

**REPORT FROM:** PLACE DIRECTORATE- HOUSING AND  
ENVIRONMENTAL HEALTH

**TO:** COUNCIL

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## **REGISTRATION OF SKIN PIERCING ACTIVITIES THROUGH THE ADOPTION OF BYELAWS**

### **PURPOSE OF REPORT**

To adopt the amendments made under Section 120 of the Local Government Act 2003 to Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 in to include registration of activities of body piercing and semi permeant skin colouring

### **RECOMMENDATIONS**

- 1) To adopt Sections 14-17 of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Local Government Act 2003 within the administrative area of Pendle Borough Council. This is to regulate persons carrying out skin piercing activities. The Head of Legal Services be authorised to take all the necessary steps to bring this into force.
- 2) To make the byelaws at Appendix A. The Head of Legal and Democratic Services be authorised to take all the necessary steps to make the byelaws and submit the same to the Secretary of State for Confirmation.

### **REASONS FOR RECOMMENDATIONS**

- 1) To bring into full force the regulatory framework of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Local Government 2003 within Pendle Borough Council administrative area;
- 2) Including the provision of making byelaws for the regulation of businesses involved in the 5 skin piercing activities, namely acupuncture, cosmetic piercing (including ear and body piercing), tattooing, electrolysis and semi-permanent skin colouring.
- 3) Adoption of local bylaws are to ensure that that skin piercing activities are undertaken in a clean environment using sterile equipment to prevent infections and illness to the public.

## ISSUE

### 1. BACKGROUND TO REPORT

Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 originally covered the regulation of tattooing, acupuncture, ear piercing and electrolysis. The was subsequently amended by The Local Government Act 2003 to substitute 'ear piercing' to the more comprehensible term 'cosmetic body piercing' to accommodate the growing practice of piercing other parts of the human body. To also regulate the relatively new practice of semi-permanent skin-colouring.

The amendment to the 1982 Act was also triggered by the need to increase health protection and reduce the risk of transmission of blood borne viruses (BBV) infections such as HIV, Hepatitis B, Hepatitis C and other infections. Ensuring that the skin piercing activities are controlled and performed with sterile equipment in a clean environment.

Locally the Commercial Environmental Health Team have not received with complaints or concerns relating to blood borne viruses or other infections from members to the public relating to skin piercing activities.

Nationally there have been more serious consequences of unregulated skin piercers.

The Local Government (Miscellaneous Provisions) Act 1982 sets out four separate byelaws issued by the Department of Health for acupuncture, electrolysis, ear-piercing and tattooing.

On the 7<sup>th</sup> September 2006, the Department for Health issued a revised model byelaws for the 1982 Act, which consolidated all four areas into a single byelaw, considerably simplifying the adoption process.

Pendle Borough Council is the responsible authority for the regulation of tattooing, acupuncture, ear-piercing and electrolysis within the Borough. The growing popularity of these activities and the addition of new activities of cosmetic body-piercing and semi-permanent skin colouration means that it is advisable to introduce the mandatory regulation of all skin piercing activities through bringing into force Part VIII of the 1982 Act, in its amended post 2003 Act form.

Currently within Pendle Borough Council there are:

- 16 Tattooist at 10 premises
- 0 Acupuncturists at 0 premises
- 11 Persons undertaking electrolysis at 9 premises
- 1 Ear piercers at 1 premises

Intelligence indicates that activities of cosmetic body-piercing and semi-permanent skin colouration are a growing trend nationally and within Pendle Borough Council.

Currently we have-

- 1 Cosmetic body-piercing at 1 premises; and
- 28 Semi-permanent skin colouration activities at 25 premises,

With approximately five new registrations per annum.

By registration of these activities the business is able to demonstrate to customers and other interested parties that they are regulated by Pendle Borough Council. Consequently customers can look for registered premises and operators certificates when visiting establishments providing these service. Information on all skin piercing providers are kept on a public register, which we hope to make publically available on the Council's website in time.

The adoption of the byelaws under the 1982 Act would generally replicate existing byelaws issued by Pendle Borough Council. Any breaches to the breach of these byelaws would carry the possibility of a criminal prosecution. It would be an offence under Section 16 (2) of the 1982 Act for any person to contravene the proposed byelaws. Which upon conviction could result in a fine of £1,500. The Court on conviction would also have the power to cancel any registration under the 1982 Act. Effectively causing the person convicted to cease to lawfully practice in these disciplines, and incurring a further offence should they practice unregistered.

An update Minute specifying the adoption of the 1982 Act, including the amendments introduced by the 2003 Act, and the making of the byelaws under it. Would be required to be produced to the Magistrates Court prior to any prosecution for these offences under the Byelaws. Ensuring avoidance of doubt for proof of the existence and validity of the byelaws for the Court to retain and apply for their future use.

The adoption of the new consolidated Model Byelaw by the Department of Health indicates that further revision of this area of the law in the near future is unlikely and it should be make the adoption of such byelaws simpler and cheaper.

## **2. Proposals**

It is proposed that Pendle Borough Council adopt in its entirety Part VIII of the 1982 Act (as amended by the 2003 Act) within the Borough by a resolution under Section 13 of Part VIII 1982 Act. In addition to authorise the making of a full set of byelaws under the 1982 Act (as amended by the 2003 Act) in accordance with the new Model Byelaw issued by the Department of Health on 7<sup>th</sup> September 2006.

To bring Part VIII fully into force, a date will need to be specified in the resolution of the Council when these provisions will fully come into force. Following the making of the resolution but before these coming into force of these provisions, it will be necessary for Pendle Borough Council to publish a notice that they have passed a resolution under Section 13 of the 1982 Act for two consecutive weeks in a local newspaper. With the first publication of this notice at least 28 days before the day specified in the resolution for coming into force of these provisions.

Once Part VIII of the 1982 Act has fully come into force then Pendle Borough Council may institute the procedure of introduction of Byelaws under Section 14(7) of the 1982 Act for acupuncture and Section 15(7) of the 1982 Act for tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.

Appendix A sets out the new Model Byelaws to be adopted for Pendle Borough Council.

It would be proposed to start the procedure of enactment of the byelaws as soon as Part VIII of the 1982 Act has been brought fully into force.

## **3. Procedure for adoption of Byelaws**

The procedure for the adoption of byelaws is set out in Appendix B

#### 4. Other Options Considered

Consideration has been given to continuing without adoption of the amendments made under the Local Government Act 2003, leaving the skin piercing activities of body piercing, semi-permanent make up and colouring an unregulated activity in Pendle Borough Council. This would leave members of the public at risk of blood borne infection from these unregulated activities possibly resulting in increased health costs and decreased quality of life.

#### 5. Resource implications

The cost of making the byelaws will be borne out of existing resources. There may be minor costs associated with placing advertisements in the local paper/website.

The costs of enforcing the byelaws would be met from existing resources already allocated to enforcement and therefore should not entail any additional expenditure or increase the number of officers.

Fees are currently charged for skin-piercers and premises. It is anticipated that the scale of charges would be in line with those existing for tattooing, acupuncturist, ear-piercing and electrolysis activities. The current fee is £202.64 per application, which covers the cost of administration and registration inspections.

#### IMPLICATIONS

##### **Policy:**

There is no policy implication arising from this report.

##### **Financial:**

The report identifies financial costs arising from implementing this decision will be met with existing resources within the service and through the application and registration fee.

##### **Legal:**

The making of the byelaws is a function that can only be exercised by Full Council. As noted in this report, before a byelaw, regulating the practice of acupuncture under Section 14 (7) and the practice of tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis under Section 15 (7) of the Local Government (Miscellaneous Provisions) Act 1982 the Council must first pass a resolution to adopt sections 14 to 17 of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Local Government Act 2003, on the basis that this amendment introduces wider definitions of cosmetic piercing that covers the new practices of semi-permanent skin-colouring not recognised by the 1982 Act.

##### **Risk Management:**

There is negligible risk and mitigation to the Council.

##### **Health and Safety:**

Should the Council not proceed in adoption of the byelaws then skin piercing activities will be unregulated, potentially leading to blood borne infections and diseases to the public.

##### **Sustainability:**

There are no climate change implications arising from this report.

##### **Community Safety:**

There are no community safety implications arising from this report.

**Equality and Diversity:**

There are no equality and diversity implications arising from this report.

**APPENDICES**

Appendix 1- Pendle Borough Council byelaws for the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

Appendix 2- Procedure for Adopting Byelaws.



## Pendle Borough Council

### Byelaws

#### **For the regulation of Acupuncture, Tattooing, Semi-permanent skin-colouring, Cosmetic piercing and electrolysis.**

Byelaws for the purpose of securing the cleanliness of the 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 the persons registered under Sections 14(1) or 15(1) or both of the Act and the persons assisting them and/or securing the cleansing and, so far as is appropriate, sterilisation 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 Pendle Borough Council in pursuance of Sections 14(7) and 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 jewelry supplied in packaging that indicates 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 premises registered under Part VIII of the Act;

**“proprietor”** means any person registered under Part VIII 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 the premises where treatment is given to clients.

- (2) the Interpretation Act 1978 shall apply fully 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 the premises and for 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 be cleaned effectively;
- (b) any waste materials, 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 in single-use and disposable, as far as is practicable, or otherwise is sterilised for each treatment is suitably stored after treatment and disposal 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 a 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 as a smooth impervious surface which is disinfected-
  - (i) immediately after use;
  - (ii) at the end of each working day.
- (f) any table, couch or item of furniture used in treatment is covered by a disposal paper sheet which is changed for each client;
- (g) no eating, drinking or smoking is permitted in treatment area and a Notice or Notices reading “No Smoking” and “No Eating or Drinking” must prominently be displayed in the treatment area.

2)-

- (a) subject to 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 only the treatment to be given in such premises is ear piercing or nose piercing using a hypodermic piercing instrument.

3)-

- (a) subject to sub paragraph (b), where the 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 areas is provided with a smooth, impervious surface;
- (b) sub paragraph (a) shall not apply only if only treatment to be given in such premises is ear piercing or nose piercing using a hygiene piercing instrument.

3. (1) for the purpose of securing cleansing and so far as is appropriate, the sterilisation of needles, instruments, jewelry, materials and equipment used in connection with treatment-

- (a) the operator shall ensure that-
  - (i) any gown, wrap or other protective clothing, paper or other covering, towel, cloth or such article used in treatment-

(aa) is clean and in good repair and so far as is appropriate is sterile.  
(bb) not previously been used in connection with another client unless it consists of a material which can be and has been adequately cleaned and, so far as is appropriate sterilised.

(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 and touches a part is sterile;

(iii) any jewelry 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 cleansed and sterile before reuse.

(b) a proprietor shall provide-

(i) adequate facilities and equipment for-

(aa) cleansing; and

(bb) sterilisation, unless only pre-sterilised 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 the equipment mentioned in paragraphs 3(1) (a) (i), (ii), (iii), (iv), (v) to be avoided as far as possible.

4. (1)- for the purposes of securing the cleanliness of operators, the 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 only 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 purpose 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 provided either a hygienic gel or liquid, the washing facilities that the proprietor provides needs to 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) if 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;
- (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 Section 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 shall observe the requirements relating to the operator in paragraphs 3(1)(a) and 4(1)(a).
6. The byelaws relating to acupuncture, ear piercing, electrolysis and tattooing were confirmed by the Secretary of State for Social Services on 19<sup>th</sup> June 1984 and brought into operation by Pendle Borough Council on \*\*\*\*\* are revoked.

THE COMMON SEAL OF PENDLE BOROUGH COUNCIL was hereunto  
Affixed in the presence of-

[Authorising Officer]

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

[Print 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 8 of the Act. A person who contravenes Section 16(9) shall be guilty of an offence and liable for 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 8 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 defense when a 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 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 reference in the introductory text to provisions of Section 14 (acupuncture) of the Local Government (Miscellaneous Provisions) Act 1982 only apply to acupuncture
- The reference 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) of 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 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 requirement relating to dye or a container used to hold dye used for treatment in paragraphs 3(1)(a)(iv)(v) apply to tattooing and semi-permanent skin-colouring
- The requirement in paragraph 4(1)(a)(iii) that an operator wears disposal examination gloves that have not recently 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 to acupuncture (see Section 14(8) of the Act)

## Appendix B

The Procedure for adoption of Byelaws is set out in section 236 of the Local Government Act 1972, once Part VIII of the 1982 Act had come into force. It would be for Pendle Borough Council to formally resolve to adopt the byelaws set out in Appendix A. The resolution to make the byelaws would be given at the same time as the resolution to bring into force Part VIII of the 1982 Act and would be conditional upon the provision coming into force. The adopted byelaws would then be made under the common seal of Pendle Borough Council, following which a notice of Pendle Borough Council's intentions to apply for their confirmation by the Secretary of State for Health must be given in one or more newspapers circulating in the area to which the byelaws are to apply. For at least one month after the date of the publication of the newspapers, a copy of the byelaw must be held on deposit at the offices of the Pendle Borough Council for inspection by the public at all reasonable hours, and Pendle Borough Council must provide any person who applies with a copy of any part of the byelaws. After the month for deposit has expired the application to the Secretary of State for Health would be undertaken by sending two sealed copies of the byelaw, together with copies of the newspapers advertising the byelaw. On receipt of the sealed byelaws, provided that no objections have been received, they will normally be stamped as confirmed by the Secretary of State and returned to Pendle Borough Council as soon as possible. Where an objection has been received following the advertisement of the byelaws, Pendle Borough Council will be provided with copies of the objections for its officers to comment upon, which in turn will be considered by the Secretary of State. Should the Secretary of State still be unclear as to the proper resolution of these objections then a Public Inquiry may be ordered to be held into the objections to the adoption of the byelaws, and confirmation or refusal of confirmation dependent upon the Chair of the Inquiries decision.