

Draft Order laid before the Scottish Parliament under section 44(3) of the Civic Government (Scotland) Act 1982, for approval by resolution of Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2006 No.

**LICENCES AND LICENSING
PUBLIC HEALTH**

**The Civic Government (Scotland) Act 1982
(Licensing of Skin Piercing and Tattooing) Order 2006**

Made - - - - 2006

Coming into force in accordance with article 1

The Scottish Ministers, in exercise of the powers conferred by section 44(1)(b) and (2) of the Civic Government (Scotland) Act 1982⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 44(3) of that Act, been laid before and approved by a resolution of the Scottish Parliament:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Civic Government (Scotland) Act 1982 (Licensing of Skin Piercing and Tattooing) Order 2006 and shall come into force on the day after the day on which it is made.

(2) In this Order—

“the 1982 Act” means the Civic Government (Scotland) Act 1982;

“acupuncture” means the insertion of needles into living tissue for remedial or therapeutic purposes;

“cosmetic body piercing” means the perforation of the skin and underlying tissue in order to create a tunnel in the skin through which jewellery may be inserted;

“electrolysis” means the removal of body hair by electrocution of the hair roots with an electrified needle;

“hospital” means any health service hospital within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978⁽²⁾

(1) 1982 c. 45; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) 1978 c. 29; the definition of “health service hospital” in section 108(1) was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 6(a).

“independent clinic” has the same meaning as in section 77(1) of the Regulation of Care (Scotland) Act 2001⁽³⁾

“skin piercing” includes any of the following—

- (a) acupuncture;
- (b) cosmetic body piercing; or
- (c) electrolysis; and

“tattooing” means the insertion into the skin of any colouring material designed to leave a semi-permanent or permanent mark including micro pigmentation.

Licensing of activity

2.—(1) The activity specified in paragraph (2) is hereby designated as an activity for which a licence under Part I of the 1982 Act shall be required, but no such licence shall be required—

- (a) in respect of the carrying on of that activity before 1st April 2006; or
- (b) for the carrying on of that activity by a registered medical practitioner within—
 - (i) a hospital; or
 - (ii) an independent clinic.

(2) The activity referred to in paragraph (1) is the carrying on of a business which provides skin piercing or tattooing.

Application of Part I of the 1982 Act

3. Part I of the 1982 Act shall have effect, subject to the modifications specified in the Schedule, for the purposes of the licensing of the activity designated by article 2.

Transitional provision

4.—(1) A person who on or after 1st April 2006 carries on the activity designated by article 2 without a licence under Part I of the 1982 Act shall not be guilty of an offence under section 7(1) of that Act⁽⁴⁾ if—

- (a) that person made application to the licensing authority before that date for the grant of a licence under Part I of that Act in respect of the activity being carried on by the person; and
- (b) that application has not yet been finally determined.

(2) For the purposes of paragraph (1)(b), an application is finally determined—

- (a) when it is withdrawn by the applicant;
- (b) when it is refused by the licensing authority and the period of 28 days specified in paragraph 18(4) of Schedule 1 to the 1982 Act expires without an appeal against the refusal being made to the sheriff;
- (c) in a case where an appeal is made against a refusal by the licensing authority, when that appeal is disposed of.

(3) For the purposes of paragraph (2)(c), an appeal is disposed of—

- (a) when it is abandoned by the appellant;

(3) 2001 asp 8.

(4) Section 7(1) was amended by the Entertainments (Increased Penalties) Act 1990 (c. 20), section 2(1); the reference in section 7(1) to a fine not exceeding £500 became a reference to a fine not exceeding level 4 on the standard scale by virtue of section 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), which section by consolidation became section 225 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

- (b) when a decision on it is made by the sheriff or a higher court and any period for making a subsequent appeal to a higher court expires without such a subsequent appeal being made.

St Andrew's House,
Edinburgh
2006

Authorised to sign by the Scottish Ministers

SCHEDULE

Article 3

APPLICATION OF PART I OF THE 1982 ACT

1. Part I of the 1982 Act shall have effect subject to the modifications in paragraphs 2 to 7 of this Schedule.

2. In section 3 (discharge of functions of licensing authorities)—
 - (a) in subsection (1), for “6 months” substitute “12 months”; and
 - (b) in subsections (2) and (4), for “6 month” substitute in each place “12 month”.
3. In section 6 (powers of entry to and search of unlicensed premises)—
 - (a) in subsections (1) and (2), after “constable” in each place insert “(or any authorised officer of the licensing authority)”;
 - (b) in subsection (3)—
 - (i) after “uniform” insert “(and where the person executing the warrant is an authorised officer of a licensing authority, that officer)”;
 - (ii) after “constable” where it second occurs insert “(or such authorised officer of the licensing authority)”;
 - (c) in subsection (4)(5)—
 - (i) after “constable” where it first occurs insert “(or authorised officer of the licensing authority)”;
 - (ii) after “constable” where it second occurs insert “(or such authorised officer)”.
4. In paragraph 4 of Schedule 1—
 - (a) before sub-paragraph (1) insert—

“(A1) Where the application for the grant or renewal of a licence which is made for the carrying on of a business which provides skin piercing or tattooing specifies the address of the premises from which the activity is to be carried on as required by paragraph 1(2)(d) above, the licensing authority shall not make a final decision upon the application unless an authorised officer of the licensing authority has visited and inspected the premises.”; and
 - (b) in sub-paragraph (1) at the beginning insert “Without prejudice to the requirement at sub-paragraph (A1) above.”.
5. In paragraph 5 of Schedule 1—
 - (a) in sub-paragraphs (1) and (2) at the beginning insert “Subject to sub-paragraphs (2A) to (2D) below.”;
 - (b) after sub-paragraph (2) insert—

“(2A) Where the licensing authority is considering an application for the grant or renewal of a licence—

 - (a) for the carrying on of a business which provides skin piercing or tattooing; and
 - (b) where the activity is to be carried out wholly or mainly in premises,

the licensing authority shall not grant the licence unless it is satisfied that the conditions in sub-paragraph (2B) above are met.

(2B) The conditions referred to in sub-paragraph (2A) above are that—

(5) The reference in section 6(4) to a fine not exceeding £200 became a reference to a fine not exceeding level 3 on the standard scale by virtue of section 289G of the Criminal Procedure (Scotland) Act 1975 (c. 21), which section by consolidation became section 225 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

- (a) separate rooms are provided for—
 - (i) the waiting area; and
 - (ii) the carrying out of skin piercing or tattooing;
- (b) the waiting area has displayed a notice advising—
 - (i) that skin piercing and tattooing will not be carried out on any person under the influence of alcohol or drugs;
 - (ii) that skin piercing will not be carried out on any child under the age of 16 unless accompanied by a person who has parental rights and responsibilities in respect of that child and who has also given their consent in writing to the skin piercing; and
 - (iii) that tattooing will not be carried out on any person under the age of 18;
- (c) the room to be used for the purposes of carrying out the skin piercing or tattooing has the following facilities—
 - (i) a sink with hot and cold running water and which uses non-hand operated taps;
 - (ii) a paper towel holder containing paper towels;
 - (iii) a soap dispenser containing soap;
 - (iv) a washable bench or chair with disposable paper sheet;
 - (v) a dispenser containing alcohol solution;
 - (vi) a waste bucket with a pedal operated lid;
 - (vii) a sharps container for storage of needles after use; and
 - (viii) a first aid kit;
- (d) the following equipment is stored and properly maintained for use on the premises—
 - (i) ultrasonic cleaners;
 - (ii) instrument baths; and
 - (iii) autoclaves and autoclaves pouches; and
- (e) the premises are well ventilated and illuminated for the purposes of skin piercing and tattooing.

(2C) Without prejudice to the generality of sub-paragraph (2) above or the requirements of sub-paragraphs (2A) and (2B) above, where a licensing authority grants or renews a licence for the carrying on of a business which provides skin piercing or tattooing and the activity is to be carried out wholly or mainly in premises, the following conditions shall be imposed—

- (a) the accommodation and facilities within the premises are to be maintained in good repair and in a good state of cleanliness;
- (b) only sterile single use disposable needles may be used for skin piercing or tattooing;
- (c) for the purposes of tattooing, only sterile pigment or ink pre-packed in single use vials may be used;
- (d) the activity of tattooing or skin piercing must be carried out by an operator wearing disposable vinyl or latex gloves, which must be changed for each client;
- (e) a supply of the following must be maintained—

- (i) disposal vinyl or latex gloves;
- (ii) disposable razors; and
- (iii) disposable single use needles;
- (f) any equipment which is not disposable shall be thoroughly cleaned with fresh disinfectant after each use;
- (g) skin piercing shall not be carried out on a child under the age of 16 unless accompanied by a person who has parental rights and responsibilities in respect of that child and who has also given their consent in writing to the skin piercing;
- (h) any equipment which is disposable must be disposed of immediately after use in an appropriate waste receptacle;
- (i) for ear piercing, a sterile cartridge for ear piercing must be used;
- (j) for tongue piercing, a sterilised clamp must be used; and
- (k) information, in an easy to understand format, must be provided to prospective clients to explain–
 - (i) the process of the skin piercing or tattooing;
 - (ii) the risks of the procedure; and
 - (iii) the after care requirements of the procedure.

(2D) Without prejudice to the generality of sub-paragraph (2) above or the requirements of paragraphs (2A) and (2B) above, where a licensing authority grants or renews a licence for the carrying on of a business which provides skin piercing or tattooing and the activity is not to be carried out wholly or mainly in premises, the licence holder must ensure that the following standards are met–

- (a) disposable vinyl or latex gloves must be worn and changed for each client;
 - (b) the skin piercing or tattooing may only be carried out through use of disposable razors or single use needles;
 - (c) any seating used for the skin piercing or tattooing must be washable and covered with a disposable paper sheet which shall be renewed after each use;
 - (d) any equipment which is not disposable shall be thoroughly cleaned with fresh disinfectant after each use;
 - (e) any equipment which is disposable must be disposed of immediately after use in an appropriate waste receptacle;
 - (f) for tongue piercing, a sterilised clamp must be used;
 - (g) for ear piercing, a sterile cartridge for ear piercing must be used;
 - (h) skin piercing shall not be carried out on a child under the age of 16 unless accompanied by a person who has parental rights and responsibilities in respect of that child and who has also given their consent in writing to the skin piercing; and
 - (i) information, in an easy to understand format, must be provided to prospective clients to explain–
 - (i) the process of the skin piercing or tattooing;
 - (ii) the risks of the procedure; and
 - (iii) the after care requirements of the procedure.”;
- (c) at the beginning of sub-paragraph (3) insert “Subject to sub-paragraph (3A) below,”;
- (d) after sub-paragraph (3) insert–

“(3A) For the purposes of sub-paragraph (3)(a)(ii) above, where the licence applied for is for the carrying on of a business which provides skin piercing or tattooing, the licensing authority, when determining whether the applicant is a fit and proper person to be the holder of the licence, shall have regard to the knowledge, skill, training and experience which the applicant can demonstrate in relation to the activity or activities which are to be carried out.”;

(e) after sub-paragraph (7) insert–

“(7A) Where a licensing authority makes out a licence under sub-paragraph (7) above for the carrying on of a business which provides skin piercing or tattooing, the licence shall specify–

- (a) the name and address of the person to whom the licence is granted;
- (b) the address of the premises in which the activity is to be carried out; and
- (c) where the premises are used for the carrying on of any trade or business, the name of that business.”.

6. In paragraph 8(3) of Schedule 1 after “Act” insert “or in the case where a licence has been granted for the carrying on of a business which provides skin piercing or tattooing”.

7. After paragraph 19 of Schedule 1 insert–

“20. In this Schedule, “parental responsibilities” in relation to a child has the meaning given by section 1(3) of the Children (Scotland) Act 1995(6) and “parental rights” in relation to a child has the meaning given by section 2(4) of that Act.

21. In this Schedule–

“autoclave” means a pressure vessel in which the lid is sealed by the internal pressure in the vessel and which is used to steam sterilise equipment used for skin piercing or tattooing;

“sharps container” means a container used for holding medical waste and devices which can cause physical injury and which complies with the standard for specification of sharps containers published by the British Standards Institution and numbered BS 7320:1990 “Specification for sharps containers”(7); and

“ultrasonic cleaner” means a cleaning device which uses sound waves propagated through an aqueous medium at frequencies higher than the audible range.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates the activity of the carrying on of a business which provides skin piercing or tattooing as an activity for which a licence under the Civic Government (Scotland) Act 1982 (“the 1982 Act”) shall be required in terms of section 44(1)(b) of that Act (article 2). Skin piercing and

(6) 1995 c. 36.

(7) Copies can be obtained from British Standards Institution, 389 Chiswick High Road, London.

tattooing are defined in article 1(2). An exemption from the licensing regime is provided where a registered medical practitioner carries out the activity in certain circumstances (article 2).

The licensing provisions at Part I of the 1982 Act (including Schedule 1) will apply to such licences with the following modifications as set out in the Schedule to the Order—

- (a) allowing local authorities 12 months (rather than 6) to determine licence applications (paragraph 2 of the Schedule);
- (b) granting a power of search of unlicensed premises to officers of the licensing authority (paragraph 3 of the Schedule);
- (c) requiring the licensing authority to inspect the premises prior to making a final decision on the application (paragraph 4 of the Schedule);
- (d) allowing a licence to be granted where the activity is to be carried out wholly or mainly in premises but also where the activity is not restricted to premises. Paragraph 5 of the Schedule sets certain pre-conditions which must be met before the licensing authority grant the application where the activity is to be carried out wholly or mainly in premises. Paragraph 5 further provides that certain mandatory conditions will attach to the grant or renewal of a licence, stipulating the conditions which will be imposed in each case where the activity is to be carried out wholly or mainly in premises (new paragraph 5(2C) of Schedule 1 to the 1982 Act) or otherwise for all other licences for the activity (new paragraph 5(2D)). One of the conditions attaching to the grant of any licence is that skin piercing should not be carried out on a person under the age of 16 years unless the consent of a person with parental rights and responsibilities is obtained;
- (e) disapplying paragraph 8(3) of Schedule 1 to the 1982 Act which provides that, on the death of a licence holder, the licence shall be deemed to have been granted to his executor and will remain in force for 3 months from the death of the licence holder (paragraph 6 of the Schedule); and
- (f) providing additional definitions in Schedule 1 to the 1982 Act (paragraph 7 of the Schedule).

The Order requires the designated activity to be licensed as from 1st April 2006 but transitional provision is made where an application is made before that date for the grant of an appropriate licence (article 4). In such a case, the activity may be carried on (without a licence) until the licensing authority has made a decision on the licence and, where a decision to refuse an application is then appealed to the sheriff, until that appeal has been disposed of.