

## **EXECUTIVE NOTE**

### **THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SKIN PIERCING AND TATTOOING) (AMENDMENT) ORDER 2006. SSI/2006/604**

The above amendment was made in exercise of the powers conferred by section 44(1)(b) and (2) of the Civic Government (Scotland) Act 1982. The instrument is subject to affirmative resolution procedure.

#### **Background**

The existing legislation, the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006, regulates tattooing and skin piercing by giving local authorities in Scotland powers to license and inspect businesses carrying out these activities. It provides for consistent controls over such businesses (whether fixed or mobile) in order to manage and reduce the risks faced by potential clients, in relation to health and specifically the transmission of bloodborne viruses such as HIV and hepatitis B and C.

As a result of representation and further evidence from key stakeholders including the British Acupuncture Council, local authorities and NHSS it has been agreed that certain amendments should be made to the current legislation, by means of an amending Order. The amendments, shown below, will bring the legislation into line with professional practice.

#### **Amendments**

##### **The main amendments contained in this Order will:**

- Exclude all registered healthcare professionals from the need to be licensed. This is because the policy intention is to capture those who do not have any formal training or regulation, under the existing provisions this group is not excluded. This amendment is therefore in recognition of the considerable training at degree or postgraduate degree level that individual healthcare professionals must undergo, and the professional fees that they must pay, in order to maintain the “registered” healthcare professional status. As part of maintaining registration, all healthcare professionals must undergo continuing professional development and maintain high standards of clinical practice and patient care.
- In relation to acupuncture, following further evidence and representation from the British Acupuncture Council to show that the mandatory wearing of gloves is difficult to undertake in this line of practice, the wearing of gloves should only now take place where there is a risk of infection passing between the operator and the client.
- The conditions for ear piercing have been reduced when using a hygienic piercing system. There will no longer be the need for a separate room with wash hand basin. This is because the current arrangements require infection and hygiene controls much higher than is needed when using hygienic piercing systems.

#### **Consultation**

The principles on the policy behind these amendments to the regulations have been the subject of consultation with stakeholders including local authorities, professional bodies including the Ear Piercing Manufacturers of Europe, British Acupuncture Council and the Chartered Society of Physiotherapists and NHS Scotland. All stakeholders contacted were supportive.

### **Financial Effects**

An updated regulatory impact assessment has been undertaken and has shown that the clear impact of the amendments to the Order will be on small independent businesses who carry out ear piercing and acupuncture.

Scottish Executive Health Department  
2006

**UPDATED RIA Ref 2006/23**

**THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SKIN PIERCING AND TATTOOING) (AMENDMENT) ORDER 2006**

**UPDATED REGULATORY IMPACT ASSESSMENT (RIA)**

**Introduction**

A Regulatory Impact Assessment (RIA) is a policy tool which assesses the impact including potential costs, benefits and risks of any proposed regulation which could affect businesses, charities or the voluntary sector.

**Title**

**1. THE CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF SKIN PIERCING AND TATTOOING) (AMENDMENT) ORDER 2006**

**Purpose and intended effect**

**Objective**

2. This regulation provides local authorities in Scotland powers to license and inspect cosmetic skin and body piercing and to introduce consistent controls over skin piercing and tattooing businesses (whether fixed or mobile) in order to manage and reduce the risks faced by potential clients, in relation to health and specifically the transmission of bloodborne viruses such as HIV and hepatitis B and C. Amendments have been made to the Order.

3. The main amendments to the Order will:

- Exclude all registered healthcare professionals from the need to be licensed. This is in recognition of the considerable training at degree or postgraduate degree level that individual healthcare professionals must undergo, and the professional fees that they must pay, in order to maintain the "registered" healthcare professional status. As part of maintaining registration, all healthcare professionals must undergo continuing professional development and maintain high standards of clinical practice and patient care.
- In relation to acupuncture, following further evidence and representation from the British Acupuncture Council the wearing of gloves should only now take place where there is a risk of infection passing between the operator and the client.
- The conditions for ear piercing have been reduced when using a hygienic piercing system. There will no longer be the need for a separate room with wash hand basin.

**Background**

4. The original consultation document presented four options for future control of skin and body piercing in Scotland:

- no change to existing statutory arrangements; or
- adoption of best practice guidelines; or
- licensing requiring, for example, registration and conditions of licence for premises and/or operators, either at the discretion of local authorities or mandatory across Scotland; or
- new primary legislation. Present, limited, controls derive from the Tattooing of Minors Act 1969, the Health and Safety at Work etc Act 1974 and some local legislation.

5. The independent analysis published in 2001 confirmed that further controls of skin and body piercing would be broadly acceptable to key stakeholders and should take the form either of licensing which is mandatory across Scotland, or new primary legislation.

## **Rationale for government intervention**

If there is no government intervention then all registered healthcare professionals including nurses, dentists, hospital consultants, physiotherapists will be required to pay for a licence. While we are not aware of any registered healthcare professional carrying out the activity of skin piercing or tattooing, there are a significant number who practice acupuncture. As one of the main purposes of the Order is to capture those who do not have any formal training or regulation, effectively registered healthcare professionals are being penalised because they are also paying for their professional registration.

In relation to acupuncture, it is recognised that this is an alternative therapeutic treatment rather than a cosmetic skin piercing activity. To enable this practice to be carried out to the best benefit of the patient, the acupuncturists should only need to wear gloves where there is any risk of infection passing between the practitioner and the client. If there is no government intervention then the patients will not benefit fully from this treatment because acupuncturists will have to continue to wear gloves all of the time.

Ear piercing using the correct equipment and procedures is extremely straight forward and with very low risk of passing any potential bloodborne viruses. Failure to reduce the conditions in recognition of this lower risk would force ear piercing establishments to close because they would have to maintain high levels of infection control, thus reducing the number of providers available. It has also been suggested that if the numbers of ear piercing providers reduces then members of the public would be inclined to undertake this practice at home.

## **Consultation**

We have consulted with on all of the stakeholders in relation to the amendments. All of the changes have their support. Those consulted include professional leads in the Scottish Executive, local authorities, Health Protection Scotland, NHSScotland and Department of Health in England who have access to further expertise in this area as they have developed local authority byelaws.

Publicly we have consulted with local authorities and key stakeholders including the British Acupuncture Council, Ear Piercing Manufacturers of Europe, Chartered Society of Physiotherapists

## **Options**

6. Taking account of prior consultation, the Order set out detailed proposals for mandatory licensing, and a range of options relating to what that should involve.

7. The main variables in terms of regulatory impact are:

- the cost of the license;
- the capital and ongoing cost of maintaining acceptable standards of infection control and hygiene;
- the potential loss of revenues arising out of the proposed requirement for parental consent where the individual seeking a piercing is aged under 16 years; and
- the introduction of penalties associated with non-compliance.

## **Costs and benefits**

### Sectors and groups affected

8. The licensing scheme applies to any business in Scotland offering skin or body piercing services of which the vast majority will be small and independent. However, as a result of the amendments “registered healthcare professionals” are now exempt from the requirement to apply for a licence. The number of such businesses is not known at present, given the absence of regulation.

### Benefits of Regulation

9. The main identified benefits of the regulations are:

- a reduced incidence in tattooing and/or piercing while the client is under the influence of alcohol or other substances, or has not fully considered all the implications of their actions, with corresponding social and economic benefits for individuals;
- a significantly reduced incidence of conflict within families arising from piercing of young people under the age of 16, with corresponding social benefits;
- reduced risk of transmission of infection arising from tattooing and/or piercing, with corresponding social and economic benefits for both the client and the tattooist or piercer;
- a reduced incidence in infection or complications arising from tattooing and/or piercing which require subsequent medical attention, with associated economic benefits to NHSScotland;
- a potential economic benefit to licensed tattooists and piercers arising from better public awareness of the potential risks and the hygiene standards which underpin the granting of a license leading to increased public confidence and custom.
- Regulation will provide necessary protection to customers of tattooing/piercing against the risk of blood-borne virus transmission.

### Costs

10. The Order gives local authorities powers to recover the cost of operating the licensing regime from those who apply through license fees and charges. This means that the costs of implementing the legislation is offset against this income. The cost burden associated with the regulations will therefore fall directly to piercing and tattooing businesses. We recognise that in the earlier consultation the business community endorsed and welcomed the introduction of a regulatory regime because of the perceived benefits listed above. As a result of the amendments, the costs will be reduced for those businesses who undertake ear piercing only (using a hygienic system) as they will not be required to have a separate room to carry out the activity.

11. Key variables in terms of regulatory impact are: the cost of the license; and the capital and recurring costs of maintaining acceptable standards of infection control and hygiene.

12. The costs of the license will vary from one local authority area, estimated costs for the license range from £150 to £500.

13. The costs of infection control equipment and consumables also varies, depending on the range and volume of services provided by individual piercing or tattooing businesses. It is understood that autoclaves cost somewhere between £1,000 and £3,000 and can be expensive to maintain, and that small volume ultrasonication baths cost around £200.

### **Small/Micro firms impact test**

15. The proposed regulations will clearly impact on small independent businesses, which we believe constitute the major part of this industry sector. It was recognised that in earlier consultation the business community endorsed and welcomed the planned introduction of regulating the profession of cosmetic piercing.

16. In order to discuss the impact of the regulation, the Scottish Executive Health Department contacted a sample number of local authorities and small businesses. 2 local authorities, 4 small businesses who undertake skin piercing and tattooing and 1 private beauty school for beauty therapists provided comments. The unanimous response from small businesses is that the licensing process has been long awaited and would be welcomed. All the businesses contacted were already

equipped to provide what they regarded as a hygienic service and they did not believe that the regulation would impose any other costs other than the cost of the license.

17. There is also the potential for small businesses to recoup the expense of the license and administration costs by increasing their fees to their customers.

18. It is considered that the main variables in terms of regulatory impact are:

- the cost of the license;
- the capital and ongoing cost of maintaining acceptable standards of infection control and hygiene;
- the potential loss of revenues arising out of the proposed requirement for parental consent where the individual seeking a piercing is aged under 16 years; and
- the introduction of penalties associated with non-compliance.

### **Test run of business forms**

The conditions set out in the Order are mainly used by local authorities who extract the information to be included in their application forms for those applying for a licence.

### **Competition assessment**

19. The proposals are unlikely to have a significant detrimental effect on competition. This assessment is based on the following consideration of the Cabinet Office “competition filter test”:

<i>Question</i>	<i>Answer (Yes/No)</i>
In the market affected does any firm have more than a)10%, b)20%, c) 50% market share?	Not known, but unlikely. Piercing and tattooing businesses are generally small in scale.
Would the costs of the regulation affect some firms substantially more than others?	No. The same standards would apply to all.
Is the regulation likely to affect the market structure, changing the number or size of firms?	No.
Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No. The same standards would apply to all.
Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No. The same standards would apply to all.
Is the sector characterised by rapid technological change?	No.
Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	Yes - but the same quality standards would apply to all.

### **Enforcement, sanctions and review**

20. Enforcement and implementation of these regulations fall to local authorities. Local authority Environmental Health Officers are already involved in monitoring the health and safety compliance in businesses, including tattoo and body-piercing businesses.

21. Non-compliance penalties would largely involve either the refusal or suspension of a licence or a fine, consistent with the existing parameters of Section 44 of the Civic Government (Scotland Act) 1982. The only exception relates to piercing a minor without parental consent, which would be a criminal offence.

22. The regulation will be reviewed after the standard three-year period in the light of factors such as advances in equipment, techniques and training and the view of local government, business and the public.

### **Implementation and delivery plan**

The implementation of this Order will be made by local authorities. We have ensured that all local authorities and stakeholders are aware of the timetable for the amendments made to the Order so that planning is underway already.

### **Post-implementation review**

A review of implementation will be undertaken by SEHD after the initial three year period.

### **Summary and recommendation**

The introduction of a regulatory regime has been welcomed and is currently being implemented by local authorities. As outlined previously any costs incurred will be fall directly to piercing and tattooing businesses in the cost of their licence and in maintaining effective infection and hygiene controls. The cost of a licence is expected to range from £150 to £500. Effective infection and hygiene is an essential part of the business regardless of the licensing requirements.

### **Declaration and publication**

**I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.**

**To be signed by the Minister**