

CHESHIRE EAST COUNCIL

LICENSING COMMITTEE

Date of Meeting:	16 January 2012
Report of:	Head of Community Services
Subject/Title:	Byelaws Relating to Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis

1.0 Report Summary

- 1.1 The report provides background in relation to byelaws regarding the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis and asks the Licensing Committee to make recommendations to Council in relation to a set of draft byelaws.

2.0 Decision Requested

- 2.1 The Licensing Committee is requested:
- 2.1.1 Subject to consultation, to authorise the Borough Solicitor, or an officer acting on her behalf, to submit the draft byelaws attached as an appendix to this report, to the Department of Health for provisional approval; and
- 2.1.2 Subject to provisional approval being received from the Department of Health, to recommend the following resolutions to Council:
- (a) that the byelaws relating to the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis attached as an appendix to this report be approved and authorisation be provided for the affixing of the common seal of the Council to the byelaws; and
 - (b) that the Borough Solicitor, or officer acting on her behalf, be authorised to carry out the relevant statutory procedures in relation to the making of the byelaws and to apply to the Secretary of State for confirmation of the byelaws.

3.0 Reasons for Recommendations

- 3.1 At the meeting of Council on 13th October 2011 Council resolved that sections 14 to 17 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') be adopted and shall apply to the Borough of Cheshire East with effect from 1 December 2011.
- 3.2 Section 14(7) of the 1982 Act provides the power to make byelaws relating to acupuncture. Section 15(7) of the 1982 Act provides the power to make

byelaws relating to tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.

- 3.3 Paragraph 4.4.10 of Chapter 4 of the Council's Constitution provides that the functions of "making, amending, revoking, re-enacting, adopting or enforcing byelaws..." are functions of the Full Council.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 The making of byelaws in relation to the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis is requested in order to further the promotion of public health. It is suggested that the byelaws would provide safeguards to reduce the risk of blood borne disease transmission.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 There will be costs of approximately £1,300 (exclusive of VAT) associated with the publication of the notice of the Council's intention to apply for confirmation of the byelaws. These costs would be met from existing budget provision within the Public Protection and Health Service.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Section 14(7) of the 1982 Act provides that a local authority may make byelaws for the purpose of securing – (a) the cleanliness of premises registered under section 14 (i.e. in relation to acupuncture) and fittings in such premises; (b) the cleanliness of persons so registered and persons assisting persons so registered in their practice; and (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the practice of acupuncture.
- 8.2 Section 15(7) of the 1982 Act provides that a local authority may make byelaws for the purpose of securing - (a) the cleanliness of premises registered under section 15 (i.e. in relation to tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis) and fittings in such premises; (b) the cleanliness of persons so registered and persons assisting persons so registered in the business in respect of which they are registered; and (c) the cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment

used in connection with a business in respect of which a person is registered under section 15.

- 8.3 The procedure for making byelaws under sections 14 and 15 of the 1982 Act is prescribed by section 236 of the Local Government Act 1972 ('the 1972 Act'). Section 236 of the 1972 Act provides that once the common seal of the Council has been affixed to byelaws and at least one clear calendar month before applying to the Secretary of State for confirmation, the Council is required to publish notice of its intention to apply for confirmation in one or more local newspapers circulating in the area to which the byelaws are to apply. A copy of the byelaws must also during this period be held on deposit for inspection by members of the public at the Council's offices. At the conclusion of the notice period the Council may apply to the Secretary of State for the confirmation of the byelaws. Once byelaws have been confirmed copies must be sent to the proper officer of every parish or community council, or in the case of a parish not having a council, to the chairman of the parish meeting.
- 8.4 Paragraph 4.4.10 of Chapter 4 of the Council's Constitution provides that the functions of "making, amending, revoking, re-enacting, adopting or enforcing byelaws..." are functions of the Full Council.
- 8.5 Consideration has been given to the application of the 'public sector equality duty' (as per section 149 Equality Act 2010) to the decision requested within paragraph 2.0 above. It is suggested that the decision requested would have a neutral impact in terms of its impact on those individuals with 'protected characteristics.'

9.0 Risk Management

- 9.1 It is suggested that the byelaws would provide safeguards to reduce the risk of blood borne disease transmission.

10.0 Background and Options

- 10.1 As Members will recall, Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Local Government Act 2003) contains provisions in relation to the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis.
- 10.2 Members will also be aware that on 13th October 2011 Council resolved to readopt sections 14 to 17 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') so that the provisions apply to the Borough of Cheshire East with effect from 1 December 2011.
- 10.3 Section 14(7) of the 1982 Act provides the power to make byelaws relating to acupuncture. Section 15(7) of the 1982 Act provides the power to make byelaws relating to tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis. At the present time the following byelaws are in force within the Borough as a result of original adoptions made by the predecessor district councils:

- (a) Byelaws for acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis made by Crewe and Nantwich Borough Council on 29th January 2007 and confirmed by the Secretary of State for Health on 16th August 2007;
- (b) Byelaws relating to ear-piercing and electrolysis made by Congleton Borough Council on 7th August 1986 and confirmed by the Secretary of State for Social Services on 7th November 1986;
- (c) Byelaws relating to tattooing made by Congleton Borough Council on 7th August 1986 and confirmed by the Secretary of State for Social Services on 7th November 1986;
- (d) Byelaws relating to acupuncture made by Congleton Borough Council on 7th August 1986 and confirmed by the Secretary of State for Social Services on 7th November 1986.

- 10.4 It is proposed that a set of byelaws in relation to acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis be made in relation to the Borough of Cheshire East as a whole. As referred to above, such byelaws are currently in force in the Crewe and Congleton areas of the Borough. However, there are currently no byelaws in force in the Macclesfield area dealing with the regulation of such activities.
- 10.5 It is suggested that the adoption of the set of draft byelaws attached within the appendix would be beneficial in ensuring a consistent approach to regulation across the Borough and will assist in reducing the risk of blood borne disease transmission. The draft byelaws are based on the model byelaws relating to the regulation of acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis produced by the Department of Health in February 2007 and, if made, would repeal the existing byelaws referred to in paragraph 10.3 above.
- 10.6 For the reasons set out above it is proposed that consultation on the proposed byelaws is carried out by way of publication of the proposals on the Council's website and direct correspondence with individuals and businesses currently registered with the Council. In the event that no substantive responses are received it is proposed that the Borough Solicitor be authorised to submit the draft byelaws to the Secretary of State for provisional approval. If substantive consultation responses are received these would be reported to a future meeting of the Licensing Committee for consideration. The Committee is further requested to recommend to Council that, if provisional approval is received, the byelaws be made and authorisation given for an application for confirmation by the Secretary of State.

11.0 Access to Information

Byelaws for acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis made by Crewe and Nantwich Borough Council on 29th January 2007 and confirmed by the Secretary of State for Health on 16th August 2007.

Byelaws relating to ear-piercing and electrolysis made by Congleton Borough Council on 7th August 1986 and confirmed by the Secretary of State for Social Services on 7th November 1986;

Byelaws relating to tattooing made by Congleton Borough Council on 7th August 1986 and confirmed by the Secretary of State for Social Services on 7th November 1986;

Byelaws relating to acupuncture made by Congleton Borough Council on 7th August 1986 and confirmed by the Secretary of State for Social Services on 7th November 1986.

The background papers relating to this report can be inspected by contacting the report writer:

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APPENDIX

CHESHIRE EAST BOROUGH COUNCIL

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 Cheshire East 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 acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis that were made by Crewe and Nantwich Borough Council on the 29th January 2007 and were confirmed by Secretary of State for Heath on 16th August 2007 are revoked.

7. The byelaws relating to ear-piercing and electrolysis that were made by Congleton Borough Council on the 7th August 1986 and were confirmed by the Secretary of State for Social Services on 7th November 1986 are revoked.

8. The byelaws relating to tattooing that were made by Congleton Borough Council on the 7th August 1986 and were confirmed by the Secretary of State for Social Services on 7th November 1986 are revoked.

9. The byelaws relating to acupuncture that were made by Congleton Borough Council on the 7th August 1986 and were confirmed by the

Secretary of State for Social Services on 7th November 1986 are
revoked.

The COMMON SEAL of)
CHESHIRE EAST BOROUGH)
COUNCIL was hereunto affixed)
on the day of 2012)
in the presence of:)

AUTHORISED SIGNATORY

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).***