

Report of the Director of Health and Wellbeing to the meeting of the Regulatory and Appeals Committee to be held on 27th October 2022.

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Subject:

ADOPTION OF UPDATED MODEL BYELAWS TO REGULATE ACUPUNCTURE, TATTOOING AND ELECTROLYSIS AND TO EXTEND REGULATION TO SEMI-PERMANENT SKIN COLOURING AND COSMETIC PIERCING

Summary statement:

To seek approval for the adoption of a single consolidated model byelaw to regulate acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis. This will also require revocation of the existing three byelaws that regulate acupuncture, tattooing, ear piercing and electrolysis in accordance with sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 120 of the Local Government Act 2003.

EQUALITY & DIVERSITY:

There is no perceived impact upon equality, diversity and human rights.

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Portfolio:

Health and Wellbeing

Overview & Scrutiny Area:

Regeneration and Environment

1. SUMMARY

- 1.1 The purpose of this report is to inform the Committee of changes to the existing legislation regulating the skin piercing industry and the registration of premises and persons that carry out body piercing and semi-permanent skin colouring.
- 1.2 To recommend that Bradford Metropolitan District Council adopts a single consolidated set of bylaws produced by the Department of Health to regulate acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis and revoke existing bylaws which only regulate acupuncture, tattooing, ear piercing and electrolysis.
- 1.3 To recommend that the statutory mechanism for having the model bylaws confirmed by the Secretary of State is commenced.

2. BACKGROUND

- 2.1 Local Authorities have powers under the Local Government (Miscellaneous Provisions) Act 1982 Part VIII, to regulate tattooing, acupuncture, electrolysis and ear piercing by requiring registration of businesses and practitioners and through compliance with bylaws. Bradford Council adopted Sections 14 and 15 of the 1982 Act and the current bylaws for tattooing, ear-piercing and electrolysis, and acupuncture on 1st February 1987 following confirmation by the Secretary of State.
- 2.2 In response to changes in the beauty industry, provisions in section 120 and Schedule 6 of the Local Government Act 2003, amended Part VIII, section 15 of the Local Government (Miscellaneous Provisions) Act 1982 to include the regulation of cosmetic piercing and skin-colouring as registerable activities.
- 2.3 To aid in the implementation of the Local Government Act 2003 amendment the Department of Health published model bylaws on 7th September 2006 with the aim of facilitating consolidation of all five areas of regulation into one bylaw. The model bylaws can be found in **Appendix 1**
- 2.4 It is important that the skin piercing industry is effectively regulated due to the risks associated with the treatments offered. Treatments associated with skin piercing businesses have, if performed incorrectly, the potential to cause health risks such as localised skin infections, bleeding and risk of transmission of blood-borne viruses including Hepatitis B, Hepatitis C, Hepatitis D and HIV.
- 2.5 The treatments that are not currently regulated (cosmetic body piercing and semi-permanent skin colouring) pose similar public health concerns to the treatments which are currently regulated (tattooing, ear piercing, acupuncture and electrolysis) as these all involve the piercing of the skin with needles, objects and/or dyes and colourings.
- 2.6 Adopting the model bylaws requiring the regulation and registration of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis will enable Bradford Council's Environmental Health Service to enforce the bylaws consistently across all businesses presenting similar health risks.

- 2.7 The model byelaws set out expected standards in respect of the hygiene and cleanliness of premises where procedures are carried out and the equipment and materials used, prevention of transmission of infectious diseases and competency standards of persons carrying out such treatments.

3. OTHER CONSIDERATIONS

None.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The requirement for the registration of additional treatments will not lead to increased spending or additional officers as all premises are already visited under the current scheme. The registration system is already in place and the procedure and process will not change so there will not be any additional resources needed.
- 4.2 The expected standards set out in the consolidated model byelaws are comparable to the three existing byelaws. Therefore, any premises and practitioners that have already registered, been inspected and comply with the existing byelaws will also comply with the new byelaws. There will be no increased financial burden on any existing businesses.
- 4.3 Sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to charge reasonable fees for registrations of persons and premises carrying out the business of skin piercing. Bradford Council currently charges a fee of £231.31 for business/main operator registration and £116.25 for any additional operator. The same fee regime will be applied to businesses offering the new registerable treatments to maintain consistency. This fee will cover initial inspections associated with registration, advising businesses about registration and associated administration.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

- 5.1 As cosmetic body piercing and skin colouring procedures are not covered by existing byelaws there is no current requirement for premises and practitioners to register with Bradford Council. They are legally able to operate without registration and inspection which could lead to poor hygiene standards and lack of infection control with consequential potential risk to public health.
- 5.2 Regulation of the cosmetic skin piercing industry is exclusively through byelaws, as there is not appropriate primary legislation, therefore those byelaws need to be up to date and fit for purpose to ensure good hygiene standards and allow enforcement officers to manage the risks to public health.
- 5.3 Through registering the additional types of treatments the Environmental Health Service will have a more comprehensive understanding of the type of treatments being undertaken in the district and will be more aware of any new and emerging treatments that may need to be regulated in the future.

6. LEGAL APPRAISAL

- 6.1 Local Authorities have powers under the Local Government (Miscellaneous Provisions) Act 1982 Part VIII, to regulate tattooing, acupuncture, electrolysis and ear piercing by requiring registration of businesses and practitioners through compliance with byelaws.
- 6.2 Provisions in section 120 and Schedule 6 of the Local Government Act 2003, amend Part VIII, section 15 of the Local Government (Miscellaneous Provisions) Act 1982 to extend that regulation to cosmetic piercing and skin-colouring.
- 6.3 Schedule 6 of the 2003 Act allows any local authority that has already implemented Section 15 of the 1982 Act to automatically be enabled to extend the registration and byelaws regime to cosmetic piercing and semi-permanent skin colouring.
- 6.4 The full procedure for adoption of byelaws is set out in section 236 of the Local Government Act 1972 and can be found in **Appendix 2**. Notice of Bradford Council's intention to apply for confirmation must be given for two consecutive weeks in a local newspapers circulating in the area to which the byelaws will apply at least one calendar month before application to the Secretary of State. During this month a copy of the byelaws must be available for public inspection at the Council's Offices at all reasonable times.

7. OTHER IMPLICATIONS

7.1 SUSTAINABILITY IMPLICATIONS

There are no implications arising from the recommendations of this report

7.2 GREENHOUSE GAS EMISSIONS IMPACTS

There are no implications arising from the recommendations of this report.

7.3 COMMUNITY SAFETY IMPLICATIONS

Adoption of the model bye laws will enhance the level of regulation of techniques that, if delivered incorrectly, have the potential to impact on the health of our residents.

7.4 HUMAN RIGHTS ACT

There are no implications arising from the recommendations of this report.

7.5 TRADE UNION

There are no implications arising from the recommendations of this report.

7.6 WARD IMPLICATIONS

As the types of businesses that are to be regulated under the amended byelaws are located throughout the district there are no particular ward implications arising from the recommendations of this report.

7.7 IMPLICATIONS FOR CHILDREN AND YOUNG PEOPLE

Age restrictions for different treatments are in place for the safeguarding of young people. The procedures for age verification are checked at inspection but enforcement lies with West Yorkshire Joint Services and in the case of Tattooing with West Yorkshire Police. Any concerns identified during inspections or investigations are referred to the requisite agency for further investigation.

7.8 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

The procedures for registration and inspection will be amended to incorporate the additional treatments. Those procedures are covered by existing GDPR requirements and all staff are appropriately trained.

8. NOT FOR PUBLICATION DOCUMENTS

None.

9. OPTIONS

9.1 Option One - to implement the new model byelaws and revoke the existing ones. The new model byelaws will enable registration of a wider range of current treatments and would facilitate future registration similar new treatments as the beauty industry continues to innovate.

9.2 Option Two - to continue to use the existing limited byelaws regime.

10. RECOMMENDATIONS

- That the committee members consider the contents of this report and pass a resolution to adopt the 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.
- That the committee members authorise the Common Seal of the Council to be applied to the new byelaw.
- That the committee members support a request to the Director of Legal & Governance to carry out the statutory procedure for seeking confirmation of the byelaws by the Secretary of State.

- That the committee members approve that the requirements of the byelaws will come into effect from the date on which the byelaws are confirmed by the Secretary of State and the current byelaws revoked.

11. APPENDICES

1. Model Byelaws to be adopted.
2. Full procedure for adopting model byelaws.

12. BACKGROUND DOCUMENTS

Local Government Act 2003, Regulation of Cosmetic Piercing and Skin-Colouring Businesses, Guidance on Section 120 and Schedule 6

Chartered Institute of Environmental Health Tattooing and body piercing guidance Toolkit

APPENDIX 1 – NEW 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;
- (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).***

APPENDIX 2 – ADOPTION PROCEDURE

- 1) The Council shall pass a resolution: -
 - a) authorising the affixing of the common seal to the byelaws and
 - b) authorising the clerk to carry out the necessary procedure and apply to the Secretary of State for confirmation.
- 2) The seal should be affixed and duly attested, and the date of sealing inserted in the attestation. The date of sealing, and not the date of the resolution, is the date on which the byelaws are made, and until they are made the Council has no power to carry out the rest of the statutory procedure.
- 3) At least one clear calendar month before applying to the Secretary of State for confirmation:
 - a) Notice of the Council's intention to apply for confirmation must be given in one or more local newspapers circulating in the area to which the byelaws will apply. A series of byelaws should be described by giving the heading they bear on the draft informally approved by the Secretary of State. If the byelaws are to apply to part only of the Council's district, the notice should explain which part will be affected.
 - b) A copy of the byelaws having been subject to the procedures at 2 above, must be deposited at the Council's offices and be open to public inspection without charge at all reasonable times during that month.
- 4) The byelaws may be submitted for confirmation any time after the month has elapsed. They should be printed to conform to the approved draft. The Secretary of State's seal and confirmation should be printed below the Council's seal and a space of at least 10 centimetres should be left. It would be helpful if the following could be typed on the left-hand side of the page as indicated:

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

The Notes which do not form part of the byelaws should be printed after both the Council's and Secretary of State's seals.

- 5) It would be helpful for the application to be accompanied by: -
 - (a). copy of the full Council's resolution
 - (b). the sealed byelaws (2 sets) and a photocopy;
 - (c). the newspaper(s) containing the notice;
 - (d). the clerk's certificate as to the date and duration of deposit of a copy of the byelaws;
 - (e). a statement as to whether or not any objections were received by the Council;
 - (f). confirmation, where applicable, that the byelaws are identical to the model byelaws;

(g). confirmation of the Council's adoption of Section 14-17 and compliance with the provisions of Section 13 of the Local Government Act (Miscellaneous Provisions) Act 1982 particularly regarding the publishing of notice in a local newspaper.

- 6) The Secretary of State emphasises that he has power to confirm only if the procedure laid down in section 236 of the 1972 Act is properly carried out. He has no power to excuse deviation from this procedure.
- 7) The Secretary of State has power to fix the date on which the byelaws come into operation. He considers that the first day of a month will normally be most convenient; and as section 236(7) provides that, if he does not fix a date, byelaws shall come into operation one month after confirmation, he will normally bring byelaws into operation on the first day of the month next following the expiry of this period.