

Agenda



Listening Learning Leading

Contact Officer: Mrs Jennifer Thompson

Tel: 01491 823619

Fax: 01491 823605

E-mail: jennifer.thompson@southoxon.gov.uk

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Website: <http://www.southoxon.gov.uk>

A MEETING OF THE

General Licensing Committee

WILL BE HELD ON TUESDAY 15 JANUARY 2013 AT 2.00 PM

IN COMMITTEE ROOM 4, COUNCIL OFFICES, CRIOWMARSH GIFFORD

Members of the Committee:

Mr Malcolm Leonard (Chairman)

Mrs Elizabeth Gillespie
(Vice-Chairman)
Ms Joan Bland
Mr Bernard Cooper

Mrs Pat Dawe
Mrs Ann Midwinter
Ms Anne Purse

Mrs Pearl Slatter
Mrs Margaret Turner
Mr Michael Welply

Substitutes

Mr Roger Bell
Mr David Bretherton
Mrs Celia Collett, MBE
Mr Mark Gray
Mr Will Hall

Mr Tony Harbour
Mr Marcus Harris
Mr Stephen Harrod
Mr Marc Hiles
Dr Christopher Hood

Ms Lynn Lloyd
Mr Alan Rooke
Mr David Turner

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- 1 **Apologies**
- 2 **Declaration of disclosable pecuniary interest**
- 3 **Minutes, 4 October 2012**
- 4 **Adoption of the model skin piercing byelaws** (Pages 1 - 10)

Purpose: to adopt a new single consolidated set of byelaws, produced by the Department of Health, to regulate acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

MARGARET REED

Head of Legal and Democratic Services

General Licensing Committee Report



Report of Head of Health and Housing

Author: Diane Moore

Telephone: 01491 823242 / 01235 540382

Textphone: 18001 01491 823242 / 18001 01235 540382

E-mail: diane.moore@southandvale.gov.uk

Cabinet member responsible: Anna Badcock

Tel: 01491 614707

E-mail: annabadcock1@gmail.com

To: General Licensing Committee

DATE: 15 January 2013

Executive member responsible: Roger Cox

Tel: 01367 243360

E-mail: roger.cox@whitehorsedc.gov.uk

To: General Licensing Committee

DATE: 14 January 2013

AGENDA ITEM

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Adoption of the model skin piercing byelaws

Recommendation(s)

(a) That committee pass resolutions to adopt model byelaws for the regulation of skin piercing activities in accordance with section 15 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 120 of the Local Government Act 2003 and to authorise the Head of Legal Services to apply to the Secretary of State for confirmation.

(b) That the relevant registration requirements come into effect from the date on which the byelaws referred to above are confirmed by the Secretary of State and the current byelaws revoked.

Purpose of Report

1. The purpose of this report is to recommend that both councils pass a resolution to adopt a new single consolidated set of byelaws, produced by the Department of Health, to regulate acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

2. The bylaws would require persons conducting any of the above activities to register themselves and their premises, and in carrying out the activities observe criteria relating to hygiene of premises, practitioners and equipment.

Strategic Objectives

3. The implementation of the new bylaws will enable the councils to legally enforce hygiene standards within cosmetic piercing and skin colouring establishments. This will contribute to **strategic objective 1 at both councils – excellent delivery of key services.**

Background

4. Both councils resolved to adopt the provision of the Local Government (Miscellaneous Provisions) Act 1982 in respect of skin piercing in 1983 and three separate sets of bylaws were adopted under section 236 of the Local Government Act 1972 to control the hygiene of premises, practitioners and equipment for persons undertaking the following within the district:
 - acupuncture,
 - tattooing and
 - ear piercing and electrolysis
5. Public demand for body piercing has increased significantly over the past 20 years. Industry practices have also changed and practitioners have adopted new cosmetic techniques, for example semi-permanent skin-colouring. These activities cannot be regulated under the existing bylaws.
6. In response to these changes, section 120 and schedule 6 of the Local Government Act 2003 amended section 15 of the Local Government (Miscellaneous Provisions) Act 1982. The new legislation updated the law to allow for these new practices. Neither council adopted the new bylaws at the time, instead opting to await for the production of model bylaws. It is these that are now available and that it is proposed the councils adopt.
7. There are advantages to both customer businesses and councils from the adoption of these bylaws. Implementation of the bylaws reduces the risk to the public of contracting blood borne viruses such as HIV and Hepatitis B and C. In addition, a single set of bylaws will benefit business as the process of registration will be simplified, particularly for those conducting more than one type of cosmetic skin piercing activity.

Financial Implications

8. The adoption of new bylaws offers an opportunity to review the current charging policies. Councils are allowed to charge a one off fee for registration. The current charges are as follows:

Skin piercing activity		South Oxfordshire	Vale of White Horse
Acupuncture	premises including one operator	£138	£160
Acupuncture	additional operator at a registered premises	£ 39	£105
Electrolysis	premises including one operator	£138	£160
Electrolysis	additional operator at a registered premises	£ 39	£105
Tattooing	premises including one operator	£138	£190
Tattooing	additional operator at a registered premises	£ 39	£135

9. There are currently 165 premises registered under the existing byelaws at South, and 89 at the Vale.

10. Officers have considered a rationale for charging and conclude that the following principles should apply

- The charging should be simplified, there is no obvious rationale for charging different rates for different skin piercing activities.
- The charges should be harmonised across the councils to simplify the process of charging and collection.
- That the charges should at least cover the councils' administrative costs.
- That charges should be broadly similar to those charged by neighbouring authorities so as not to deter future businesses from considering the districts

11. Officers have carried out an estimate of the costs of registering a premises as £83.50, and an additional operative as £47.50

12. Officers have examined the charging regime for neighbour councils

	West Berkshire	Oxford City	Cherwell	West Oxfordshire
Registration per premises	£249	£105	£138	£150.30
Registration of additional operative	£125	n/a	£78	£118.05

13. On the basis of the above it is proposed that the fees are harmonised at the rates currently set in the Vale set for 2013/14 to £160 for premises with one operator and £105 for each additional operator. This will be reviewed each year as part of the annual review of fees and charges.

14. In accordance with the council's constitution, officers will agree the level of fees and charges in consultation with the Cabinet member and chairman of Scrutiny Committee. Amending the fees will require adjustments to the budgets. It is proposed that this will be picked up as part of the budget process since the amounts involved are minor.
15. The current budgets are £1190 at Vale and £220 at SODC, reflecting approx 7 new premises at Vale and 1 at SODC.
16. Officers propose to set budgets, as part of the budget process, that better reflect activity at £475 per council to reflect 1 new premises and 3 new operatives. Officers believe this better reflects activity in this market
17. A statutory public notice advising that the new byelaws have been adopted must be published in a local newspaper. There will be a cost associated with this in the region of £250 per council which will be met from existing budgets.

Legal Implications

18. The Department of Health has provided model byelaws and guidance on applications to the Secretary of State for Health for confirmation of the byelaws. The guidance includes a model council resolution which has been adapted for this report and a model newspaper notice which officers also intend to use. Both councils will have to publish its intention to adopt the new legislation in the local press before it applies to the Secretary of State to confirm the byelaws.

Risks

19. The only way the councils can effectively control skin piercing is by adopting the byelaws. If the model byelaws are not adopted the councils will not be able to regulate hygiene practices and reduce the risk of infection in premises and by operatives offering body piercing and semi-permanent skin colouring procedures.

Other Implications

20. None

Conclusion

21. In recommending that councils pass the resolutions, committee shall ensure that regulation of acupuncture and cosmetic skin piercing in the districts is consistent and up to date. There shall be an increased level of public health protection and business shall benefit from the simplification of legal requirements.

Background Papers

20. Appendix 1 – Model Byelaws

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;

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- (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.

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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.

Appendix 1

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.***

Appendix 1

*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).***