



SCOTTISH EXECUTIVE

Health Department
Public Health Division

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Consultees on skin piercing paper

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Our ref: NJM/1/19

19 January 2001

Dear Colleague

The Scottish Executive is seeking views on the matter of controls over skin piercing in Scotland, and I enclose a consultation paper on which it would be very helpful to have your views.

The paper sets out current statutory provisions, asks for your views on their adequacy, and seeks your suggestions about any additional controls you consider to be necessary.

You are invited to comment on the specific questions raised in the paper but we would also welcome your views on any other related area. **Comments should be sent to James McMorris, either by e mail (james.mcmorrine@scotland.gov.uk), fax (0131-244-2157) or in writing to Area 3E(S) at the above address by 13 April 2001.**

The paper has been sent to those listed in Annex A to this letter. It is also available on the website www.scotland.gov.uk. Further copies can be obtained on request from James McMorris.

Thank you for your participation.

Yours sincerely

J T Brown
Public Health Division



1. Local Authorities and Local Authority Associations

Annex A

Chief Executives, Local Authorities
CoSLA
Environmental Health Chief Officers
Directors of Social Work
Health and Safety Co-ordinating Group (HASCOG) of the Royal Environmental Health
Institute for Scotland (REHIS)
Scottish Civic Forum
The Royal Environmental Health Institute for Scotland (REHIS)
The Society of Chief Officers of Environmental Health in Scotland

2. NHS and Public Health Interests

Aids Co-ordinators
Chief Executives NHS Trusts
Consultants in Public Health Medicine (CsPHM)
Department of Health, England
Director, Scottish Healthcare Supplies
Directors of Public Health
General Managers Health Boards
National Director, Scottish National Blood Transfusion Service (SNBTS)
Scottish Centre for Infection and Environmental Health (SCIEH)

3. Advisory Groups

Advisory Group on Hepatitis
Expert Advisory Group on AIDS

4. Industry

Association of Professional Piercers
Association of Professional Tattooists
British Association of Beauty Therapy and Cosmetology (BABTAC)
British Association of Electrolysis Ltd
British Jewellers Association
British Tattoo Artists Federation
Caflon International Limited
European Association of Professional Piercers
Guild of Professional/Beauty Therapists
Health & Beauty Therapy Training Board
Institute of Electrolysis Ltd
Metal Morphosis
Multitek Services
National Association of Goldsmiths of GB and Ireland
P.A.U.K.
Regis (Europe) Limited
Sterex International
STUDEX UK MFG
The Federation of Small Businesses



5. Medical Professional Bodies

Guild of Professional Beauty Therapists
Institute of Electrolysis Ltd
National Association of Goldsmith of GB and Ireland
Royal College of Surgeons of Edinburgh
Royal College of Physicians & Surgeons of Glasgow
Royal College of Physicians (Edinburgh)
Royal College of General Practitioners (Scottish Council)
Royal College of Nursing (Scottish HQ)
Royal College of Midwives
British Medical Association (Scottish Office)

6. Acupuncture Professional Bodies

Acupuncture and Chinese Herbal Practitioners Association
Acupuncture Association of Chartered Physiotherapists
Association of Western Acupuncture
British Acupuncture Association and Register
British Acupuncture Council
British Medical Acupuncture Society
Council for Acupuncture
The British Academy of Western Acupuncture

7. Consumer Groups

Consumers in the European Community Group
National Consumer Protection Council
National Federation of Consumer Groups
Scottish Association of Citizens Advice Bureaux
Scottish Consumer Council

8. Mainstream political parties

Scottish Conservative and Unionist Party
Scottish Green Party
Scottish Labour Party
Scottish Liberal Democrats
Scottish National Party
Scottish Socialist Party

9. Other Bodies/individuals with an interest

Children 1st
Children in Scotland
Health & Safety Executive
HSBCC Gibbs Insurance
M R McVittie, The W S Society
Mr T Wigley (ex Chair International Tattoo Artists)
Professor Norman Noah, Dept of Public Health and Epidemiology, King's College School of
Medicine and Dentistry
Ros McDonnell, HSBCC Gibbs Insurance, West Sussex
Save the Children



The Law Society of Scotland
Scottish Child Law Centre
Scottish Law Commission
Women's National Commission

10. Trade Businesses

Acupuncture

A & Acupuncture Clinic, East Kilbride
Abercromby Acupuncture, Glasgow
Aberdeen Acupuncture Centre, Craigton Road, Aberdeen
Aberdeen Acupuncture Clinic, Deeside Drive, Aberdeen
Academy of Chinese Medicine (Scotland), Edinburgh
Alkureishi and Murphy, Wishaw
Alexandra Gilmartin, Kilmarnock, Ayrshire
Brian Gardiner, Aberdeen
Brian Gardiner, Fife

British Acupuncture Council - members:

James Lees, Borders; John McLennan, Edinburgh; Julia Edmonds, Edinburgh; Maggie Burt, Edinburgh; Mary V Paterson, Edinburgh; Mr J N Clogstoun-Willmott, Edinburgh; Mr James Welsh, Edinburgh; Mrs Ming Chen Robertson, Edinburgh; Quintus Farrell, Edinburgh; Rob Ritchie, Edinburgh; Sue Kingston, Edinburgh; Fred Carson, Hawick; Susan Meredith, Hawick; Anne Woolgrove, Kelso; Jane Martin, Kirkcaldy; Karen Morrison, Aberdeen; Neil McGuire, Aberdeen; Robert Wilson, Aberdeen; Sheila Harper, Bridge of Don; Judy Light, Forres; Karen Morrison, Inverurie; Mrs Jane Stephen, Inverurie; Tara W Drummond, Ayr; Bernard King, Glasgow; Ruth Chappell, Glasgow; Tom Williams, Glasgow; Karen Campbell, Johnstone; Dr Anne Robb, Lanark; Dr W D Campbell, Troon; Dr T W Alkureishi, Wishaw; Pamela J Boxx, Carr-Bridge; Juliette Lowe, Inverness; Claire Gant, Newmills; Lou Radford, Aberfeldy; A Falconer, Broughty Ferry; Kevin G McGhee, Dundee; M V Paterson, Dundee; Maggie Moore, Dunkeld; Boyd Campbell Mackenzie, Perth; Neil Scott-Kiddie, Perth; Lim Paul Chong-Kui, Falkirk; Alan Hunter, Glasgow; Joy McDougall, Glasgow; The Therapy Centre, Glasgow; Louisa Dingwall, Glasgow; Rhona Fraser, Glasgow; Wei Xiong Chen, Glasgow; Boyd Campbell Mackenzie, Stirling; Sarah Hill, Bridge of Allan; Fred Smithers, Dumfries; Lynda A Sharp, Dumfries; Rob Ritchie, Edinburgh.

British Medical Acupuncture Society - Dr P S Mukherji, Edinburgh

Bunis Myra, Hamilton and Clarkston Practices, Hamilton
Chen Dr (TCM) Wei Xiong, The Hui Chun Clinic, Glasgow
Chinese Medicine & Healthcare Centre, Edinburgh
Chinese Medicine Centre, Glasgow
Complementary Medicine Centre, Glasgow
Colourpuncture, Edinburgh
Dr F Fawzi, Glenrothes
Dr G M Cox, Angus
Dr James Hawkins, Edinburgh
Dr John D'Ambrosio, Glasgow & Helensburgh
Dr K H Ooi, Monklands Acupuncture Centre
Dr Maryanne Robinson, Glasgow
Dr P Tsang, Abercromby Acupuncture, Glasgow
Dr Tom Barlow, Dumbarton



Dr Wing-Kwong Tam, Greenock
Hammersmith Acupuncture, Aberdeen
Heart of Nature's Way, Cupar
Herbal House for Chinese Medicine, Aberdeen
J Fleming Sneddon, Glasgow
Jane F Martin, Muckhart and St Andrews
Kathleen Powderly, Aberdeen
Mrs E Brodie, West Lothain
Neil Scott-Kiddie, Lanarkshire
P J McCabe, Kilmarnock
Paul Marynicz, Coldstream
Ruth Chappell, Acupuncture, Chinese Herbal Medicine & Allergy Testing, Glasgow
Sino Herbal Chinese Medical Clinic, Glasgow
The Acupuncture Clinic, Dunkeld
The Edinburgh Chinese Herbal Medicine Centre, Edinburgh
The Whole Works, Complimentary Therapy Centre, Edinburgh
Thornhill Clinic, Wishaw
Tom Williams, Kun Chen Clinic, Giffnock

Tattooists and Body Piercing

Ace Tattoo Studio, Edinburgh
Alba Tattoo Studio, Clydebank
Alex's Body Piercing Centre, Paisley
Alex's AB Tattoo Studio, Paisley
Alla-Tomba, Aberdeen
Amethyst Body Piercing & Tattoo Studio, Dunbar
Angel Art, Kirkcaldy
Angel Piercing Studio, Perth
Angels Body Piercing, Banff
Annette Opitz, Angel Art Tattooing & Body Piercing, Kirkcaldy
Artfull Dodger, Cumbernauld
Atomic Tattoo Studio, Kirkcudbright
Ayrshire Tattooing, Irvine
Bills Tattoo Studio, Edinburgh
Billy's Tattoo Studio, Bellshill, Lanarkshire
Bim's Tattoo Studio, Wishaw
Blue Tiger Tattoo, Edinburgh
Body Art Tattooing and Piercing
Bodypiercing, Ayr
Boneyard Tattoo, Edinburgh
Burning Monkey Piercing Studio, Glasgow
Caledonia Sun Tattoos, Stirling
Chaebol Professional Body Piercing, Glasgow
Coalition Body Piercing Studio, Edinburgh
Colourfull People, Oban, Argyll
Comedian Tattooing, Bathgate
Creative Art Tattoo Studio, Glasgow
Dermart, Paisley, Renfrewshire
Draconian Tattoo Studio, Aberdeen
Dragons' Lair, Edinburgh
DTS, Motherwell, Lanarkshire



Eastside Piercing, Glasgow
Electric Pencil, Penicuik
Elgin Tattoo Centre, New Elgin
Falkirk Body Piercing Studio, Falkirk
Fine Arts Tattoo Studio, Perth
Flashpoint Tattoo & Piercing Thought, Falkirk
Freckles Body Piercing Salon, East Kilbride, Glasgow
Graeme's Tattoo Studio, Dundee
Highland Tattoo & Body Piercing, Inverness
Highland Tattoo Studio, Inverness
Inkantation Tattoo Studio, Glenrothes
Inkstyle Skin FX, Greenock, Renfrewshire
Irezumi Tattoo Studio, Glasgow
Ivory Tower Tattoo, Edinburgh
Jabs Adornments, Wick, Caithness
Jagged Edge, Glasgow
Johnny's Tattoo Studio, Glasgow
Jules Body Piercing, Buckie
Kenny's Tattoo & Body Piercing Studio, Glasgow, Lanarkshire
Kev's Inkhous, Aberdeen
Kimberley Laing Body Piercing Studio, Perth
Klean Kut Har and Body Centre, Port Glasgow
Midnight Dragon Tattoo, Saltcoats
Mikes Tattoo Studio, Carlisle
Millennium Tattoo Studio, Dundee, Angus
Needleworks, Dumfries
Nirvana Body Piercing, Glasgow
Oodles and Doodles, Lochgilphead
Osiris, Glasgow
Outer Limits Body Piercing, Stirling
Pete's Tattoo Studio, Dalkeith, Midlothian
Piercing Beauty, Cumnock, Ayrshire
Presents Piercing Studio, Aberdeen
Primal Piercing Studio, Edinburgh
Renegades Tattoo Studio, Dundee
Retro Rebels Body Piercing, Aberdeen
Richard's Tattoo Studio, Aberdeen
Skin Scribe Tattooist, Falkirk
Solar Reef, Glasgow, Lanarkshire
Southside Body Piercing Studio, Glasgow
Southside Ink Tattoo Studio, Glasgow
Spacey's Bizarre Ink, Edinburgh
Stealin' Skin, Broxburn
Tattoo Krazy, Glenrothes
Tattoo Studio, Glasgow
Tattoo's by Lorraine, Hamilton
Tattoo's by Steven, Glasgow
Tattooist True Colours, Nairn, Morayshire
Terry's Tattoo Studio, Glasgow
The Glasgow Piercing Studio, Glasgow
The Tattoo Studio, Cumnock, Ayrshire
Think Ink Tattoo Studio, Airdrie
Tribal Body Art, Edinburgh



Tribe Tattoo & Piercing, Edinburgh
Tropical Rainbow Paradise, Glasgow
Urban Body Modification, Edinburgh

Westport Body Piercing Studio, Dundee, Angus



REGULATION OF SKIN PIERCING:

A CONSULTATION PAPER

Comments requested by 13 April 2001

Comments should be sent to:

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SCOTTISH EXECUTIVE

January 2001

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SECTION 1

Summary and purpose

1.1 Skin and body piercing has grown in popularity in recent years. With this growth have come calls for a greater degree of control over skin and body piercing businesses in Scotland. The Scottish Executive is seeking views on the need for such controls and, if so, what form these might take.

1.2 The principal aim of tighter controls would be to help reduce the risk of transmitting bloodborne viruses and more minor infection caused by the introduction of bacteria from dirty equipment or contaminated tattoo colours.

1.3 This consultation document describes the current controls over piercing businesses, and possible options for change.

Definitions

1.4 “Skin piercing” is often used as an umbrella term for a wide range of procedures. For the purposes of this consultation paper, “skin piercing” should be taken to mean ear piercing, tattooing (whether permanent or semi-permanent), acupuncture and electrolysis, and “body piercing” to mean cosmetic body piercing. In addition, the term “semi-permanent make-up” should be taken to mean micropigmentation of the skin. All of these procedures can involve varying degrees of skin penetration.

1.5 At the end of most sections, we have raised questions for consultees’ consideration and comments. We would also welcome views on any other aspect of each section or any new points you wish to raise.

SECTION 2

Current Controls in Scotland

General

2.1 The sole specific control over any element of skin piercing in Scotland is provided by the Tattooing of Minors Act 1969, under which it is a criminal offence to tattoo a person under 18 years.

2.2 General duties are placed on operators of skin and body piercing businesses by the Health and Safety at Work etc Act 1974. They must conduct their business, so far as is reasonably practicable, in such a way as to ensure that staff, customers or other people are not exposed to risks to their health and safety. Premises are inspected, often annually, by local authority enforcement officers, usually from the environmental health department, who examine standards of hygiene and premises design. They are able to issue improvement and prohibition notices where this is necessary, for example to minimise the risk of infection or injury to the customer. In serious cases, the inspector may report a case to the Procurator Fiscal, who may decide to prosecute.

2.3 Operators of both skin and body piercing businesses in Scotland, with the exception of Edinburgh (see paragraphs 2.4 and 2.5), are not required at present to register their business or obtain an operator's licence before beginning to practise. This means that, often, local authority officers become aware of the existence of a new business only by chance. The Health and Safety Executive can also inspect domestic or peripatetic piercers, where known.

Edinburgh

2.4 Acupuncture, tattooing, ear piercing and electrolysis currently come under the scheme of registration operated under the City of Edinburgh District Council Order Confirmation Act 1991. A charge of £5 is levied for a registration certificate which, on issue, must be displayed within the premises. The registration applies to the practitioner within those premises until the activities are no longer provided there or circumstances otherwise change.

2.5 The scheme of registration has limited regulatory sanction and serves mainly to ensure that the Council is aware that these practitioners are trading in Edinburgh. Registration may be refused only if the premises are unsuitable or inappropriate for the purpose. Practices, procedures and training are not considered as part of registration. There are currently 85 such premises registered in Edinburgh under this scheme. Inspections cover the areas identified in the Council's checklist of standards. However, enforcement is difficult, as these standards are not prescribed in legislation; nor is their observance a condition of registration.

Body Piercing

2.6 There is currently no scheme of registration or licensing for practitioners of body piercing in Scotland, albeit the practice has become more widespread over the last few years. In Edinburgh, there are seven known premises where body piercing is offered and a further two known mobile body piercers.

Summary

2.7 It has been represented that the weaknesses in relying on Health and Safety at Work Act-based inspections are:

- the absence of any formally recognised guidance on good practice (although advisory material is available and in circulation);
- the lack of specific powers to assess the skills and training of operators (although it is possible to assess whether good hygiene is observed);
- a business may be operating for some time before the local authority is aware of its existence;
- piercers operating from home, or who are peripatetic, are not likely to be identified;
- there is no agreed standard for the inspection.

Do you consider that the current controls provided under Health and Safety legislation are sufficient to ensure, so far as possible, the safe practice of skin and body piercing in Scotland?

SECTION 3

Current Controls in England

3.1 Under powers contained in the London Local Authorities Act 1991, local authorities in London may regulate ear piercing, body piercing and semi-permanent make-up businesses through licensing and inspection. Local authorities may impose licence conditions affecting cleanliness, hygiene and safety. It is a criminal offence for a business to trade without being licensed or to breach licence conditions. A small number of London authorities use powers available to them under the Greater London Council (General Powers) Act 1981 to control and regulate businesses in their areas by a registration, byelaws and inspection scheme.

3.2 In England, local authorities outside London have powers to regulate skin piercing in their areas by requiring registration and the observance of byelaws about hygiene and cleanliness, and inspection. It is an offence for a business offering skin piercing to trade without being registered or to breach byelaws. These authorities do not at present have similar powers for body piercing or semi-permanent make-up businesses and therefore if a studio sets up to perform body piercing or semi-permanent make-up only (not tattooing, acupuncture or ear piercing), in many local authority areas they would not be required to register unless local byelaws specifically require it.

3.3 In many cases, body-piercing businesses also carry out tattooing or ear piercing, which local authorities outside London do have powers to regulate. Contact, through regulation of the latter, gives local authorities the opportunity to work with businesses, which also offer cosmetic body piercing, to encourage safe and hygienic practices. Local authorities also have enforcement powers under Health and Safety at Work legislation. This allows them to use improvement and prohibition notices, and ultimately to prosecute body piercing and semi-permanent make-up businesses, if there is a risk to customers' health and safety.

3.4 In the light of an earlier consultation exercise, the UK Government is committed to legislation, when Parliamentary time permits, to give authorities outside London and in Wales powers to regulate body piercing and semi-permanent make-up businesses.

Do you consider that regulatory controls similar to those currently available in London would be appropriate in Scotland?

SECTION 4

Infection and Risk Assessment

4.1 Skin and body piercing can be carried out for cosmetic purposes (eg tattooing, ear piercing, piercing other parts of the body and electrolysis) or therapeutic purposes eg acupuncture. On the basis of the number registered in Edinburgh it is likely there is in excess of 200 skin piercing businesses in Scotland. These range from fixed-site premises in the form of specialist clinics, tattoo parlours, jewellers, hairdressers and beauty salons, to individuals operating alone at home. In the absence of specific hygiene requirements, standards may be variable.

4.2 If skin and body piercing is carried out by a competent practitioner using sterile equipment and hygienic procedures, there should be little risk of infection, unless the customer contaminates the pierced area afterwards by touching it with dirty hands. However, if proper hygienic precautions are not taken, there is a risk of transmission of serious infections like hepatitis B or C and of localised bacterial wound infections. There have been no reported cases of HIV infection resulting from skin and body piercing, but the potential risk cannot be ruled out. Tattooing has caused several cases of hepatitis B infection (which is particularly easily transmitted). Infections in the upper cartilaginous part of the ear may heal with difficulty because of the limited blood supply there, and could lead to deformity of that part of the ear. Infections are more likely with nose piercing because of the bacteria contained in the nose. There can also be other non-infectious and usually not serious complications directly resulting from the procedure, such as swelling around the piercing, scarring, bleeding, jewellery embedding in the skin, allergic reactions to jewellery metal and antiseptics, and tooth damage from biting on tongue jewellery. It is also important that piercers discuss clients' medical history prior to piercing their skin since certain conditions would make piercing risky and potentially dangerous. And if operators provide customers with good after-care advice, this will enable them to care for any wounds appropriately at home.

4.3 Another issue which arises from time to time is the administration of local anaesthetics in the context of skin and body piercing. The position is that the supply and use of local anaesthetics is already governed by the Medicines Act 1968 and the regulations made under it. Responsibility for ensuring compliance with the legislation rests with the Medicines Control Agency.

Do you consider that further measures are needed to reduce the risk of infection from skin and body piercing? If so, what steps do you think should be taken?

Are there any forms of piercing which you consider should be subject to less stringent controls than for other kinds of piercing; and, if so, which and for what reasons?

Do you think there is any need to prohibit by law any particular forms of skin or body piercing?

SECTION 5

Why change and how?

5.1 This section outlines some options for the future under four headings; there may well be others:

- a No change to existing statutory arrangements;
- b Adoption of best practice guidelines;
- c Licensing requiring eg registration and conditions of licence for premises and/or operators;
- d New primary legislation;

Each option is described below. From a public health perspective, the Executive sees merit in a regulatory approach, and options c. and d. set out some possibilities. But the Executive will reflect on all the responses to the consultation before reaching conclusions.

Options c and d would imply costs to business through, for example, alterations to premises or licence fees, and we have attempted to assess the implications of these in the initial Regulatory Impact Assessment referred to in Section 7 and set out more fully in Annex A.

a. No change

5.2 The case for no statutory change might rest on the argument that existing controls are adequate and that further regulation would not necessarily in itself be effective in helping to prevent transmission of bloodborne viruses and other health problems. Nor might new controls be successfully applied to activities carried out informally on domestic premises or on an itinerant basis. In that case, a more effective approach might be to mount a focussed public education campaign, aimed both at bringing home to people conducting such activities the need for good hygiene practices and also alerting potential clients to the importance of satisfying themselves about the suitability of the conditions in which the piercing takes place.

b. Adoption of best practice guidelines

5.3 Good practice guidelines on skin and body piercing have already been drawn up by the Scottish Centre for Infection and Environmental Health, and these are currently under review. Also, the European Professional Piercers Association and the Association of Professional Piercers produce guidance on safe and hygienic body piercing techniques. The Scottish Executive could arrange, in conjunction with local authorities and health boards, for such guidance to be issued to all known businesses; and local authorities, in their inspections under the 1974 Act, could check the extent of compliance. Alternatively, local councils, in consultation with health boards, may see merit in producing their own guidelines as has already been done by several English authorities.

c. Licensing Provisions

5.4 One possible route for introducing new statutory controls to regulate skin and body piercing in Scotland would be for Scottish Ministers to use the powers available to them under section 44 of the Civic Government (Scotland) Act 1982 to create a licensing regime. The 1982 Act already contains a regulatory framework for local authorities to license

activities such as taxis, street traders and window cleaners, and section 44 allows Ministers to prescribe other activities by Order. Any such Orders require to be approved by the Scottish Parliament.

5.5 In making such an Order, Scottish Ministers can determine whether any new licensing activity should be mandatory or discretionary. The case for a mandatory scheme is that controls should apply consistently across Scotland. Infection does not respect local boundaries; and hygiene standards should be enforceable everywhere. The argument for a discretionary approach is that some eg rural, local authorities may not wish to license skin and body piercing. If a discretionary approach were to be adopted in Scotland, local authorities wishing to introduce a licensing scheme would be required, under section 9 of the 1982 Act, to pass a resolution to that effect. Any licensing requirement would not come into effect until 9 months from the date of the resolution, in order to give the businesses concerned time to prepare for the new arrangements.

5.6 In the event that discretionary licensing provisions were introduced, the provisions of Part 1 of the Act (timescale for consideration of applications, rights of entry and inspection and offence provisions) and Schedule 1 (procedure for application and renewal, including representations, conditions, variation and appeals) would apply, unless exempted or varied in the Order itself. This would mean, for example, that it would be an offence for premises (and, potentially, operators) not to be licensed. It would also allow a local authority to refuse a licence if it considered that premises were unsuitable or if the applicant was judged not to be a fit and proper person to hold a licence. Further requirements could be included in the Order itself eg conditions bearing on hygiene.

d. Primary Legislation

5.7 New primary legislation could be considered, specifically to regulate skin and body piercing. This could take various forms, including powers for the Scottish Ministers to make regulations, requiring businesses (both operators and premises) to be licensed, for example, by local authorities or health boards. The legislation and regulations could specify the conditions that could be attached to licences, and the sanctions that could be applied, including the withdrawal of the licence, for non-compliance.

Controls over operators

5.8 There is at present no certified training course, making it difficult for any licensing authority to assess the competence of an operator. If there were accredited training courses, operators could obtain an appropriate qualification, thus allowing for the setting of national minimum standards for knowledge of hygiene and of skin and body piercing procedures before a person could gain an operator's licence.

Which of the options set out in this section do you favour and why? If you favour other controls or regulatory schemes, what specific measures do you feel are appropriate?

If you favour further controls by way of local authority licensing, do you consider local councils should have discretionary powers to introduce licensing schemes appropriate to local circumstances or should licensing be mandatory across Scotland?

Should operators be required to obtain an appropriate qualification before being allowed to practise and, if so, what should that qualification be and by whom should it be accredited?

SECTION 6

Consent

6.1 Parents sometimes express concern that their children have undergone skin or body piercing without their consent. The Executive's understanding of the relevant statutory provisions is set out in the following paragraphs.

6.2 Skin and body piercing for decorative or cosmetic purposes with the valid consent of the client is lawful in the case of adults. Without such consent, the piercing of the client's body by another person could be held to be an assault.

6.3 In Scotland, as in the rest of the UK, minors are protected by the Tattooing of Minors Act 1969, as described in Section 2.1. The following legislative provisions also have a bearing on the issue of minors' consent:-

The Children and Young Persons (Scotland) Act 1937 makes it an offence for any person who has attained the age of 16 and has custody, charge or care of any child or young person under that age wilfully to assault, ill-treat, neglect, abandon or expose him in a manner likely to cause him unnecessary suffering or injury to health.

The Age of Legal Capacity (Scotland) Act 1991 states that a person under the age of 16 does not have the legal capacity to enter into a transaction, unless a statute specifically allows for it or it is a kind commonly entered into by persons of his age and circumstances and on terms which are not unreasonable.

6.4 It is not for the Executive to interpret what those provisions imply for the issue of consent in relation to skin or body piercing of young people; that is for the Courts to determine in particular cases. The Executive recognises there may be differing views on this issue and will take due note of any comments expressed.

SECTION 7

Cost Implications

7.1 To ensure that any proposals for further controls are considered with knowledge of the full facts and impacts (where these are known at the present time), an initial Regulatory Impact Assessment (RIA) has been prepared and is at Annex A of this paper. Comments on the likely impacts and costs of each option upon businesses will help ensure that any changes proposed will rest on as full as possible an appreciation of the financial implications.

The introduction of controls implies increased costs for businesses. It would be helpful therefore if consultees could mention any anticipated additional costs arising from the options outlined, to allow these to be reflected in further consideration of the issue.

Comments on these proposals are sought by 13 April 2001 and should be sent by e mail or in writing to:

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St Andrew's House
Regent Road
Edinburgh EH1 3DG

E mail: james.mcmorrine@scotland.gov.uk

Fax: 0131-244-2157

To help inform debate on the questions covered by this consultation paper, the Executive intends to follow its normal practice of making available to the public, on request, copies of the responses received. The Executive will assume, therefore, that responses can be made publicly available in this way. If respondents indicate that they wish all, or part, of their reply excluded from this arrangement, its confidentiality will be strictly respected.

INITIAL REGULATORY IMPACT ASSESSMENT (RIA)**1. Title**

Regulation of skin piercing: A consultation paper

2 i The issue and objective

Issue: Are current regulatory controls over skin piercing businesses adequate and, if not, what additional controls would be preferred? The Scottish Executive is mounting this consultation exercise in view of concerns expressed that current controls over skin and body piercing businesses in Scotland are inadequate in preventing risk to customers of the transmission of bloodborne viruses or minor infections through unhygienic practice. It is seeking the views of public health interests, local authorities, the piercing industry and other interested parties in order to establish if there is a general desire for additional regulation and, if so, what form this should take.

Objective: To establish whether current controls over skin and body piercing businesses are – or are not - sufficient to prevent the transmission of bloodborne viruses and other health risks to customers through unhygienic and unprofessional skin or body piercing procedures.

2ii Risk Assessment

In recent years there have been calls from local authorities and others for a greater degree of control over skin and body piercing businesses in Scotland to reduce the chance of injury or transmission of bloodborne viruses. Please see Section 4 for a full discussion of the risks involved.

3i. - Option 1

No change to existing arrangements

3ii - Option 2

Adoption of best practice guidelines.

3iii - Option 3

Introduction of licensing

3iv - Option 4

New Primary Legislation

Costs to Business

Option 1

Maintaining the current arrangements would not impose any additional expenditure upon businesses.

Option 2

Best practice guidelines already exist and if these, or revised versions, were adopted as a national standard, any cost implications for businesses would be voluntary ie businesses would themselves consider how best their procedures, equipment or premises might be brought up to the standards recommended in the guidelines. If new guidelines were to be produced by, for example, local authorities, the latter would be responsible for the costs of production and distribution; but this should not entail substantial expenditure.

Options 3 and 4

Cost to businesses of these options would depend upon:

- The extent of any new legislation;
- The type of powers favoured ie licensing premises and/or operators on a one-off or ongoing basis;
- The extent of investment required by a particular business to bring its premises or operators up to the new requirements;
- Whether new controls were discretionary or mandatory;
- The extent of licence conditions;
- The frequency of inspections and their duration;
- The period of the licence eg one, two or three years;
- Arrangements for recovering the administrative costs of licensing;
- Whether eg Health Boards or local authorities are required to recover licence costs.

4i Identify the benefits

Option 2 would present to the industry the optimum conditions under which they should operate and highlight those practices to which they should give particular attention. It would be at the discretion of individual businesses to upgrade premises or improve procedures, or not. This option could result in an uneven impact across the country, depending on the numbers of businesses in each location adopting them, and to what extent. Standards of service to clients would vary commensurately.

If option 3 is discretionary, the position is similar to option 2. If mandatory, there should be greater uniformity of standards across the country. Businesses may also benefit, in terms of customer satisfaction, by being registered (or by claiming to observe good practice) and ultimately give customers confidence that health hazards were being minimised.

Option 4 could result in a regime that might involve, for example, placing a duty on local authorities or Health Boards to register and license piercing premises and operators. The licensing authority would therefore be responsible for providing appropriate staff to carry out the necessary inspections. The main benefit would be a consistent (mandatory) regime across the country.

4ii Quantifying and valuing the benefits

Options 2, 3 and 4 should improve standards of service. The degree of benefit will depend on whether any changes to the current arrangements are discretionary or mandatory. Option 2 implies a discretionary approach, in which case any improvements to, eg, premises will be voluntary. On the other hand, Option 3 and 4 could entail a mandatory approach, which would require licensees, eg to introduce more hygienic equipment or facilities. This could vary from premises to premises and, at this point, precise estimates of likely expenditure cannot be made.

Options 2, 3 and 4 should also help reduce the risk to the general public of the transmission of bloodborne viruses. It is estimated that the amount saved by the NHS in respect of one case of HIV infection prevented is £75,000. The saving from each case of hepatitis infection prevented is more difficult to quantify, since the outcome ranges from asymptomatic, through minor symptoms, to chronic liver disease and death, but it can obviously be substantial.

5i Business sectors affected

Only those businesses involved in skin and body piercing would be affected by any new controls. The numbers affected by the application of option 2 would depend upon voluntary adherence to guidelines and also whether applied in full or in part. For option 4, the numbers would depend upon the extent of the legislation or regulation proposed (skin and/or body piercing). Option 3 would be similar in outcome to option 4, if mandatory, but fewer businesses would likely be affected, if licensing were discretionary.

5ii Compliance costs for a typical business

Options 3 and 4 would be likely to result in non-voluntary financial burdens on businesses. This would include the cost of licences, time spent on completing application forms and responding to any changes required as a result of inspections, and the purchase of eg, new equipment, before a licence is granted or to ensure compliance with licence conditions.

In Edinburgh, the current cost of registration is £5 but licences issued under any new regime could vary according to the nature of the scheme. The cost of updating equipment or premises will vary from operator to operator.

The Department of Health carried out an exercise in 1994 which produced the following information:

- around 1000 businesses across England and Wales (although this is known to have increased considerably to the present time);
- outer London authorities operated a system of one-off registration fees – at the time costing £55 for premises and £35 for operators; and
- at the time, London authorities licensed premises on an annual basis with fees being £215 in the first instance with renewal costing £157.

6. Consultation with Small Business: ‘The Litmus Test’

Because of the range of possibilities described above, we are unable to establish clear cost implications for a sample of businesses in this field beyond what is described in the foregoing sections. We would welcome the views of businesses on the potential impact of charges on them.

7. Identify any other costs

Options 3 and 4

There would be costs to the Executive in preparing any new legislation or regulations. A licensing regime involving inspection by councils would likely be cost neutral in so far as local authorities seek to recover any associated costs.

8. Results of Consultation

After the results of this consultation are received by the Executive and collated, they will be summarised and the summary will be circulated to consultees.

The Scottish Executive
January 2001