 of the Local Government Act 2003 introduces new terminology for simplicity and clarity as follows:

Ear piercing and cosmetic body piercing are encompassed in the single term "Cosmetic Piercing".

Micropigmentation semi-permanent make up and temporary tattooing are covered by the umbrella term "semi-permanent skin colouring"

"Semi-permanent skin colouring" is defined as "the insertion of semi-permanent colouring into a persons skin"

3.6.1 Schedule 6 of the Local Government Act 2003 provides for transition from current legislation to amended legislation and to avoid disruption to local authorities and businesses by providing that:

- persons and premises already registered for activities covered by Section 15 of the current legislation (i.e. tattooing, ear piercing and electrolysis) are unaffected;
- pending local authority resolutions to apply section 15 of the 1982 Act in their area are unaffected;
- where a local authority has already resolved that section 15 of the 1982 Act should be brought into force in their area for tattooing, ear piercing and electrolysis, then the local authority will be automatically enabled to apply the registration and byelaws regime to cosmetic piercing and semi-permanent skin colouring;
- a person and premises already registered for ear piercing shall be counted as registered for cosmetic piercing until that person subsequently provides another form of cosmetic piercing, or those premises are subsequently used to provide another form of cosmetic piercing (i.e. cosmetic piercing of a part or parts of the body other than the ear), when a new registration would be required.

## **Implications**

### Financial Implications

Section 15(6) of the Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to charge reasonable registration fees for registration of persons carrying on businesses of cosmetic piercing or semi-permanent skin-colouring . The fee might cover initial inspection(s) associated with registration, advising the business about registration and associated administration.

The Licence fee proposed in this report is calculated to cover the likely cost to the Local Authority for granting and enforcement of any such licence.

It is estimated that up to two to three new licences could be generated by the extension of the powers, generating some £150-£225 in 2006-07 and following years. There are approximately six existing users who already pay for licences under the current powers, who will not be financially affected by the changes.

### Legal Implications

The adoption of the provisions in section 120 and schedule 6 of the Local Government Act 2003 will allow the local authority to regulate cosmetic skin piercing and skin colouring businesses in North Wiltshire.

Community and Environmental Implications

The adoption of the recommended by-laws will help protect human health from the spread of Blood Borne Viral infection within the North Wiltshire district and give control to the local authority to maintain these premises in a hygienic state.

Human Resources Implications

None

Equal Opportunities implications

None

Risk Analysis

Not to adopt the recommendation above which will result in the Local Authority not being able to legally enforce hygiene standards within cosmetic piercing and skin colouring establishments thus reducing human health protection from the spread of Blood Borne Viral infections within the North Wiltshire district.

<b>Appendices:</b>	<ul style="list-style-type: none"> <li>▪ Model Byelaws</li> </ul>
<b>Background Documents Used in the Preparation of this Report:</b>	<ul style="list-style-type: none"> <li>▪ Local Government Act 2003 – Regulation of Cosmetic Piercing and Skin-Colouring Businesses – Guidance on Section 120 and Schedule 6</li> </ul>

**Previous Decisions Connected with this Report**

<b>Report</b>	<b>Committee &amp; Date</b>	<b>Minute Reference</b>
<b>None</b>		

## 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 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).***