
Subject: **BYELAWS FOR THE REGULATION OF ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN COLOURING, COSMETIC PIERCING AND ELECTROLYSIS.**

Meeting and Date: **Council - 28th January 2015**

Report of: **David Randall (Director of Governance)**

Classification: **Unrestricted**

Purpose of the report: To seek Council approval for the adoption of model byelaws, developed by the Department of Health, covering acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.

Recommendation: That the Council:

1. Approves the adoption and the making of the proposed model byelaw at Appendix 1;
2. Approves the consequent revocation of the existing byelaws previously adopted by the Council in 1984 and 1986.
3. Authorises the Director of Governance to apply to the Secretary of State for Health for confirmation of the byelaw following the necessary period of publication.

1. **Summary**

Dover District Council's current Byelaws for Tattooing, Ear Piercing and Electrolysis are 30 years old and are ineffective in covering the full range of modern cosmetic treatments offered to the public e.g. semi-permanent makeup, temporary tattooing, micro pigmentation and cosmetic body piercing. This report seeks approval to revoke existing byelaws relating to cleanliness and public health measures in the business of tattooing, acupuncture, ear-piercing and electrolysis and to replace them with modern model byelaws relating to acupuncture, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

2. **Introduction and Background**

2.1 In 1984 and 1986, Dover District Council adopted powers under the Local Government (Miscellaneous Provisions) Act 1982 to regulate the provision of all businesses practising acupuncture, ear piercing, tattooing and electrolysis, by requiring any such business to be registered with the local authority.

2.2 Following the adoption of these powers, the Council proceeded to make byelaws designed to ensure good standards of cleanliness and hygiene are adhered to in registered establishments.

2.3 Since the implementation of the byelaws 30 years ago, customer demands and a boom in the cosmetic piercing industry have resulted in new practices being offered to the general public e.g. semi-permanent makeup, temporary tattooing,

micro pigmentation and body piercing. The current byelaws are not effective as they do not cover these current modern techniques offered by the cosmetic piercing industry.

3 Proposal

- 3.1 In 2003, the government responded to the developments of the cosmetic industry within the Local Government Act 2003. Section 120 of this Act amended the Local Government (Miscellaneous Provisions) Act 1985 so as to include the need for establishments to register for the practising of all forms of cosmetic piercing and semi-permanent skin colouring.
- 3.2 At this time, the Department of Health produced new model byelaws which local authorities could adopt. The model byelaws cover new cosmetic practices and enable Local Authorities to work in a more consistent manner.
- 3.3 It is proposed that the Council adopt and make the 'Model Byelaws for the Regulation of Acupuncture, Tattooing, Semi-permanent Skin Colouring, Cosmetic Piercing and Electrolysis'. The model byelaws are now used by at least 8 out of the 13 Kent Local Authorities.
- 3.4 The intention behind the adoption of the extended byelaws is to ensure that hygienic and safe skin piercing practices are followed by operators, in order to protect the health and safety of those receiving treatments and those carrying out the treatments.
- 3.5 In order to enact these model byelaws, the Council are required to follow the procedures set out in section 236 of the Local Government Act 1972. This requires the Council to give at least one months notice, in a local newspaper, of the intention to apply to the Secretary of State for Health to confirm the new byelaws. During this period, the Council is required to make a copy of the byelaws available for public inspection at their offices and they will also be available on the website. Local businesses already registered for skin piercing will be contacted by way of a mailshot and advised of the proposed new byelaws.

4 Identification of Options

- 4.1 Option 1 - the model byelaws are adopted by Council.
- 4.2 Option 2 - the model byelaws are not adopted by Council.

5 Evaluation of Options

Option 1 - Implementation of the model byelaws will greatly improve the protection of public health and safety and provide a clear framework of standards for establishments and persons carrying out such practices.

Option 2 -The current byelaws are ineffective as they are 30 years old and do not reflect current modern techniques offered by the cosmetic piercing and semi-permanent skin colouring industries. Failure to adopt the new byelaws will leave operators of these procedures without the level of protection recommended by the Department of Health

6 Resource Implications

Estimated costs of £70.80 will be incurred for the placing of a notice for two weeks, in one or more local newspapers, advertising the proposed byelaws. There will also be a minimal cost, for contacting local businesses already registered for skin piercing by way of a mailshot. These costs will be funded from within existing budgets.

7 Corporate Implications

7.1 Comment from the Section 151 Officer:

Accountancy has been consulted and has no further comments.

7.2 Comment from the Solicitor to the Council:

The Senior Solicitor has read and advised on this report and has no further comments.

7.3 Comment from the Equalities Officer:

This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

8 Appendices

Appendix 1 – Updated Model Byelaws

9 Background Papers

None

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**Model Byelaws with respect to
acupuncture, cosmetic skin piercing,
tattooing, semi-permanent skin-
colouring and electrolysis.**

**Made by Dover District Council in pursuance
of Section 14(7) and Section 15(7) of the
Local Government (Miscellaneous Provisions) Act 1982.**

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, 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 Dover 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 sterilised 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 or drinking is permitted in the treatment area and a notice, or notices, reading “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 sterilisation 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, 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 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 sterilised 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 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 their hands and nails clean and their 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 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 made by Dover District Council relating to acupuncture and electrolysis on 01 July 1986 and tattooing and ear piercing on 21 September 1984 and were confirmed by the Secretary of State for Social Services on 23 September 1986 and 21 December 1984 are revoked.

EXECUTED AS A DEED by the affixing of)
THE COMMON SEAL of **DOVER DISTRICT**)
COUNCIL this **XXX** day of **XXX** 2015)
 in the presence of:)

Nadeem Aziz
 Chief Executive



The foregoing byelaws are hereby confirmed by the Secretary of State for Health on xxx xxx xxx and shall come into operation on the xxx day of xxx xxx.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
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

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).**