



Doncaster
Metropolitan Borough Council

Agenda Item No. 4
9th November 2010

**To the Chair and Members of the
ELECTIONS AND DEMOCRATIC STRUCTURES COMMITTEE**

**REVOCATION OF THE EXISTING BYELAWS REGULATING ACUPUNCTURE,
TATTOOING, EAR PIERCING AND ELECTROLYSIS AND THE ADOPTION OF NEW
BYELAWS REGULATING ACUPUNCTURE, COSMETIC PIERCING, ELECTROLYSIS,
TATTOOING AND SEMI-PERMANENT SKIN-COLOURING.**

EXECUTIVE SUMMARY

1. Doncaster Council currently has 3 sets of byelaws, which were introduced in the late 1980s, to help ensure hygienic practices are maintained by those persons engaged in carrying out skin-piercing practices. At that time, the law only recognised skin-piercing as including tattooing, acupuncture, ear-piercing and electrolysis. Whilst in the 1980s it was considered adventurous to have ones ears pierced in the 21st Century it is now commonplace for items of jewellery to be inserted into many other parts of the anatomy and other practices such as semi-permanent tattooing have also evolved. As a result, we found ourselves able to apply byelaws to regulate hygiene practices during ear-piercing whereas we were unable to apply the byelaws to, for example, a tongue piercing or nose piercing.
2. After much lobbying, the law was amended thereby widening the legal definition of skin-piercing to include the new practices. Local authorities are now able to make byelaws controlling the hygiene practices of acupuncture, cosmetic piercing, electrolysis, tattooing and semi-permanent skin-colouring. The key changes being the term ear-piercing being replaced with cosmetic piercing, which relates to the entire body now rather than being confined to regulating ear-piercing, and the introduction of the term semi-permanent skin-colouring.
3. In the interests of providing modern up to date byelaws, reducing the legislative burden on those practitioners who practice more than one method of skin-piercing and ensuring continued public confidence it is proposed to revoke the existing 3 sets of byelaws and replace them with 1 all encompassing set.
4. The proposed byelaws are based on the model byelaws for acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis produced by the Department of Health.

RECOMMENDATIONS

5. That the Committee recommends the Council to accept the proposals to revoke the existing byelaws, as listed in Appendix 1 and resolve to approve the new byelaws set out in Appendix 2, for confirmation by the Secretary of State.

6. That, in the event of objections/representations being received, the Regulation and Enforcement Manager be authorised, in consultation with the Chair and/or Vice-Chair of the Elections and Democratic Structures Committee, to comment upon such objections/representations received and provide comments back to the Secretary of State

BACKGROUND

7. The Local Government (Miscellaneous Provisions) Act 1982 gave local authorities the option to adopt powers to require the operators of prescribed skin piercing practices to register with them and additionally the option to adopt byelaws. The prescribed practices were acupuncture, ear piercing, electrolysis and tattooing. Doncaster Council adopted these provisions in 1982 and have required such skin piercing practitioners to register ever since. On 17th November 1982 Doncaster Councils Law and General Purposes Committee resolved that draft byelaws be prepared for approval to regulate the premises used for these activities. We currently have 3 sets of byelaws (all confirmed in 1988):
 1. Acupuncture;
 2. Ear piercing & electrolysis;
 3. Tattooing.
8. In recent years piercing practices have become more prolific and diverse in nature, particularly with regard to body piercing where there is a market demand for just about every part of the body to be pierced. Due to the 1982 Act being prescriptive it has not until recently been possible to require some practitioners to register nor publish byelaws to regulate these new piercing practices, namely body piercing and semi-permanent skin-colouring. For example, it was possible for a person to operate as a body piercer relatively unregulated as long as they avoided piercing ears.
9. In order to address this apparent loop-hole, new provisions were introduced under section 120 and Schedule 6 of the Local Government Act 2003 (the 2003 Act) , which amend section 15 of the Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act). In summary section 120 has amended section 15 of the 1982 Act by introducing new terminology. The term ear piercing has been replaced by *cosmetic piercing* so as to encompass piercing of any part of the body not just the ear. The umbrella term *semi-permanent skin colouring* has been introduced to cover micro pigmentation, semi-permanent make-up and temporary tattooing.
10. The new provisions give this Authority the ability to require practitioners of these practices to register, thereby allowing more effective control and regulation. To further minimise the potential risk of blood-borne virus (BBV) transmission it is felt that these new byelaws are required to encompass all the latest piercing practices and trends.

OPTIONS CONSIDERED

11.
 1. Revoke existing Ear-Piercing and Electrolysis Byelaws and adopt two new sets of byelaws covering cosmetic piercing and semi-permanent skin colouring.
 2. Revoke all existing piercing byelaws (Appendix 1) and adopt one,

all encompassing set of byelaws (Appendix 2).

REASONS FOR RECOMMENDED OPTION

12. Option 2 is the recommended option for reasons of simplicity, in that all skin piercing practices will be regulated by one set of byelaws, any future amendments will only need to be made to one set of byelaws, the perceived burden on the trade will be minimised and, moreover, this option is in line with guidance produced by the Department of Health.

IMPACT ON THE COUNCIL'S KEY OBJECTIVES

13. The modern up-to-date byelaws will help contribute towards protecting the health of the population.

Doncaster Priorities	Implications of this initiative
A Prosperous Place	
Skills & Lifelong Learning	
Healthy & Caring	Improve and protect the health of the population and reduce health inequalities
Safer, Cleaner & Greener	
Equality of Opportunity (Cross-Cutting)	
Improving Neighbourhoods Together (Cross-cutting)	
Protecting The Environment (Cross-cutting)	
Achieving Excellence	

RISKS & ASSUMPTIONS

14. Failure to adopt the byelaws will allow those who are not covered by the current byelaws to potentially operate without guidance and in an unhygienic manner. The amendments will allow the Authority to deal effectively and efficiently with those practitioners and provide a minimum standard for practitioners to work to reducing the risk of transmission of BBV within the Borough.

LEGAL IMPLICATIONS

- 15. Section 120 and Schedule 6 of the Local Government Act 2003 amend
- 21. ~~the Council of the Local Government (Miscellaneous Provisions) Act: 1982, so that local authorities can now regulate cosmetic piercing and semi-permanent skin colouring, as opposed to just ear piercing and tattoos. The amendments allow local authorities to compel businesses to register themselves and their premises and requires them to observe byelaws relating to the cleanliness and hygiene of premises to apply for an approval by the Secretary of State must be given in one or more newspapers circulating in the Borough. For at least one month after the date of publication of the local Government Act 1972 deals with applications to Secretary of State for confirmations of byelaws. The additional Guidance has been issued by the Department of Health person who applies with a copy of any part of the byelaws.~~
- 16. ~~The Council shall pass a resolution authorising the affixing of the seal to the byelaws and the seal shall be affixed and the date of the sealing shall be the date on which the byelaws are made. At least one clear calendar month before applying to the Secretary of State for confirmation, Notice of the Council's intention to apply for confirmation must be given in one or more of the local newspapers circulating in the area to which the byelaws apply. The byelaws, having been subject to the above procedure must be deposited at the Council's offices and open to public inspection without charge at all reasonable times during the advertisement. The byelaws may be submitted for confirmation any time after the month has elapsed will be considered by the Secretary of State.~~
- 17. ~~Over the month to be advertised, the Council must be given in one or more of the local newspapers circulating in the area to which the byelaws apply. The byelaws, having been subject to the above procedure must be deposited at the Council's offices and open to public inspection without charge at all reasonable times during the advertisement. The byelaws may be submitted for confirmation any time after the month has elapsed will be considered by the Secretary of State.~~
- 23. ~~Over the month to be advertised, the Council must be given in one or more of the local newspapers circulating in the area to which the byelaws apply. The byelaws, having been subject to the above procedure must be deposited at the Council's offices and open to public inspection without charge at all reasonable times during the advertisement. The byelaws may be submitted for confirmation any time after the month has elapsed will be considered by the Secretary of State.~~
- 24. ~~Over the month to be advertised, the Council must be given in one or more of the local newspapers circulating in the area to which the byelaws apply. The byelaws, having been subject to the above procedure must be deposited at the Council's offices and open to public inspection without charge at all reasonable times during the advertisement. The byelaws may be submitted for confirmation any time after the month has elapsed will be considered by the Secretary of State.~~

FINANCIAL IMPLICATIONS

- 25. Should the Secretary of State still be unclear as to the proper resolution of the byelaws, the Council should be required to refer the byelaws to the Secretary of State for confirmation.
- 26. The cost of making the Byelaws could be reduced by existing into the byelaws. The byelaws will be subject to the above procedure must be deposited at the Council's offices and open to public inspection without charge at all reasonable times during the advertisement. The byelaws may be submitted for confirmation any time after the month has elapsed will be considered by the Secretary of State.

Police	£100 - £1500 depending on how extensive the inquiry is.	
Human Resources	£100 - £1500 depending on how extensive the inquiry is.	
Buildings, Land and Occupiers	£100 - £1500 depending on how extensive the inquiry is.	
IC	£100 - £1500 depending on how extensive the inquiry is.	

CONSULTATION

- 19. The proposed byelaws are based on the model byelaws for acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and **BACKGROUND PAPERS** by the Department of Health.

- 20. Part of the formal process of adopting new byelaws is a period of formal consultation. Local Government Act 2003. Regulation of cosmetic piercing and skin colouring businesses, available on the Department of Health website www.dh.gov.uk
 - Updated model byelaws for the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis by local authorities, available on the Department of Health website www.dh.gov.uk

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Appendix 1 – Existing byelaws

- Tattooing – confirmed by the Secretary of State 9 May 1988, came into operation 1 July 1988;
- Ear piercing and electrolysis - confirmed by the Secretary of State 9 May 1988, came into operation 1 July 1988;
- Acupuncture - confirmed by the Secretary of State 9 May 1988, came into operation 1 July 1988

Appendix 2 – Proposed byelaws

DONCASTER BOROUGH 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 Doncaster 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 acupuncture; ear piercing and electrolysis; and tattooing that were made by Doncaster Borough Council on the 25 January 1988 and were confirmed by the Secretary of State on 9 May 1988 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).***