

Agenda Item No:**Report No:****Report Title:**

Adoption of Byelaws for the Regulation of Acupuncture, Electrolysis, Tattooing, Cosmetic Piercing and Semi-Permanent Skin Colouring

Report To:

Cabinet

Date:

12 February 2008

Lead Councillor:

Councillor E Collict

Ward(s) Affected:

All

Report By:

Director of Planning and Environmental Services

Contact Officer(s):

**Mark Wiltshire (Environmental Health Manager) or
Lisa Harvey-Vince (Acting Principal Environmental Health Officer)**

Purpose of Report:

1. To inform Cabinet of the existing arrangements for the regulation of acupuncture, electrolysis, tattooing, cosmetic piercing and semi-permanent skin colouring.
2. To advise Cabinet that a draft set of byelaws for acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis has been compiled to replace the existing byelaws which regulate these activities.

Officers Recommendations

1. To note the contents of the draft byelaws
 2. To authorise the Head of Environment and Health and the District Solicitor to submit the draft byelaws to the Department of Health for provisional approval.
 3. If provisional approval is obtained, to authorise the Head of Environment and Health and District Solicitor to submit the byelaws to Council for ratification.
-

Reasons for Recommendation

1. To provide an effective and consistent enforcement regime for the regulation of acupuncture, electrolysis, tattooing, semi-permanent skin colouring and cosmetic piercing within the District.

Information

1. Legislative Background: The Local Government (Miscellaneous Provisions) Act 1982 part VIII made provision for the making of byelaws by local authorities for the regulation of ear piercing, tattooing, electrolysis and acupuncture. Both the practitioner and the premises at which the skin piercing is to be carried out are required to be registered. However, where the practitioner visits people to give treatment, the premises where the

treatment takes place is not required to be registered.

2. Applications for registration must include details of where the applicant desires to practice, together with any details for non-compliance with skin piercing bye-laws. The local authority cannot require information about people to whom treatment has been given.
3. In addition to registration, the local authority may make byelaws which cover:
 - a. Cleanliness of premises and fittings;
 - b. Cleanliness of persons; and/or
 - c. Cleansing and sterilisation of instruments, materials and equipment
4. Existing Byelaws: Lewes District Council has made three sets of byelaws for the regulation of treatments. These byelaws apply to:
 - a. Acupuncture - made 14 September 1984 and brought into force on 1 May 1985
 - b. Ear piercing and electrolysis made 27 January 1986 and brought into force on 1 August 1986 and
 - c. Tattooing made 27 January 1986 and brought into force on 1 August 1986
5. The Act allows for reasonable fees for registration to be determined at the discretion of the local authority. Lewes currently charges £78 for a registration application (this is a one-off fee, and is not renewable annually).
6. Since the making of those byelaws there has been an increase in the popularity of cosmetic body piercing and semi-permanent colouring (often referred to as temporary tattooing). These activities carry a potential risk of blood borne virus transmission such as HIV, Hepatitis (A and C) and other microbial infections, if infection control procedures are not observed e.g. the use of sterile equipment for each client.
7. Legislative Change: The Local Government Act 2003 amends the 1982 Act to include cosmetic piercing (i.e. piercing of the body including the ear) and semi-permanent skin colouring (including micro-pigmentation, semi-permanent make up and temporary tattooing). There are no changes in the requirement to register premises and operators, however any new byelaws may include more general controls in relation to:
 - a. cleanliness and hygiene of premises;
 - b. practitioners; and
 - c. equipment.
8. Members should be advised that there is no provision within the byelaws to regulate the age of consent for treatment. Cosmetic piercing of a minor is lawful provided a valid consent is given. A statutory minimum age of consent for tattooing (18 years of age) is specified in the tattooing of Minors Act 1969 and is not enforced by local authorities.

9. The Department of Health has produced a new set of model byelaws which consolidate the byelaws relating to acupuncture, ear piercing and electrolysis and tattooing and also include cosmetic piercing and semi-permanent skin colouring. The model set which has been adapted for the Council's purposes is appended at Appendix 1. The changes from the existing byelaws are summarised (Appendix 2) and do not impose any additional regulatory burden upon the businesses or practitioners that is not already considered good practice within the industry.
10. Impact upon businesses: The Environmental Health Department already register the following number of premises and practitioners:

	Premises
Acupuncture	13
Ear-piercing	24
Electrolysis	14
Tattooing	5

It is estimated that introducing these additional changes will affect a very small number of premises (less than 10) who do not already register for one or more treatments, but will require a number of practitioners to register for the new treatments to be regulated by the proposed changes.

11. Procedure for making the Byelaws: If Cabinet agree the Head of Environment and Health and the District Solicitor will seek provisional approval for the draft byelaws from the Department of Health. Once that approval has been obtained, the District Solicitor will prepare a report to full Council seeking ratification of the byelaws and authority to seal. The Council must then advertise its intention to apply for confirmation of the byelaws. Adverts must be placed in local newspapers giving members of the public and other interested bodies at least one month to make representations to the Department of Health about the byelaws. When that month has expired, the Secretary of State for Health will consider the representations (and comments received from the Council in respect of those representations) and decide whether the byelaws should be confirmed and brought into force. It is anticipated that the whole process will take approximately six to nine months.

Financial Appraisal

1. There are no direct costs involved in the making of the byelaws (apart from the cost of advertisement).

Environmental Implications

1. I have completed the Environmental Implications questionnaire and there are no significant effects as a result of these recommendations.

Risk Assessment

1. I have completed a risk assessment. If the recommendations are not implemented, the risk will be that:
 - (a) the Council will not be able to provide enforceable controls over high-risk activities; and
 - (b) that there will remain an imbalance between practices creating unfair burdens on some practices and not others.

Background Papers

None

Appendices

Appendix 1 – Draft/Model Byelaws

Appendix 2 – Summarised changes from the existing Byelaws

Appendix 1

Lewes District Council 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 Lewes 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; and

“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 disposal, as far as practicable, or otherwise is sterilized for each treatment, is suitable 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 disposal paper sheet which is changed for each client; and
 - (g) no eating or drinking is permitted in the treatment area and a notice 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; and
- (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; and
- (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 article used in treatment:-
- (aa) is clean and in good repair and, so far as is appropriate, is sterile; and
- (ab) 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 it 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; and

- (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
 - (ab) 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 disposal 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 and detergents; 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 disposal 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 Acupuncture that were made by Lewes District Council on the 14 September 1984 and were confirmed by the Secretary of State for Social Services on 12 May 1985 are revoked.
- 7. The byelaws relating to Ear Piercing and Electrolysis that were made by Lewes District Council on the 27 January 1986 and were confirmed by the Secretary of State for Social Services on 10 June 1986 are revoked.
- 8. The byelaws relating to Tattooing that were made by Lewes District Council on the 27 January 1986 and were confirmed by the Secretary of State for Social Services on 10 June 1986 are revoked.

APPENDIX 2

The proposed Byelaws contain the same controls as the current Byelaws for Acupuncture, Ear Piercing, Electrolysis, and Tattooing, with the exception of the control relating to smoking in the treatment area. It is proposed to remove the control relating to 'No Smoking' in the treatment area as this is now controlled through the Health Act 2006.

There are additional controls in the proposed Byelaws which are described in the table below:

Section	Additional Controls relate to:
1(1)	Definition of 'hygienic piercing instrument' designed to pierce either the ear or nose.
3(1)(a)(iii)	Requirement for any jewellery used for cosmetic piercing using a hygienic piercing instrument, to be sterile.
4(1)(a)(iii)	Requirement for operators to wear new disposable gloves for each client, except for acupuncture.
4(2)	Washing facilities no longer need to be for the sole use of the operator where only a hygienic piercing instrument is used and hand gel/liquid cleaners are available.
4(3)	Requirement for operators to wear new disposable gloves for each client for acupuncture in specified circumstances relating to bodily fluids, blood, lesions and blood borne viruses.
4(5)	Operators who visit clients at other premises are required to following the byelaws relating to cleansing and sterilization of needles, instruments, jewellery, materials and equipment used for treatment [3(1)(a)], and cleanliness of the operator [4(1)(a)].