

LICENSING COMMITTEE
6TH FEBRUARY 2012

Cosmetic Piercing and Skin Colouring – Adoption of Legislation and Byelaws

Executive Summary

Wiltshire Council as a unitary authority has not yet adopted the legislation set in Part VIII of the Local Government (Miscellaneous Provisions) Act 1982, which allows the Council to regulate persons carrying on acupuncture, tattooing, and skin piercing. The Council must adopt this primary legislation before it can make any associated byelaws. There are revised model byelaws which will allow Wiltshire Council to regulate businesses which carry out skin piercing activities. The adoption of these provisions of the Act and the making of these byelaws will help protect human health from the spread of blood borne viral infection within Wiltshire and give control to the local authority to maintain these premises in a hygienic state.

Recommendations

It is recommended:

1. That the Committee recommend to Council to adopt the provisions of Section 14, 15, 16 and 17 of the Local Government (Miscellaneous) Provisions Act 1982 and that these provisions shall come into effect on 1st July 2012
2. That the Committee recommend that the Council make byelaws relating to cosmetic piercing and semi-permanent skin colouring, in the form of the model byelaws as set out in the attached Appendix for submission to the Secretary of State for approval.
3. That the Committee recommend the Council that the current byelaws relating to cosmetic piercing and semi-permanent skin colouring, which had previously been adopted by the ex-district councils be revoked on the confirmation of the new model byelaws

Reason for Proposal

Cosmetic piercing and skin colouring carries a high risk of blood borne viral infection such as Hepatitis B and Hepatitis C if infection control procedures are not observed. The provisions of Section 120 and Schedule 6 of the Local Government Act 2003 amend Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 and allow local authorities to regulate the cleanliness and hygienic practices of skin piercing businesses. The Council, however cannot implement these provisions without first adopting the relevant part of the Act.

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1. Background

- 1.1 Section 14 of the Local Government (Miscellaneous Provisions) Act 1982 provides that persons and premises carrying out the business of acupuncture are required to be registered with their local authority.
- 1.2 Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 originally provided persons and premises carrying out the business of tattooing ear-piercing and electrolysis are to be registered with their local authority.
- 1.3 West Wiltshire District Council, Kennet District Council, Salisbury District Council and North Wiltshire District Council all adopted Section 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982 between 1984 and 1985.
- 1.4 Originally Section 15 of the 1982 Act only regulated ear-piercing, tattooing and electrolysis and did not cover the broader spectrum of cosmetic piercing (all body piercings in addition to ear-piercing) and semi-permanent skin colouring (including micropigmentation, semi-permanent make-up and temporary tattooing)
- 1.5 The Local Government Act 2003 amended Section 15 of the 1982 Act so that local authorities may require 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, sterilisation of instruments, materials and equipment
- 1.6 Only North Wiltshire District Council adopted revised byelaws to cover the extended scope of Section 15, to include provisions relating to cosmetic piercing and skin colouring
- 1.7 Section 16 of the Act allows for the enforcement of the requirement to register and any byelaws that have been made under sections 14 and 15 and Section 17 confers a power of entry into premises in relation to such enforcement.

Environmental Impact

None

Equality and Diversity

None

Risk Assessment

Not to adopt the recommendations above 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 Wiltshire.

Financial Implications

Section 14 and Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to charge reasonable fees for registration of persons and premises carrying out the business of skin piercing. The fee might cover initial inspection(s) associated with registration, advising the business about registration and associated administration.

Currently Wiltshire Council charge a fee of ^{122.00}£~~117.00~~ to register a premises and person and a ^{15.00}£~~12.00~~ fee for each additional person to be registered.

There will be a cost to Wiltshire Council to advertise the adopted legislation and associated byelaws.

Legal Implications

These are set out in the body of this report. There is a requirement to publish notice that a resolution to adopt Sections 14 to 17 of the 1982 Act in two consecutive weeks in a local newspaper circulation in their area.

The first publication shall not be later than 28 days before the day specified in the resolution as the date on which these sections are to come into force.

Conclusion

It is recommended that the Committee recommend to Council that the byelaws adopted by the ex-district councils are revoked and that Wiltshire Council as a unitary authority adopt Sections 14, 15, 16 and 17 of the Local Government (Miscellaneous Provisions) Act 1982 and that they make byelaws relating to skin piercing in the form of the Secretary of State's model byelaws as attached

Background Papers

Local Government Act 2003 – Regulation of Cosmetic Piercing and Skin-Colouring Businesses – Guidance on Section 120 and Schedule 6.

Appendices

Model Byelaws

APPENDIX 1

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 Wiltshire 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 the subject matters that were made by Kennet District Council, Salisbury District Council, West Wiltshire District Council and North Wiltshire District Council as listed below are revoked:

Subject	Authority	Date Made	Name of confirming authority	Date confirmed
S. 14 Acupuncture	Kennet District Council	10 July 1985	Secretary of State for Social Services	27 September 1985
S. 15 Ear piercing and Electrolysis	Kennet District Council	10 July 1985	Secretary of State for Social Services	27 September 1985
S. 15 Tattooing	Kennet District Council	10 July 1985	Secretary of State for Social Services	27 September 1985
S. 14 Acupuncture	Salisbury District Council	21 December 1983	Secretary of State for Social Services	30 May 1984
S. 15 Ear piercing	Salisbury District Council	21 December 1983	Secretary of State for Social Services	30 May 1984
S. 15 Electrolysis	Salisbury District Council	21 December 1983	Secretary of State for Social Services	30 May 1984
S. 15 Tattooing	Salisbury District Council	21 December 1983	Secretary of State for Social Services	30 May 1984
S. 14 Acupuncture	West Wiltshire District Council	15 August 1984	Secretary of State for Social Services	27 November 1984
S. 15 Tattooing, Acupuncture, Ear piercing and Electrolysis	West Wiltshire District Council	15 August 1984	Secretary of State for Social Services	27 November 1984
Ss. 14 and 15 Acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis	North Wiltshire District Council	2 February 2007	Secretary of State for Health	26 April 2007

ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN-COLOURING, COSMETIC PIERCING AND ELECTROLYSIS (2007)

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).

