

Report to: Licensing & Regulatory Committee **Date of Meeting:** 3rd June 2013
 Council 27th June 2013

Subject: Introduction of a Byelaw – Cosmetic Treatments

Report of: Director of Built Environment **Wards Affected:** All

Is this a Key Decision? Yes **Is it included in the Forward Plan?**
 No

Exempt/Confidential No

Purpose

To seek the Council’s adoption of a new model byelaw governing acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis, and the consequent revocation of the Council’s existing byelaws covering this activity.

To ensure that the new byelaw can be legally enacted, the Council must ensure that it has adopted the latest technical and legal definitions of the various cosmetic treatments. Consequently, this report proposes a technical resolution to demonstrate that the provisions of Sections 14 to 17 of part VIII of the Local Government (Miscellaneous Provisions) Act 1982 apply within the Borough of Sefton.

Recommendation(s)

- (1) That the Licensing and Regulatory Committee notes the report
- (2) That the Council :
 - (i) Approves the adoption of the proposed new model byelaw set out in appendix B to this report; and
 - (ii) Resolves that the provisions of Sections 14 to 17 of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 apply within the Borough of Sefton.

How does the decision contribute to the Council’s Corporate Objectives?

	Corporate Objective	Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being	√		
5	Children and Young People		√	
6	Creating Safe Communities	√		
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

Reasons for the Recommendation:

To allow Officers to progress the introduction of new byelaws to keep pace with developments in the skin piercing industry.

What will it cost and how will it be financed?

(A) Revenue Costs.

To recover costs there is a one -off fee for registration (Section 15(6) 1982 Act enables local authorities to charge reasonable fees for registration of persons carrying on businesses of cosmetic piercing or semi-permanent skin colouring). The fee covers initial inspection(s) associated with registration, advising the business about registration and associated administration.

(B) Capital Costs

Not applicable

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal	The Head of Corporate Legal Services has been consulted and comments have been incorporated into the report (LD 1582)
Finance	The Head of Finance and ICT has been consulted (FD 2266) and notes costs incurred are likely to be recovered by fees for registration. As a result there are no direct financial implications
Human Resources	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

What consultations have taken place on the proposals and when?

None

Are there any other options available for consideration?

No

Implementation Date for the Decision – Immediately following the decision of Council.

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1. Background

- 1.1 The Council has existing byelaws relating to acupuncture, ear piercing and electrolysis and tattooing, which were made individually on 12th March 1991 under powers contained in the Local Government (Miscellaneous Provisions) Act 1982. Whilst these byelaws were adequate at the time of adoption, they do not cover some of the high risk techniques now in use.
- 1.2 Over time, the industry has developed, and new advanced types of treatment have been introduced. The current byelaw is now limited in effect, as it does not adequately control some beauty therapy treatments, which did not exist when the original byelaw was first established. For example, the existing byelaw covers ear piercing but does not cover body piercing, which is an activity that presents a greater risk of infection if not carried out correctly.
- 1.3 The Department of Health has now published updated model byelaws which aim to secure the cleanliness of:-
 - Premises and fittings in beauty treatment premises;
 - Persons and persons assisting them; and
 - 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.
- 1.4 If the Council was to adopt these model byelaws, then they would provide clean and consistent modern day standards for the beauty therapy industry and would provide the necessary controls to allow enforcement officers to take action against non-compliant businesses.
- 1.5 Under the new byelaws, businesses which carry out electrolysis, acupuncture, tattooing, cosmetic piercing and micro-pigmentation would have to:
 - Register with Sefton Council; and
 - Follow the byelaws on the cleanliness and hygiene of practitioners, premises and equipment to protect customers against the risk of infection.
- 1.6 Therefore, it would be an offence to carry on such a business without being registered or to breach the requirements of the byelaw. Businesses currently registered for treatments would not need to re-register.
- 1.7 All Sefton businesses which would be affected will be contacted and provided with a fact sheet, which outlines what the new byelaw would mean to their business. A copy of this fact sheet is attached at Appendix A.

2. PROCEDURAL STEPS

2.1 All byelaws must be confirmed by the relevant Secretary of State. The Government Department with responsibility for confirming this byelaw is the Department of Health. The steps which would be required include:-

Step 1 - Committee endorses the proposed byelaw

Step 2 - Council approves the model byelaw

Step 3 - The byelaw is formally sealed

Step 4 - The Council advertises the byelaw in a local newspaper and invites affected persons to make representations to the Secretary of State

Step 5 - The sealed byelaw is sent to the Secretary of State for confirmation

Step 6 - The Secretary of State decides whether to confirm the byelaw

Step 7 - The byelaw comes into force after one month following confirmation by Secretary of State.

2.2 The key point to note from the above process is that any new byelaw must be confirmed by the Secretary of State before it can take effect. No timescales are provided for the Secretary of State to consider the byelaw, but previous experience suggests that this process can take several months. If there appeared to be a delay in the matter being considered, then officers would contact the Secretary of State for clarification. The existing byelaw controls will remain in place until the new byelaw is approved.

3. THE NEW BYELAW

3.1 The proposed new byelaw is to be called the "Byelaws for Acupuncture, Tattooing, Semi Permanent Skin Colouring, Cosmetic Piercing and Electrolysis". The power for the Council to make new byelaws is contained in Part VIII of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Local Government Act 2003. The text of the proposed new byelaw is set out at Appendix B to this report.

Appendix A

FACT SHEET FOR BUSINESSES

New byelaws for cosmetic treatments

Why do we need new byelaws?

Sefton Council's existing byelaws date back to the 1990's. These were adopted to adequately control cleanliness in businesses carrying out ear piercing, tattooing, electrolysis and similar treatments. The byelaws are now over 20 years old and need to be updated to take into account new ways of working and new treatments. The Local Government Act 2003 gives local authorities powers to introduce such changes by adopting new model byelaws.

When will the new byelaws come into effect?

We are currently working towards adoption of the new byelaws and we will publicise when the new byelaws will come into effect

What are the proposed main changes?

The 2003 Act amends the original but now outdated 1982 Act to include cosmetic piercing and semi-permanent skin colouring business in addition to ear piercing, tattooing and electrolysis. This approach allows for new or other similar activities to be covered without the need for new byelaws in the future.

- Cosmetic piercing means puncturing or penetrating the skin of a client with pre-sterilised single-use needles and the insertion of pre-sterilized jewellery or other adornment into the opening. Ear piercing and cosmetic body piercing are now encompassed in one single term 'cosmetic piercing'.
- Micro pigmentation means the insertion of pigment into the dermal layer of the skin. This includes semi-permanent/ permanent make-up, such as lip and eye liner, body art and tattoos.

How will any changes to the byelaws affect me?

If you are a business that carries out any of the above treatments and are not currently registered, you will need to comply with any changes to the byelaws, including the improved hygiene standards. Details will be made available to you on adoption of the byelaws.

Will these byelaws make any difference?

Yes. The adoption of new model byelaws will help to improve health and hygiene standards in these businesses. The byelaws will apply to new cosmetic treatments not previously covered by byelaws. In essence, public safety will be served better by adopting these new byelaws.

Do businesses have to re-register?

No, businesses/individuals and premises already registered for activities covered by section 15 of the 1982 Act current legislation (i.e. tattooing, ear piercing and electrolysis) do not have to re-register.

What happens if I do not register?

Section 120 of the Local Government Act 2003 essentially requires permanent skin colouring and cosmetic piercing businesses to register themselves and their premises with the local authority. Section 16 of the Act provides for offences and for non-custodial penalties (summary conviction and fine) for trading without local authority registration or breaching local authority byelaws.

Is there a fee for registration?

Yes, Section 15(6) 1982 Act enables local authorities to charge reasonable registration fees for registration of persons carrying on businesses of cosmetic piercing or semi-permanent skin colouring. The fee covers initial inspection(s) associated with registration, advising the business about registration and associated administration.

Registration is a one-off event and the fees will not be required annually. We will inform you of the fees upon the adoption of the new byelaws.

Where can I get more information about this?

You can contact Environment Service on:

Tel: 0845 140 0845

Fax: 0151 934 4272

Email: ETScontact@sefton.gov.uk

Appendix B

DRAFT SEFTON BYELAWS

FOR

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 Sefton Metropolitan Borough 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 Tattooing, Acupuncture, Ear Piercing and Electrolysis that were all made by The Council of the Metropolitan Borough of Sefton on the **date to be inserted** and were confirmed by the Secretary of State for Social Services on the **date to be inserted**.

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).