

LICENSING AND REGULATION COMMITTEE

14 June 2012

PROPOSED CONTROLS OVER PREMISES OFFERING ACUPUNCTURE,
TATTOOING, BODY PIERCING AND ELECTROLYSIS

REPORT OF HEAD OF HEALTH PROTECTION

Contact Officer: Jo Spence Tel No: 01962 848 319 jspence@winchester.gov.uk

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report recommends adoption of sections 15, 16 and 17 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Local Government Act 2003 which enable the Council to control businesses where acupuncture, tattooing, body piercing and electrolysis are offered on domestic or commercial premises. This will introduce a requirement for such businesses to register with the Council and will authorise the Council to charge a registration fee. Members are also asked to authorise adoption of the model byelaws under this Act to regulate the cleanliness, fittings, persons, instruments, materials and equipment connected with these businesses.

RECOMMENDATIONS:

1. That sections 14 to 17 inclusive of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 120 and Schedule 6 of the Local Government Act 2003) be adopted and that notice of resolution be advertised and sent to businesses affected by the changes.
2. That subject to adoption of the above provisions, the charges set out in paragraph 6.1 of this report be agreed and adopted.
3. That following the formal adoption of the provisions set out in 1 above, the Head of Legal Services be authorised to make and advertise the model

byelaws under sections 15 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 120 and Schedule 6 of the Local Government Act 2003) and to apply to the Secretary of State for confirmation of the byelaws.

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PROPOSED CONTROLS OVER PREMISES OFFERING ACUPUNCTURE, TATTOOING, BODY PIERCING AND ELECTROLYSIS

REPORT OF HEAD OF HEALTH PROTECTION

INTRODUCTION

- The Local Government Miscellaneous Provisions Act 1982 (“the 1982 Act”) (under sections 13 -17) gives local authorities the power to require that a person who carries out the business of tattooing or electrolysis within their area register with the Local Authority and prominently display at the business premises the certificate of registration.
- Recent legislation has broadened this power to include regulation of cosmetic piercing and semi-permanent skin colouring.
- In order to do so the Council must first adopt the provisions of sections 14 to 17 of the 1982 Act.
- Once the Council has adopted these provisions the model byelaws to deal with the cleanliness of the premises, can then be adopted. Although cleanliness is also dealt with by the Health and Safety at Work etc Act 1974, the byelaws will give the Council broader powers to enforce good hygiene practices

DETAIL

1. BACKGROUND

- 1.1 Section 15 (7) of The Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) gives local authorities the power to make byelaws for the control of acupuncture, tattooing, ear piercing and electrolysis within its area. Before making byelaws regulating this activity the Council must first adopt part VIII of the 1982 Act which allows the Council to require registration of these businesses.
- 1.2 Currently, the only means of controlling these activities is by use of the Health and Safety at Work legislation to regulate hygiene on premises.
- 1.3 Amendments introduced by The Local Government Act 2003 (which came into force on 1 April 2004) have since broadened the powers contained in Part VIII to include the ability to control the activities of cosmetic piercing and semi-permanent skin colouring.
- 1.4 As use of these activities is growing in popularity particularly among young people it is prudent for the Council now to consider registration and regulation of these activities.

2. MAIN ISSUES

- 2.1 There is no statutory duty which requires the Council to adopt the provisions mentioned. Therefore, the Council has no register of practitioners carrying out these services. In the past, complaints received have been dealt with under the Health and Safety at Work etc Act 1974, but powers are limited. By resolving to adopt Part VIII of the 1982 Act, as amended, the Council can ensure that all premises carrying out one of the named activities must be registered and display a certificate of registration.
- 2.2 A consultation has already been undertaken with practitioners within the area which involved sending 51 letters to known existing practitioners of all treatments proposed. Six responses were received all in favour, however two were from premises that will not be covered by the new byelaws.
- 2.3 The recommendation is that Committee resolves to adopt the provisions and that the Head of Legal Services carry out the formal advertising of the resolution (for two consecutive weeks in a local newspaper).
- 2.4 Once these provisions have been adopted the Council can if it chooses to, adopt the model byelaws to regulate the cleanliness of the premises see Appendix 1 for model byelaws.
- 2.5 These measures are intended to increase health protection and reduce the risk of transmission of blood-borne virus infections such as HIV, hepatitis B and hepatitis C and other infections.

OPTIONS

- 3.1
 - (a) To resolve to adopt all the provisions under sections 14 to 17 of the 1982 Act and to adopt the model byelaws under section 15 of the Local Government Miscellaneous Provisions Act.
 - (b) To resolve to adopt only some of the provisions (i.e to adopt provisions 15 -17 which do not include acupuncture) and to adopt the model byelaws under section 15 of the Local Government Miscellaneous Provisions Act.
 - (c) Not to adopt any of sections 14 to 17 of the 1982 Act or the byelaws which would mean that the Council would not have powers to require the registration of any business carrying out the activities of acupuncture, cosmetic piercing, electrolysis, semi-permanent skin-colouring or tattooing activities within the Councils area.

By not adopting these powers the Council would not be able to act on complaints by the public or Environmental Health officers concerns about these activities carried out in the district.

3. PROPOSALS

- 3.1 It is recommended that the Committee pass a resolution to adopt Part VIII of the 1982 Act. Section 13 (2) of the 1982 Act gives the Council this authority.
- 3.2 This will enable the Council to register those practitioners carrying out acupuncture, tattooing, ear piercing and electrolysis and under the additional powers granted by the 2004 amendment to the 1982 Act also to regulate the activities of cosmetic piercing and semi-permanent skin colouring within the area.
- 3.3 Section 13 of the Act does give the Council a choice to adopt only sections 14 and 15 or to adopt all the sections 14 to 17 inclusive. In the interests of comprehensive regulation of these activities it is proposed that all the provisions in sections 14 to 17 be adopted.
- 3.4 Sections 14 and 15 provide for regulations of these activities by requiring practitioners to provide information about their businesses including details of the premises to be used and any relevant convictions. Sections 14 and 15 each grant power to the Council to make byelaws to secure the cleanliness of premises and cleanliness of persons registered to perform such activities, as well as the cleansing and sterilisation of instruments, materials and equipment used for such purposes.
- 3.5 Sections 16 and 17 provides the Council with powers to prosecute those in breach of the Council's requirement to register and for breach of any byelaws made under Part VIII.
- 3.6 Section 17 provides the Council power to enter premises in order to inspect them and to apply for a warrant to do so if the occupier does not co-operate.

OTHER CONSIDERATIONS:

4. SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

The Committee will have regard to the Council's priorities as set out in Winchester's District Community Strategy 2010 – 2020 and in particular to the Active Communities Change Plan which focuses on ensuring people who live and work here are able to lead active and healthy lifestyles by making good choices and decisions.

5 RESOURCE IMPLICATIONS:

- 5.1 Officer time spent in carrying out the formal procedures will be covered in the existing budget as will the cost of advertising the resolution and byelaws in local newspapers.
- 5.2 Sections 14 and 15 of Part VIII permit the Council to charge reasonable fees for registration of practitioners. A charge of £100 per business and £25 per each practitioner is proposed and it is anticipated that this will cover the additional costs of administering and enforcing the legislation (based on information received from other local authorities in Hampshire see Appendix 2). Currently this forecasts income of £5,000 based on registration of 40

businesses each with 1 member of staff requiring registration. This may be subject to change as at the present time it is unclear how many premises will register. The inspection of premises for enforcement of these additional provisions would be undertaken by existing staff and is covered in the existing budget. It is proposed that the fees for registration are reviewed annually.

6 RISK MANAGEMENT ISSUES

- 6.1 Introducing charging as suggested in the report is lawful, and the level of charges is reasonable and justifiable. Charging should ensure that there is no negative financial effect.
- 6.2 Should there be objections to the adoption of the byelaws they will be forwarded to the Secretary of State in contentious cases, particularly those where the arguments are finely balanced. It is open to the Secretary of State to order a public inquiry to be held. Such inquiries are rare and, in the normal course, the Secretary of State would expect that the issues - and any scope for compromise would be determined locally between the council and objectors.

BACKGROUND DOCUMENTS:

Various papers including consultation letter to trade with question and answer, spreadsheet with consultation responses, , email consultation with the Portfolio Holder, Copy of draft Resolution.

APPENDICES:

Appendix 1 Copy of Model Byelaws

Appendix 2 Fees across Hampshire

BYE LAW IN RESPECT OF ACCUPUNCTURE, 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 Winchester City 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).

THE COMMON SEAL of)
WINCHESTER CITY COUNCIL)
Was hereunto affixed in the presence of)

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

Local Authority	Acupuncture, electrolysis etc	Ear Piercers
Gosport	£72 premises + £62 per person	£72 premises + £62 per person
New Forest	£117 premises + £52 per person	£111 premises +£50 per person
Eastleigh	£99.50	£99.50
Hart	£160	£160
Test Valley	£124	£124
Havant	£50	£50
Winchester	NIL	
Rushmoor	£125 premises +£92 per person	
Portsmouth	£113	£113 premises
Fareham		£120 premises + £70 per person