

## **HAMBLETON DISTRICT COUNCIL**

**Report To:** Cabinet  
11 February 2014

**Subject:** **REGULATION OF COSMETIC PIERCING AND SKIN-COLOURING BUSINESSES**

**All Wards**  
**Portfolio Holder for Leisure and Health Services: Councillor Mrs S Shepherd**

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### **1.0 PURPOSE OF THE REPORT:**

- 1.1 The purpose of this report is to recommend to the Council the making of all encompassing byelaws to control cosmetic piercing, semi-permanent skin colouring, acupuncture, electrolysis and tattooing and the repeal of any byelaws which related only to ear-piercing, electrolysis, tattooing and acupuncture.
- 1.2 The purpose is also to seek approval for an Enforcement Policy to cover the above activities.

### **2.0 BACKGROUND:**

- 2.1 The Council currently has byelaws covering tattooing, acupuncture, ear-piercing and electrolysis. These were approved by Council in March 1986. The nature of the skin-piercing trade has changed considerably since then.
- 2.2 The Council now has the power to make comprehensive byelaws which cover acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis. The benefit of the new byelaws would be to update the controls available to regulators in respect of cosmetic piercing (piercing of the body including the ear) and semi-permanent skin-colouring (including Micropigmentation, semi-permanent make up and temporary tattooing), both practices of which are not covered by existing byelaws.
- 2.3 These measures are intended to increase health protection and reduce the risk of transmission of blood-borne virus (BBV) infections such as HIV, hepatitis B, hepatitis C and other infections. Body piercing and semi-permanent skin colouring are practices that are growing in popularity, particularly among young people. The proposed byelaws will provide sufficient extra power to control these activities.
- 2.4 Model Byelaws for the "Regulation of Cosmetic Piercing and Skin-Colouring Businesses" are published by the Department of Health.
- 2.5 The procedure to follow in order to confirm the byelaws is laid down in the Department of Health Guidance.

#### **Enforcement**

- 2.6 Three means of controlling practices and personnel would become available:-
  - a) general powers exist for the service of notices and prosecution under the Health and Safety at Work etc. Act 1974. These are considered to be broad powers, but not specifically designed to cover cosmetic piercing etc;

- b) failure to be registered is a contravention of section 16(1) of the 1982 Act; and
- c) failure to comply with the byelaws is a contravention of section 16(7) of the 1982 Act.

2.7 In order to ensure that enforcement is carried out in accordance with the Regulators' Code, and so that those who are regulated can easily understand their responsibilities and the associated consequences, a draft enforcement policy has been produced. This has been subject to a short consultation exercise but no feedback has been received.

### **3.0 LINK TO CORPORATE PRIORITIES:**

3.1 To put our customers first and provide high quality, value for money services that meet the needs of our communities

### **4.0 RISK ASSESSMENT**

4.1 The main risks are in not approving the recommendation.

<b>Risk</b>	<b>Implication</b>	<b>Prob*</b>	<b>Imp*</b>	<b>Total</b>	<b>Preventative action</b>
Registered businesses and personnel fail to comply with good practice.	Customers are exposed to the risk of infection and other health & safety hazards associated with new body piercing and skin colouring practices	4	3	12	Enforce the new byelaws in order to bring controls up to date and implement controls relating to body piercing and skin colouring for the first time

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

### **5.0 FINANCIAL IMPLICATIONS AND EFFICIENCIES:**

5.1 As many body-piercing and semi-permanent skin colouring practices are carried out on premises already used for tattooing and ear-piercing, additional costs are considered minor in the enforcement of byelaws and will be contained within existing resources.

5.2 Registration fees are agreed annually as part of the overall Fees and Charges process. The fee is a one-off charge at the time of registration and is not likely to result in increased fee income as premises are already registered. There is a cost implication in relation to advertising of making the byelaws. There is no cost for the application to the Department of Health for approval.

### **6.0 LEGAL IMPLICATIONS:**

6.1 The scheme needs to be operated within the existing legislative framework. Existing byelaws, will be deleted and replaced by the single new Model Byelaws.

### **7.0 SECTION 17 CRIME AND DISORDER ACT 1998:**

7.1 There are no implications

### **8.0 EQUALITY/DIVERSITY ISSUES:**

8.1 There are no equality implications.

**9.0 RECOMMENDATION:**

9.1 That Cabinet recommend that:-

- a) the Council pass a resolution authorising the making of byelaws in the form of the Model Byelaws and carry out the necessary procedure and apply to the Department of Health for confirmation; and
- b) Council approves the Cosmetic Piercing and Semi-permanent Colouring Enforcement Policy.

DAVID GOODWIN

**Background papers:** Local Government (Miscellaneous Provisions) Act 1982  
Department of Health. "Regulation of Cosmetic Piercing and Skin-  
Colouring Businesses. 2004.

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110214 Cosmetic piercing



HAMBLETON DISTRICT COUNCIL  
ENVIRONMENTAL HEALTH SERVICE

ACUPUNCTURE, TATTOOING, SEMI-  
PERMANENT SKIN-COLOURING,  
COSMETIC PIERCING AND ELECTROLYSIS  
ENFORCEMENT POLICY

SK.D.7

Date of issue:

Version Control

<i>Version No.</i>	<i>Amended by</i>	<i>Date</i>
1.0	Philip Mephram	9/10/13

## **1.0 Introduction**

1.1 Hambleton District Council is an enforcement authority in relation to Cosmetic Piercing and Skin Colouring. Responsibility for enforcement of relevant legislation has been delegated to the Environmental Health Service and the duties and powers are contained in the following legislation:-

- Local Government (Miscellaneous Provisions) Act 1982 (the 1982 Act)
- Local Government Act 2003
- Tattooing of Minors Act 1969
- Health & Safety at Work etc. Act 1974 (HASAWA)
- Management of Health & Safety at Work Regulations 1999
- Control of Substances Hazardous to Health Regulations 2002
- Health Protection (Part 2A Orders) Regulations 2010

1.2 In exercising its duties and powers, the Environmental Health Service will enforce all of the above legislation and will do so in a firm, fair, open, consistent and helpful way in line with the principles of the Department of Business Innovation & Skills Regulators' Code and the Code for Crown Prosecutors.

1.3 This enforcement policy builds on the overall Environmental Health Enforcement Strategy and Policy and explains its application in relation to Cosmetic Piercing and Skin Colouring services.

1.4 This policy applies to all aspects of the service within the boundaries of Hambleton District Council.

## **2.0 Relevant Documents**

2.1 In addition to the above primary legislation, and its associated secondary legislation, the Service will have regard to the following guidance produced externally and relevant to the enforcement activity.

- Local Government Act 2003. Regulation of Cosmetic Piercing and Skin Colouring Businesses. Department of Health. February 2004
- Tattooing and body piercing guidance. Public Health England. July 2013 Model Byelaws. Acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis. Department of Health.
- Blood-borne virus in the workplace. Guidance for employers and employees. Health & Safety Executive.
- Hairdressing and Beauty Industry Authority publications.

## **3.0 Responsibility**

3.1 All authorised officers are responsible for compliance with this policy in relation to the use of their enforcement powers.

#### **4.0 The Cosmetic Piercing and Skin-Colouring Enforcement Policy Statement**

4.1 The Policy of Hambleton District Council is to take all necessary steps to ensure that all establishments and individuals that are required to be registered under section 14 or 15 of the 1982 Act are registered and that the premises and personnel involved in such activities comply with legislation and good practice.

4.2 In order to implement this Policy, the Environmental Health Service will ensure that Authorised Officers are adequately trained and experienced for the purposes of enforcing the relevant legislation. They will liaise with all relevant bodies to help ensure the efficient enforcement of the legislation. Where appropriate, the Service will also call upon the expertise of others to assist the process.

4.3 The Environmental Health Service will:-

- a) produce, apply and regularly review conditions attached to registrations issued by the Council to provide adequate protection to customers of relevant businesses and practitioners;
- b) prepare and distribute to all involved, material explaining the provisions of the law and registration conditions so as to promote a better understanding of the law and greater compliance with the various statutes;
- c) inspect premises and carry out such enquiries as required prior to their registration applications being determined to ensure they will comply with the conditions;
- d) interview and observe practitioners on existing and proposed practices to ensure that good practice is followed:
- e) carry out investigations into allegations of non-compliance with cosmetic piercing and skin-colouring legislation and conditions;
- f) regularly review the District to determine whether premises or businesses exist which ought to be licensed but which are not.

#### **5.0 Authorisations and Delegations**

5.1 Decisions about Cosmetic Piercing and Skin-Colouring enforcement are delegated to officers of the Council as follows:-

##### **5.1.1 Environmental Health Manager**

- appointment and/or authorisation of officers to exercise statutory functions and exercise of the powers of entry
- exercise of powers in default and recovery of expenses
- in consultation with the Council's Legal Manager, consider the institution of legal proceedings, and approval and amendment of any registration.

N.B. In the absence of the Environmental Health Manager (EHM), the duty will be undertaken by the Environmental Health Team Leader.

#### 5.1.2 Council's Director of Corporate Services

Where considered appropriate and in accordance with this Policy to institute legal proceedings on behalf of the Council in respect of offences against any legislation, including byelaws, which the Council is authorised to enforce.

#### 5.1.3 Authorised Officers

All Environmental Health Officers and Technical Officers who are suitably qualified and experienced are empowered to inspect premises and activities and consider applications for registrations.

5.2 Powers of Entry - all Environmental Health Officers and Technical Officers who are suitably qualified and experienced are authorised to exercise the powers of entry as detailed in their authorisations. In exercising those powers the Environmental Health Officers and Technical Officers will carry identification documents.

5.3 Where differences in application of legislation are not resolved between the Authorised Officer and the regulated entity, it will be the responsibility of the Lead Officer (Commercial) to resolve the matter. In the event of failure to resolve the difference, the matter will be referred to the Environmental Health Manager or, in their absence, the Environmental Health Team Leader.

5.4 Where rights of appeal are specified in legislation, these will be clearly set out in writing at the time the formal documents are served.

### **6.0 Registration of Cosmetic Piercing and Skin-Colouring Premises and Personnel**

6.1 All premises within the scope of this Policy and subject to the legislation listed in paragraph 1.1 above, must be registered at all times during which the relevant business is in operation. For premises to be registered, the relevant conditions must be complied with, or an agreed written programme of improvements must be in place and be in the process of implementation, and all relevant fees must have been paid. All practitioners carrying out registerable activities, or people assisting those practitioners, must comply with relevant byelaws and legislation.

6.2 An inspection programme will be devised and implemented on the basis of the risk inherent to the type of business or type of procedure involved, previous history and level of compliance with existing requirements and perception of management ability to maintain standards in the future. In addition, the programme will be based on inspection requirements and periods set in specific legislation.

6.3 All requests for investigation of unsatisfactory situations will be assessed and a decision made on the extent of the investigation according to the information available or ascertainable.

## **7.0 The Enforcement Options**

7.1 After having due regard to all relevant legislation, information and evidence, the following enforcement options will be considered where applicable:

- a) To take no action
- b) To take informal action
- c) To take statutory action under byelaws, HASAWA and 1982 Act
- d) To prosecute
- e) To recommend refusal, suspension or cancellation of a registration
- f) To seize articles or substances

## **8.0 No Action**

8.1 This course of action is only considered appropriate where, in the officers' opinion, all relevant statutes, byelaws and guidelines are satisfactorily complied with.

## **9.0 Informal Action**

9.1 Informal action is action which will, in the officer's opinion, secure compliance with legislation by offering advice, issuing verbal warnings, and the issue of letters.

9.2 Officers may recommend informal action where:

- a) The previous record of the premises is such that it would be reasonable to expect compliance when informal action is taken.
- b) Confidence in the premises management is high.
- c) The action is part of an ongoing project to improve standards.

9.3 At the conclusion of every visit or investigation the officer will discuss the result of the visit or investigation with the person in control of the premises and issue a report.

9.4 When taking informal action the officer will:

- a) Give all the necessary information to enable all relevant person(s) to understand what is required to remedy the situation and why the action is necessary.
- b) Indicate that any other means that achieve the objectives of compliance will be equally acceptable.
- c) Clearly differentiate between legal requirements and recommendations of good practice.
- d) Arrange to carry out follow-up visits where revisits are necessary to confirm compliance. The timing of these visits will be determined by the



significance of the breaches and should, wherever possible, be carried out by the original inspecting officer.

- 9.5 After investigation of allegations found to be unsubstantiated or anonymous complaints where corroborating evidence is not obtained by the Investigating Officer, no further action will generally be taken. However, the allegation or complaint will remain on the premises file for 3 years.

## **10.0 Statutory Action**

- 10.1 Where there is a contravention of a statutory provision, byelaws or registration condition, and the Officer is satisfied that the remedy of that unsatisfactory situation is unlikely to be achieved by informal means, or there is potential danger to human health, a formal letter will be produced. This will specify the work to be done or the situation to be remedied, stating a timescale for its completion. The contents of this letter and associated timescales will be discussed with the person responsible before the notice is produced.
- 10.2 Where public health needs to be protected but voluntary co-operation to avert a health risk cannot be secured and where other methods of control are ineffective, action will be implemented under the Health Protection (Part 2A Orders) Regulations 2010. These powers can impose restrictions or requirements and are conditional on strict criteria being met.
- 10.3 Extensive powers for the service of improvement and prohibition notices are described in HASAWA.

## **11.0 Prosecution**

- 11.1 The decision to prosecute is a serious matter and will only be considered after consultation with the Environmental Health Team Leader or Environmental Health Manager. The case and the available evidence will be discussed with the Council's Legal Manager prior to any decision regarding the institution of legal proceedings
- 11.2 The relevant criteria to be considered by officers when prosecution is being contemplated are detailed in the Environmental Health Enforcement Strategy and Policy.
- 11.3 Prior to the issue of any prosecution proceedings the EHM or Environmental Health Team Leader must be satisfied (by the authorised officer) that there is relevant, admissible, substantiated and reliable evidence that the offence has been committed by an identifiable body or individual.
- 11.4 There must be a realistic prospect of conviction.
- 11.5 The current Code for Crown Prosecutors issued by the Crown Prosecution Service and the relevant Codes of Practice must be followed.

- 11.6 In addition to being satisfied that there is sufficient evidence a positive decision must be made by the officer based on the factors detailed in section 8 of the Environmental Health Enforcement Strategy and Policy.
- 11.7 The decision to prosecute will be based upon fact and fairness and not upon arbitrary rules not embodied in this policy or the Environmental Health Enforcement Policy and Strategy.
- 11.8 Prosecution will invariably follow any instances of obstruction of an Officer in the course of their duties where appropriate.

## **12.0 Suspension, cancellation and refusal of a registration**

- 12.1 If a person, registered to practice acupuncture, tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis is found guilty of an offence by the Magistrates' Court for an offence(s) under section 16 of the 1982 Act the court may, instead of or in addition to imposing a fine, order the suspension or cancellation of his registration. The Court may also order the suspension or cancellation of any registration of the premises in which the offence was committed. There is a right of appeal to the Crown Court.
- 12.2 Where the Court has cancelled the registration of a person following conviction under section 16 of the 1982 Act he shall not be registered again under section 14 or, as the case may be, section 15 of the 1982 Act except with the consent of the Magistrates' Court which convicted him.

## **13.0 Seizure of articles or substances**

- 13.1 Under section 25 of HASAWA, if an Inspector during a visit finds any articles or substances believes it to be a cause of imminent danger or serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).