

STROUD DISTRICT COUNCIL
ENVIRONMENT COMMITTEE

**AGENDA
ITEM NO**

5 DECEMBER 2019

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Report Title	ADOPTION OF NEW BYELAWS FOR THE REGULATION OF COSMETIC PIERCING AND SKIN-COLOURING BUSINESSES.
Purpose of Report	To update the arrangements for the regulation of acupuncture, tattooing, semi-permanent skin-colouring cosmetic piercing and electrolysis businesses within the District. In particular to give authority for the process to revoke the existing byelaws for regulating acupuncture, tattooing, ear piercing and electrolysis, which came in to force on the 1 st August 1986, and replace them with new byelaws.
Decision(s)	The Committee Recommends that Council pass a resolution: 1) To authorise the Interim Head of Legal Services & Monitoring Officer to affix the common seal to new Byelaws for the regulation of businesses that carry out acupuncture, tattooing cosmetic piercing, semi-permanent skin-colouring, and electrolysis and carry out the necessary procedure and apply to the Secretary of State for confirmation.; and 2) Subject to the confirmation of the proposed new Byelaws, take such steps necessary to revoke the Council's existing Byelaws relating to acupuncture, tattooing, ear piercing and electrolysis that came into force on 1st August 1986.
Consultation and Feedback	None
Financial Implications and Risk Assessment	There are no direct financial implications directly related to this report. Adele Rudkin, Accountant Tel: 01453 754109 Email: adele.rudkin@stroud.gov.uk

Legal Implications	<p>Sections 14, 15, 16 and 17 of the Local Government (Miscellaneous Provisions) Act 1982 enable Stroud District Council to adopt the Byelaws in Appendix 1. As the Council resolved in 1983 that section 15 of the 1982 Act should be brought into force for tattooing, ear piercing and electrolysis, it can proceed to make a Byelaw based on the amendments made by the Local Government Act 2003.</p> <p>If the latest model byelaws are not adopted, the Council will continue to have dated byelaws which can be confusing for local businesses and inconsistent with other authorities.</p> <p>Furthermore, the Council could be open to legal challenge for not being able to undertake suitable enforcement of those businesses wishing to deliver the additional practices of cosmetic piercing and semi-permanent skin colouring.</p> <p>Patrick Arran, Interim Head of Legal Services & Monitoring Officer / Vikki Fennell, Solicitor (One Legal) Tel: 01453 754369 Email: patrick.arran@stroud.gov.uk vikki.fennell@tewkesbury.gov.uk</p>
Report Author	Philip Park: Commercial Services Manager Tel: 01453 754471 Email: phil.park@stroud.gov.uk
Options	The Council can either decide to authorise the making of the byelaw or not, though there are risks in not making the byelaw as set out in the legal implications.
Performance Management Follow Up	None
Background Papers/ Appendices	Appendix 1: Model Byelaws

1. INTRODUCTION / BACKGROUND

- 1.1. In 1983 the Council resolved to adopt Sections 14-17 of the Local Government (Miscellaneous Provisions) Act 1982 dealing with the provisions for acupuncture, tattooing, ear-piercing and electrolysis services to the public. Following this resolution, Byelaws regulating these 4 activities were prepared and sealed (made) on the 20th June 1986 and confirmed by the Secretary of State for Social Services on 1st August 1986.
- 1.2. The Council is now asked to give consideration to revoking the existing Byelaws and replacing them with new, updated and consolidated Byelaws that include these additional activities.
- 1.3. In 2003, in light of developments in the industry, the Government introduced the Local Government Act 2003 which amended the current provisions of the 1982 Act so as to bring cosmetic piercing and semi-permanent skin-colouring within the scope of the legislation. All types of business are required to register with the Council but the

existing Byelaws do not specifically refer to these additional practices, which could limit enforcement options in some circumstances.

- 1.4. In 2006 the Department of Health produced new, consolidated model byelaws that apply to all types of skin piercing and reflect current infection control advice and industry best practice. Blood-borne viruses (BBVs) include hepatitis B, C, and HIV, and can be transmitted via blood and other body fluids from one person to another. It is estimated that around 1% of the UK population are chronically infected with hepatitis B or C and therefore infectious. An estimated 0.14% of the UK population are HIV positive. However, many people are unaware of their BBV status.
- 1.5. Whilst intravenous drug use is the major risk factor for transmission of BBVs, the practices of tattooing, skin-piercing and acupuncture have long been recognised as a potential mode of transmission of HIV, Hepatitis B and C. The risk of transmission through these practices in the UK is acknowledged as being low however it remains a key consideration for any prevention strategy which aims to decrease and prevent blood borne virus transmission.

2. ISSUES FOR CONSIDERATION

- 2.1 Approximately 75 businesses in the Stroud district are currently registered for one or more of the prescribed activities. Applicants are required to pay a one-off fee for registration and an initial inspection is carried out to ensure they meet established hygiene and safety standards. The Council cannot refuse to register.
- 2.2 Businesses that are currently registered and operating in accordance with the existing Byelaws will be automatically covered by the new Byelaws. They will not be required to re-register. A copy of the new Byelaws will be sent to these businesses for their information and will be applied in any future interventions.
- 2.3 The process for making Byelaws is contained in Section 236 of the Local Government Act 1972. The starting point is the making, by sealing, of the byelaws followed by a notice in the local press and depositing a copy at the Council's offices for inspection. The application to the Secretary of State for confirmation needs to be at least one month from the notice and deposit of the copy byelaws.
- 2.4 Section 120 and Schedule 6 of the Local Government Act 2003 amends Section 15 of the Local Government (Miscellaneous Provisions) Act 1982, giving the Council specific powers relating to persons carrying out certain business activities
- 2.5 The form of the Byelaws is based on a model produced by the, then, Secretary of State for Health and the Council cannot deviate from these in the process, other than make them applicable to Stroud DC. A draft copy of the consolidated Byelaws is attached at Appendix 1.

3. CONCLUSION / RECOMMENDATION

- 3.1 The existing Byelaws are out of date. The adoption and implementation of the consolidated Byelaws will bring this area of regulation in to line with current best practice.
- 3.2 If new Byelaws are made then the existing Byelaws would be repealed when the new Byelaws come into operation.

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 Stroud District 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 *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).*