

## Cabinet

10 April 2013



### **New Byelaws for Acupuncture, Tattooing, Semi-permanent Skin Colouring, Cosmetic Piercing and Electrolysis (To seek approval to create new byelaws)**

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**Report of Corporate Management Team  
Terry Collins, Corporate Director, Neighbourhood Services  
Councillor Bob Young, Cabinet Portfolio Holder for Strategic Environment**

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#### **Purpose of the Report**

- 1 The purpose of this report is to seek approval to create new byelaws in respect of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis. It follows a report to Council on 20 February 2013 that adopted the legislation that enables the local authority to create the byelaws.

#### **Background**

- 2 The Local Government (Miscellaneous Provisions) Act 1982 introduced specific controls for certain skin piercing activities such as ear piercing, tattooing, acupuncture and electrolysis. The controls enable Local Authorities to require the registration of such activities to ensure that operators meet hygienic standards. The principal reason for the introduction of the controls was related to the risks of transmission of blood borne diseases such as Aids and Hepatitis.
- 3 Since the initial controls were introduced there have been a number of developments in skin piercing primarily associated with fashion trends. Consequently the current practices of what are known as cosmetic body piercing for studs, rings etc., and also semi-permanent skin colouring are in effect unregulated. Local Authorities have expressed concern for a number of years that these practices also pose potential health risks for the transmission of blood borne diseases.
- 4 In recognition of these concerns the Government introduced, through Section 120 and Schedule 6 of the Local Government Act 2003, powers to require the registration of businesses which provide cosmetic piercing and skin colouring services. The powers must first be adopted by a Local Authority and regulation will be subject to compliance with a set of model byelaws.

## **Current Position**

- 5 Following local government review, any byelaws that had been previously adopted by the 7 former district authorities were transferred to Durham County Council and remain in force in the geographical areas of the former districts.
- 6 These byelaws do not contain provision to deal with issues relating to cosmetic skin piercing, other than ear piercing, or semi-permanent skin colouring.
- 7 Sections 14 to 17 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended) come into effect within the area of County Durham on 14 May 2013, following the Council resolution of 20 February 2013. The adoption of these provisions enables the County Council to create byelaws controlling the activities of Acupuncture, Tattooing, Cosmetic Piercing and Electrolysis.

## **Proposed Byelaws**

- 8 The 2003 Local Government Act amended the 1982 Act to give local authorities powers to regulate businesses providing cosmetic piercing (i.e. piercing and insertion of jewellery into any part of the body including the ears) and semi-permanent skin colouring (e.g. micro-pigmentation).
- 9 The Department of Health has recommended a set of model byelaws. It is intended that Durham County Council adopts the model byelaws in their entirety as shown in Appendix 2.
- 10 Adoption of the comprehensive model byelaws prepared by the Department of Health will repeal existing byelaws dealing with this subject within County Durham.

## **Procedure for Adopting the Byelaws**

- 11 Durham County Council has resolved to apply sections 14 to 17 as specified above, and it can now adopt the byelaws in appendix 2 providing that it complies with the provisions for adopting byelaws set out in Section 236 of the Local Government Act 1972.
- 12 If the byelaws are adopted by Durham County Council, an advertisement will be published in a local newspaper giving notice that the Council intends to apply for confirmation of the byelaws to the Department of Health. The advert must be published at least one month prior to confirmation being sought from the Secretary of State. A copy of the byelaws will be held on deposit at Durham County Council for inspection by the public for one month after the date of the newspaper publication. Any person will have the right to object to the byelaw before it is confirmed.
- 13 Following this period, application will be made to the Secretary of State for confirmation of the byelaws. The Government department with responsibility for confirming byelaws in this instance is the Department of Health.
- 14 The byelaws will usually come into force no earlier than one month after they have been confirmed, unless some other date is specified.

## **Recommendations and reasons**

16 To agree that:

- i) Members resolve that the model byelaws in Appendix 2 are adopted by Durham County Council; and
- ii) Arrangements are made to apply the Council seal.

## **Background papers**

Draft Byelaws (Appendix 2)

Local Government Act 2003: Regulation of Cosmetic Piercing and Skin-Colouring Businesses, Guidance on Section 120 and Schedule 6, Department of Health.

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## **Appendix 1: Implications**

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### **Finance**

The legislation allows for reasonable fees to be charged for registration of persons carrying on businesses of cosmetic piercing which should cover the cost of introducing and enforcing the requirements of these byelaws. The fees for registration under existing byelaws are set and review annually.

### **Staffing**

Fees from registration will be reinvested in the service, and it is expected that the introduction and enforcement of the new byelaws can be met from existing resources.

### **Risk**

A risk assessment was carried out for the submission of the report of November 2010; no reportable risks were identified. There is no change to this risk assessment.

### **Equality and Diversity/ Public Sector Equality Duty**

An assessment was carried out for the submission of the report of November 2010; Adoption of the byelaws will ensure all operators of skin piercing businesses are treated equally. There is no change to this assessment.

### **Accommodation**

None

### **Crime and Disorder**

None

### **Human Rights**

None

### **Consultation**

None

### **Procurement**

None

### **Disability Issues**

None

### **Legal Implications**

Legal Services have been consulted regarding this report. Sections 14, 15, 16 and 17 of the Local Government (Miscellaneous Provisions) Act 1982 enable Durham County Council to adopt the byelaws in appendix 2.

## Appendix 2: Proposed Byelaws



### DURHAM COUNTY 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 Durham County 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 listed in Schedule 1 of these byelaws are revoked.

**EXECUTED** as a **DEED** (but not delivered until the date of it) by the affixing of **THE COMMON SEAL OF THE COUNTY COUNCIL OF DURHAM** By Order:

Authorised Sealing Officer (A permanent Officer of the County Council)

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



## **DURHAM COUNTY COUNCIL BYELAWS**

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

### **Schedule 1: Byelaws to be revoked**

1. The byelaws relating to tattooing which were made by Easington District Council on the eleventh day of July 1985 and confirmed by The Secretary of State for Social Services on 29 October 1985 are revoked.
2. The byelaws relating to ear piercing and electrolysis which were made by Easington District Council on the eleventh day of July 1985 and confirmed by The Secretary of State for Social Services on 29 October 1985 are revoked.
3. The byelaws relating to acupuncture which were made by Easington District Council on the eleventh day of July 1985 and confirmed by The Secretary of State for Social Services on 29 October 1985 are revoked.
4. The byelaws relating to acupuncture which were made by Wear Valley District Council on the twenty third day of February 1987 and confirmed by The Secretary of State for Social Services on 26<sup>th</sup> May 1987 are revoked.
5. The byelaws relating to tattooing which were made by Wear Valley District Council on the twenty third day of February 1987 and confirmed by The Secretary of State for Social Services on 26<sup>th</sup> May 1987 are revoked.
6. The byelaws relating to ear piercing and electrolysis which were made by Wear Valley District Council on the twenty third day of February 1987 and confirmed by The Secretary of State for Social Services on 26<sup>th</sup> May 1987 are revoked.
7. The byelaws relating to acupuncture which were made by Sedgefield Borough Council in June 1988 and confirmed by The Secretary of State for Health on 17<sup>th</sup> February 1989 are revoked.
8. The byelaws relating to ear piercing and electrolysis which were made by Sedgefield Borough Council in June 1988 and confirmed by The Secretary of State for Health on 17<sup>th</sup> February 1989 are revoked.
9. The byelaws relating to tattooing which were made by Sedgefield Borough Council in June 1988 and confirmed by The Secretary of State for Health on 17<sup>th</sup> February 1989 are revoked.
10. The byelaws relating to acupuncture which were made by Durham City Council on 13 March 1985 and confirmed by The Secretary of State for Social Services on 1<sup>st</sup> September 1985 are revoked.

11. The byelaws relating to tattooing which were made by Durham City Council on 13 March 1985 and confirmed by The Secretary of State for Social Services on 1<sup>st</sup> September 1985 are revoked.
12. The byelaws relating to ear piercing and electrolysis which were made by Durham City Council 13<sup>th</sup> March 1985 and confirmed by The Secretary of State for Social Services on 1<sup>st</sup> September 1985 are revoked.
13. The byelaws relating to ear piercing and electrolysis which were made by Derwentside District Council on 18<sup>th</sup> March 1986 and confirmed by The Secretary of State for Social Services on 1<sup>st</sup> July 1986 are revoked.
14. The byelaws relating to tattooing which were made by Derwentside District Council on 18<sup>th</sup> March 1986 and confirmed by The Secretary of State for Social Services on 1<sup>st</sup> July 1986 are revoked.
15. The byelaws relating to acupuncture which were made by Derwentside District Council on 18<sup>th</sup> March 1986 and confirmed by The Secretary of State for Social Services on 1<sup>st</sup> July 1986 are revoked.
16. Any other byelaws made pursuant to the Local Government (Miscellaneous Provisions) Act 1982 relating to acupuncture, tattooing, ear piercing and electrolysis and made by Chester le Street District Council, Derwentside District Council, Durham City Council, Easington District Council, Sedgefield Borough Council, Teesdale District Council, or Wear Valley District Council, and that were transferred to Durham County Council on 1<sup>st</sup> April 2009 are revoked.

## **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).***