



<u>Committee and Date</u>
Strategic Licensing Committee
16 th June 2010

<u>Item/Paper</u>
9
Public

REGULARISATION OF PROCEDURES FOR PREMISES PROVIDING ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN COLOURING, COSMETIC PIERCING AND ELECTROLYSIS

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Summary

Local authorities are able to regulate businesses delivering acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and/or electrolysis through a process of registration and byelaws. At present an inconsistent regulatory framework exists in the Shropshire Council area where the different adoptions and byelaws of the former Boroughs and Districts remain in existence.

The standardisation of process whereby Shropshire Council adopts the provisions of the Local Government (Miscellaneous Provisions) Act 1982 Part VIII s14-17 and the most recent model byelaws covering these matters would provide both certainty and consistency.

Recommendations

That Committee recommends that the Council:-

- A Adopts the provisions of the Local Government (Miscellaneous Provisions) Act 1982 Part VIII s14-17 with effect from a minimum of two months from the date of the resolution;
- B Adopts the model byelaws for Acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis as set out in the Appendix 1 with effect from a minimum of two months from the date of the resolution;
- C Revokes all existing byelaws which regulate acupuncture, tattooing, semi-permanent skin-colouring, cosmetic/ear piercing and electrolysis with effect from the start date of the new byelaws

REPORT

Background

1. On 1st April 2009 the provisions of the Local Government (Miscellaneous Provisions) Act 1982 that had been independently adopted by the five District/Borough Councils in Shropshire automatically transferred to Shropshire Council. Amendments to those provisions were made by the Local Government Act 2003. It is apparent that the five former Borough and District Authorities had not adopted identical provisions.
2. Many authorities, including the former Districts and Boroughs, have chosen to adopt byelaws to regulate the standards that are required of the providers of these services. The precise nature of the byelaws differs from authority to authority, and this has led to differing regimes within the Shropshire Council area.
3. The impact of this situation is that businesses operating in different parts of the Shropshire Council area are subject to differing minimum standards, a situation that is potentially confusing for the public and business alike.,
4. Shropshire Council may pass a resolution to adopt the provisions of Sections 14- 17 of the Act (as amended), which would provide consistency and certainty.

Proposal

5. Following any such resolution a notice must be published for two consecutive weeks in a local newspaper. The first publication must be no later than 28 days before the day specified in the resolution for the coming into force of the provisions specified in it. The notice must state which provisions of the Act will apply and the general effect to persons to whom the provisions will apply.
6. Shropshire Council may also resolve to adopt the model byelaws produced by the Department of Health on 7th September 2006. These deal with acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis. A copy of these byelaws is produced at Appendix 1 to this report.
7. The procedure for adopting these byelaws would be as set out in s236 Local Government Act 1972. After formal resolution, the adopted byelaws would be made under the common seal of the Council. Following that, a notice of the Council's intention to apply for their confirmation by the Secretary of State for Health must be given in a local newspaper. For at least one month after the date of publication in the newspaper, a copy of the byelaws must be held at the Council's offices for inspection by the public. After the month on deposit has expired, the application can be sent to the Secretary of State for Health for confirmation. If there are no objections, the byelaws are normally returned stamped as confirmed.
8. The byelaws would apply to any premises and business proprietor involved in the practice of acupuncture, the business of tattooing, semi-permanent skin colouring, cosmetic piercing or electrolysis unless the activity is being

undertaken by or under the supervision of a person who is registered as a medical practitioner.

9. On application (and thereafter following registration), the premises can be inspected to ensure compliance with the byelaws (as referred to below) (which include the general cleanliness of the fittings/premises and persons to be registered).
10. The Local Government (Miscellaneous Provisions) Act 1982 provides for offences and non-custodial penalties for trading without registration by the Council or breaching the requirement(s) of the byelaws.
11. Any extant byelaws made under Part VIII of the '82 Act by the five former District/Borough Councils should at the same time as the new byelaws become effective, be revoked.

Conclusion

The adoption of the provisions of the Local Government (Miscellaneous Provisions) Act 1982 in relation to the delivery of the above range of services will ensure a consistent approach across the Shropshire Council area. This will provide certainty to businesses and the public, and assist with the provision of advice to affected businesses.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Local Government (Miscellaneous Provisions) Act 1982 Part VIII; Local Government Act 1972 s.236; Department of Health Model Byelaws 7/9/06
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Human Rights Act Appraisal

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998.

Environmental Appraisal N/A

Risk Management Appraisal

Failing to adopt the provisions of Part VIII of the 1982 Act and the model byelaws, may result in inconsistency in the Shropshire Council area
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Community / Consultations Appraisal
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No statutory consultation is required and none has been undertaken
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Cabinet Member:

Councillor Mike Owen

Local Member

All areas of the Council

Appendix 1

Model Byelaws

Appendix 1

MODEL 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 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 *state subject matter* that were made by *insert name* on the *insert date* and were confirmed by *insert name of confirmation authority* on *insert date* 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).***