

# REPORT TO CABINET

**REPORT OF:** Healthy Environment Portfolio Holder

**REPORT NO:** ENV557

**DATE:** 14 November 2011

<b>TITLE:</b>	Registration of premises and skin piercers relating to the activities of body piercing and semi-permanent skin-colouring	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	To adopt the amendments made under Section 120 of the Local Government Act 2003 to Section 15 of the Local Government (Miscellaneous Provisions) Act 1982	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	John Smith Portfolio Holder for Healthy Environment	
<b>CONTACT OFFICER:</b>	Judy Hulland (Team Leader, Commercial Team) D F Price Environmental Health Services Manager	
<b>INITIAL IMPACT ASSESSMENT:</b>	Carried out and Referred to in paragraph (7) below	Full impact assessment Required: N/A
<b>Equality and Diversity</b>		
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	Copy of proposed byelaws for the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis	

## 1) RECOMMENDATIONS

That the Cabinet consider the proposed draft byelaws as set out at Appendix A to this report and make a recommendation to full Council to approve by:

- 1.1) Adopting by resolution sections 14 to 17 of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Local Government Act 2003) in their entirety to come into force at a date to be set within the administrative area of SKDC for the proper regulation of persons carrying out the practices of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.
- 1.2) Authorising the making of byelaws regulating the practice of acupuncture under Section 14(7) of the Local Government (Miscellaneous Provisions) Act 1982 as soon as Section 14 of that Act

is adopted as in Point 1.1 above within the administrative area of SKDC Authorise the making of byelaws regulating the practices of tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis under Section 15 (7) of the Local Government (Miscellaneous Provisions) Act 1982 as soon as Section 15 of that Act is adopted as in Point 1.1 above within the administrative area of SKDC the Head of Environmental Services be authorized to make the consolidated byelaw attached at Appendix A made under the provisions of Sections 14 (7) and 15(7) of the Local Government (Miscellaneous Provisions) Act 1982, as amended, and take all necessary steps to secure their confirmation with the Secretary of State and carry them into effect.

1.3) This proposal has been considered by the communities PDG at their meeting on 10<sup>th</sup> November last and in addition to the foregoing, the PDG recommended the following be incorporated in the registration /application process:

- Details of how records will be kept and what they will include.
- Parents/carers/guardians should be present at procedures performed on those under 18 years.

## **2) PURPOSE OF THE REPORT**

To bring fully into force the regulatory framework of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act')(as amended by the Local Government Act 2003) within the South Kesteven District Council administrative area, including the provision of the making of byelaws for the proper regulation of businesses involved in the 5 skin piercing activities, namely tattooing, acupuncture, cosmetic piercing (including ear piercing) electrolysis semi-permanent skin-colouring.

## **3) DETAILS OF REPORT**

### **3.1 Background Information**

Part VIII of the 1982 Act originally provided for the regulation only of tattooing, acupuncture and ear piercing and electrolysis. This was subsequently amended by the Local Government Act 2003 to substitute the more comprehensive term 'cosmetic body piercing' for 'ear piercing' to accommodate the growing practice of piercing other parts of the human body, and to regulate the relatively new practice of semi-permanent skin-colouring which has grown up in the interim.

This amendment to the 1982 Act was triggered by the need to increase health protection and reduce the risk of transmission of blood borne virus (BBV) infections such as HIV, hepatitis B and hepatitis C and other infections.

In the past 2 years Environmental Health Services have dealt with several issues relating to blood borne viruses and other infections, and complaints from members of the public relating to skin piercing activities. For example:

- Following an infectious disease notification made under the Public Health Act of potential hepatitis C, an unregistered tattooist operating was identified. This person was operating out of an unregistered domestic premise. Minors (ie under 18 years old) were being tattooed which is illegal.
- A complaint was received following a young mother being admitted to hospital following an infection of a tattoo on a foot. There was a danger of amputation.
- Several complaints have been received from parents/guardians about body piercing of teenage children, some as young as 13 years old. This is not illegal, but currently can be undertaken in SKDC without operators and premises being registered. Therefore the risk of infection is increased.

Nationally there have been more serious consequences of unregulated skin piercing activity, for example, Daniel Hindle, a Sheffield resident died after an unregulated lip piercing procedure. Further details of this are publicly available at [www.danaid.com](http://www.danaid.com)

Each of the areas regulated by the 1982 Act required the enactment of its own set of byelaws requiring five sets of procedures, and models had only been issued by the Department of Health for three of the five areas of Regulation. This considerably slowed down the adoption of the revised byelaws by Local Authorities.

On the 7 September 2006, the Department of Health issued a revised model byelaw for the 1982 Act which consolidated all five areas of regulation into a single byelaw, considerably simplifying the adoption process.

SKDC has previously undertaken the regulation of the practices of tattooing, acupuncture, ear-piercing and electrolysis, within the district. However, the growing popularity of these activities and the addition of new activities of cosmetic body-piercing and semi - permanent skin colouration means that it is advisable to introduce the mandatory regulation of all of these activities through the bringing into force of Part VIII of the 1982 Act, in its amended post 2003 Act form. Currently within SKDC there are:

- 53 Tattooists at 14 premises
- 32 Acupuncturists at 21 premises
- 26 Persons undertaking electrolysis at 14 premises
- 63 Ear piercers at 32 premises

Service intelligence indicates that activities of cosmetic body-piercing and semi - permanent skin colouration are a growing trend nationally and within SKDC.

The predicted number of new registrations would be initially approximately 20 with approximately 5 per annum thereafter.

By registration of these activities the business is able to demonstrate to customers and other interested parties that they are regulated by SKDC. Consequently customers can look for registered premises and operators certificates. This information has to be kept as a public register, which would also be made available on the SKDC website.

The adoption of byelaws under the 1982 Act would generally replicate the existing guidance issued by SKDC, but would further provide that any breach of this guidance would carry with it the possibility of criminal prosecution. It would be an offence under Section 16 (2) of the 1982 Act for any person to contravene the proposed byelaws, which upon conviction could result in a fine of up to £1,500. The Court upon conviction would also have the power to cancel any registration under the 1982 Act, effectively causing any person convicted to cease to lawfully practice in these disciplines, and incurring a further offence should they practice unregistered.

An updated Minute specifying the adoption of the 1982 Act, including the amendments introduced by the 2003 Act, and the making of the byelaws under it would be required to be produced to the Magistrates Court prior to any prosecution for offences under the Byelaws for the avoidance of doubt as proof of the existence and validity of the byelaws for the Court to retain and apply for their future use.

The adoption of the new consolidated Model Byelaw by the Department of Health indicates that further revision of this area of law in the near future is unlikely and it should make the adoption of such byelaws simpler and cheaper.

### **3.2 Proposals**

It is proposed that SKDC bring fully into force the entirety of Part VIII of the 1982 Act (as amended by the 2003 Act) within the district by a resolution under Section 13 of Part VIII of the 1982 Act, and in addition authorise the making of a full set of byelaws under the 1982 Act (as amended by the 2003 Act) in accordance with the new Model Byelaw issued by the Department of Health on the 7 September 2006.

To bring Part VIII fully into force, a date will need to be specified in a resolution of the Council when these provisions will fully come into force. Following the making of the resolution but before the coming into force of these provisions, it will be necessary for SKDC to publish a notice that they have passed a resolution under section 13 of the 1982 Act for two consecutive weeks in a local newspaper. The first publication of this notice has to be at least 28 days before the day specified in the resolution for the coming into force of these provisions.

Once Part VIII of the 1982 Act has fully come into force then SKDC may institute the procedure for the introduction of byelaws under Section 14(7) of the 1982 Act for acupuncture and Section 15(7) of the 1982 Act for tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

At Appendix A is the new Model Byelaw as adapted for SKDC. Only a byelaw under this provision substantially similar to the Model byelaw will be confirmed by the Secretary of State.

It would be proposed to start the procedure for the enactment of the byelaws as soon as Part VIII of the 1982 Act has been brought fully into force.

### **3.3 Procedure for adoption of Bye Laws**

The Procedure for adoption of byelaws is set out in Appendix B.

#### **4) OTHER OPTIONS CONSIDERED**

Consideration has been given to continuing without adoption of the amendments made under the Local Government Act 2003 leaving the skin piercing activities of body piercing and semi-permanent make-up an unregulated activity in SKDC. This would leave members of the public in SKDC at risk of blood-borne infection from these unregulated activities possibly resulting in increased health costs and decreased quality of living.

#### **5) RESOURCE IMPLICATIONS**

The cost of making the byelaws would be borne out of existing resources. There would be minor costs associated with placing of the advertisements in local papers.

The cost of enforcement of the byelaws would be met from existing resources already allocated to enforcement and should therefore not entail any additional expenditure or increase in the number of officers. Existing staff resources within Environmental Health Services can absorb these duties.

Fees are currently charged for registration of skin piercers and premises. It is anticipated that the scale of charges would be in line with those existing for tattooing, acupuncturists and electrolysis activities. These fees cover the costs of administration and registration inspections.

#### **6) RISK AND MITIGATION**

There is negligible risk and mitigation to the council.

#### **7) ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

The Environmental Health Service Equality Impact Assessment has recently been completed and consulted on. Considerations from the Equality Impact Assessment have been incorporated into this report.

#### **8) CRIME AND DISORDER IMPLICATIONS**

Not applicable

#### **9) COMMENTS OF FINANCIAL SERVICES**

As confirmed within this report, any financial costs arising from implementing this decision will be met from within existing resources. Any fee and charge levels will be set in line with the existing charges and reviewed annually by the service manager. Any changes in fee levels will be need to be approved by Council and include consultation with relevant parties.

#### **10) COMMENTS OF LEGAL AND DEMOCRATIC SERVICES**

The making of byelaws is a function that can only be exercised by full Council. As noted in the report, before a byelaw, regulating the practice of acupuncture under section 14 (7) and the practice of tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis under section 15 (7) of the Local Government (Miscellaneous Provisions) Act 1982 the Council must first pass a resolution to adopt sections 14 to 17 of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Local Government Act 2003, on the basis that this amendment introduces wider definitions of cosmetic piercing and covers the new practices of semi-permanent skin- colouring not recognized by the 1982 Act.

#### **11) COMMENTS OF COMMUNITY SAFETY AND LICENSING SERVICE**

No Comments received following consultation

#### **12) APPENDICES:**

Appendix A - SKDC Byelaws for the regulation of acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.

Appendix B Procedure for Adoption of Byelaws

# **APPENDIX A**

## **SOUTH KESTEVEN DISTRICT COUNCIL**

### **BYELAWS**

For the Regulation of

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

## **SOUTH KESTEVEN DISTRICT COUNCIL**

### **BYELAWS**

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/or securing the cleansing and, so far as appropriate, sterilisation of instruments, materials and equipment used in connection with the practise of acupuncture or the business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis or any two or more of such practise and businesses made by South Kesteven District 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 Part VIII of the Act;  
    **"proprietor"** means any person registered under Part VIII 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 the premises where treatment is given to clients  
  
(2) the Interpretation Act 1978 shall apply fully 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 for 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 materials, 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 sterilised for each treatment, is suitably stored after treatment and disposed of in accordance with relevant legislation and guidance as advised by the Local Authority;
  - (d) any furniture for 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 a 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 as a smooth impervious surface which is disinfected –

- (i) immediately after use;
- (ii) at the end of each working day.

- (f) any table, couch, or other item of furniture used in treatment is covered by a disposal 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” must be promptly displayed in the treatment area.

(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 sterilisation 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) 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, sterilised.

- (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 and touches a part 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 cleansed and sterilised before reuse.
- (b) a proprietor shall provide –
- (i) adequate facilities and equipment for –
    - (aa) cleansing; and
    - (bb) sterilisation, unless only pre-sterilised 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), (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 only in the circumstances described in paragraph 4(3);
  - (iv) wears a gown, wrap or protective clothing that is clean and washable or alternatively a disposal 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 purposes 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 needs to be for the sole use of the operator.

(3) – where an operator gives acupuncture a proprietor shall ensure that the operator wears disposal examination gloves that have not previously been used with another client if –

- (a) if 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;
- (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 acupuncture, ear piercing, electrolysis and tattooing were confirmed by the Secretary of State for Social Services on 19 June 1984 and brought into operation by South Kesteven District Council on 26 July 1984 are revoked.

THE COMMON SEAL of SOUTH KESTEVEN

DISTRICT COUNCIL was hereunto

Affixed in the presence of:-

[Authorising Officer]

The foregoing byelaws are hereby confirmed by the Secretary of State for Health on \_\_\_\_\_ and shall come into operation on \_\_\_\_\_

[Printed name]

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 8 of the Act. A person who contravenes Section 16(9) shall be guilty of an offence and liable for 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 8 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 when a 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 practise 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 practise of acupuncture, or business of tattooing, semi-permanent skin-colouring, cosmetic piercing or electrolysis is carried by or under the supervision of such a person.

Nothing in these byelaws extends to the practise of acupuncture by or under the supervision of a person who is registered as a Dentist, or to premises in which the practise 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 reference in the introductory text to provisions of Section 14 (acupuncture) of the Local Government (Miscellaneous Provisions) Act 1982 **only apply to acupuncture**
- The reference 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) of 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 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 requirement relating to dye or a container used to hold dye used for treatment in paragraphs 3(1)(a)(iv)(v) **apply to tattooing and semi-permanent skin-colouring**
- The requirement in paragraph 4(1)(a)(iii) that an operator wears disposal examination gloves that have not recently 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 to **acupuncture (see Section 14(8) of the Act)**

## **APPENDIX B**

The Procedure for adoption of Byelaws is set out in section 236 of the Local Government Act 1972, once Part VIII of the 1982 Act had come into force. It would be for SKDC to formally resolve to adopt the byelaws set out in Appendix A. The resolution to make the byelaws would be given at the same time as the resolution to bring into force Part VIII of the 1982 Act and would be conditional upon the provision coming into force.

The adopted byelaws would then be made under the common seal of SKDC, following which a notice of SKDC's intentions to apply for their confirmation by the Secretary of State for Health must be given in one or more newspapers circulating in the area to which the byelaws are to apply.

For at least one month after the date of the publication of the newspapers, a copy of the byelaw must be held on deposit at the offices of the SKDC for inspection by the public at all reasonable hours, and SKDC must provide any person who applies with a copy of any part of the byelaws.

After the month for deposit has expired the application to the Secretary of State for Health would be undertaken by sending two sealed copies of the byelaw, together with copies of the newspapers advertising the byelaw.

On receipt of the sealed byelaws, provided that no objections have been received, they will normally be stamped as confirmed by the Secretary of State and returned to SKDC as soon as possible. Where an objection has been received following the advertisement of the byelaws, SKDC will be provided with copies of the objections for its officers to comment upon, which in turn will be considered by the Secretary of State. Should the Secretary of State still be unclear as to the proper resolution of these objections then a Public Inquiry may be ordered to be held into the objections to the adoption of the byelaws, and confirmation or refusal of confirmation dependent upon the Chair of the Inquiries decision.