

## LICENSING COMMITTEE – 23RD JULY 2019

### Report of the Head of Regulatory Services

#### Part A

ITEM 5      ADOPTION OF MODEL BYELAWS TO REGULATE THE HYGIENE AND PRACTICE STANDARDS IN PREMISES CONDUCTING COSMETIC PIERCING, SEMI-PERMANENT SKIN COLOURING, ACUPUNCTURE, TATTOOING AND ELECTROLYSIS

#### Purpose of Report

This report recommends to Full Council the adoption of new byelaws in accordance with the Local Government Act 2003 Section 120 and Schedule 6, of the registration of premises and persons within the borough of Charnwood undertaking cosmetic piercing (piercing of the body including the ear) and semi-permanent skin-colouring (including micropigmentation, semi-permanent make up and temporary tattooing).

#### Recommendations

1. To recommend to Full Council the adoption of the byelaws outlined in Appendix 1 to this report;
2. Subject to recommendation 1, to recommend to Full Council that the Head of Regulatory Services be given delegated authority to take all such steps as may be necessary to make, seal, advertise and obtain confirmation, under S.235 of the Local Government Act 1972, of the byelaws from the Secretary of State for Health, so as to bring them into effect;
3. To recommend to Full Council, that, subject to the confirmation of the byelaws referred to in recommendation 2 above, the existing byelaws relating to ear piercing, acupuncture, tattooing and electrolysis in the Borough of Charnwood, made by the Council on 7th March 1984 and confirmed by the Secretary of State for Health, be revoked;
4. To recommend to Full Council, that the Head of Regulatory Services be given delegated authority to introduce a fee in line with our current fee for skin piercing activities and in line with the Council's fees and charging policy.

#### Reasons

1. To ensure that, businesses undertaking cosmetic piercing and semi-permanent skin colouring are registered under the Local Government (Miscellaneous Provisions) Act 1982 and appropriate controls are in place to protect public health and prevent the spread of blood-borne viruses such as HIV, hepatitis B and hepatitis C and other infections.
2. To enable appropriate steps to be taken to introduce the byelaws.

3. To enable the revocation of the existing byelaws, subject to the introduction of the proposed new update byelaws.
4. To enable an appropriate fee to be charged for the Registration of relevant individuals and businesses.

### Policy Justification and Previous Decisions

Under section 13(2) of the Local Government (Miscellaneous Provisions) Act 1982 Charnwood Borough Council through the Housing and Health Committee in January 1983 agreed to adopt section 15 of the Act to apply in their area to register those undertaking tattooing, ear piercing, electrolysis and acupuncture.

The Local Government Act 2003 extends the definitions of this Act to include cosmetic piercing (including ear piercing) and semi-permanent skin colouring.

Regulatory Services are responsible for ensuring that public health is protected and as this is an area of rising concern as skin piercing activities are invasive it is considered appropriate to adopt the new byelaws.

Businesses are only required to register their premises and practitioners once, there are no on-going costs relating to their registration.

15 known businesses carrying out semi-permanent skin colouring were sent a questionnaire to consult on the introduction of this legislation into Charnwood. Six responses were received. 100% of the responses received (6) said that we should register these types of skin piercing operations. The businesses consulted said they thought registration would either have a very positive or positive impact. 100% of business responses received (6) agreed registration would ensure safe and clean premises and equipment.

### Implementation Timetable including Future Decisions.

At least one calendar month before applying to the Secretary of State for confirmation..

- a. Charnwood Borough Council must give notice of its intention to apply for confirmation of the byelaws in one or more local papers circulating in the area to which the byelaws will apply;
- b. A copy of the byelaws must also be deposited at the Council's offices and be open to public inspection without charge at all reasonable times during that month.

The Consultation period will begin following Full Council approval and the placing of the required advertisement. We will consult with those business affected directly to let them know the proposal and so that they can make any comments as necessary for one month. Any comments made will then go to the Secretary of State with the byelaws to be confirmed. If confirmed by the Secretary of State, the byelaws will take effect on the date specified by the Secretary of State.

## Report Implications

The following implications have been identified for this report.

### *Risk Management*

The risks associated with the decision the Licensing Committee is asked to make and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
Failure to consult on and implementation of the Local Government Act 2003 would result in the Council failing to exercise its duty under the requirements of that Act.	L	M	Follow guidance outlines in the Department of Health Report, obtain and follow procedures within Charnwood Borough Council and ensure approval at Full Council

### *Financial*

There are no financial implications associated with this report, other than those of consultation with business/interested parties. The Council will issue a registration fee which will cover the administration and visits involved with the adoption of this legislation. The current registration fee is £130.00 and this is reviewed on an annual basis.

### *Equality and Diversity*

A review of the Equality Impact Assessment has been undertaken and no significant issues have been found that need incorporating into the existing assessment.

This is a regulatory responsibility appropriate to specified premises and activity and there is no known equality impact associated with this.

#### Background Papers:

- Local Government Act 2003 Regulation of Cosmetic Piercing and Skin –Colouring Business Guidance on Section 120 and Schedule 6
- Local Government (Miscellaneous Provisions) Act 1982
- Local Government Act 1972
- Local Government Act 2003

Appendix 1:

Model Byelaws – Acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis

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## Part B

### Background

Charnwood Borough Council (officers in Regulatory Services) are using existing legislation the Local Government (Miscellaneous Provisions) Act 1982 to enable them to register tattooing, acupuncture, electrolysis and ear piercing.

Since 1982 the cosmetic beauty and tattooing market has changed and there are now new procedures available to members of the public which are classed as skin piercing. Piercing is now available to all areas of the body and there has been a recent increase in a number of beauticians offering semi-permanent make up to people in and outside our borough.

Semi-permanent make up includes the application of pigment to areas of the body such as eyebrows, lips and head. There are also other applications such as Henna tattoos which are also semi-permanent but can contain high levels of metals or viruses. As the Council has had an increase of businesses enquiring to set up in these areas (29 in total) it is considered in line with public health protection to ensure these businesses are operating in a safe manner and with this legislation the Council can register these businesses and ensure they are complying with byelaws designed to increase health protection and reduce the risk of transmission of blood-borne virus (BBV). These include HIV, hepatitis B and hepatitis C and other infections. The Department of Health has produced model byelaws which we would adopt to ensure consistency across England.

The application of these byelaws and controls have been effective, however, there is an opportunity because of legislative, model bylaw and guidance changes, for the byelaws to be improved to reflect the latest model as well as being expanded to include the following:

- (i) cosmetic piercing (any part of the body including ears); and
- (ii) semi-permanent skin colouring (which include, for example, micro-pigmentation, semi-permanent make-up and temporary tattooing).

This would bring cosmetic piercing and semi-permanent make up in line with the registration we also currently operate for other businesses such as acupuncture, tattooing, electrolysis and ear piercing.

As the byelaws were updated by the Department of Health in 2007 it is only proper of Charnwood Borough Council to have in place the current byelaws relating to all skin piercing activities as one set of byelaws.

Approval has to be agreed by the Council and once this has been agreed and the byelaws made, formal request has to be given to the Secretary of State for the byelaws to be confirmed and to enable them to come into force.

The impact on the level of resource required to assess additional businesses registering is thought minimal and therefore will be unlikely to affect the team negatively.

## MODEL BYELAWS

### Acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis

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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 Charnwood Borough 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 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 relating to tattooing, ear-piercing, electrolysis and acupuncture that were made by Charnwood Borough Council on the 7 March 1984 and were confirmed by the Secretary of State for Health on 26 March 1984 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 \_\_\_\_\_

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).*