To: Mayor, Ladies and Gentlemen

Proposed New Byelaws for Acupuncture,
Tattooing, Semi-Permanent Skin Colouring,
Cosmetic Piercing and Electrolysis

PURPOSE OF THE REPORT:

To seek the approval of Council for the proposed new Byelaws, and to seek authority for the Legal Division to take the proposed new Byelaws to public consultation.

1.0 INTRODUCTION AND BACKGROUND

1.1 The Council currently has two sets of Byelaws regulating 1) tattooing and 2) ear piercing and electrolysis. These date back to 1984. Since that time, fashions in body decoration have moved on and it is now necessary to cover new forms of body decoration such as cosmetic body piercing and skin colouring.

1.2 On the 8th December 2010, a Report was brought to Council seeking approval of draft Byelaws prepared by the Welsh Assembly Government (as it then was) in respect of this very same subject. On that occasion, Council approved the draft Byelaws and authorised the Legal Division to take the same to public consultation. However, on the 5th January 2011, the Welsh Assembly Government requested that no further work be undertaken by Local Authorities with regard to the Byelaws, as there were certain deficiencies in the version produced by WAG, which would need to be corrected by them, and would necessitate a new set of draft Byelaws.

1.3 The Welsh Government has recently produced a new draft set of Model Byelaws which bring all the above types of body decoration under one document. The document has passed through the initial consultation stage, and the Council’s
Environmental Health Division now recommends that its provisions be adopted as the Council’s Byelaws on these matters.

1.4 The legislation which allows local authorities to make Byelaws relating to these matters is contained in sections 14 and 15 of the Local Government (Miscellaneous Provisions) Act 1982. Council resolved to formally adopt sections 14 and 15 at Full Council on the 8th March 2006.

1.5 As part of the adoption process, draft Byelaws particular to the Merthyr Tydfil County Borough have been prepared by the Legal Division (Appendix One) and submitted to the Welsh Government for provisional approval prior to going to public consultation. Provisional approval has now been granted.

1.6 If Council approves the draft Byelaws, they will be advertised in the Merthyr Express and this will be followed by a period of 28 days for interested parties to raise any objections to them.

1.7 The draft Byelaws (subject to any amendments brought about by objections from interested parties or members of the public) will then be sent to the Welsh Government for ‘confirmation’ and once again this will be advertised in the Merthyr Express so that objections can be sent to the Welsh Government.

1.8 Once the Welsh Government has ‘confirmed’ the Byelaws the document will be placed before Council for adoption and sealing.

2.0 FINANCIAL IMPLICATION(S)

2.1 The only financial implications consequent upon this report will be the cost of press advertisements. These are likely to amount to approximately £700. This will be met from the Environmental Health budget.

3.0 EQUALITY IMPACT ASSESSMENT

3.1 An Equality Impact Assessment (EqIA) has been prepared for the purpose of this report. A copy of the EqIA can be obtained from the author.
4.0 **RECOMMENDATION(S) that**

4.1 The contents of the report be noted.

4.2 The draft Byelaws for Acupuncture, Tattooing, Semi-permanent Skin Colouring, Cosmetic Piercing and Electrolysis be approved.

4.3 The Legal Department undertake a consultation exercise in relation to the proposed new Byelaws.

GARETH CHAPMAN
CHIEF EXECUTIVE

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*Consultation has been undertaken with Executive Board in respect of each proposal(s) and recommendation(s) set out in this report.*
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, made by Merthyr Tydfil 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.
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 client’s 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
   (b) 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 byelaws relating to Ear Piercing and Electrolysis that were made by the Borough Council of Merthyr Tydfil on the 3rd September 1984 and were confirmed by the Secretary of State on the 16th April 1985 are revoked.

13) The byelaws relating to Tattooing that were made by the Borough Council of Merthyr Tydfil on the 3rd September 1984 and confirmed by the Secretary of State on the 16th April 1985 are revoked.

THE COMMON SEAL of Merthyr Tydfil County Borough Council was hereunto affixed in pursuance of a Resolution of the Council held on

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Authorised Signatory

Legal Division
Civic Centre
Castle Street
MERTHYR TYDFIL
CF47 8AN
The foregoing byelaws are confirmed by the Welsh Ministers under section 236 of the Local Government Act 1972

on and comes into operation on the

Signed:

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

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