

CITY COUNCIL - 13 NOVEMBER 2017

REPORT OF THE PORTFOLIO HOLDER FOR COMMUNITY AND CUSTOMER SERVICES

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

1 SUMMARY

- 1.1 The Council adopted the provisions of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') relating to acupuncture, tattooing, ear piercing and electrolysis with effect from 1 January 1983.
- 1.2 The Local Government Act 2003 ('the 2003 Act') enables the registration of businesses providing cosmetic piercing (piercing of the body including the ear) and semi-permanent skin colouring (including micro pigmentation, semi-permanent make-up and temporary tattooing) not previously included in the 1982 Act.
- 1.3 Bylaws made by Nottingham City Council ('the Council') in pursuance of section 15(7) of the 1982 Act to regulate the hygiene and practice standards in premises who register for tattooing, electrolysis, ear piercing and acupuncture are out-dated and it is appropriate to renew these bylaws to reflect the recommended model conditions produced by the Government.
- 1.4 The bylaws cover:
 - a. the cleanliness of premises and fittings therein;
 - b. the cleanliness of registered persons, and any person assisting registered persons, in carrying on the business of tattooing, acupuncture, ear piercing and/or electrolysis; and
 - c. the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with a business in respect of which a person is registered.
- 1.5 The adoption of model bylaws which cover acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis, will not only ensure permanent skin-colouring, cosmetic piercing comply, it will also enable greater consistency across these businesses to conform to the same basic hygiene standards to minimise the spread of viral and bacterial infections.

2. RECOMMENDATIONS

- 2.1 To approve the adoption of the bylaws outlined in Appendix 1 to this report.
- 2.2 To authorise the Director of Legal and Governance and/or the Head of Legal and Governance to take all such steps as may be necessary to make, seal, advertise and obtain confirmation of the bylaws so as to bring them into effect.
- 2.3 That, subject to the confirmation of the bylaws referred to in recommendation 2.1 above, the existing bylaws relating to ear piercing, acupuncture, tattooing and

electrolysis in the City of Nottingham, made by the Council on 1 April 1988 and confirmed by the Secretary of State for Health on 1 March 1989, be revoked.

3 REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that persons who operate businesses within the City which could present a health risk to the public through the nature of their activities are required to comply with bylaws which promote hygiene standards, which will reduce the risk of the spread of viral and bacterial infections.
- 3.2 To establish a consistent and fair approach with all businesses presenting similar health risks that are required to register.
- 3.3 To enable the Council's Environmental Health Officers to enforce the bylaws across all businesses presenting similar health risks ensuring premises, practitioners and practices are in adherence.

4 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 4.1 An option would be to not adopt the bylaws outlined in Appendix 1 to this report, however, this will mean that cosmetic piercing and semi-permanent skin colouring businesses will have no basic hygiene standards to legally comply with.

5 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 5.1 On 1 January 1983, the Council adopted sections 14 to 17 of the 1982 Act in respect of the provisions relating to acupuncture, tattooing, ear piercing and electrolysis. The Council also made three sets of bylaws on 1 April 1988: one relating to acupuncture, one relating to tattooing, and one relating to ear piercing and electrolysis, which were all confirmed by the Secretary of State for Health on 1 March 1989 and all came into effect on 1 May 1989. These three sets of bylaws are attached to this report at Appendix 2.
- 5.2 The application of these bylaws and controls have been effective, however, there is an opportunity because of legislative, model byelaw and guidance changes, for the bylaws 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).
- 5.3 Approval has to be agreed by the Council and once this has been agreed and the bylaws made, formal request has to be given to the Secretary of State for the bylaws to be confirmed and to enable them to come into force.
- 5.4 Businesses are only required to register their premises and practitioners once, there are no on-going costs relating to their registration.
- 5.5 There are no requirements to consult businesses to adopt a change in the bylaws, however, registered businesses that receive a periodic inspection will be informed of the changes. We do not envisage that existing registered businesses will have difficulties meeting the basic hygiene standards required by the model bylaws.

- 5.6 There are transitional provisions in the 2003 Act which apply where the Council had already resolved that section 15 of the 1982 Act should be brought into force in their area for tattooing, ear piercing and electrolysis, as is the case in Nottingham. The Council was then automatically enabled to apply the registration and bylaws regime to cosmetic piercing and semi-permanent skin colouring.
- 5.7 The Council gave its approval to implement model bylaws issued by the Department of Health to supplement the existing model bylaws in 2005, and made them in 2005. However it is unclear whether the administrative process required before the bylaws could be sent to the Secretary of State for confirmation was completed, and the Secretary of State has no record of receiving the bylaws for confirmation.
- 5.8 It is recommended that the Department of Health's updated model bylaws outlined in Appendix 1 to this report are approved, which cover all types of skin piercing and skin colouring and replace the existing bylaws, and the three sets of existing bylaws, copies of which are shown at Appendix 2 to this report, are revoked.

6 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY)

- 6.1 Section 15(6) of the 1982 Act as amended by the 2003 Act enables Local Authorities to charge reasonable registration fees for registration of persons carrying on the business of cosmetic piercing or semi-permanent skin colouring. The fee should cover initial inspection of the premises, advising the businesses about registration and associated administration.
- 6.2 The current fee (2017/18) for ear piercing, tattooing and acupuncture is £67.00 per person registered plus £129.00 for the premises in which the activity takes place. It is proposed that there will be no additional charge for persons with existing registrations seeking to add cosmetic piercing or semi-permanent skin colouring to existing registrations for ear piercing or tattooing. New applicants will be charged the full fee. The fee will be subject to annual review.
- 6.3 No additional costs will be incurred in relation to extending the scheme to other businesses as any new premises would be added to the current inspection program operated by the Safer Business team.
- 6.4 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.

Michelle Pullen, Commercial Business Partner, 26 October 2017.

7 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 7.1 Bylaws relating to tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis are made under section 15 of the 1982 as amended by the 2003 Act. Bylaws relating to acupuncture are made under section 14 of the 1982 Act. These measures came into force on 1 April 2004 and, as with acupuncture, tattooing, ear piercing and electrolysis, local authorities were able to choose whether to adopt them. There are transitional provisions in the 2003 Act which apply where the

Council had already resolved that section 15 of the 1982 Act should be brought into force in their area. The Council adopted sections 14 -17 of the 1982 Act on 1 January 1988 and the transitional provisions contained in the 2003 Act apply. The Council is therefore automatically enabled to apply the registration and bylaws regime to cosmetic piercing and semi-permanent skin colouring. Under the provisions of the Council's Constitution, the approval of draft bylaws is reserved to full Council and it is within full Council's powers to make the bylaws outlined at Appendix 1.

- 7.2 The process for making bylaws under sections 14 and 15 of the 1982 Act is contained within section 236 of the Local Government Act 1972. This requires that, if approved by full Council, the bylaws must be sealed on behalf of the Council.
- 7.3 The sealing of the bylaws must be advertised in the local press and a copy of the bylaws will need to be placed on deposit at the Council's offices for a period of one month and a copy placed on the Council's website. During the public notice period members of the public can make representations or objections to the content of the bylaws to the Secretary of State.
- 7.4 When the public notice period has expired, the Council must then apply to the relevant Secretary of State for confirmation of the bylaws. When making a decision, the Secretary of State will take account of any representations or objections received. If confirmed by the Secretary of State, the bylaws will take effect on the date specified by the Secretary of State.
- 7.5 The Department for Health have confirmed that they continue to have responsibility for confirming bylaws made under section 14 and 15 of the 1982 Act. They have also confirmed that the bylaws outlined at Appendix 1 to this report are the current version, replacing those contained in the Local Government Act 2003 Regulation of Cosmetic Piercing and Skin-Colouring Businesses Guidance on Section 120 and Schedule 6.
- 7.6 It is proposed that existing bylaws attached to the report at Appendix 2 are revoked, but if the recommendations are passed, they will remain in force until the confirmation of the bylaws referred to in recommendation 2.1 to this report.
- 7.7 Any amendments required to the fees for registration (or confirmation that the fees will apply to registration) of cosmetic piercing and or semi-permanent skin colouring can be set by full Council if they wish, but this would appear to fall within the remit of Regulatory and Appeals Committee and any relevant sub-delegations to officers.
- 7.8 Crime and Disorder Act implications – the proposed bylaws would provide an additional power to promote basic hygiene standards and minimise the spread of viral and bacterial infections as identified in the report.

Tamazin Wilson, Solicitor, 19 October 2017

8 EQUALITY IMPACT ASSESSMENT (EIA)

8.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because this is a regulatory responsibility appropriate to specified premises and activity and there is no known equality impact associated with this.

9 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

9.1 None

10 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

10.1 Local Government Act 2003 Regulation of Cosmetic Piercing and Skin-Colouring Businesses Guidance on Section 120 and Schedule 6 (published in 2004).

10.2 City Council – 18 July 2005 Report of the Portfolio Holder for Transport and Street Services Bylaws for the Registration and Cleanliness of Cosmetic Piercing and Semi-permanent Skin Colouring Businesses.

10.3 Local Government (Miscellaneous Provisions) Act 1982.

10.4 Local Government Act 1972.

10.5 Local Government Act 2003.

**COUNCILLOR TOBY NEAL
PORTFOLIO HOLDER FOR COMMUNITY AND CUSTOMER SERVICES**

MODEL BYLAWS

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

Bylaws 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 as amended by 2003 Act 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 Nottingham City Council in pursuance of sections 14(7) or 15(7) or both of the Act.

Interpretation

1.—(1) In these bylaws, unless the context otherwise requires—

“The Act” means the Local Government (Miscellaneous Provisions) Act 1982 (as amended);

“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 bylaws 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 disposed of after each use, 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, including 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 bylaws relating to acupuncture, tattooing, ear piercing and electrolysis that were made by Nottingham City Council on the 1 April 1988 and were confirmed by the Secretary of State for Health on 1 March 1989 are hereby revoked.

COUNCIL'S SIGNATURE

COUNCIL'S SEAL

The foregoing bylaws 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 BYLAWS

Proprietors shall take all reasonable steps to ensure compliance with these bylaws by persons working on premises. Section 16(9) of the Local Government (Miscellaneous Provisions) Act 1982 as amended provides that a registered person shall cause to be prominently displayed on the premises a copy of these bylaws 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 bylaws 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 bylaws 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 bylaws 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 bylaws 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 piercing using only a hygienic piercing instrument.***

*The exception whereby the bylaws 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).***