

AGENDA ITEM 4

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

21st JANUARY 2016

PROVISION OF BYELAWS ON ACUPUNCTURE, TATTOOING, SEMI-PERMANENT SKIN-COLOURING, COSMETIC PIERCING AND ELECTROLYSIS IN RHONDDA CYNON TAF

REPORT OF GROUP DIRECTOR COMMUNITY AND CHILDREN'S SERVICES IN DISCUSSIONS WITH THE RELEVANT PORTFOLIO HOLDER (COUNCILLOR M. FOREY)

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1. PURPOSE OF THE REPORT

1.1 The purpose of the report is:

- To inform Members about the comprehensive revision by the Welsh Government of the existing Model Byelaws on ear piercing, tattooing, acupuncture and electrolysis (including cosmetic piercing and semi-permanent skin colouring).
- To seek authority for the Service Director, Public Health & Protection, to undertake a public consultation on the adoption of the draft Model Byelaws in Appendix 1 and, if necessary, amend them.
- For Cabinet to recommend that Council adopt the new Model Byelaws in place of the existing Byelaws covering these issues.

2. RECOMMENDATIONS

2.1 That Cabinet recommends to Council the adoption of the provisions of the Local Government (Miscellaneous Provisions) Act 1982, Part VIII, sections 14-17 to enable new Byelaws to be adopted

2.2 That the Cabinet approves in their entirety the draft Model Byelaws reproduced in Appendix 1 and:

- a) authorises the Service Director of Public Health & Protection to publicise notice of intention to make a byelaw using Local Government Byelaws (Wales) Act 2012 and to consult relevant persons and
 - b) delegates authority to the Service Director of Public Health & Protection to consider feedback from consultation before progressing to full Council
 - c) subject to the outcome of the public consultation, to recommend the Council adopt the final, proposed model byelaws in accordance with the provisions of the Local Government Byelaws (Wales) Act 2012
- 2.3 To further recommend to Council the revocation of all existing byelaws, which regulate ear piercing, tattooing, acupuncture and electrolysis with effect from the start date of the new byelaws.

3. REASONS FOR RECOMMENDATIONS

- 3.1 During skin piercing procedures blood and body fluids are released posing a risk of blood borne virus transmission, including hepatitis A, B, and C and HIV. Some blood borne viruses, for example hepatitis B, can be transmitted by very small volumes of blood; too small to be visible to the naked eye. Such diseases can be debilitating, have a major impact on the quality of life and, if not medically treated, can lead to death. Effective regulation of this trade is therefore necessary to protect individuals from infection but also to safeguard the wider public health. The adoption of Welsh Government Model Byelaws will ensure the Council has a regulatory framework in place to control the skin piercing trade within Rhondda Cynon Taf.

4. BACKGROUND

- 4.1 Tattooing and skin piercing in all its forms is increasingly popular and we already have over 50 registered premises offering these services. The incentives for practitioners to enter the rapidly growing market have never been greater. The ready availability and low cost of DIY kits has facilitated new entrants into the market who practice on themselves but also (illegally) offer their services to others. Any skin piercing operation risks infection and many people have been painfully scarred as a result of unhygienic practices. However, cross infection of life threatening blood born diseases such as HIV, hepatitis B and hepatitis C from client to client poses a much more serious risk to the individual and to contacts in the wider community that they may subsequently infect. Effective regulation of this trade is therefore necessary to protect individuals from infection but also to safeguard the wider public health.

- 4.2 The Local Government (Miscellaneous Provisions) Act 1982 (The Act) gave powers to local authorities to regulate ear piercing, tattooing, acupuncture and electrolysis by requiring practitioners to register and comply with local byelaws. The Local Government Act 2003 amended the 1982 Act to include cosmetic piercing and semi-permanent skin colouring businesses in the list of those that local authorities have powers to regulate. The Local Government Byelaws (Wales) Act 2012 came into force in March 2015 and provides the framework with which local authorities can adopt byelaws pursuant to the 1982 Act.
- 4.3 The predecessor Authorities of Rhondda Cynon Taf CBC each introduced their own (different) local byelaws, which remain in force today. These measures are limited in that they apply only to tattooing, acupuncture and ear piercing. They are also now very outdated and (because they are different in different parts of the County Borough) they are complicated to enforce. They impose inconsistent standards for local businesses and provide inconsistent levels of public protection across the County Borough. A single set of byelaws applicable to all types of skin piercing and skin colouring practices therefore would have clear advantages.
- 4.4 Rhondda Cynon Taf's circumstances are replicated in many of the 22 Welsh Authorities. The Welsh Government has therefore produced a set of up to date Model Byelaws covering the whole range of current skin piercing services, which Local Authorities may adopt in whole or in part. These are reproduced in Appendix 1. *"The Model Byelaws for Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis"* would, if adopted, provide a comprehensive package of practicable, appropriate controls in Rhondda Cynon Taf. All of the provisions could usefully and reasonably be applied in Rhondda Cynon Taf and there is no apparent reason to exclude any of them from adoption.
- 4.5 If Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 and the new Model Byelaws are adopted by The Council, it will be possible for us to prosecute both non-compliant and unregistered practitioners. On conviction, the Court may impose a fine and /or suspend or cancel the person's registration. The Court may also suspend or cancel their premises registration so that the practitioner may no longer occupy them. It is therefore anticipated that adoption would provide a deterrent for non-registration and non-compliance, which would drive up standards in the trade and thereby provide enhanced protection of public health.
- 4.6 In order to achieve that, it will be necessary for the Council to resolve that the provisions of Part VIII of the Act apply in Rhondda Cynon Taf and to follow the prescribed procedures set out in Section 6 Local Government Byelaws (Wales) Act 2012. The Council previously

approved the adoption of Part VIII of the 1982 Act (Council meeting 26th March 2014) and the model byelaws (Council meeting 24.7.2013), however due to a procedural error within the process, the formal adoption could not be completed. In order to be legally binding, and in the context of the new 2012 Byelaws Act, the process to be followed is summarised below:

- Approval from Cabinet to publicise in the local paper(s) the intention to adopt the provisions of the 1982 Act and the Model Byelaws
- Undertake public consultation in respect of the intention to adopt the provisions of the 1982 Act and the Model Byelaws and allow representations to be made
- Seek Council approval to adopt the provisions of the 1982 Act and adoption of the Model Byelaws
- Publicise the final notice of effective date for the Byelaws to come into force not less than 6 weeks before commencement date.
- Apply the common seal of the Council to the Byelaws
- Byelaws come into effect on a date set by the Council (normally six weeks after the date of confirmation).
- Copies of the Byelaws must then be deposited at the Council offices and with Community Councils for public inspection

5. EQUALITY AND DIVERSITY IMPLICATIONS

- 5.1 An Equality Impact Assessment screening form has been prepared for the purpose of this report. It has been found that a full report is not required at this time. The screening form can be accessed by contacting the author of the report or the Cabinet Business officer.

6. CONSULTATION

- 6.1 Consultation will be undertaken with interested parties, including those operating in the sector and with the relevant trade bodies. The consultation information will be placed on the Council's website and all responses will be considered.

7. FINANCIAL IMPLICATION(S)

- 7.1 The report informs cabinet about activity within the existing budget.

8. LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED

- 8.1 The Local Government (Miscellaneous Provisions) Act 1982 Part VIII
- 8.2 Welsh Government Model Byelaws for Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis (2009)
- 8.2 Local Government Byelaws (Wales) Act 2012

9. LINKS TO THE COUNCILS CORPORATE PLAN/OTHER CORPORATE PRIORITIES/SIP

- 9.1 The proposals contained within the report link to one of Welsh Governments National Enforcement Priorities of Protecting individuals from harm.
- 9.2 The proposals link to the Single Integrated Plan priority of 'children and adults at risk are protected from harm'.
- 9.3 The proposals also link to one of the Council's eight improvement priorities, 'Protecting people from harm' theme.

10. CONCLUSION

- 10.1 The existing Byelaws for ear piercing, tattooing, acupuncture and electrolysis adopted by Rhondda Cynon Taff CBC's predecessor Authorities are seriously outdated and provide inconsistent standards for practitioners. They also offer limited and inconsistent protection for clients, who now demand a wide range of skin piercing services, and who are potentially at risk of cross infection from client to client of life threatening blood born diseases.
- 10.2 The new "*Model Byelaws for Acupuncture, Tattooing, Semi-Permanent Skin Colouring, Cosmetic Piercing and Electrolysis*" produced by Welsh Government would, if adopted, provide a robust solution for Rhondda Cynon Taf, and would help provide a consistent regulatory approach throughout Wales.

Other information:

Relevant Scrutiny Committee:
Health and Wellbeing

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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Background Papers – none

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Appendix 1

MODEL BYELAWS (WALES)

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, made by Rhondda Cynon Taf County Borough Council in pursuance of sections 14(7) or 15(7) or both of the Act.

1) Interpretation

- (i) In these byelaws, unless the context otherwise requires—
- “The Act” means the Local Government (Miscellaneous Provisions) Act 1982;
- “Animal” means any reptile, mammal, and all other living creatures belonging to the animal kingdom;
- “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,
 - (b) the upper flat cartilage of the ear, and/or
 - (c) 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.

- (ii) The Interpretation Act 1978 applies to the interpretation of these byelaws as it applies to the interpretation of an Act of Parliament.

Cleanliness of premises and fittings

- 2) For the purpose of securing the cleanliness of premises and fittings in such premises a proprietor must ensure that—
 - (i) 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;
 - (ii) any waste material, or other litter arising from treatment must be placed immediately after use in an appropriate waste receptacle with a pedal operated lid and be handled and disposed of in accordance with relevant legislation and guidance as advised by the local authority;
 - (iii) any needle, razor or other sharp item used in treatment is disposed of in a sharps container that is kept out of reach of clients and the general public in accordance with relevant legislation and guidance as advised by the local authority;
 - (iv) any furniture or fitting in the premises is kept clean and in such good repair as to enable it to be cleaned effectively;
 - (v) 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 cleaned and disinfected—
 - (a) immediately after use; and
 - (b) at the end of each working day.
 - (vi) any table, couch, or other item of furniture used in treatment is covered by a disposable paper sheet which is changed for every client;
 - (vii) no eating or drinking is permitted in the treatment area and a notice or notices reading “No Eating or Drinking” is prominently displayed there;
 - (viii) animals are prohibited from the premises except for animals used by the sight and/or hearing impaired.

- 3) (i) Subject to Byelaw 3(ii), where premises are registered under sections 14(2) (acupuncture) or 15(2) (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Act, a proprietor must ensure that treatment is given in a treatment area used solely for giving treatment;
- (ii) Byelaw 3(i) does not apply if the only treatment to be given in such premises is the piercing of the lobe or the upper flat cartilage of the ear using a hygienic piercing instrument.
- 4) (i) Subject to Byelaw 4(ii), where premises are registered under section 15(2) (tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis) of the Act, a proprietor must ensure that the floor of the treatment area is provided with a smooth impervious surface;
- (ii) Byelaw 4(i) does not apply if the only treatment to be given in such premises is (a) the piercing of the lobe or the upper flat cartilage of the ear using a hygienic piercing instrument; and/or (b) electrolysis.

Cleansing and so far as is appropriate, the sterilization of needles, instruments, jewellery, materials and equipment

- 5) 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 an operator must ensure that—
 - (i) any gown, wrap or other protective clothing, paper or other covering, towel, cloth or other such article used in treatment—
 - (a) is clean and in good repair and, so far as is appropriate, is sterile;
 - (b) 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, razor or other sharp item used in treatment is single-use and disposable;
 - (iii) any single-use 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;
 - (iv) only disposable single-use safety razors are used;
 - (v) if petroleum jelly or lubricating gel is to be placed on a clients skin, enough for one client only should be removed from the stock container with a clean spatula, and placed in a container that is either disposed of at the end of each treatment or is cleaned and sterilized before re-use;

- (vi) elastic bands or plastic bags used on tattoo machines are disposed of after every client;
 - (vii) any jewellery used for cosmetic piercing by means of a hygienic piercing instrument is sterile;
 - (viii) for the purposes of tattooing or semi-permanent skin-colouring, only sterile inert pigment dispensed into single use pots or pre-packed in single use vials is used;
 - (ix) any container used to hold dye for tattooing or semi-permanent skin-colouring is used for only one client and disposed of together with any unused pigment at the end of each treatment.
- 6) 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 proprietor must provide—
- (i) adequate facilities and equipment for—
 - (a) cleansing and disinfection, including a general purpose sink with an adequate and constant supply of hot and cold running water on the premises separate from the wash hand basin required under Byelaw 8(i). This general purpose sink should be located out of the treatment area wherever possible; and sterilisation, unless only pre-sterilised items are used. All sterilisation equipment must be serviced and maintained at appropriate intervals and periodically tested by the operator to ensure its efficient operation. Records of maintenance, servicing, testing and operating cycles must be retained at the premises until the date falling six months after the equipment is destroyed or disposed of.
 - (ii) sufficient and safe gas points and electrical socket outlets;
 - (iii) clean and suitable storage which avoids contamination of the articles, needles, instruments and equipment mentioned in Byelaw 5(i), (ii), (iii), (iv), (v), (vi), (vii) (viii) and (ix).

Cleanliness of operators

- 7) For the purpose of securing the cleanliness of operators, a proprietor must ensure that an operator—
- (i) is instructed in appropriate hygienic hand decontamination techniques and washes their hands immediately before carrying out a treatment on each client;
 - (ii) keeps his/her hands and nails clean and his/her nails short and free from nail varnish, nail decoration or any form of nail covering;
 - (iii) keeps any open lesion on an exposed part of the body effectively covered by an impermeable dressing;

- (iv) wears disposable, well fitting, surgical gloves that have not previously been used with another client, unless giving acupuncture otherwise than in the circumstances described in Byelaw 10;
 - (v) wears a gown, wrap or protective clothing that is clean and washable and, so far as is appropriate, is sterile, or alternatively a disposable covering that has not previously been used in connection with another client;
 - (vi) does not smoke or consume food or drink in the treatment area.
- 8)** Subject to Byelaw 9, for the purpose of securing the cleanliness of operators a proprietor must provide—
- (i) suitable and sufficient wash hand basins with non hand operated taps appropriately located for the sole use of operators, including an adequate and constant supply of clean hot and cold water, liquid soap and paper towels stored in a wall mounted dispenser next to the wash hand basin. Hand washing instructions should be clearly displayed at such basins;
 - (ii) suitable and sufficient sanitary accommodation for operators.
- 9)** Where the only treatment an operator carries out is the piercing of the lobe or the upper flat cartilage of the ear using a hygienic piercing instrument and a proprietor provides either a hand hygienic gel or liquid cleaner, the wash hand basins the proprietor provides need not be for the sole use of the operator.
- 10)** A proprietor must ensure the activity of acupuncture is only carried out by an operator who has washed their hands immediately before carrying out the activity of acupuncture on each client. Where an operator gives acupuncture a proprietor must ensure that the operator wears disposable, well fitting, surgical gloves that have not previously been used with another client where—
- (i) the client is bleeding or has an open lesion on an exposed part of his/her body; or
 - (ii) the client is known to be infected with a blood-borne virus; or
 - (iii) the operator has an open lesion on his/her hand; or
 - (iv) the operator is handling items that may be contaminated with blood or other body fluids.
- 11)** 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 Byelaws 5(i) and 7(i).

- 12) The following byelaws relating to ear piercing & electrolysis, tattooing and acupuncture that were made by Taff Ely BC, Rhondda BC and Cynon Valley BC are revoked.

Subject	Made by	Date made	Confirmed by	Date confirmed
Ear piercing & electrolysis	Taff Ely BC	13/05/1987		
Ear piercing & electrolysis	Rhondda BC	25/06/1993	Welsh Office	21/01/1994
Ear piercing & electrolysis	Cynon Valley BC	28/02/1984	Welsh Office	01/07/1984
Tattooing	Taff Ely BC	13/05/1987		
Tattooing	Cynon Valley BC	28/02/1984	Welsh Office	01/07/1984
Tattooing	Rhondda BC	25/06/1993	Welsh Office	21/01/1994
Acupuncture	Taff Ely BC	13/05/1987		

COUNCIL'S SIGNATURE

COUNCIL'S SEAL

The foregoing byelaws are confirmed by the Welsh Ministers under section 236 of the Local Government Act 1972

on _____ and come into operation on the

Signed:

under authority of the Minister for Health and Social Services, one of the Welsh Ministers.

NOTE – THE FOLLOWING DOES NOT FORM PART OF THE BYELAWS

Proprietors must 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 must 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) will 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 will 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 is 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 Byelaw 1(i) in the definition of “premises” to provisions of section 14 (acupuncture) only apply to acupuncture.

The references in Byelaw 1(i) 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 Byelaw 3 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 the piercing of the lobe or the upper flat cartilage of the ear using a hygienic piercing instrument.

The requirement in Byelaw 4 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, piercing of the lobe or the upper flat cartilage of the ear using a hygienic piercing instrument or electrolysis.

The requirement relating to elastic bands and plastic bags in Byelaw 5(vi) applies to tattooing.

The requirement relating jewellery in Byelaw 5(vii) applies to cosmetic piercing.

The requirements relating to dye or a container used to hold dye used for treatment in Byelaw 5(viii) and (ix) apply to tattooing and semi-permanent skin-colouring.

The requirement in Byelaw 7(iv) that an operator wears disposable well fitting, surgical gloves that have not previously been used with another client does not apply to acupuncture otherwise than in the circumstances described in Byelaw 10.

The provisions of Byelaw 9 in relation to washing facilities apply to the piercing of the lobe or the upper flat cartilage of the ear using a hygienic piercing instrument.

*The byelaws do not apply to (i) tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis treatment carried out by or under the supervision of a **medical practitioner (section 15(8) of the Act)** or (ii) acupuncture carried out by or under the supervision of a **medical practitioner or a dentist (section 14(8) of the Act)**.*

Local authorities may find it helpful to have regard to the Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) Local Authority Circulars:

76/2: *Enforcement of skin piercing Activities* (April 2005) –
<http://www.hse.gov.uk/lau/lacs/76-2app.htm>

14/1: *Micro-pigmentation, semi-permanent tattooing and semi-permanent make-up* (August 2006) <http://www.hse.gov.uk/lau/lacs/14-1.htm>

These contain comprehensive guidance on issues such as infection control, waste disposal and aftercare advice-

[http://www.hse.gov.uk/lau/lacs/14-1.htm#Cleaning and disinfection](http://www.hse.gov.uk/lau/lacs/14-1.htm#Cleaning_and_disinfection)