

LICENSING COMMITTEE

**Wednesday, 22 January
2020**

5.30 pm

Committee Room 1, City Hall

Membership: Councillors Jane Loffhagen, Alan Briggs, Liz Bushell, Kathleen Brothwell (Chair), Loraine Woolley (Vice-Chair), Biff Bean, Bill Bilton, Ronald Hills, Adrianna McNulty, Ralph Toofany and Pat Vaughan

Substitute member(s): Councillors Bob Bushell, Gary Hewson and Jackie Kirk

Officers attending: Tom Charlesworth, Ian Cullen, Becky Scott, Jess Cullen and Emma Credland

A G E N D A

SECTION A

Page(s)

SITTING AS THE LICENSING COMMITTEE OF THE LICENSING AUTHORITY UNDER THE LICENSING ACT 2003

Substitute Members are not appointed as Members of the Licensing Authority under the Provisions of the Licensing Act 2003 and Gambling Act 2005. Licensing Committee members must have attended training on 16 May 2019 in order to take part in item number 2 of this agenda.

1. Declarations of Interest

Please note that, in accordance with the Members' Code of Conduct, when declaring interests members must disclose the existence and nature of the interest, and whether it is a disclosable pecuniary interest (DPI) or personal and/or pecuniary.

2. Introduction of powers to allow suspension and revocation of Personal Licences under Section 132A of the Licensing Act 2003 **3 - 18**

LICENSING COMMITTEE

3. Confirmation of Minutes - 17 September 2019 **19 - 20**
4. Hackney Carriage and Private Hire minutes of previous meeting - 24 October 2019 **21 - 28**
5. Registration of Premises and Skin Piercers relating to the activities of Body piercing and Semi-Permanent Skin-Colouring **29 - 50**

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SUBJECT: INTRODUCTION OF POWERS TO ALLOW SUSPENSION AND REVOCATION OF PERSONAL LICENCES UNDER SECTION 132A OF THE LICENSING ACT 2003

DIRECTORATE: COMMUNITIES & ENVIRONMENT

REPORT AUTHOR: IAN CULLEN – LICENSING TEAM LEADER

1. Purpose of Report

1.1 The purpose of this report is to inform the Committee of amendments to the Licensing Act 2003 made by the Policing and Crime Act 2017 and to introduce new procedures relating to these changes.

2. Executive Summary

2.1 Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003 and gave licensing authorities the power to revoke or suspend personal licences. This is a discretionary power; licensing authorities are not obliged to give consideration to all personal licence holders subject to convictions for relevant offences, foreign offences or civil penalties for immigration matters.

2.2 Should licensing authorities choose to use this power, the process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out at section 132A of the Licensing Act 2003 (**Appendix A**). The decision to revoke or suspend a personal licence must be made by the Licensing Committee or Sub-Committee, but the action required before making a final decision may be made by a licensing officer.

2.3 This report proposes the procedure that the City of Lincoln Council will take when deciding whether to revoke or suspend a personal licence.

3. Background

3.1 Prior to April 2017, only the magistrates' court had the power to revoke or suspend a personal licence where the licence holder had been convicted of a relevant offence.

3.2 The amendments to the 2003 Act now give this power to Licensing Authorities for convictions received on or after 6 April 2017. Where a Licensing Authority, which has granted a personal licence, becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or has been required to pay an immigration penalty on or after this date, the Authority has the discretionary power to revoke the licence or suspend the licence for a period of up to six months. Relevant offences are listed in Schedule 4 to the Licensing Act 2003 (as amended) (**Appendix B**).

- 3.3 Section 138(2) of the Policing and Crime Act 2017 dictates that these powers cannot be delegated to Officers. However the discretionary nature of the powers allows officer consideration as to whether a personal licence holder should be referred to a committee for determination to take place. Such considerations will necessarily be carried out on a case by case basis.
- 3.4 Before making a decision regarding the status of a personal licence, the Authority must invite the licence holder to make representations regarding:
- the relevant offence, foreign offence or immigration penalty,
 - any decision of the Court in relation to the personal licence, and
 - any other relevant information (including information regarding the licence holder's personal circumstances).
- A period of 28 days must be given in order for the licence holder to make the above representations. The proposed procedure is that an Officer will write to the licence holder inviting the representations.
- 3.5 The Policing & Crime Act 2017 does not set out any hearing procedures for determining whether or not to revoke/suspend personal licences. The s.182 guidance issued by the Secretary of State specifies that a Licensing Committee or a Sub-Committee should determine the application to revoke a personal licence, however the licensing authority does not need to hold a hearing to consider the representations. The options are explored further at paragraph 6.2 below.
- 3.6 If the Licensing Authority is not minded to revoke the personal licence then notice of such a decision must be given to Lincolnshire Police. The notice must ask the Police whether in their opinion the licence should be suspended or revoked. In such a scenario the Licensing Authority must reconsider its decision not to revoke if the Police indicate that, in their opinion, the licence should be suspended or revoked having regard to the crime prevention objective.
- 3.7 If the personal licence is suspended or revoked, then the licence holder has 21 days to submit an appeal against the decision to the Magistrates Court. Any suspension or revocation of the licence will not take effect until the end of the period for the submission of an appeal or if an appeal is submitted until such time as the appeal is determined.
- 3.8 Guidance is issued to Licensing Authorities by the Home Office in relation to the processing and review of licences under the Licensing Act 2003. A relevant extract from the current guidance, on the subject of the suspension or revocation of personal licences can be found at **Appendix C**.

4. Proposed procedure

- 4.1 The proposed procedure to be undertaken when determining suspension or revocation of a personal licence can be found at **Appendix D**

5. Strategic Priorities

- 5.1 Let's drive economic growth
N/A

- 5.2 Let's reduce inequality
N/A
- 5.3 Let's deliver quality housing
N/A
- 5.4 Let's enhance our remarkable place
N/A

- 5.5 High performing services
N/A

6. Organisational Impacts

6.1 Finance (including whole life costs where applicable)

- 6.1.1 As with all licensing decisions it is possible that if a Licensing Committee decision is appealed to the Magistrates Court and the appeal is upheld, costs may be awarded against the Council.
- 6.1.2 Whilst the Council could incur additional costs as a result of an increase in licensing hearings, these are not anticipated to be significant in the context of the Council's overall finances. However any increase in costs would be managed within the areas current budget.

6.2 Legal Implications including Procurement Rules

- 6.2.1 The Policing & Crime Act 2017 does not set out any hearing procedures for determining whether or not to revoke/suspend personal licences. The s.182 guidance issued by the Secretary of State specifies that a Licensing Committee or a Sub-Committee should determine the application to revoke a personal licence, but does not specify whether or not a hearing needs to take place.
- 6.2.2 Section 7(1) of the Licensing Act 2003 empowers a Licensing Committee to determine the decision making procedures for applications under the Licensing Act 2003. It is therefore open to the Licensing Committee to elect to dispose of these hearings by:
 - 1. Delegating to the Licensing Sub-Committee the power to determine the application on the papers without a formal hearing; or
 - 2. Delegating the decision making powers to the Licensing Sub-Committee. The hearing procedure and timescales that apply to contested personal licence applications can apply to applications to revoke/suspend personal licences.
- 6.2.3 All relevant applicant types under the Licensing Act are already determined by a process of hearings by a Sub-Committee. If the Licensing Sub-Committee is further delegated to make these decisions, it will align with the functions of the Licensing Sub-Committee.

6.3 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

7. Risk Implications

7.1 (i) Options Explored

7.2 (ii) Key risks associated with the preferred approach

8. Recommendation

8.1 That Members note the amendments to the Licensing Act 2003, made by the Policing and Crime Act 2017, which give the Licensing Authority powers to suspend or revoke a personal licence.

8.2 That the Committee confirm that Licensing Sub-Committees of the Licensing Act 2003 Committee hold the authority to suspend or revoke a personal licence.

8.3 Approve the general procedure in regards to revoking or suspending a Personal Licence as set out in Appendix D.

8.4 Confirm that the hearing procedure and timescales, that currently apply to contested applications for the grant of a personal licence (as laid down in the Licensing Act 2003 (Hearings) Regulations 2005), will apply to the procedures for decisions on whether to revoke or suspend a personal licence.

Is this a key decision? No

Do the exempt information categories apply? No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply? No

How many appendices does the report contain? 4

List of Background Papers: None

Lead Officer: Ian Cullen, Licensing Team Leader
Telephone (01522) 873714

Appendix A

132A Convictions etc of licence-holder: powers of licensing authority

(1) This section applies where a licensing authority has granted a personal licence and it becomes aware (whether by virtue of section 123(1), 131 or 132 or otherwise) that the holder of the licence (“ the licence holder ”) has been, at any time before or after the grant of the licence—

- (a) convicted of any relevant offence or foreign offence, or
- (b) required to pay an immigration penalty.

(2) But this section does not apply at any time when in the case of a licence holder who has been convicted of any relevant offence or foreign offence—

- (a) the licence holder has appealed against a conviction for, or any sentence imposed in relation to, a relevant offence or foreign offence and that appeal has not been disposed of, or
- (b) the time limit for appealing against such a conviction or sentence has not expired.

(3) The relevant licensing authority may—

- (a) suspend the licence for a period not exceeding six months, or
- (b) revoke the licence.

(4) If the relevant licensing authority is considering whether to suspend or revoke the licence, the authority must give notice to the licence holder.

(5) A notice under subsection (4) must invite the licence holder to make representations regarding—

- (a) the relevant offence, foreign offence or immigration penalty that has caused the relevant licensing authority to issue the notice,
- (b) any decision of a court under section 129 or 130 in relation to the licence, and
- (c) any other relevant information (including information regarding the licence holder's personal circumstances).

(6) The licence holder may make representations under subsection (5) to the relevant licensing authority within the period of 28 days beginning with the day the notice was issued.

(7) Before deciding whether to suspend or revoke the licence the relevant licensing authority must take into account—

- (a) any representations made by the licence holder under this section,
- (b) any decision of a court under section 129 or 130 of which the licensing authority is aware, and
- (c) any other information which the authority considers relevant.

(8) Having taken into account the matters described in subsection (7) the relevant licensing authority may make a decision whether to suspend or revoke a licence, unless subsection (9) applies.

(9) This subsection applies where the relevant licensing authority has taken into account the matters described in subsection (7) and proposes not to revoke the licence.

(10) Where subsection (9) applies the authority must—

- (a) give notice to the chief officer of police for its area that it proposes not to revoke the licence, and
- (b) invite the officer to make representations regarding the issue of whether the licence should be suspended or revoked having regard to the crime prevention objective.

(11) The chief officer of police may make representations under subsection (10)(b) to the relevant licensing authority within the period of 14 days beginning with the day the notice was received.

(12) Where the relevant licensing authority has given notice to the chief officer of police under subsection (10)(a), the authority must take into account—

- (a) any representations from the officer, and
 - (b) the matters described in subsection (7),
- and then make a decision whether to suspend or revoke the licence.

(13) The relevant licensing authority must give notice of any decision made under subsection (8) or (12) to the licence holder and the chief officer of police, including reasons for the decision.

(14) A decision under this section does not have effect—

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

(15) A decision under subsection (8) or (12) may be appealed (see paragraph 17(5A) of Part 3 of Schedule 5 (appeals: personal licences)).

Appendix B

Schedule 4 of Licensing Act 2003 - Personal Licence: Relevant Offences

- 1 An offence under this Act.

- 2 An offence under any of the following enactments—
 - (a) Schedule 12 to the London Government Act 1963 (c. 33) (public entertainment licensing);
 - (b) the Licensing Act 1964 (c. 26);
 - (c) the Private Places of Entertainment (Licensing) Act 1967 (c. 19);
 - (d) section 13 of the Theatres Act 1968 (c. 54);
 - (e) the Late Night Refreshment Houses Act 1969 (c. 53);
 - (f) section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30);
 - (g) the Licensing (Occasional Permissions) Act 1983 (c. 24);
 - (h) the Cinemas Act 1985 (c. 13);
 - (i) the London Local Authorities Act 1990 (c. vii).

- 3 An offence under the Firearms Act 1968 (c. 27).

- 4 An offence under section 1 of the Trade Descriptions Act 1968 (c. 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.

- 5 An offence under any of the following provisions of the Theft Act 1968 (c. 60)—
 - (a) section 1 (theft);
 - (b) section 8 (robbery);
 - (c) section 9 (burglary);
 - (d) section 10 (aggravated burglary);
 - (e) section 11 (removal of articles from places open to the public);
 - (f) section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;

- (g) section 13 (abstracting of electricity);
- (h) section 15 (obtaining property by deception);
- (i) section 15A (obtaining a money transfer by deception);
- (j) section 16 (obtaining pecuniary advantage by deception);
- (k) section 17 (false accounting);
- (l) section 19 (false statements by company directors etc.);
- (m) section 20 (suppression, etc. of documents);
- (n) section 21 (blackmail);
- (o) section 22 (handling stolen goods);
- (p) section 24A (dishonestly retaining a wrongful credit);
- (q) section 25 (going equipped for stealing etc.).

6 An offence under section 7(2) of the Gaming Act 1968 (c. 65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).

7 An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)—

- (a) section 4(2) (production of a controlled drug);
- (b) section 4(3) (supply of a controlled drug);
- (c) section 5(3) (possession of a controlled drug with intent to supply);
- (d) section 8 (permitting activities to take place on premises).

7A An offence under any of the Immigration Acts.

8 An offence under either of the following provisions of the Theft Act 1978 (c. 31)—

- (a) section 1 (obtaining services by deception);
- (b) section 2 (evasion of liability by deception).

9 An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c. 2)—

- (a) section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc.);
- (b) section 170B (taking preparatory steps for evasion of duty).

- 10 An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c. 7)—
- (a) section 8G (possession and sale of unmarked tobacco);
 - (b) section 8H (use of premises for sale of unmarked tobacco).
- 11 An offence under the Forgery and Counterfeiting Act 1981 (c. 45) (other than an offence under section 18 or 19 of that Act).
- 12 An offence under the Firearms (Amendment) Act 1988 (c. 45).
- 13 An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)—
- (a) section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);
 - (b) section 107(3) (infringement of copyright by public performance of work etc.);
 - (c) section 198(2) (broadcast etc. of recording of performance made without sufficient consent);
 - (d) section 297(1) (fraudulent reception of transmission);
 - (e) section 297A(1) (supply etc. of unauthorised decoder).
- 14 An offence under any of the following provisions of the Road Traffic Act 1988 (c. 52)—
- (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
 - (b) section 4 (driving etc. a vehicle when under the influence of drink or drugs);
 - (c) section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit).
 - (d) section 6(6) (failing to co-operate with a preliminary test).
- 15 An offence under either of the following provisions of the Food Safety Act 1990 (c. 16) in circumstances where the food in question is or includes alcohol—
- (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
 - (b) section 15 (falsely describing or presenting food or drink).

- 16 An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.
- 17 An offence under the Firearms (Amendment) Act 1997 (c. 5).
- 18 A sexual offence, being an offence —
- (a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));
 - (b) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);
 - (c) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).
- 19 A violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, including an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).
- 19A An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences).
- 19B An offence listed in Part 3 of Schedule 15 to the Criminal Justice Act 2003 (specified terrorism offences).
- 20 An offence under section 3 of the Private Security Industry Act 2001 (c. 12) (engaging in certain activities relating to security without a licence).
- 21 An offence under section 46 of the Gambling Act 2005 if the child or young person was invited, caused or permitted to gamble on premises in respect of which a premises licence under this Act had effect.

- 22 An offence under the Fraud Act 2006.
- 22ZA An offence under any of the following provisions of the Violent Crime Reduction Act 2006—
- (a) section 28 (using someone to mind a weapon);
 - (b) section 36 (manufacture, import and sale of realistic imitation firearms).
- 22A An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.
- 23 An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.
- 23A An offence under any of the following provisions of the Psychoactive Substances Act 2016—
- (a) section 4 (producing a psychoactive substance);
 - (b) section 5 (supplying, or offering to supply, a psychoactive substance);
 - (c) section 7 (possession of psychoactive substance with intent to supply);
 - (d) section 8 (importing or exporting a psychoactive substance).
- 23B An offence listed in section 41 of the Counter-Terrorism Act 2008 (terrorism offences).
- 24 An offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an offence that is a relevant offence.
- 25 An offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit an offence that is a relevant offence.
- 26 The offence at common law of conspiracy to defraud.

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Section 182 guidance extract

Licensing authority powers to revoke or suspend personal licences

4.45 The Policing and Crime Act 2017 gives licensing authorities the power to revoke or suspend personal licences, with effect from 6 April 2017. This is a discretionary power; licensing authorities are not obliged to give consideration to all personal licence holders subject to convictions for relevant offences, foreign offences or civil penalties for immigration matters. When a licensing authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months. This applies to convictions received and civil immigration penalties which a person has been required to pay at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017, or the requirement to pay the civil penalty arose after 6 April 2017. Only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017. The process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out at section 132A of the 2003 Act. The decision to revoke or suspend a personal licence must be made by the licensing committee or sub-committee, but the actions required before making a final decision may be made by a licensing officer.

4.46 The licensing authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the offence, until the appeal is disposed of. Where an appeal is not lodged, the licensing authority may not take action until the time limit for making an appeal has expired.

4.47 If a licensing authority is considering revoking or suspending a personal licence, the authority must give notice to the licence holder. This notice must invite the holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also decide to include any other information, for example, about their personal circumstances. The licence holder must be given 28 days to make their representation, beginning on the day the notice was issued. The licensing authority does not need to hold a hearing to consider the representations. Before deciding whether to revoke or suspend the licence the licensing authority must consider any representations made by the licence holder, any decisions made by the court or appellate court in respect of the personal licence of which the licensing authority is aware, and any other information which the licensing authority considers relevant. The licensing authority may not be aware of whether the court considered whether to revoke or suspend the licence, and there is no obligation on the licensing authority to find this out before making a decision themselves. Where the court has considered the personal licence and decided not to take action, this does not prevent the licensing authority from deciding to take action itself. Licensing authorities have different aims to courts in that they must fulfil their statutory duty to promote the licensing objectives, and therefore it is appropriate for the licensing authority to come to its own decision about the licence.

4.48 If the licensing authority, having considered a suspension and revocation and subsequently considered all the information made available to it, proposes not to revoke the licence it must give notice to the chief officer of police in the licensing authority's area, and invite the chief officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime. The chief officer may make representations within the period of 14

days from the day they receive the notice from the licensing authority. Any representations made by the chief officer of police must be taken into account by the licensing authority in deciding whether to suspend or revoke the licence. Convictions may come to light via police in another area, for example if the personal licence holder no longer lives in the area of the licensing authority which issued the licence, or if the offence took place in another police force area. In this instance it would be good practice for the police providing the information to notify the police force in the licensing authority area, because it is the local chief officer who must provide representations if the licensing authority proposes not to revoke the licence. Where the licence holder is convicted of immigration offences or has been required to pay a civil penalty for immigration matters, the licensing authority should notify Home Office Immigration Enforcement and allow representations to be made in the same way.

4.49 The licensing authority must notify the licence holder and the chief officer of police of the decision made (even if the police did not make representations). The licence holder may appeal the licensing authority's decision to revoke or suspend their personal licence. A decision to revoke or suspend the licence does not take effect until the end of the period allowed for appealing the decision (21 days); or if the decision is appealed against, until the appeal is disposed of.

4.50 If the personal licence holder is a DPS, the licensing authority may notify the premises licence holder once the decision to revoke or suspend the licence has been made if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions. The licensing authority may also notify any person who has declared an interest in the premises under section 178 of the 2003 Act if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions. The licensing authority may invite the premises licence holder to make representations about the personal licence holder before deciding whether to revoke or suspend the licence; this is not a legal requirement and may not be appropriate in all circumstances.

Relevant offences

4.51 Relevant offences are set out in Schedule 4 to the 2003 Act. If a person has been required to pay a civil penalty for immigration matters on or after 6 April 2017, this may be taken into consideration in the same way as a relevant offence. Offences added to the list of relevant offences with effect from 6 April 2017 may only be taken into consideration if the conviction was received on or after 6 April 2017.

Appendix D

General Procedure for Revoking or Suspending a Personal Licence

1. Officers become aware of a conviction of a “relevant offence” or immigration penalty. *Note: The personal licence holder should inform the local authority and also the magistrates’ court should be informing the local authority.*
2. After officer determines that it is a relevant offence, a decision will be made by the officer whether it may be appropriate for the licence to be revoked or suspended.
3. If the officer believes it may be appropriate to revoke or suspend the licence, a notice must be given to the licence holder confirming the intention.
4. Officer also collects any addition information that may be relevant to the case.
5. The licence holder has 28 days to provide any relevant information as explained in the notice.
6. Representations made by the licence holder will be taken into account along with any other information received from the officer’s investigation. This could involve any evidence and statements provided by the police or Home Office in regards to the circumstances surrounding the convictions.
7. Report will be produced for Sub-Committee detailing the convictions received and relevant offence, information supplied by licence holder and any further information gathered during course of investigation.
8. A Sub-Committee hearing will be held where the report will be presented and the licence holder invited to attend to provide a submission and answer any questions from members.
9. Members will have the option of 3 decisions that can be made:
 - a. To take no action
 - b. To suspend the personal licence for a period not exceeding 6 months
 - c. To revoke the personal licence
10. If the Sub-committee proposes not to revoke the personal licence, the officer must then notify the chief of police and give them 14 days to make representations regarding whether the licence should be suspended or revoked having regard to the crime prevention objective.

11. If Police respond and ask for the revocation of personal licence, a second hearing will be held for members to consider the original information, the new representations from the Police and give a final decision. Following consideration of the new information, the same 3 options apply:
 - a. To take no action
 - b. To suspend the personal licence for a period not exceeding 6 months
 - c. To revoke the personal licence
12. If no response is received from the Police, or the response indicates it is for information only, then Sub-Committee will need to confirm if the original decision stands. This may be done via email/phone or similar method rather than a second hearing. Alternatively they may decide to convene a second hearing as item 11 above.
13. Once a final decision has been made, a decision notice will be sent to the licence holder and Police detailing the decision made and reasons for it. The licence holder will have 21 days to appeal to magistrates.

Present: Councillor Kathleen Brothwell (*in the Chair*),
Councillor Jane Loffhagen, Councillor Alan Briggs,
Councillor Liz Bushell, Councillor Loraine Woolley,
Councillor Bill Bilton, Councillor Adrianna McNulty and
Councillor Pat Vaughan

Apologies for Absence: Councillor Biff Bean, Councillor Ronald Hills, Councillor
Ralph Toofany and Councillor Keith Weaver

1. Confirmation of Minutes - 18 March 2019

RESOLVED that the minutes of the meeting held on 18 March 2019 be confirmed.

2. Declarations of Interest

No declarations of interest were received.

3. Licensing Act 2003 Statement of Licensing Policy

Ian Cullen, Licensing Team Leader,

- a) presented the report updating the committee on the result of the consultation of the Statement of Licensing Policy (the policy) under the Licensing Act 2003 (“the Act”)
- b) explained that the act required that the Licensing Authority published its Statement of Licensing Policy at least every five years. The current Statement of Licensing Policy came into effect in October 2014 and under current legislation was therefore due for revision by October 2019
- c) stated that core to the Licensing Act were four Licensing objectives. These were:
 - the prevention of crime and disorder;
 - public safety
 - the prevention of public nuisance; and
 - the protection of children from harm
- d) highlighted that the consultation period commenced on 5th July and ended on the 19th August. A total of 3 responses were received as outlined in the report
- e) Invited members comments and questions.

Question: In reference to Appendix D of the report Members asked for clarification on the position of the consultee?

Response: He was a local resident and business owner in the Bailgate and Vice-Chair of the Bailgate Guild

Question: Was three responses to a consultation an average amount?

Response: It wasn't particularly unusual however officers had expected to receive more.

RESOLVED that the contents of the report be approved for the draft policy; and referred to Full Council for adoption.

Present: Councillor Pat Vaughan (*in the Chair*),
Councillor Kathleen Brothwell, Councillor
Adrianna McNulty and Councillor Alan Briggs

Apologies for Absence: Councillor Loraine Woolley

18. Confirmation of Minutes: 5 September 2019

RESOLVED that the minutes of the meeting held on 5 September 2019 be confirmed.

19. Declarations of Interest

No declarations of interest were received.

20. Exclusion of Press and Public

RESOLVED that the press and public be excluded from the meeting during consideration of the following item(s) of business because it is likely that if members of the public were present there would be a disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

21. Change to Order of Business

RESOLVED that the order of business be amended to allow the remaining agenda items to be considered in reverse order.

22. To Interview an Applicant for a Private Hire Driver's Licence who has 9 Current Penalty Points (11/2019)

The Licensing Officer:

- a. provided a report to determine whether an applicant for a private hire driver's licence was a fit and proper person to continue to hold a licence having 9 valid penalty points on his driving licence
- b. stated that the licensee had held a private hire driver's licence since August 2013
- c. explained that the applicant came into City Hall on 11 July 2019 to apply for a 3 year private hire drivers licence
- d. highlighted that during the appointment the licensee declared that he had received two convictions for speeding, receiving 3 penalty points for each offence and was awaiting the paperwork for a third speeding offence
- e. reported that a driving licence check revealed endorsements involving 6 penalty points as detailed within paragraph 3.4 of the report and a 3 year driver's licence was issued on 7 August 2019

- f. added that a further DBS check was carried out following a telephone call made by the licensee on 25 September 2019 to say that he had received a further 3 penalty points and this DBS check confirmed that the licensee now had 9 valid penalty points on his licence
- g. alerted the Sub Committee to the current Hackney Carriage and Private Hire Licensing Policy which stated the following in relation to penalty points and taking a stepped approach to driver licence enforcement; *'If a driver receives 9 or more penalty points for minor or some hybrid traffic offences, the matter will be referred to the Hackney Carriage and Private Hire Sub-Committee for a hearing. The driver will be expected to address the issues before the Sub-Committee.'*

The decision was made as follows:

1. That the private hire driver's licence be suspended until such time that the driver could attend and pass a driver improvement programme at his own expense and achieve a low level risk score.
2. A special condition be imposed requiring a 6 monthly DBS check to be carried out at the licence holder's expense for the duration of his licence
3. A strongly worded letter to be issued which would emphasise the very high standards of safe driving expected from him as a Private Hire Driver, including an expectation that should any further traffic violations be committed these would result in him being brought back before the Sub-Committee.

Reasons for the decision:-

1. Members of the Sub-Committee were concerned over the frequency of fines the licence holder had received for a succession of speeding offences over three consecutive months from March to May 2019.
2. Members of the Sub-Committee were concerned to hear the speeds the licence holder claimed to be travelling when caught exceeding the speed limits when he was questioned.
3. The fact that the Licence Holder did disclose his pending speeding fine was noted by members.
4. The licence holder's decision to take it upon himself to partake in a speed awareness course at his own expense following the second conviction was noted by members.
5. The Sub-Committee believed that the quality of the Licensee's driving would be improved by completing an advanced driving course. The safety of the travelling public was of paramount concern and would best be protected by suspending the Licensee's private hire driving licence until the Licensee had completed the advanced driving course.
6. The Sub-Committee concluded that the issue of a strongly worded letter and a 6 monthly DBS check for the duration of his licence, in addition to

the suspension of his licence until satisfactory completion of an advanced driving course would be suitably proportionate action to take.

7. Members agreed that the licence holder had learnt a lesson by being put under scrutiny by the Sub-Committee.
8. The Sub-Committee took into account that the licence holder presently carried nine penalty points on his licence. Consequently, if he gained any more penalty points and/or more points were revealed by the frequent DVLA checks, he would reach the twelve point limit and be immediately suspended and brought before the Sub-Committee again.
9. After very careful deliberation the Sub-Committee concluded that the licence holder was a fit and proper person to continue to hold a Private Hire Driver's licence.

23. To Interview an Applicant for a Private Hire Driver's Licence who is Unable to Provide a Certificate of Good Conduct and Failed to Disclose Previous Offences (14/2019)

The Licensing Officer:

- a) provided a report to determine whether an applicant for a private hire driver's licence was a fit and proper person to hold a licence having been unable to provide a certificate of good conduct and had also failed to disclose previous offences
- b) explained that the applicant came into City Hall for an appointment to apply for a new private hire driver's licence on 15 August 2019
- c) reported that the applicant responded to question 15 of the application form which asked "*are there any previous convictions, criminal findings of guilt (including fixed penalty tickets), cautions and warnings, whether for motoring or other offences recorded against you*", stating that he had received motoring convictions around 2013/2014 and had also received 3 points for a speeding offence in December 2016
- d) confirmed that following a DVLA check the licensee's driving licence was found to have 3 penalty points for an SP30 offence
- e) gave details of the convictions identified from the DBS check returned in October 2018 as detailed at paragraph 3.4 of the officer's report
- f) added that due to the delay in the application for a Private Hire Driver's Licence being made since the previous DBS check, a further check was requested in October 2019 which returned the same information as that provided at paragraph 3.4 of the report
- g) highlighted that under the current policy "*It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence. Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused*".

- h) advised also that the applicant had been unable to provide the Licensing Team with a certificate of good conduct from Iraq where he was originally from
- i) stated that the applicant came to the UK in 2002
- j) advised that the applicant had held a full UK driving licence since July 2012 and currently had 3 penalty points recorded against him
- k) explained that he also passed the knowledge test on his first attempt scoring 8/10 as well as achieving a low risk on the Driver Improvement Programme on his second attempt after initially receiving a high risk rating.

The Sub-Committee interviewed in depth an applicant for a private hire driver's licence who had been unable to provide a certificate of good conduct and had also failed to disclose previous offences.

The decision was made as follows:

The application for a private hire driver's licence be granted.

Reasons for the decision:

1. The Sub-Committee was sympathetic to the difficulties faced by the applicant in obtaining a certificate of good conduct from his country of origin Iraq.
2. The Sub-Committee was concerned that the applicant had failed to disclose previous convictions.
3. The Sub-Committee referred to the current policy where it stated that any failure to disclose offences would normally result in a licence application being refused.
4. Members of the Sub-Committee noted that the punishment given for the driver's offences had not been at the higher scale of penalties which could be imposed.
5. The Sub-Committee felt that the applicant presented himself well with a genuine work ethic.
6. The applicant had no further offences recorded against him since 2013.
7. The applicant came to the UK aged 16 as a refugee.
8. The applicant gave good answers to the Sub-Committee's questions, in particular with regards to how he would handle difficult customers as a taxi driver and how he would safeguard customers.
9. The Sub-Committee considered that the applicant had given credible reasons why he had failed to surrender to custody in September 2006 due to family bereavement.

10. The Sub-Committee concluded that the licence holder was a fit and proper person to hold a Private Hire Driver's licence.

24. To Interview an Applicant for a Private Hire Driver's Licence who is Unable to Provide a Certificate of Good Conduct (13/2019)

The Licensing Officer:

- a) provided a report to determine whether an applicant for a private hire driver's licence was a fit and proper person to hold a licence having been unable to provide a certificate of good conduct
- b) explained that the applicant came into City Hall for an appointment to apply for a new private hire drivers licence on 14 April 2019
- c) highlighted that the applicant had been unable to provide the Licensing Team with a certificate of good conduct from Afghanistan where he was originally from
- d) stated that the applicant came to the UK in 2006 and now held a British Passport
- e) advised that the applicant had held a full UK driving licence since July 2016 and currently had no penalty points recorded against him
- f) explained that he also passed the knowledge test on his first attempt scoring 8/10 as well as achieving a low risk on the Driver Improvement Programme on his second attempt after initially receiving a high risk rating.

Members asked the applicant relevant questions in relation to his application.

Decision

That the Private Hire Drivers licence be granted.

Reasons for the Decision

1. The applicant presented himself to the Sub-Committee as being truthful, open, credible and believable.
2. The applicant had a clean driver's licence and DBS check.
3. The Sub-Committee did not have any concerns over the suitability of the applicant and was sympathetic to the difficulties faced by him in obtaining a certificate of good conduct from his place of origin, Afghanistan, despite going to a huge effort to try to obtain one through the Afghani Embassy.
4. The applicant had not been convicted of any offences since arriving in the UK and becoming a British Citizen therefore there was no reason to doubt that he was a fit and proper person to hold a Private Hire Driver's licence.
5. The applicant had already passed his BTEC qualification in professional driving.
6. The applicant came to the UK aged 17 as a refugee.

7. The Sub-Committee concluded that the licence holder was a fit and proper person to hold a Private Hire Driver's licence.

25. To Interview an Applicant for a Private Hire Driver's Licence who is Unable to Provide a Certificate of Good Conduct (12/2019)

The Licensing Officer:

- a) provided a report to determine whether an applicant for a private hire driver's licence was a fit and proper person to hold a licence having been unable to provide a certificate of good conduct
- b) explained that the applicant came into City Hall for an appointment to apply for a new private hire driver's licence on 13 June 2019
- c) highlighted that the applicant had been unable to provide the Licensing Team with a certificate of good conduct from Afghanistan where he was originally from, despite going to a huge effort to try to obtain one through the Afghani Embassy
- d) stated that the applicant came to the UK in 2012
- e) advised that the applicant had held a full UK driving licence since April 2007 and currently had no penalty points recorded against him
- f) explained that he also passed the knowledge test on his second attempt as well as achieving a low risk on the Driver Improvement Programme

Members asked the applicant relevant questions in relation to his application.

Decision

That the Private Hire Drivers licence be granted.

Reasons for the Decision

1. The Sub-Committee felt that the applicant presented himself well and that he came across as open and honest with a genuine work ethic.
2. The applicant had a clean driver's licence and DBS check.
3. The applicant came to the UK aged 15 as a refugee.
4. The Sub-Committee did not have any concerns over the suitability of the applicant and was sympathetic to the difficulties faced by him in obtaining a certificate of good conduct from his place of origin, Afghanistan.
5. The applicant's explanation regarding trying to obtain an apprenticeship in plumbing and wanting to save money to pay for a plumbing course was supported by the Sub-Committee.
6. The applicant spoke good English.

7. The applicant had obtained a low risk on the Driver Improvement Programme.
8. The Sub-Committee concluded that the licence holder was a fit and proper person to hold a Private Hire Driver's licence.

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**SUBJECT: REGISTRATION OF PREMISES AND SKIN PIERCERS
RELATING TO THE ACTIVITIES OF BODY PIERCING AND
SEMI-PERMANENT SKIN-COLOURING**

DIRECTORATE: DIRECTORATE OF COMMUNITIES AND ENVIRONMENT

REPORT AUTHOR: EMMA CREDLAND – ENVIRONMENTAL HEALTH OFFICER

1. Purpose of Report

- 1.1 To update current Byelaws as described in the report regarding tattooing, acupuncture, cosmetic piercing (including ear piercing), electrolysis and semi-permanent skin-colouring.

2. Executive Summary

- 2.1 The proposed update to the skin piercing byelaws, to expand the definition of ‘ear piercing’ to include ‘semi-permanent make-up and cosmetic (body) piercing’ and introduce a ‘variation of existing registration fee’. This update will allow the registration of such activities and aid in regulation of these activities and will allow cost recovery for Officer time spent re-issuing skin piercing registrations.
- 2.2 The Committee are asked to consider adopting revised Byelaws to regulate skin piercing activities, namely tattooing, acupuncture, cosmetic piercing (including ear piercing), electrolysis and semi-permanent skin-colouring under one set of consolidated model Byelaws.
- 2.3 It is important that this industry is effectively regulated due to the risks associated with the treatments offered. There is the potential risk of transmission of blood borne viruses (BBV) such as Hepatitis B and C and HIV, as well as other infections, and potential physical damage and bleeding if treatment is completed incorrectly. The recommendations will ensure greater protection to those undergoing these treatments by ensuring that businesses providing any of the aforementioned treatments operate hygienically and in a manner which will minimise the risk of infection to their customers.
- 2.4 The Local Government Act 2003 (‘2003 Act’) amended the 1982 Act to include cosmetic (body) piercing and semi-permanent skin-colouring within the list of treatments the Local Authority can regulate. Earlier Byelaws adopted in 1984 covering tattooing, acupuncture, electrolysis and ear piercing were not updated, and it is now felt prudent to update these Byelaws to include these additional activities.
- 2.5 The Council may levy a reasonable fee for registration (which can include the initial inspection costs, advising businesses and associated administration) and it is proposed that the current fee for those treatments currently covered by the Byelaws (premises registration £160.10 and personal registration £30.70) be

applied to ensure a consistent and fair approach to all such applicants.

3. Background

- 3.1 Part VIII of the 1982 Act originally provided for the regulation of tattooing, acupuncture, electrolysis and ear piercing only. This was subsequently amended by the 2003 Act to substitute the term 'ear piercing' with the more comprehensive term 'cosmetic piercing' to accommodate the growing practice of piercing other parts of the human body, and to regulate the relatively new practice of semi-permanent skin-colouring which has grown in the interim.
- 3.2 This amendment to the 1982 Act was triggered by the need to increase health protection and reduce the risk of transmission of BBV and other infections.
- 3.3 Each of the areas regulated by the 1982 Act required enactment of its own set of Byelaws, requiring five sets of procedures. Model Byelaws had only been issued by the Department for Health for three of the five areas of regulation. This slowed down the adoption of the revised Byelaws by Local Authorities considerably.
- 3.4 On 7th September 2006, the Department for Health issued a revised model Byelaw for the 1982 Act which consolidated all five areas of regulation into one single Byelaw, considerably simplifying the adoption process.
- 3.5 City of Lincoln Council has previously undertaken the regulation of the practices of tattooing, acupuncture, electrolysis and ear piercing within its administrative area. However, the growing popularity of these activities and the addition of new activities of cosmetic piercing and semi-permanent skin-colouring means that it is advisable to introduce mandatory regulation for all of these activities through bringing into force Part VIII of the 1982 Act, in its amended form post - 2003 Act. Current active registrations within the City of Lincoln Council administrative area are:
 - 130 Tattooists at 41 premises
 - 284 Acupuncturists at 47 premises
 - 122 Persons undertaking electrolysis at 35 premises
 - 167 Ear piercers at 69 premises.

This does not mean that they are all currently practicing the said activity.

- 3.6 By registration of these activities the business is able to demonstrate to customers and other interested parties that they are regulated by City of Lincoln Council. Consequently customers can look for registered premises and persons' certificates on display within the business. This information has to be kept as a public register, which would also be made available on the City of Lincoln Council website.
- 3.7 The adoption of the Byelaws under the 1982 Act would generally replicate the existing guidance issued by City of Lincoln Council, but would further provide that any breach of this guidance would carry with it the possibility of criminal prosecution. It would be an offence under Section 16(2) of the 1982 Act for any person to contravene the proposed Byelaws, which upon conviction could result in a fine of up to £1000. The Court upon conviction would also have the power to cancel any registration under the 1982 Act, effectively causing any persons convicted to cease to lawfully practice in these disciplines, and incurring a further

offence should they practice unregistered.

- 3.8 An updated minute specifying the adoption of the 1982 Act, including the amendments introduced by the 2003 Act, and making of the Byelaws under it would need to be produced to the Magistrates Court prior to any prosecution for offences under the Byelaws for the avoidance of doubt, as proof of the existence and validity of the Byelaws for the Court to retain and apply for their future use.
- 3.9 The adoption of the new consolidated Model Byelaw by the Department of Health indicates that further revision of this area of law in the near future is unlikely and it should make the adoption of such Byelaws simpler and cheaper.
- 3.10 At Appendix A is the new Model Byelaw as adapted for City of Lincoln Council. Only a Byelaw under this provision substantially similar to the Model Byelaw will be confirmed by the Secretary of State.

4. Proposal

- 4.1 It is recommended that City of Lincoln Council bring fully into force the entirety of Part VIII of the 1982 Act (as amended by the 2003 Act) within its administrative area by a resolution under Section 13 of Part VIII of the 1982 Act. In addition to authorise the making of a full set of Byelaws under the 1982 Act (as amended by the 2003 Act) in accordance with Model Byelaw issued by the Department of Health on the 7th September 2006.
- 4.2 To bring Part VIII fully into force, a date will need to be specified in a resolution of the Council when these provisions will fully come into force. Following the making of the resolution, but before coming into force, it will be necessary for the City of Lincoln Council to publish a notice for two consecutive weeks in a local newspaper that they have passed a resolution under section 13 of the 1982 Act. The first publication of this notice has to be at least 28 days before the day specified in the resolution for the coming into force of these provisions.
- 4.3 Once Part VIII of the 1982 Act has fully come into force then City of Lincoln Council may institute the procedure for the introduction of Byelaws under Section 14(7) of the 1982 Act for acupuncture and Section 15(7) of the 1982 Act for tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis.
- 4.4 It is proposed to start the procedure for the enactment of the Byelaws as soon as Part VIII of the 1982 Act has been brought fully into force. The procedure for adoption of Byelaws is set out in Appendix B.
- 4.5 To introduce a charge of £15 for cost recovery of Officer time spent re-issuing Certificates of Registration. It is proposed that this cost be introduced from 1st April 2020.

5. Strategic Priorities

5.1 Let's drive economic growth

The process of registrations allows advice, guidance and inspections to be completed covering topics such as infection control and premises hygiene.

Businesses and practitioners will be provided with advice and support to assist them in compliance with regulatory requirement and encourage best practice to ensure that their business is hygienic, safe and successful.

5.2 Let's enhance our remarkable place

It is widely recognised that there is a risk associated with the provision of these treatments specifically linked with the transmission of BBV and other infections. Additionally there is a risk of physical damage and bleeding if treatment is completed incorrectly. By regulating these activities the Council can enhance our remarkable place through advice, guidance and if necessary enforcement on infection control and premises hygiene.

6. **Organisational Impacts**

6.1 Finance (including whole life costs where applicable)

The cost of making the Byelaws would be borne out of existing resources. There would be minor costs associated with placing the advertisements in local newspapers.

The cost of enforcement of the Byelaws would be met from existing resources already allocated to enforcement of the current Byelaws and therefore should not entail any additional expenditure or increase in the number of officers. Existing staff within the Food, Health and Safety Team can absorb these duties.

As the Council already registers premises and practitioners for tattooing, ear piercing, acupuncture and electrolysis, the required procedures and processes are already in place. Officers are already familiar with the requirements pertaining to hygiene and cleanliness of the premises, practitioners and equipment, therefore the financial burden will be minimal.

Any fee and charge level will be set in line with existing charges and reviewed annually by the Service Manager. Any changes to fee levels will need to be approved by Council and include consultation with relevant parties.

6.2 Legal Implications including Procurement Rules

The making of Byelaws is a function that can only be exercised by full Council. As noted in the report, before a Byelaw, regulating the practice of acupuncture under section 14(7) and the practice of tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis under section 15(7) of the 1982 Act, the Council first pass a resolution to adopt sections 14 to 17 of Part VIII of the 1982 Act as amended by the 2003 Act, on the basis that this amendment introduces wider definitions of cosmetic piercing and covers the new practices of semi-permanent skin-colouring not recognised by the 1982 Act.

6.3 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

Considerations from the Councils equality impact assessment have been incorporated into this report. There is no perceived impact upon equality, diversity and human rights as this is an amendment to activities already being undertaken by the Council. Please find the completed Equality with Human Rights Analysis Toolkit at Appendix C.

6.4 Human Resources

Existing staff within the Food, Health and Safety Team can absorb these duties.

6.5 Land, Property and Accommodation

Not applicable.

6.6 Significant Community Impact

Not applicable.

6.7 Corporate Health and Safety implications

Not applicable.

6.8 Communications

The Communication Team will be asked to arrange for the publication of the intention to adopt the Byelaws in at least one local newspaper. They will also be asked to advertise on the Council's public website.

Relevant businesses and persons will be written to directly to inform them of the impending changes as set out in Appendix D.

7. Risk Implications

7.1 (i) Options Explored

Consideration has been given to continuing without adoption of the amendments made under the 2003 Act leaving skin piercing activities of the body and semi-permanent skin-colouring an unregulated activity within the administrative area of City of Lincoln Council. This would leave members of the public at risk of BBV and other infections from such unregulated activities possibly resulting in increased health care costs and decreased quality of living.

7.2 (ii) Key risks associated with the preferred approach

There is negligible risk to the Council and no mitigation is required.

8. Recommendation

- 8.1 That the Licensing Committee consider the proposed draft of Byelaws as set out in Appendix A of this report and make a recommendation to full Council to approve the following:
- 8.2 Adopting by resolution sections 14 and 17 of Part VIII of the 1982 Act (as amended by the 2003 Act) in their entirety, to come into force at a date set within the administrative area of City of Lincoln Council for the proper regulation of tattooing, acupuncture, cosmetic piercing (including ear piercing), electrolysis and semi-permanent skin-colouring, to ensure greater protection to those undergoing these treatments by ensuring that businesses providing such treatments operate hygienically and in a manner that will minimise risk of infection to their customers.
- 8.3 Authorising the making of Byelaws regulating the practice of acupuncture under Section 14(7) of the 1982 Act as soon as section 14 of that Act is adopted as in point 8.2 above within the administrative area of City of Lincoln Council. Authorise the making of the Byelaws regulating the practices of tattooing, semi-permanent skin-colouring, cosmetic piercing and electrolysis under Section 15(7) of the 1982 Act as soon as section 15 of the 1982 Act is adopted as in point 8.2 advice within the administrative area of City of Lincoln Council. The Strategic Director for Communities and Environment be authorised to make the consolidated Byelaw attached at Appendix A made under the provisions of Sections 14(7) and 15(7) of the 1982 Act, as amended, and take all necessary steps to secure their confirmation with the Secretary of State and carry them into effect.
- 8.4 That the Council's common seal be affixed to the Byelaws and that following advertisement, the Byelaws be submitted to the Secretary of State for Health for approval.

Is this a key decision? No

Do the exempt information categories apply? No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply? No

How many appendices does the report contain? Appendix A – Byelaws for the regulation of skin piercing activities.
Appendix B – Procedures for Adoption of Byelaws
Appendix C – EIA

List of Background Papers: None

Lead Officer: Emma Credland, Environmental Health Officer, Food Health and Safety Team
Telephone (01522) 873302

Appendix A

City of Lincoln Council

Byelaws

For the Regulation of

Acupuncture, Tattooing, Semi-Permanent Skin-Colouring,
Cosmetic Piercing and Electrolysis

City of Lincoln Council

Byelaws

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, sterilisation 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 City of Lincoln 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 —

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“**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 sterilisation 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) sterilisation, 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 —

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(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, ear piercing, electrolysis and tattooing were confirmed by the Secretary of State on 15th June 1984 and brought into operation by City of Lincoln Council on 23rd July 1984 are revoked.

THE COMMON SEAL OF CITY OF LINCOLN COUNCIL was hereunto Affixed in the presence of:-

(Authorising Officer)

The foregoing byelaws are hereby confirmed by the Secretary of State for Health on and shall come into operation on

(Printed Name)

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.**

APPENDIX B

The procedure for adoption of Byelaws is set out in section 236 of the Local Government Act 1972. It would be for City of Lincoln Council to formally resolve to adopt the Byelaws set out in Appendix A. The resolution to make the Byelaws would be given at the same time as the resolution to bring into force Part VIII of the 1982 Act and would be conditional upon the provision coming into force.

The adopted Byelaws would then be made under the common seal of City of Lincoln Council, following which notice of the Council's intentions to apply for their confirmation by the Secretary of State for Health must be given in one or more newspapers circulating in Lincoln.

For at least one month after the date of the publication of the newspapers, a copy of the Byelaw must be held on deposit at the offices of the Council for inspection by the public at all reasonable hours, and the Council must provide any person who applies with a copy of any part of the Byelaw.

After a month for deposit has expired the application to the Secretary of State for Health would be undertaken by sending two sealed copies of the Byelaw, together with copies of the newspapers advertising the Byelaw, a statement concerning the deposit of the Byelaws and that no objections have been received, confirmation that the Byelaws are identical to the model Byelaws, and of the Council's adoption of sections 14-17 of the 1982 Act and compliances with section 12 of the 1982 Act.

On receipt of the sealed byelaws, provided no objections have been received, they will normally be stamped as confirmed by the Secretary of State and returned to the Council as soon as possible. Where an objection has been received following the advertisement of the Byelaw, the Council will be provided with copies of objections for its officers to comment upon, which in turn will be considered by the Secretary of State. Should the Secretary of State still be unclear as to the proper resolution of these objections then a Public Inquiry may be ordered to be held into the objections to the adoption of the Byelaw.

APPENDIX C

Equality with Human Rights Analysis Toolkit

Section A

Name of policy / project / service	REGISTRATION OF PREMISES AND SKIN PIERCERS RELATting TO THE ACTIVITIES OF BODY PIERCING AND SEMI-PERMANENT SKIN-COLOURING, DIRECTORATE OF COMMUNITIES AND ENVIRONMENT, EMMA CREDLAND – EHO FOOD, HEALTH AND SAFETY TEAM
Background and aims of policy / project / service at outset	To update current Byelaws to bring fully into force the regulatory framework of Part VIII of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') (as amended by the Local Government Act 2003) within the City of Lincoln Council's administrative area, including the provision of the making of byelaws for the proper regulation of businesses involved in five skin piercing activities, namely tattooing, acupuncture, cosmetic piercing (including ear piercing), electrolysis and semi-permanent skin-colouring.
Person(s) responsible for policy or decision, or advising on decision, and also responsible for equality analysis	EMMA CREDLAND – EHO FOOD, HEALTH AND SAFETY TEAM LOUISE HARDING – TEAM LEADER FOOD, HEALTH AND SAFETY TEAM
Key people involved <i>i.e. decision-makers, staff implementing it</i>	EMMA CREDLAND – EHO FOOD, HEALTH AND SAFETY TEAM LOUISE HARDING – TEAM LEADER FOOD, HEALTH AND SAFETY TEAM

SECTION B

This is to be completed and reviewed as policy / project / service development progresses

	Is the likely effect positive or negative? (please tick all that apply)			Please describe the effect and evidence that supports this and if appropriate who you have consulted with*	Is action possible to mitigate adverse impacts?	Details of action planned including dates, or why action is not possible
	Positive	Negative	None			
Age			✓	The proposed change to the Byelaws will not have an impact upon age.	NA	
Disability including carers (see Glossary)			✓	The proposed change to the Byelaws will not have an impact upon disability.	NA	
Gender re-assignment			✓	The proposed change to the Byelaws will not have an impact upon gender.	NA	
Pregnancy and maternity			✓	The proposed change to the Byelaws will not have an impact upon pregnancy or maternity.	NA	
Race			✓	The proposed change to the Byelaws will not have an impact upon race.	NA	
Religion or belief			✓	The proposed change to the Byelaws will not have an impact upon religion or belief.	NA	
Sex			✓	The proposed change to the Byelaws will not have an impact upon sex.	NA	
Sexual orientation			✓	The proposed change to the Byelaws will not have an impact upon sexual orientation.	NA	
Marriage/civil partnership			✓	The proposed change to the Byelaws will not have an impact upon marriage/civil partnership.	NA	
Human Rights (see page 8)			✓	The proposed change to the Byelaws will not have an impact upon human rights.	NA	

**Evidence could include information from consultations; voluntary group feedback; satisfaction and usage data (i.e. complaints, surveys, and service data); and reviews of previous strategies*

Did any information gaps exist?	Y/N/NA	If so what were they and what will you do to fill these?
	No	

SECTION C



Decision Point - Outcome of Assessment so far:

Based on the information in section B, what is the decision of the responsible officer (please select one option below):

- | | |
|---|---|
| | Tick here |
| • No equality or human right Impact (your analysis shows there is no impact) - sign assessment below | [<input checked="" type="checkbox"/>] |
| • No major change required (your analysis shows no potential for unlawful discrimination, harassment)- sign assessment below | [] |
| • Adverse Impact but continue (record objective justification for continuing despite the impact)-complete sections below | [] |
| • Adjust the policy (Change the proposal to mitigate potential effect) -progress below only AFTER changes made | [] |
| • Put Policy on hold (seek advice from the Policy Unit as adverse effects can't be justified or mitigated) -STOP progress | [] |

Conclusion of Equality Analysis (describe objective justification for continuing)	It is concluded that the proposed update to the skin piercing bye laws to consolidate the bye laws into one set of byelaws and to include skin piercing and semi-permanent does not impact upon equality or human rights. The update to the bye laws would have a positive impact upon the health and wellbeing of those practising skin piercing activities and those in receipt of them, as the update will allow these activities to come under the same level of regulation, advice and guidance as the current activities. The justification for this is because the aim of the changes is to enhance public protection for health & safety and infectious disease.
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When and how will you review and measure the impact after implementation?*	Monitoring of unexpected impact would be assessed case by case at the time of premises and individuals applying to register for the skin piercing activities to be covered by the updated byelaws.
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Checked and approved by responsible officer(s) (Sign and Print Name)	 SIMON COLBURN	Date	19 Sept 2019
Checked and approved by Assistant Director (Sign and Print Name)	 SIMON COLBURN	Date	19 Sept 2019.

Appendix D

FACT SHEET FOR BUSINESS

New Byelaws for Skin Piercing Activities

Why do we need byelaws?

City of Lincoln Councils Byelaws relating to skin piercing activities dates back to the 1980s. These were adopted to adequately control cleanliness in businesses carrying out tattooing, ear piercing, acupuncture and electrolysis. The Byelaws are now over 30 years old and need to be updated to take into account new ways of working and new treatments. The Local Government Act 2003 gives the Council the powers to introduce such changes by adopting new model Byelaws.

When will the new Byelaws come into effect?

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

What are the proposed main changes?

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

Cosmetic piercing means puncturing or penetrating the skin of a client with pre-sterilised single use needles and the insertion of pre-sterilised jewellery or other adornment into the opening. Ear piercing and cosmetic piercing by piercing are now encompassed in one single term 'cosmetic piercing'.

Semi-permanent skin-colouring also known as micro-pigmentation means the insertion of pigment into the dermal layer of the skin. This includes semi-permanent make-up, such as lip liner, eye line and microblading of eyebrows for example.

How will the changes to the Byelaws affect me?

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

Will these Byelaws make any difference?

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

Do businesses have to re-register?

No, businesses/individuals and premises already registered for activities covered by section 14 (acupuncture) and section 15 (tattooing, ear piercing and electrolysis) do not have to re-register.

What happens if I do not register?

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

Is there a fee for registration?

Yes, the 1982 Act enables Local Authorities to charge reasonable registration fees for registration of persons carrying on a business of semi-permanent skin-colouring and cosmetic piercing and the registration of the premise when these activities are being undertaken. The fee covers initial inspection(s) associated with registration, advising businesses about registration and associated administration.

Registration is a one-off event per premises and individual. Fees are not required annually. We will inform you of the fees upon the adoption of the new Byelaws. They are likely to be in line with the current fees for registering a premises and individuals for tattooing, ear piercing, electrolysis and acupuncture.

Where can I get more information about this?

You can contact the Food, Health and Safety Team by email at environmental.health@lincoln.gov.uk or by telephone at 01522 873383.

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