REGULATION OF SKIN AND BODY PIERCING

SCOTTISH EXECUTIVE

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ANALYSIS OF WRITTEN SUBMISSIONS TO CONSULTATION

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FOREWORD

The growth in popularity in recent years in skin and body piercing has brought calls for a greater degree of control over businesses engaging in these activities. In response, the Scottish Executive published a consultation document in January 2001 seeking views on the need for controls and, if so, what form these might take.

The Scottish Executive is grateful to Rhiannon Walters for analysing the written submissions to the consultation and for drawing out some conclusions. The conclusions are clearly her own, but her work will inform the Scottish Executive's further consideration of this important issue.

SCOTTISH EXECUTIVE HEALTH DEPARTMENT

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EXECUTIVE SUMMARY

1. The Scottish Executive Health Department consulted major stakeholders in public agencies, representative bodies and skin and body piercing businesses about possible tighter regulation of these businesses in order to reduce the risk of transmission of blood-borne and other infections. The consultation document outlined four options including a 'status quo' option. The consultation was completed in April 2001.

2. Present controls regulating skin and body piercing in Scotland derive from the Tattooing of Minors Act 1969 and the Health and Safety at Work etc Act 1974 and local legislation. The purposes of the consultation were to assess the need for further controls of skin and body piercing and to explore the form such controls might take.

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

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, broken down into:

C(i) licensing introduced at the discretion of local authorities
C(ii) mandatory licensing across Scotland

D new primary legislation

4. The Health Department commissioned a research project to analyse written responses to the consultation and inform consideration of action, using quantitative and qualitative methods. The project, reported here, described respondents' views and drew conclusions on implications for action, taking into account the level of response from different interest groups on the distribution list.

5. Three broad groupings of sectors were identified, which represent different interests:

- *Public health and public protection interest groups* including health boards, NHS trusts, local authorities, and other statutory agencies and expert advisory bodies
- *Piercing practitioners* including practitioners of tattooing, skin piercing, body piercing, electrolysis and acupuncture and their representative bodies
- *Legislative interests and consumer groups* including the political parties, consumer and legal bodies, and members of the public with no stated affiliation

Conclusions

6. The findings from analysis of responses suggest the following conclusions on new regulation of skin and body piercing:

- The general conclusion can be drawn that further controls of skin and body piercing are advisable, and will be acceptable to key stakeholders (findings reported in Chapter 4).

- These controls should take the form either of licensing which is mandatory across Scotland, or new primary legislation (findings reported in Chapter 4).

- Regulation should apply uniformly across Scotland, and should be effective in minimising health risks from body piercing by ensuring that only those practitioners willing and able to practise safely remain in practice (findings reported in Chapters 4, 5, and 6).

- Regulation should minimise the burden on enforcing agencies through use of existing structures and enabling cost recovery, unless a clear public health gain can be demonstrated from new practices which justifies extra duties and expense (findings reported in Chapters 4 and 6).

7. The findings suggested a need for good communication during the preparation and implementation of any new regulations to ensure the support of stakeholders.

- For all stakeholders, this should stress uniform controls across Scotland which are effective in minimising harm arising from skin and body piercing (findings reported in Chapter 4).

- For a local authority audience it is important to demonstrate that all additional administrative burdens and costs are justified by public health gains, and that their experience has been drawn from in the consideration of enforcement mechanisms (findings reported in Chapters 4 and 6).

- For a piercing practitioner audience it is important to demonstrate that closer control, new practices to minimise health risks and increased costs will be applied fairly to all practitioners (findings reported in Chapters 4 and 6).

8. Responses on the scope of proposed controls suggested the following conclusions:

- Regulation should include control of piercing of minors which is uniform across different forms of piercing. Widespread support for further regulation of piercing of minors was demonstrated in this consultation (findings reported in Chapter 3).

- It is probably impractical to ban particular forms of piercing, but some forms, particularly piercing of the male and female genitals, nipples and tongue could be the subject of more stringent licensing conditions (findings reported in Chapter 3).

- Further research may be needed to investigate the possibility of less stringent regulation of establishments which conduct ear piercing using a purpose built gun, and no other piercing activity, as a secondary activity within a pharmacy, jewellery, hairdressing or beauty salon premises (findings reported in Chapters 3 and 6).

- If less stringent regulation is considered for premises providing ear piercing only, as a secondary activity to another business, a clear case based on evidence of risk will be needed to maintain the support of those whose primary business is piercing (findings reported in Chapters 3 and 6).

9. Responses to questions about establishing an accredited qualification and an accrediting body suggested that a process is needed to develop consensus across all stakeholders for the identification of an appropriate qualification which can be among the conditions to be met by licensed skin and body piercing practitioners, and an accrediting body or bodies (findings reported in Chapter 5).

CHAPTER ONE INTRODUCTION

Background

1.1 The Scottish Executive Health Department consulted major stakeholders in public agencies, representative bodies and skin and body piercing businesses about possible tighter regulation of these businesses in order to reduce the risk of transmission of blood-borne and other infections. The consultation document outlined four options including a 'status quo' option. The consultation paper was circulated on 19 January 2001, and the deadline for responses was 23 April 2001.

1.2 The consultation document is appended at Annex 1, and the distribution list arranged by the categories used in analysis at Annex 2.

1.3 The Health Department commissioned a research project to analyse written responses to the consultation and inform consideration of action.

The need for review of control of skin and body piercing

1.4 The purposes of the consultation were to assess the need for further controls of skin and body piercing and to explore the form such controls might take.

1.5 The consultation document identified a number of risks arising from skin and body piercing which justified the consideration of strengthening existing controls, including:

- transmission of serious infections like hepatitis B or C
- the potential for transmission of HIV infection
- localised bacterial wound infections, particularly of the nose and upper ear
- consequent deformity of the upper cartilaginous part of the ear
- scarring
- bleeding
- jewellery embedding in the skin
- allergic reactions to jewellery metal and antiseptics
- tooth damage from biting on tongue jewellery
- risks arising from administration of local anaesthetics

Current Controls in Scotland

1.6 At present controls regulating skin and body piercing in Scotland include:

- the Tattooing of Minors Act 1969, under which it is a criminal offence to tattoo a person under 18

- the Health and Safety at Work etc Act 1974 which obliges operators of skin and body piercing businesses to conduct their business so as to ensure that staff, customers or other people are not exposed to risk. Local authority enforcement officers examine standards of hygiene and premises design. They are able to issue improvement and prohibition notices, for example to minimise the risk of infection or injury to the customer, or report serious cases to the Procurator Fiscal

1.7 These controls have a number of weaknesses including:

- 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

1.8 The consultation document summarised arrangements in England and drew particular attention to the discretionary licensing scheme in London. Under powers contained in the London Local Authorities Act 1991, local authorities may regulate ear piercing, body piercing and semi-permanent make-up businesses through licensing and inspection.

Options for control of skin and body piercing in Scotland

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

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

1.10 Under local licensing (Option C) local councils could have discretionary powers to introduce licensing schemes appropriate to local circumstances (Option C(i)) or licensing

could be mandatory across Scotland (Option C(ii)). Fuller details of the options, including the legislative framework, are given in the consultation document (Annex 1).

The research project

1.11 The objectives of this research project are:

- to describe the level of support for each of the four options
- to describe the views which underlie support for each option
- to set out concerns and possible further options which emerge from responses
- to expose anomalies in responses
- to place these findings in the light of the profile of respondents, by analysing how representative respondents are of the recipients of the consultation document, and by breaking down findings by sector
- to suggest conclusions based on the findings and set in the context of current public health debate

Research method

1.12 During the first stage of the study a data entry form was designed for the entry of category and free text fields. Straightforward yes-no and category responses were coded at the first stage while complex free text responses were copy typed into the form for more considered coding at the second stage. The accuracy of data entry was checked by a one-in-ten sample.

1.13 At the second stage, free text responses were read, broad groupings of responses to questions were characterised and like responses were counted. Since not all questions were answered in the format or order that they were asked, all parts of each response were examined for responses to each question.

1.14 Some respondents did not give direct answers to the question about options for future regulation of skin and body piercing. Since this question was crucial to the consultation, their support for options were inferred from free text. Factors underlying choice of favoured option were sought from all parts of each response and counted. Matters which were not raised in the consultation document, but were addressed by several respondents were also entered as free text, grouped into like opinions and counted.

1.15 Quantitative findings were presented by interest group and sector, and illustrated with representative direct quotations.

Structure of this report

1.16 This chapter has set out the background to the project, the purpose of the project and the research method. The remainder of the report is set out as follows:

Chapter 2 *Responses by Sector* presents a profile of the respondents by sector, and as a proportion of the recipients of the consultation document in each sector.

Chapter 3 *Scope of Proposed Regulation* reports responses on the scope of any controls on skin and body piercing, including any forms of piercing which should be treated less or more stringently than others, and special protections for minors.

Chapter 4 *Support for Options* reports the level of support for four options for regulation of skin and body piercing set out in the consultation document by interest group and sector, and the factors underlying those choices.

Chapter 5 *An Accredited Qualification?* describes responses to a question on whether operators should be required to obtain an appropriate qualification before being allowed to practise and, if so, what that qualification should be and by whom it should be accredited.

Chapter 6 *Implementation Costs* reports responses on the additional costs arising from implementation of the options for control of skin and body piercing. Many respondents volunteered views on other aspects of enforcement based on their current experience, and particularly on what agencies should be involved in enforcement. This chapter lists the issues addressed by these contributions.

Chapter 7 *Conclusions* presents conclusions which arise from the findings of qualitative and quantitative analysis of written responses to the consultation.

Annexe 1 presents the consultation document. This document summarises the public health issues which arise from skin and body piercing and which gave rise to the consultation. It also sets out proposed options for addressing these issues, and their implications.

Annexe 2 contains the consultation document distribution list arranged by the categories used in analysis.

CHAPTER TWO RESPONSES BY SECTOR

2.1 This chapter presents a profile of the respondents by sector, and as a proportion of the recipients of the consultation document in each sector. This profile is important to the interpretation of the findings from the consultation. More confidence can be placed in the findings of a consultation which has successfully reached and gained responses from all sectors of its target audience. Policy advice can be given in the light of full information from all sectors.

Broad groupings of respondent sectors by interest

2.2 Three broad groupings of sectors were identified, which represent different interests.

Agencies and individuals consulted primarily for their public protection or public health function including health boards, NHS trusts, local authorities, and other statutory agencies, expert advisory bodies, medical professional standard bodies (apart from those representing piercing practitioners) and voluntary bodies with an advocacy role for vulnerable groups

Piercing practitioner interests including businesses, trade federations and professional bodies in tattooing, skin piercing, body piercing, electrolysis and acupuncture

Legislative and consumer interests – a diverse group including the political parties, consumer and legal bodies, and members of the public with no stated affiliation.

2.3 The identification of these groups is not intended to pre-judge the views of respondents on regulation of skin and body piercing. For example, as a later chapter will show, many piercing practitioners are committed to rigorous regulation.

2.4 The full distribution list arranged by these interest groups, and within those interest groups by sector, is given at Annex 2.

Responses by interest group and sector

2.5 Table 2.1 presents the responses by interest group and sector.

2.6 The right-hand columns shows, for each sector, what proportion of those on the distribution list of the consultation document responded. It allows comparison of the reach of the consultation among different interest groups and sectors. Respondents not on the distribution list are shown in dedicated rows where they constitute a distinct sector, or by notes attached to the number of respondents when they fall within a category already on the distribution list.

Table 2.1 Responses by interest group and sector

Interest group/sector	Invited	Responded	
		Number	Percent of those invited
Public protection interest			
Local government			
Chief executives	32	0	0
Environmental health chief officers	32	21	66
Directors of social work	32	5	16
Representative bodies and associations	5	1	20
Other local government	-	2	-
NHS and public health			
General managers, health boards	15	1	13
Aids co-ordinators	15	0	0
Directors of public health / PH consultants	15	9	60
Other health board	-	1	-
NHS trust chief executives	28	4	14
Other NHS trust	-	9	-
Other public health bodies and experts	10	5	50
Health professional representative bodies	7	6	71
Advocacy bodies	5	0	0
Others not on list	-	7	-
Piercing practitioner interest			
Acupuncture business and professional representative bodies	8	2	25
Acupuncture businesses	93	*7	6
Tattooing, body piercing, beauty therapy, jewellery trade and electrolysis business and professional representative bodies	17	3	18
Tattooing and body piercing businesses	88	†19	20
Beauty therapist	-	1	-
Legislative interests and consumer			
Consumer groups	5	‡2	20
Political parties	6	0	0
Legal bodies	2	§2	50
MSP	-	1	-
Members of the public	-	3	-
TOTAL	415	111	

Notes to table
* includes 2 not on distribution list
† includes 1 not on distribution list
‡ includes 1 not on distribution list
§ includes 1 not on distribution list

Public protection group

2.7 The public protection group includes health boards, NHS trusts and local authorities. Responses were received from 10 of 15 health boards, 12 of 28 NHS trusts and 22 of 32 local authorities.

2.8 Separate copies of the consultation document were sent to the chief executive, the environmental health chief officer and the director or head of social work in each local authority. Of these officers, the environmental health officers were most likely to respond.

2.9 Within health boards, copies were sent to general managers, directors of public health, consultants in public health medicine and AIDS co-ordinators. Of these, directors of public health or consultants in public health medicine were most likely to respond.

2.10 Consultation documents were addressed to the chief executives of NHS trusts. Several responses came from clinicians in relevant fields such as infection control and dermatology.

2.11 These responses represented good coverage of local authorities and health boards, and poorer coverage of NHS trusts.

2.12 Twenty-two representative and expert bodies within or closely associated with health and local authority services were on the distribution list, of which 10 responded.

2.13 Good coverage of medical representative and professional bodies, and of expert bodies such as the Scottish Centre for Infection and Environmental Health (SCIEH) could compensate for the low response from trusts as a channel for clinician opinions.

2.14 There was no response from advocacy bodies. These bodies comprised mainly those representing children's interests. However, 5 responses from directors of social work and one from a director of schools were included in the local authority responses, and these respondents could be expected to consider children's interests.

2.15 Seven responses were received from bodies and individuals in the public protection group who were not on the distribution list for the consultation document. These respondents included professional and expert bodies, and officers of statutory agencies not originally targeted by the distribution list.

Piercing practitioner interest group

2.16 The piercing practitioner interest group includes acupuncture, skin and body piercing and tattoo businesses, and the representative bodies of businesses and practitioners or professionals in acupuncture, tattooing and body piercing, beauty therapy, the jewellery trade and electrolysis. Responses were received from 2 of 8 acupuncture business and professional

representative bodies, 7 acupuncture businesses including 5 of 93 on the distribution list, 3 of 17 tattooing, body piercing, beauty therapy, jewellery trade and electrolysis business and professional representative bodies, and 19 tattooing and body piercing businesses, 18 of which were among the 88 on the distribution list (Annex 2).

2.17 The interests of practitioners in tattooing, skin and body piercing and acupuncture were represented by several responses, including, in the case of acupuncture, 2 professional bodies. As a proportion of those invited their numbers are small, and no claims can be made that they are representative. However they include comprehensive and thoughtful replies which will be helpful to the consideration of regulation of skin and body piercing.

2.18 There were insufficient acupuncturists to draw useful conclusions about the distribution of views on the options for skin and body piercing regulation in this sector.

2.19 Among the representative bodies were one from the field of electrolysis and another from the field of beauty therapy. One former beauty therapist not on the distribution list responded. Beauty salons, hairdressers' and jewellers' businesses were not included on the distribution list. In responses reported in Chapter 3, tattooists were critical of piercing being conducted in these premises, and the absence of a balancing view from this sector may be a cause for concern.

Legislative interests and consumer groups

2.20 Responses were received from one of 5 consumer groups on the distribution list, one further consumer group, none of 6 political parties, one of 2 legal bodies on the distribution list and one further legal body.

2.21 Responses were received from one member of the Scottish Parliament and 3 members of the public.

Summary

2.22 This chapter described the respondents to the consultation. Points to note are:

- good coverage of local authorities and health boards was achieved
- coverage of NHS trusts was poorer, but good coverage of medical expert and representative bodies may provide an alternative channel for clinicians' views
- no responses were received from advocacy bodies representing children's interests, but some local authority responses will consider these concerns
- tattooists and acupuncturists were represented by several responses, although they constitute a small proportion of those on the distribution list, and in the case of acupuncturists, too few for analysis
- responses were received from beauty therapy representative organisations, but not from piercers currently practising in that sector, nor from jewellers
- no political parties responded, but responses were received from legal bodies and consumer groups

CHAPTER THREE SCOPE OF PROPOSED REGULATIONS

3.1 This chapter reports respondents' views on the scope of any new controls on skin and body piercing. The purposes of the consultation were to assess the need for further controls on skin and body piercing and to explore the form such controls might take.

3.2 The document defined skin and body piercing as follows

> *"…'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." (Consultation Document Para 1.4)*

The document therefore made a distinction between skin piercing and body piercing.

3.3 Respondents contributed their own views on the scope of any controls, reflecting their concerns about related activities which were outside this definition but also in need of control, and about risks not identified within the document. These views are reported in this chapter.

3.4 Respondents were asked to suggest whether any practices could be subject to less stringent control, and whether any practices should be banned altogether. Their responses to these questions are also reported in this chapter.

3.5 The consultation document raised anomalies in the law covering skin and body piercing of minors. This was clearly an issue of concern to many respondents, who volunteered opinions which are reported in this chapter.

Definitions

3.6 Two public health professionals proposed definitions which could be adopted for the purposes of control:

> *"'Skin penetrating procedures' … embraces both skin piercing and body piercing to include all those practices detailed in Section 1.4 … This single term … would also be appropriate to cover acupuncture and electrolysis which people would not normally have considered under the categories of skin piercing or body piercing." (Dr Colin Ramsay, Consultant Epidemiologist, Scottish Centre for Infection and Environmental Health)*

> *"Perhaps a more generic definition of piercing would be better e.g. 'procedures involving routine or potential breach of the skin/mucous*

membranes for therapeutic or cosmetic purposes'." (Consultant in public health medicine)

3.7 While both of these definitions are more cumbersome than 'skin and body piercing' they have the advantage of embracing a wider range of related activities within a term free of cultural associations. This report will continue to use 'skin and body piercing', but the term and its definition could be addressed again when controls are considered.

3.8 Respondents did not use the separate terms 'skin piercing' and 'body piercing' in their replies when distinguishing between levels of risk or control for different activities.

Inclusion of other activities

3.9 Some respondents wished to extend the scope of activities subject to any proposed control into two other areas. Firstly, some wished to add emerging body modification and body adornment practices such as branding, scarification and jewellery implanting. Secondly, some saw an opportunity to regulate activities within the beauty trade such as pedicure, nail care and tanning.

"There are forms of piercings that should be considered as requiring particular attention – practices such as branding, scarification and implanting, for example." (Environmental health officer)

" … I would suggest the opportunity be taken to ensure that premises offering pedicure be licensed and to require the instruments to be properly sterilised between customers. Inspections should be undertaken to ensure the premises comply with such legislation. … If the USA is a guide, we are likely to see increasing numbers of nail bars in this country. It is well recognised that there is a significant health hazard related to these nail bars where the instruments are placed in sterilising 'solutions' which in many cases are nothing more than bacterial cultures. There is a real risk of HIV transmission in these circumstances…" (Dermatologist)

"Whilst this consultative document concentrates on skin and body piercing there is a view expressed that there are other ranges of treatment allied to skin and body piercing on offer at health therapy outlets and increasingly at leisure centres and private health clubs. These range from tanning to massaging and complementary therapies. In addition new developments such as the use of potentially dangerous lasers as an alternative to electrolysis are appearing in some places. Any form of new legislation, particularly licensing, should be designed with a broad view of the potential to do harm in premises where these treatments are on offer rather than simply focus on skin and body piercing activities." (Environmental health officer)

3.10 These additions reflected both a specific concern about these activities, and a more general concern that controls should not be overtaken by developments in practices where similar health risks existed.

> *"We got caught out with the GLC Powers Bill 1981 because we referred to ear piercing only – thus excluding other forms of body piercing … I have had recent correspondence about a new form of 'art' that involves blood shedding and members of the audience putting their fingers into bleeding wounds of the 'artiste'. You may need to cover this and all other such types of exposure to another person's blood." (Professor Norman Noah, Public Health Laboratory Service, Communicable Disease Surveillance Centre and London School of Hygiene and Tropical Medicine)*

Risks from skin and body piercing

3.11 Many respondents supported their support for greater control of skin and body piercing with a perception that these activities were increasingly common, and that this growth was accompanied by a decline in standards.

> *" … ever-expanding body piercing industry …" (Infectious diseases consultant, NHS hospital trust)*

> *" … too many people body piercing and tattooing with no or very little experience and causing infections due to bad practices or advice." (Tattoo business)*

> *"The increase in the popularity of skin and body piercing can attract many persons without any proper training or previous suitable experience, to consider the activity as a very attractive business venture." (Environmental health officer)*

3.12 The consultation document identified a number of risks arising from skin and body piercing which justified the consideration of strengthening existing controls.

> *" … 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. . . Another issue which arises from time to time is the administration of local anaesthetics in the context of skin and body piercing." (Consultation Document paras 4.2 and 4.3)

3.13 Respondents raised some additional risks including variant CJD (development officer, health board) and "haemorrhage, nerve damage, deformity and loss of function" (consultant in public health medicine).

" … as a dermatologist … I have seen implantation cysts and keloids following piercing of the earlobe, and sensitisation to nickel is a common problem. We also not infrequently see reactions to certain dyes, particularly red, used in tattooing." (Dermatologist)

"I have seen a number of cases recently who presented with various ailments related to body piercing, the worse being a case of septicaemia following a neglected infection from a pierced umbilicus. In the last fourteen years of general practice, I have also seen a lot of emotional distress from patients who at later age wish body tattoos removed." (General practitioner and medical acupuncturist)

3.14 Some also referred to the lack of research evidence about the extent of harm related to skin and body piercing, and hoped that some surveillance or reporting mechanism could be incorporated into the setting up or implementing of firmer controls.

Skin and body piercing practices needing special provisions

3.15 Respondents were asked:

- whether there were any forms of piercing which should be subject to less stringent controls than other kinds of piercing
- whether there was any need to prohibit by law any particular forms of skin or body piercing

Less stringent controls

3.16 Two thirds of those who responded to this question (44 of 68) believed that nothing should be singled out for less stringent control, a majority from both the public protection and piercing practitioner interest groups (Table 3.1).

"All piercing even done under the most stringent hygienic practices can catch infection due to bad aftercare … All piercings should be treated by the same laws and rules including ears." (Tattoo business)

"All forms of piercing should be subject to the same controls. The risk is related to the practices employed by individual piercers, the piercing of the skin and the area of the body involved." (Public Health Infection Control Nurses Group in Scotland)

"The Board strongly recommended that all body piercing should be performed under stringent controls." (Royal College of Midwives UK Board for Scotland)

Table 3.1 Support for less stringent control for some forms of piercing by interest group

Interest group	All		Public protection		Piercing practice		Legislative and consumer	
Option	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Nothing subject to less stringent control	44	65	25	64	15	60	4	100
Something subject to less stringent control	24	35	14	36	10	40	0	0
TOTAL	68	100	39	100	25	100	4	100

Notes to table
Analysis excludes 43 non-respondents to this question
Percentage columns may not total 100 due to rounding

Prohibited forms of piercing

3.17 Over half of those who responded to this question (35 of 67) believed that nothing should be singled out for prohibition, in both the public protection and piercing practice interest groups (Table 3.2). Reasons for this response included both the practicalities of enforcement and principles of civil liberty.

"All forms of skin piercing should be allowed as long as it is being performed by a competent practitioner and on a client who is a consenting adult." (Tattoo business)

"… this is surely up to the individual." (Joint response from 3 tattoo businesses)

"It would probably be inadvisable to prohibit by law any particular form of skin or body piercing as this might drive the practice 'underground'. Anyone still determined to obtain such a piercing would then go to an untrained or unqualified person, possibly operating in poor conditions." (Environmental health officer)

"We believe that prohibiting specific forms of piercing would be counter productive and may result in them being carried out illegally, with the potential of subjecting the client to unsafe practice. Any such law may be

difficult to enforce therefore the emphasis should concentrate around on safe practice." (Public Health Infection Control Nurses Group in Scotland)

Table 3.2 Support for prohibition of some forms of piercing by interest group

Interest group	All		Public protection		Piercing practice		Legislative and consumer	
Option	**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
Nothing prohibited	35	52	24	57	9	43	2	50
Something prohibited	8	12	2	5	4	19	2	50
Graded licensing	21	31	13	31	8	38	0	0
Risk assessment first	3	4	3	7	0	0	0	0
TOTAL	67	100	42	100	21	100	4	100

Notes to table
Analysis excludes 44 non-respondents to this question
Percentage columns may not total 100 due to rounding

3.18 Some respondents added a third category to the two 'special provision' categories offered in the consultation document (less stringent control and prohibition). They suggested that there were forms of skin or body piercing which should be subject to *more* stringent controls. This could be implemented through a graded licensing scheme which allowed some practitioners to perform higher-risk forms of piercing subject to more stringent control. Such a scheme could also incorporate minimal control of the least dangerous piercings. Around a third of both piercing practitioner and public protection interest groups supported this option, which is compatible with the view that nothing should be prohibited (Table 3.2).

"The range of services offered at any given premises may be restricted to those which the licensing authority considered appropriate having regard to the nature of the premises the facilities available and the skill of the operator." (Environmental health officer)

3.19 A further small group thought that risk assessment was needed before prohibition was contemplated.

"Medical opinion should be the overriding factor in this question. Consideration could be given to prohibiting any procedure which could develop into a problem requiring medical intervention to protect the physical health of the customer." (Environmental health officer)

"Prohibition of specific treatments will be extremely difficult unless evidence exists as to the extent of the risk posed by the particular treatment. This may be open to challenge through the courts and indeed may be affected by the introduction of the Human Rights Act. Individual treatments must be fully investigated and studies to highlight the risks associated. Only once this evidence is clearly put forward can a consensus be reached by all involved parties." (Environmental health officer)

Responses on special provisions by forms of piercing, practitioner group and premises

Earlobes

3.20 The most likely form of piercing to be identified for more lax regulation was piercing of earlobes with purpose built guns using pre-sterilised jewellery (identified by 17 respondents). Some respondents suggested that premises which did only this type of piercing and did not use the guns for body parts for which they were not designed could be controlled less stringently. These premises were likely to pierce as a secondary activity – for example hairdressers, beauty salons and jewellers. A manufacturer of this equipment noted that a similar gun designed for the flat cartilage of the upper ear would soon be available.

3.21 However, some piercing practitioners were concerned about precisely this type of piercing, and believed that use of a piercing gun, notwithstanding the provision of pre-sterilised jewellery, held more risks of cross infection than a single-use piercing needle, particularly in the type of premises where piercing was a secondary activity. Four argued that piercing in these premises should be prohibited.

> *"There is no stud gun that can be autoclaved for sterility, even those with replaceable cartridges … The gun gets coated in a fine spray of body fluid (blood etc) by the very method of forcing the stud through." (Body jewellery supplier)*

> *"The issue is further complicated by the growing number of establishments who have introduced piercing as an additional service, ie beauty salons, hairdressers etc. These types of business are generally unsuitable for the practice of tattooing and piercing due to the presence of certain solutions and materials in the air, and commonly in use in these establishments as a matter course (bleach, perming lotion, loose hair and other equipment essential to the salons' normal business practice, but detrimental to anyone with a fresh tattoo or piercing unfortunate enough to come in contact with)." (Tattoo business)*

Genitals

3.22 Piercing of the male or female genitals was the form of piercing most likely to be identified as justifying prohibition – three respondents (a tattooist, an MSP and a member of the public) responded that it should be prohibited, and 6 further respondents including both public protection and piercing interest groups expressed serious concerns.

Other body parts

3.23 No other forms of piercing identified with particular body parts were singled out for less stringent treatment.

3.24 Other body parts which were considered for either prohibition or serious concern were the nipple and the tongue, in each case because of both unsatisfactory conditions for healing and the use of anaesthetics. These body parts were identified by no more than 3 respondents. The Institute of Electrolysis reported that electrolysis of hairs in the cavities of the ear and nose is not performed by reputable practitioners.

Premises

3.25 The concerns of some piercing practitioners about premises where ear piercing is conducted as a secondary activity are noted in paragraph 3.21 above.

3.26 Both piercers and public protection interest respondents were concerned about piercing conducted in mobile and domestic premises. Three respondents including 2 tattooists thought that piercing should be prohibited in these premises, and four respondents in the public protection group expressed serious concern.

> *" … piercers should be registered at a business premises only." (Tattoo business)*

> *"Piercers working from home or peripatetic operators may not be inspected if it is not known that they are operating. Workplace regulations are concerned with the suitability of premises as a place of work rather than the provision of a safe and hygienic service …" (Environmental health officer)*

Practitioners

3.27 Two self-regulating piercing professional groups, acupuncturists and electrolysists, argued that self-regulation could be incorporated into the regulatory mechanism, and provided that these groups could demonstrate robust regulatory mechanisms, control by enforcement agencies could be less stringent.

Piercing of minors

3.28 Forty-four respondents volunteered views on the piercing of minors, all but one of whom thought that more controls were needed, although the details of the controls which were offered varied.

"Primary legislation should include all issues relative to skin piercing of young persons who have not attained the age of 18 years as current legislation does not fully address the extent to which skin piercing of children is indulged either with or without the consent of parents." (Environmental health officer)

"This is an important and difficult issue and should follow the practice of the health service which is that between the ages of 12-16 children can provide consent provided the operator believes that the child understands the implications of the procedure. It is also the case that between these ages the child also has to provide consent in addition to the views of any guardian. Children have undergone ear piercing etc without the parents' knowledge and, as with alcohol or the purchase of tobacco, the College would advocate that practitioner should be seeking proof of age." (Royal College of Physicians Edinburgh)

"Prohibit piercing clients below the age of 18 with some exceptions including those with a parent or legal guardian's consent." (Environmental health officer)

"Piercing should be like tattooing and only for over 18s and they should have to have ID e.g. passport". (Tattoo business)

"I do not see any need for legislation regarding 16+ ever being the legal age of consent in these matters. I feel sure that all my colleagues in this industry would agree that in cases of persons under 16 parental consent is a must." (Tattoo business)

3.29 Three piercing practitioners reported that they would not pierce or tattoo minors, but feared that these children would have no difficulty in finding willing practitioners elsewhere.

3.30 Several respondents in both sectors were opposed to the piercing of infants, although this was one of several areas where respondents noted the need for cultural sensitivity.

3.31 A director of schools reported that piercing interfered with children's physical education:

"Professional advice from health and safety officers recommends that children who have piercing cannot be allowed to participate in physical education. Enforcing removal of such adornments can present real difficulties for schools. The children therefore miss out on a vitally important aspect of learning. Given the Scottish Executive's position on healthy lifestyles and health problems with the young, it is unacceptable that schools and authorities have to prevent the very children who would most benefit from participation in sport from such participation." (Head of schools, local authority)

Summary

3.32 This chapter summarises responses on some aspects of the scope of any new controls of skin and body piercing.

- a more comprehensive term than 'skin and body piercing' may be helpful in drafting regulations to cover practices which would not be included in this term but carry related risks
- a majority of all respondents answering the relevant questions wanted no forms of piercing to be treated less stringently, and no forms to be prohibited
- ear piercing using a purpose-built gun and pre-sterilised jewellery was considered by some as appropriate for less stringent regulation, but piercers in particular had concerns about precisely this form of piercing
- genital piercing, and piercing of the nipples and tongue were most likely to cause concern, although the response to the question about prohibiting particular forms of piercing was low
- 43 of the 111 respondents to the consultation, all but one of those who expressed a view on this matter, were unhappy about present restrictions on piercing of minors, and most would like to see further restriction and closer enforcement

CHAPTER FOUR SUPPORT FOR OPTIONS

4.1 This chapter reports the level of support for four options for regulation of skin and body piercing set out in the consultation document by interest group and sector, and the reasons underlying those choices.

The options

4.2 The options set out in the consultation document were:

A *no change to existing statutory arrangements*

B *adoption of best practice guidelines.* 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*. Scottish Ministers could use the powers available to them under section 44 of the Civic Government (Scotland) Act 1982 to create a licensing regime.

D *new primary legislation.* 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

4.3 Under local licensing (Option C) there are two approaches:

C(i) *discretionary powers* for local councils to introduce licensing schemes appropriate to local circumstances, for example allowing rural authorities not to license skin and body piercing where it was not deemed necessary.

C(ii) *mandatory licensing across Scotland*

Fuller details of the options, including the legislative framework, are given in the consultation document (Annex 1).

4.4 Many respondents responded directly to questions about options. Others did not answer directly, and their support for options were inferred from free text. Ambiguities exist in these answers and the following assumptions were made:

- respondents who supported Option C but did not argue for local discretion were assumed to support Option C(ii)

- respondents who used terms such as "legislation" and "licensing" indiscriminately and were clearly in favour of legislative control but did not make a specific case for new primary legislation were assumed to support licensing introduced under existing powers and mandatory across Scotland (Option C(ii))

Support for the options – all respondents

4.5 The overall level of support for each option is given in Table 4.1 and summarised below:

Licensing: Fifty-three percent of the respondents supported licensing, of whom most (45% of all respondents) made no specific case for local licensing and explicitly or implicitly supported mandatory licensing across Scotland (Option C(ii)).

Primary legislation: A substantial minority, 27% of all respondents, favoured primary legislation (Option D).

Guidelines: Thirteen per cent of respondents favoured the adoption of guidelines, with compliance checked by local government inspection (Option B).

No change: Nine respondents supported none of the options for change to existing arrangements (Option A). Of these, four were acupuncturists who resisted any change to control of acupuncture and did not comment on control of other forms of skin or body piercing. Two tattooists and a local authority respondent did not express any view on the mechanism used for regulation of skin and body piercing but did however favour regulation: their responses focused on the aspects of skin and body piercing practice which were in need of control. A national public health body argued for the need for surveillance before further control was considered, and a member of the public was satisfied with existing arrangements.

Areas of concern

4.6 Over 90% of respondents therefore favoured some kind of regulation, including some of those who preferred the 'no change' option. Many respondents outlined the content of proposed regulation, as well as the mechanism. This material provides an indication of the concerns which led respondents to support further regulation and in some cases a useful resource. The content falls broadly into matters relating to operators, to practices and to premises.

Operators

4.7 Characteristics of operators which concerned respondents included

- Criminal records and the need for police checks
- Poor trading practice, 'cowboy' business practices
- Use of alcohol and drugs
- Immunisation status, particularly Hepatitis B
- Insurance
- Membership of professional bodies

The training and qualifications of operators also caused respondents a great deal of concern, and responses on these matters are reported in Chapter 5.

Practices

4.8 In addition to the forms of piercing which were reported on in Chapter 3, the following practices concerned respondents:

- Provision of information before piercing and after-care advice
- Procedures for consent for adults and children
- Infection control routines including sterilisation and waste disposal
- Use of anaesthetic
- Use and storage of toxic substances
- Record-keeping

Premises

4.9 In addition to the concerns about some kinds of premises which were reported on in Chapter 3, the following aspects of premises concerned respondents:

- Ownership of sterilising equipment
- Appropriate surfaces
- Privacy for customers
- Risks from other activities carried on in the same premises

Support for the options by interest group and sector

Licensing

4.10 A majority in every interest group (public protection, piercing practitioner interests and legislative and consumer interests) favoured some kind of licensing, and most in every group favoured mandatory licensing across Scotland (Table 4.1).

Table 4.1 Support for options for regulation of skin and body piercing by interest group

Interest group		All		Public protection		Piercing practice		Legislative and consumer	
Option		**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
A	No change	9	8	2	3	6	19	1	11
B	Guidelines	13	12	6	8	7	22	0	0
C(I)	Licensing (local discretion)	9	8	8	11	1	3	0	0
C(ii)	Licensing (mandatory across Scotland)	50	45	32	45	15	47	3	44
D	Primary legislation	30	27	23	32	3	9	4	44
TOTAL		111	100	71	100	32	100	8	100

Notes to table
Percentage columns may not total 100 due to rounding

Table 4.2 Public protection group: support for options for regulation of skin and body piercing by sector

Sector		All public protection		Local government		NHS, public health, advisory groups, experts		Medical professional bodies (excludes piercing professional bodies)	
Option		**No.**	**%**	**No.**	**%**	**No.**	**%**	**No.**	**%**
A	No change	2	3	1	3	1	3	0	0
B	Guidelines	6	8	3	10	3	8	0	0
C(I)	Licensing (local discretion)	8	11	5	17	3	8	0	0
C(ii)	Licensing (mandatory across Scotland)	32	45	11	38	17	47	4	67
D	Primary legislation	23	32	9	31	12	33	2	33
TOTAL		71	100	29	100	36	100	6	100

Notes to table
Percentage columns may not total 100 due to rounding

Table 4.3 Piercing practitioner interest group: support for options for regulation of skin and body piercing by sector

Interest group		All piercing practice		Acupuncture		Tattooing, body piercing, beauty therapy	
Option		**No.**	**%**	**No.**	**%**	**No.**	**%**
A	No change	6	19	4	44	2	9
B	Guidelines	7	22	1	11	6	26
C(I)	Licensing (local discretion)	1	3	0	0	1	4
C(ii)	Licensing (mandatory across Scotland)	15	47	4	44	11	48
D	Primary legislation	3	9	0	0	3	13
TOTAL		32	100	9	100	23	100

Notes to table
Percentage columns may not total 100 due to rounding

Public protection group

4.11 Within the public protection group including statutory and professional bodies, the level of support for mandatory licensing was between a third and a half in every sector (Table 4.2).

> *"Create a licensing regime (1982 section 44) which is uniform throughout Scotland." (Director of public health)*

> *"I feel that licensing and inspection should be standardised across Scotland and that the inspection should be rigorous, including focusing on premises being 'fit for purpose' as well as the presence of strict infection control procedures." (Medical director, primary care NHS trust)*

4.12 The strongest reason underlying support for mandatory licensing across Scotland among the public protection group was a concern for uniformity of regulation, which was mentioned by 16 respondents in this group.

> *"A licensing scheme similar to Civic Government (Scotland) Act or Licensing (Scotland) Act provisions would have some merit because of the requirement for a license conditional upon compliance with appropriate standards and the assessment of the operator as being a fit and proper person. Local authorities are already familiar with the procedures. Undertaking new regulatory powers may therefore be relatively simple to assimilate. Any such licensing scheme should benefit from compliance with nationally agreed standards which should be mandatory to ensure consistency across Scotland." (Environmental health officer)*

> *"To achieve a consistent approach, licensing across Scotland would be the best option. Model licensing conditions could be produced and these could be very specific in relation to the practices and procedures to be adopted. It may be of interest to note that many responsible skin piercing operators have indicated that they would prefer a more prescriptive approach. If any new licensing scheme is introduced, it should be mandatory rather than discretionary, in order to ensure a uniform approach is adopted across Scotland." (Environmental health officer)*

> *"I tend towards the view that the licensing of premises should be mandatory rather than optional for public health/safety reasons and that such licensing and the controls associated with it could be implemented on a national, rather than local, basis to ensure consistent standards." (Environmental health officer)*

"I would support a mandatory local authority licensing system with centrally issued standards … The current arrangements are rather hit and miss and do not provide the public with adequate safeguards against infection." (Consultant in public health medicine)

4.13 They were also likely to mention the effectiveness of this approach and the scope for enforcement through sanctions, mentioned by 11 respondents in this group

"I favour licensing - effective and consistent." (Director of public health)

"The Scottish Ministers should use the powers available to them to create a licensing regime, which is mandatory and would give a consistent approach to the health issues arising from piercing across Scotland. The Scottish Ministers should make regulations that specify the conditions that are attached to licenses and the sanctions that could be applied, including the withdrawal of the license, for non-compliance." (Director of social work)

"If premises offering body piercing and other forms of body art were required to be licensed and conditions were able to be applied before the license was granted, the majority of the problems currently experienced with body piercers could be addressed by providing a means of ensuring that the operator, premises and treatment rooms are suitable for the purpose prior to licensing … The range of services offered at any given premises may be restricted to those which the licensing authority considered appropriate having regard to the nature of the premises the facilities available and the skill of the operator. The duration of a license can be fixed. Provision could be made for licenses to be revoked in the event of evidence being found that license conditions had been breached…" (Environmental health officer)

4.14 The other factor which appeared influential with this group's choice of this option was the ease of implementation or lower cost, mentioned by 7 in the public protection group.

"Licensing would be a practical option as there is already a framework in use by local authorities which is the Civic Government (Scotland) Act 1982" (Environmental health officer)

4.15 Those who mentioned the ease of implementation and cost included 3 respondents who favoured primary legislation, but would be prepared to accept licensing which was mandatory across Scotland, if barriers of cost and problems of implementation made primary legislation impractical. A tattooist who favoured primary legislation but feared that the cost of legislation would be passed down to the operator also shared this view.

"If the financial burden of this option [legislation] were too great then licensing provisions would also be practical provided they were mandatory and not discretionary." (Body piercing business)

"We are aware that primary legislation [preferred option] … can take some time to enact and would be willing, as an interim measure, to accept licensing under the 1982 Act. Any such licensing would, in our opinion, have to be mandatory across the whole of Scotland to maintain a consistent standard." (Public Health Infection Control Nurses Group in Scotland)

"Mindful that primary legislation can take some time to enact we would also support the introduction of, preferably only as an interim measure, new licensing regulations which would require the registration of premises and operators and set conditions for those licenses." (Consultant in public health medicine)

4.16 Clear cases for local discretion (Option C(i)) were made by some local government respondents and by 2 United Kingdom-wide or English bodies familiar with the Greater London system.

"A mandatory scheme would avoid the need for councils to pass a resolution, but we would not wish to impose licensing on councils that see no need for it in their area. It would be appropriate for the Executive to issue guidance to councils on what level or type of activity should prompt them to adopt licensing. Smaller councils which do not adopt a scheme could still apply the same conditions regarding hygienic best practice and operator training on a non-statutory basis and, if operators did not co-operate, licensing could then be adopted." (Local council)

4.17 Some respondents in this sector had knowledge of the London system which influenced their view of discretionary licensing.

"Both positive and negative points have arisen from the experiences of the London boroughs. Whatever form of regulation is adopted in Scotland, the aim should be to include the positive aspects and address the negative. Positive points include: a licensing scheme made it an offence for piercer to operate without a licence; premises must meet certain criteria before a licence is granted; inspection becomes more important to an operator; licensing offers the ability to impose conditions including age restrictions on persons being pierced; licensing could be used to regulate some other forms of body modification or art. The negative points that should be addressed include: the London borough licensing system was premises based – we feel consideration should be given to licensing the individuals who carry out body piercing; although the majority of London boroughs chose to licence, some did not – we feel that to be successful any licensing scheme should be mandatory otherwise operators may migrate to non-regulated areas." (Environmental health officer)

4.18 Some factors were each mentioned by only one or two respondents in the public protection group as influencing their support for licensing, including:

- the possibility of keeping track of practitioners
- deterring irresponsible operators from practice
- fairness to practitioners, or protection of reputable practitioners
- reassuring the public
- sending out a clear message to public and practitioners.

Piercing practitioner group

4.19 This group, which was dominated by tattooists and their representative bodies, favoured mandatory licensing across Scotland with half supporting this option. It was difficult to compare the response to options on the regulation of skin and body piercing among sectors within the piercing practitioner group because of the low level of response from acupuncturists (Table 4.3).

> *[Re mandatory licensing across Scotland] "This would ensure uniformity of responsible working practices." (Tattoo business)*
>
> *"Licensing legislation and control over operators … [which] … should be mandatory across Scotland" (Body piercing business)*
>
> *"Fundamentally I am opposed to anything that is mandatory as I believe in freedom of choice. I would therefore vote for a more discretionary approach. I do believe, however, that there should be some kind of regulation that involves checking premises and practitioners and that a licence system would be the simplest method, just that should such a system come into being it should be fair and consistent Scotland wide." (Acupuncturist)*

4.20 Uniformity of application and the availability of sanctions to strengthen enforcement were the factors most likely to be mentioned as influencing piercing practitioners' support for mandatory sanctions.

> *"This would insure uniformity of responsible working practices. … the introduction of a standardised code of practice, enforceable by local environmental health officers would help to quickly identify sources of bad practice." (Tattoo business)*
>
> *"The methods employed by Westminster council would form a basis for good practice. This has to be mandatory with powers to close piercing studios down if they don't comply – it would be a futile exercise otherwise. Keep it simple and clear and uniform by way of one mandatory standard across Scotland. I can see no reason why a local authority should decide there is no piercing in their area – this would drive piercing underground with shady piercers operating out of their homes ensuring low standards. Rather, it*

would be better to encourage high quality piercers towards best practice." (Body jewellery supplier)

"Licensing should be mandatory across Scotland. Some environmental health officers are more aware of legislation than others and are more aware of how good business practices should be. We think there should be a common ground for this." (Joint response from 3 tattoo businesses)

4.21 Four mentioned that this option was fair to practitioners, or would protect reputable practitioners.

4.22 Again, some piercing practitioners had direct experience of the London system which influenced their view of discretionary licensing.

" … I did not mind paying the once off (reasonable) fee for my licence. However some of my colleagues were asked to make quite unnecessary major alterations to their premises (e.g. tiling on floor and walls and surgical standard lighting), their licence fees were also extortionate or substantial and annual. The different boroughs in London seem to have an enormous variety in their requirements and pricing policies, I would therefore not wish such a system to be adopted in Scotland." (Acupuncturist)

"The system of imposing licensing has been a disaster in the London authorities for electrolysists. The annual fees are extortionate with each authority having discrepancies and anomalies. The criteria particularly in the Westminster area is very rigid. This has caused resentment and confusion, from one area of London to another and especially compared regionally around the country amongst our own members." (Institute of Electrolysis)

4.23 Some factors were each mentioned by only one or two respondents in the piercing practitioner group as influencing their support for licensing including:

- the possibility of keeping track of practitioners
- deterring irresponsible operators from practice
- ease of implementation and cost
- reassuring the public

Primary legislation

Public protection group

4.24 Support for new primary legislation was strongest in the public protection and legislative and consumer groups where 32% supported this option (Table 4.1). Within the public protection group, support was uniform across sectors (Table 4.2).

"I would have a personal preference for primary legislation in that this would appear on my limited understanding of legal matters to allow the greatest scope for incorporating the full range of standards in terms of both practice and training requirements, which would be desirable to regulate skin penetrating procedures, bearing in mind the nature of the risk inherent in permitting these procedures. The level of risk, particularly for blood-borne viruses, would seem to me to put this beyond the category of activity, which could be adequately regulated by other methods." (Dr Colin Ramsay, Consultant Epidemiologist, Scottish Centre for Infection and Environmental Health)

4.25 Uniformity was stressed as an advantage of this option by 13 respondents.

"The legislation and regulations could specify the conditions to be attached to licences and the sanctions that could be applied, including the withdrawal of the licence, for non-compliance. This would be the preferred course of action, since requirements would apply consistently across the country and local authorities would have specific legislation to work with." (Environmental health officer)

"The Board favoured new primary legislation … The legislation should apply consistently across Scotland, while giving local authorities and/or health boards the power at a local level to withhold or withdraw a licence from an operator who did not comply with the statutory regulations." (Royal College of Midwives UK Board for Scotland)

4.26 Effectiveness and the availability of sanctions were the factors most likely to be mentioned as influencing a preference for primary legislation, being mentioned by 14 respondents.

"… D would be the preferred option both because it would ensure licensing and make conditions relating to training provisions and aseptic techniques mandatory to obtain the license. In addition it would be possible to introduce several further safeguards. I have in particular mind tattooing. In the course of my professional life I have never met any patient who has been tattooed who has not eventually come to regret the procedure…" (Dermatologist)

4.27 The ability to keep track of practitioners was most likely to be mentioned in connection with this option – it was mentioned by 9 in the public protection group.

"The introduction of primary legislation with the inclusion of local authority licensing is the favoured option. The license should pertain to both the operator and the premises/vehicle that will encompass existing operators working at/from home or in a vehicle (at fairs, etc)." (Environmental health officer)

4.28 The comprehensive scope of primary legislation, and its ability to address all types of piercing was mentioned as a factor in connection only with this option, and only by public protection group respondents, 5 of whom mentioned it.

> *"… both operators and premises can be licensed, and … training, age issues, consent, laws about female genital mutilation, and use of local anaesthetic, can be covered." (Professor Norman Noah, Public Health Laboratory Service, Communicable Disease Surveillance Centre and London School of Hygiene and Tropical Medicine)*

> *"…option D seems to be the best … laws need to be comprehensive enough to keep up to date with fashion changes, which adapt rapidly." (Consultant in public health medicine)*

> *"Future legislation should include a wider definition which incorporates all forms of skin penetration and should seek to regulate these activities on a similar basis with the equitable standards with clinical procedures which would be done within the NHS. This will require appropriate new regulation and standards. It is essential that with the significant investment required to meet regulations coming into force regarding decontamination and sterilisation of surgical instruments within the NHS and statutory sectors, that any practices which are known to exist in other setting be subject to the same scrutiny and legislative requirements." (Director of public health)*

4.29 Some factors were each mentioned by only one or two respondents in the public protection group as influencing their support for primary legislation including:

- deterring irresponsible operators from practice
- ease of implementation and cost
- fairness to practitioners, or protection of reputable practitioners
- acceptability to practitioners
- reassuring the public
- sending out a clear message to public and practitioners

Piercing practitioner group

4.30 Support for primary legislation was lower among piercing practitioners. No acupuncturists and 3 of 23 in the 'tattooing and other piercing practitioner' sector supported this option. Several tattooists showed in their responses a wish to balance a concern for hygiene and safety with the freedom to practice what they considered to be the skill and artistry of individual practitioners.

> *"There has to be a standard law throughout Britain as a whole so there is a high standard of hygiene and cleanliness with more emphasis on safety for*

customers and staff in shop … [but] … I do not agree with D as who is to say can train people and who is going to decide [who] is good [and who] is bad. I have been tattooing for 13 years and would not take kindly for someone to say no to my tattooing or piercing." (Tattoo business)

4.31 The few piercing practitioners who supported this option were most likely to mention the uniformity of enforcement and the availability of sanctions for enforcement.

"What we are asking, is for the enforcement of existing laws, and for some new ones. A new standard to be set and most importantly, for the level of standardisation, to be enforced and met by everyone in the United Kingdom who wishes to open a professional body piercing studio, not different levels for each and every environmental health department in the country." (Tattoo business)

4.32 One practitioner respondent mentioned that primary legislation could reassure the public.

Guidelines

Piercing practitioner group

4.33 Support for guidelines checked through local government inspections and unsupported by licensing was strongest in the piercing practitioner group where a third supported this option (Table 4.1). Low numbers made it difficult to distinguish between the views of acupuncturists and those of other piercing practitioners (Table 4.3).

"We believe in the adoption of best practice, provided it covers everyone and that consultation with practitioners is taken." (Joint response from 3 tattoo businesses)

4.34 The grounds for supporting this option given by practitioners were benefits to the practitioner rather than factors relating to effective control – its fairness and acceptability to practitioners, mentioned by 6 respondents in this group.

"Options A and B are without doubt the most realistic of the proposals. … As for licensing, I would fight tooth and nail against any proposals to support this. The bottom line being that licensing is nothing but another money raising scheme by the local government. Looking at it realistically, operators such as myself who run bona fide, up front, hygienic studios would be paying out money for what? We would receive no assistance, no more informed input than we already get, and would be seriously out of pocket for the privilege." (Tattoo business)

4.35 Some factors were each mentioned by only one respondent in the piercing practitioner group as influencing their support for guidelines, including:

- uniformity of enforcement
- ease of implementation
- cost to practitioners

Public protection group

4.36 Within the public protection group, support for guidelines alone was low in every sector (Table 4.2).

> *"Licensing is the favoured option - self regulation does not get rid of the cowboys." (Director of public health)*

> *"This authority believes the adoption of best practice guidelines is likely to be ineffective unless there is a common source of agreed best practice guidance. However, even if established, best practice guidance would not have any legal standing. From an enforcement point of view this type of self-regulation by piercers would not offer any benefit over the existing health and safety requirement to carry out risk assessment. Reputable piercers are likely to adopt best practice whereas those using poor premises or practices could continue to operate without control." (Environmental health officer)*

4.37 Some, however, argued that guidelines were a valuable supplement to a licensing or primary legislation mechanism. Six public protection respondents and one tattooist advocated guidelines as a supplement to these options.

> *"We feel that a combination of both B … and C should be followed. Both are important and should not be considered as separate options." (Consultant in public health medicine)*

> *"Guidelines in the form of an Approved Code of Practice are a useful tool for enforcement staff and an excellent training and information source for the industry. They will however, have to be used in combination with the provisions of the Health and Safety at Work etc Act 1974. The option to create a licensing scheme in terms of Section 44 of the Civic Government (Scotland) Act 1982 would provide local authorities with the information as to where skin piercers were operating. It would also enable local authorities to charge to offset the cost of licensing and inspection of these activities." (Environmental health officer)*

> *"The Department of Health would support the introduction of statutory controls over skin piercing businesses in Scotland (including cosmetic body piercing, semi-permanent make up and temporary tattooing businesses), in*

tandem with the adoption of good practice guidelines." (Gerry Robb, Blood-borne Viruses Unit, England Department of Health)

"It would be essential for the licensing system to be supported by detailed guidelines on best practice. Such guidelines would also have benefits in ensuring a much greater level of consistency in the determination of applications by local authorities." (Environmental health officer)

4.38 Several respondents suggested that public information was an essential supplement to control of skin and body piercing, either to inform on the risks or to make the public aware of controls to inform choice of practitioners

"… the Scottish Executive should consider the need for a campaign which effectively publicises and warns of the serious health risks which persons may be exposed to from skin and body piercing. It is felt that the Health Education Board in Scotland could have a vital role in such campaigns which should target young persons in particular." (Environmental health officer)

"Because of the possibility of unregistered people carrying out skin piercing, any system of regulation should be backed up by a public information campaign about the dangers of skin piercing by people who are not registered and do not operate from registered premises. These should be targeted at places where young people, and those most likely to be considering piercing, are to be found." (Scottish Consumer Council)

4.39 Some factors were each mentioned by only one respondent in the public protection group only as influencing their support for guidelines including ease of implementation and cost.

Issues arising from factors influencing choice of options

4.40 Licensing which is mandatory across Scotland (Option C(ii)) was the most favoured option. However, this response was used as a 'default' response if respondents favoured 'licensing' or 'legislation' but did not make a specific case for either local discretion in the introduction of licensing or new primary legislation. The level of support for this option might have been lower if this assumption had not been made. Some of the vaguer respondents might, if pressed further, have preferred Option C(ii) (licensing with local discretion) or Option D (new primary legislation). Some of the quotations in this chapter (for example those under paragraph 4.42 below) provide examples of imprecise language suggesting a lack of discrimination between different regulatory mechanisms which may be a consequence of the relatively low level of interest in regulatory mechanisms, particularly among piercing practitioners.

4.41 Some factors mentioned by many respondents, particularly uniformity of enforcement and effective enforcement, were cited as influencing choice of both new primary legislation

and licensing introduced under existing legislation. If, therefore, there were practical barriers to primary legislation, it is possible that the respondents preferring this option could be persuaded that a licensing option would be adequate provided that they could be convinced that it would provide enforcement uniformly across Scotland that would provide effective control of all piercing procedures which carried a health risk.

4.42 Piercing practitioners were, understandably, less interested in and less clear about practical issues of enforcement than were the public protection respondents whose day to day business includes the regulation of activities which might jeopardise public health. There were, therefore, contradictions in their responses. For example these piercers who opted for control through best practice guidelines clearly envisaged a mechanism with effective sanctions when responding on other issues:

> *"Infection risk would be reduced if there were countrywide registration of all practitioners, who would then be obliged to conform to an official code of hygiene." (Acupuncturist)*

> *"I have noticed a significant rise in badly done tattoos and piercing, therefore some legislation is now essential." (Tattoo business)*

It is possible therefore that some piercers who see a need for further control but opted for guidelines might find licensing acceptable if given a greater understanding of enforcement mechanisms.

4.43 Piercers responding to this consultation were in favour of regulation. They made a distinction between themselves and other less responsible practitioners whose unscrupulous practice lowered barriers to entry and created unfair competition. Some appeared unconvinced that these practitioners could be effectively controlled or deterred from practice.

> *" … firstly most amateur tattooists and piercers would not meet the criteria to qualify so would not bother, and secondly those who could not afford it would just be pushed further underground, and no amount of health officers would be able to do anything about it." (Tattoo business)*

Evidence from other trades where poor practice has been effectively dealt with by regulation could be helpful in winning the support of these more responsible piercers.

Summary

4.44 This chapter described the level of support for four options for the regulation of skin and body piercing in Scotland.

- nearly all respondents favoured a greater level of regulation than present arrangements because of a number of concerns relating to piercing business operators, practices and premises
- just below half of all respondents, and the greatest proportion of every interest group and sector, favoured licensing which was mandatory across Scotland
- a minority of local authorities and others in the public protection group made a case for local discretion in the introduction of licensing
- a third of all respondents favoured new primary legislation. This view was most common among those in the public protection interest group
- a third of piercing practitioners preferred guidelines alone, unsupported by licensing. Support for this option was low in the public protection group
- regardless of preferred option and interest group, the factors most commonly mentioned as underlying choice of option were uniformity of enforcement across Scotland and effectiveness of enforcement
- exploration of factors underlying preferences for options suggests that some respondents could find other options than their stated option acceptable provided that their concerns were met

CHAPTER FIVE AN ACCREDITED QUALIFICATION?

5.1 Respondents were asked whether operators should be required to obtain an appropriate qualification before being allowed to practise and, if so, what that qualification should be and by whom it should be accredited. Responses to these questions are reported in this chapter.

Response

5.2 Just under three quarters of respondents (73 of 110) answered this question. Only 7 responded that no qualification was needed, although few were able to offer specific suggestions about existing qualifications which would be appropriate for the purpose. Several, however, made suggestions about the content of training, or the process for delivering training.

Piercing practitioner group

5.3 Most piercers were in favour of an accredited qualification, or at least acknowledged the need for further training, and many identified appropriate content for a training course.

> *" … we feel that any piercer must have a knowledge and understanding of first aid and what to do in an emergency … Once you have successfully completed the [first aid course], you will be given a first aid certificate. We are asking for it to be compulsory for every piercing studio to have their piercers first aid trained, to keep their certificates up to date and to have the certificates displayed on the studio wall." (Tattoo business)*

> *"Training must be certificated. I am a professional and as such uphold the rules and regulations of my profession set by the governing bodies of which I am a member. As a professional I would like to see more legislation of this type preventing untrained or unprofessional practitioners being allowed to operate in unsafe conditions." (Acupuncturist)*

5.4 Three tattooists did not favour qualification. Some were among a larger group of tattooists who were concerned about the many short tattooing and piercing courses which had led to cynicism about whether any training could genuinely indicate competence. Some were also anxious that enforcement would extend beyond control of health risk to the decorative aspect of their work.

> *"A course cannot teach you how to tattoo as it comes with years of experience and time served working under a tattooist. I think there should be a licence within reason but certified training courses would not work as you do not learn enough in a short time … I myself was taught by a tattooist and body*

piercer over a long period of time and feel a two day course or self taught is not good enough to open a premises or do this from home." (Tattoo business)

"I have been tattooing for 16 years and served an apprenticeship and regard tattooing as a way of life … You shouldn't be able to get a badge/certificate after a four week course and call yourself a professional, tattooing takes years and is a way of life not a job … These so called courses are already available and have only added to the problem of too may half-hearted practitioners." (Tattoo business)

Public protection group

5.5 Most in the public protection group who responded to this question favoured setting up an accredited qualification, and many suggested appropriate content.

"… appropriate training is essential to ensure the success of any form of regulation of this procedure." (Royal College of Surgeons of Edinburgh)

"'Grey areas' in the level of knowledge encountered by the enforcing authorities are where the difficulties lie. If a recognised training course/accreditation was mandatory then it would be easier for the operator to prove competence and the enforcer to establish that at least a minimum recognised standard of training had been achieved." (Environmental health officer)

"An appropriate qualification should be an essential element prior to an operator being permitted to practice. The activity is potentially dangerous to the health and safety of operators and their clients alike and existing standards mooted are variable among operators. The qualification should include all elements of health, welfare and safety specific to the activity together with those introduced as relevant by existing operators." (Environmental health officer)

"This should cover a knowledge of cleaning, disinfection and sterilisation procedures including the use of bench-top sterilisers, universal infection control precautions, safe working practice and a knowledge of the pertinent blood-borne infections." (Consultant in public health medicine)

"We feel that training courses should include: infection hazards and controls; contraindications and persons who would not be pierced; personal hygiene and immunisation; appropriate cleaning, disinfection and sterilisation; premises requirements; correct use and storage of equipment; correct use of sterilising equipment; appropriate piercing techniques including supervised practical experience; first aid; record keeping; the handling of waste; the law and how it applies to body piercers…" (Environmental health officer)

5.6 Some emphasised the need to allow sufficient time for the development of a qualification.

> *"This should be a long term aim of the legislation. At present, however, since no such qualification exists it would create more problems and result in perhaps more 'back street' practitioners." (Royal College of Physicians Edinburgh)*

> *" … existing qualifications … would have to be identified, assessed, approved and made readily available before such a requirement could be made compulsory. Two or three years after the introduction of a control regime should be sufficient time for the various bodies to approve or establish training qualifications." (Environmental health officer)*

5.7 Three local authority respondents, and a legal body included with the legislative group, did not support the idea of an accredited qualification, either because they believed that the present position was satisfactory or because they did not believe that possession of a qualification indicated competence.

> *"A requirement to obtain a specific qualification appears attractive but holding an appropriate qualification does not always ensure competence. The determination of competence is based upon the operator being 'fit and proper persons'. In applying an appropriate qualification may present its own difficulties … The description 'fit and proper' person under licensing laws appears vague, but in fact can be assessed and determined on the basis of observation of practices applied and on understanding of hazards and risks." (Environmental health officer)*

> *"Many work activities are carried out without operators being given accredited training qualifications eg operating golf course greenkeeping equipment. Training is covered in various HSC/HSE guidance and so inspectors can pursue such issues through analysing risk assessment documentation." (Head of consumer protection, local authority)*

> *"APIL does not believe it is imperative to require operators to obtain an appropriate qualification before being allowed to practise skin piercing provided they are legally obliged to familiarise themselves with the risks posed by skin piercing and how such risks can be reduced." (Association of Personal Injury Lawyers)*

Routes to an accredited qualification

5.8 Several routes to an accredited qualification were suggested. These can be grouped into accredited qualifications overseen by public protection agencies, those overseen by

practitioner bodies, and accredited qualifications overseen by a new body involving both interests.

Overseen by public protection agencies

- use of existing further education and vocational education structures overseen by enforcing agencies – sometimes based on models from other regulated trades
- setting up a new accrediting body for skin and body piercing representing public protection interests
- a licensing examination incorporated into the licensing process and administered by the enforcing agency

Overseen by piercing practitioner bodies

- use of existing professional and trade bodies from different types of piercing practice
- setting up a new single piercing practitioner body for accreditation
- apprenticeship with experienced piercers

Cross-sector oversight

- setting up a new accrediting body for skin and body piercing representing public protection and piercing practitioner interests

Overseen by public protection agencies

5.9 An arrangement involving use of existing further education and vocational education structures overseen by enforcing agencies – sometimes based on models from other regulated trades – was most commonly favoured by the public protection interest group.

> *"The Scottish Centre for Infection and Environmental Health is probably the body best placed currently to either design and control training programmes provided by others or provide training directly themselves … All staff who perform piercing should hold some form of elementary infection control certificate (similar to the elementary food hygiene certificate)." (Consultant in public health medicine)*

> *" … training should mirror the SVQs and should follow the developments that have taken place with regard to hairdressing and massage" (Royal College of Physicians Edinburgh)*

"The operators should be trained by suitable qualified specialists in the different aspects of skin and body piercing and not only in the task of piercing itself. The trainers therefore should have knowledge and experience in infection control, environmental health etc. This training could follow the model for food safety training for food handlers, involving expertise from a variety of backgrounds." (Consultant in public health medicine)

"Perhaps those colleges which offer beauty therapy courses e.g. College of Commerce in Glasgow, could become involved. " (Dermatologist)

"Qualifications are needed, must be accredited training with supervision similar to other apprenticeship schemes e.g. hairdresser training." (Consultant in public health medicine)

"It is equally important that the operatives are subject to some form of approval, probably by the health board, which could include attendance at appropriate training courses. Similar training as required for staff for hygiene under the butchers licensing scheme could be introduced." (Environmental health officer)

" … introduction of a requirement for some form of training and satisfactory completion of a course on the safe procedures for skin/body piercing is considered necessary. This could be developed along the lines of an approved training scheme for operators with an examination being carried out by an accredited body … HSE/EMAS or others." (Environmental health officer)

"The College would model the qualifications on current food legislation. This dictates that individuals involved in the preparation and serving of food should have some basic qualification. I would have thought that it would be reasonable to have some sort of Scotvec certificates to demonstrate that individuals understood the basic health aspects of their procedures." (Royal College of Physicians Edinburgh)

"It may be that the Scottish Qualifications Authority would be the most appropriate accrediting body. It is suggested that training allied with competency should be part of the licensing scheme." (Environmental health officer)

5.10 Setting up a new accrediting body for skin and body piercing representing public protection interests was favoured by a smaller proportion, but again was found mainly among the public protection interest group

" … a body appointed and approved by the Scottish Executive should be set up to devise the appropriate qualification … this body should include those competent to assess the requirements to assure safe practice with emphasis on

health and risk assessment issues. Thereafter, the Scottish Executive should establish the qualification, the provision of relative study centres and the accreditation agency recommended by the aforementioned appointed body." (Environmental health officer)

" … collaborative approach between SCIEH, REHIS and/or the Royal Institute of Public Health could provide training for skin piercers. An audit tool should be developed in order that standards can be measured, facilitating a consistent approach to piercing practices in Scotland. A code of practice for skin piercers throughout Scotland should be established." (Public Health Infection Control Nurses Group in Scotland)

"Yes, operators should have an appropriate qualification, which indicated that the operator has undergone and passed a course in skin and/or body piercing. It should be accredited by a regulatory body set up by statute, and be updated from time to time according to the legislation." (Royal College of Midwives UK Board for Scotland)

5.11 Some respondents suggested that although accreditation should be in the hands of agencies with public protection roles, there should be input from piercing practitioner bodies.

"Course should be accredited with the Royal Environmental Health Institute for Scotland and be agreed by the European Professional Piercers Association, the Association of Professional Piercers, the Medical Acupuncture Society, the British Acupuncture Council, Chartered Society of Physiotherapists, British Medical Association, Infection Control Nurses Association, Scottish Centre for Infection and Environmental Health and the Scottish Executive." (Director of risk management, primary care NHS trust)

5.12 A few respondents suggested a licensing examination incorporated into the licensing process and administered by the enforcing agency.

" … if [regulation by piercing practitioner trade bodies] fails it would not be impossible to produce a small book on tattooing and piercing upon which the questions would be set." (Dermatologist)

Overseen by piercing practitioner bodies

5.13 Use of existing professional and trade bodies from different types of piercing practice likely to be mentioned some in the public protection interest group.

"I think the primary responsibility for educating practitioners should be with their trade association" (Dermatologist)

"Training requirements should be mandatory and operators should be required to obtain qualifications, which would be accredited by relevant trade bodies." (Environmental health officer)

5.14 Three tattooists suggested apprenticeship with experienced piercers, sometimes combined with courses offered by piercing trade bodies and others.

" … apprenticeship with a reputable, professional artist" (Tattoo business)

"It would be appropriate now that anyone requiring to open new premises in these professions should show proof that they have served at least 2 years as an apprentice under a professional person." (Tattoo business)

" … I have spoken to many people on the subject [professional training] and the majority are in agreement that, anyone wishing to become a professional piercer would have to receive an apprenticeship with an already established piercer in a reputable piercing studio. The apprenticeship should be for no less than 6 months, but there are those who feel an apprenticeship should be for no less than 1 year. Any studio offering apprenticeships should be registered for this purpose with the local council and the environmental health. They should also comply with any existing laws … Any trainee should not have to pay for their apprenticeship, but, should actually be paid themselves." (Tattoo business)

5.15 Electrolysis and acupuncture already have self-regulating bodies whose role is incorporated into English regulation and accreditation (although not all practitioners are members).

"There are nationally recognised training standards and qualifications (such as the Institute's DRE) which are long established for electrolysis, but not for piercing techniques. Electrolysis would need to be viewed separately. In this section the gap between piercers and electrolysists seems widest. Electrolysis is far more established than body piercers in its standardisation and practices. Advice and guidelines could be taken from such organisations as acupuncture ear piercing and us. Most electrolysists take training courses. There are several recognised national qualifications. Most electrolysis courses are carried out in reputable centres or colleges of further or higher education. As regards piercers there should be a training and some form of assessment to achieve safe and competent practice. This needs to be national agreed and recognised." (Institute of Electrolysis)

"The exemption of those professionals who belong to a professional body covering the area of practice has several advantages. The policing of compliance can be devolved to the professional body, as can the accreditation of the standards which are expected of its practitioners. This means that discussion about the updating and improvement of these standards can be

dealt with centrally and change effected across Scotland as a whole very rapidly" (British Acupuncture Council)

5.16 Setting up a new single piercing practitioner body for accreditation was an option more likely to be mentioned by public protection respondents than piercers themselves.

" … a recognised training course … established by the trade in consultation with the medical profession." (Environmental health officer)

"Yes, there should be a requirement for an appropriate qualification before a person can practice. An approved syllabus needs to be drawn up involving the trade, enforcement authorities (including REHIS), health boards and SCIEH, to cover relevant legislation, control of infection, and correct procedures to prevent damage. The trade needs to be encouraged to form a single responsible professional body to support standards of practice." (Environmental health officer)

5.17 This administratively attractive option of a single accrediting body representing several or all sectors providing services involving skin and body piercing does not seem practical in that it would not gain support from a wide range of piercing practitioners from different disciplines.

Cross-sector oversight

5.18 Setting up a new accrediting body for skin and body piercing representing public protection and piercing practitioner interests was suggested by piercing practice and public protection respondents.

"There should be an agency set up that would contain various people ranging from professors to practitioners and this agency should decide on the appropriate course of action whilst remaining in contact with the appropriate people in the government and environmental health agency. This agency would then be able to decide on the most suitable method of training for each type of skin piercing and the process would then be suited to the practitioners that had to follow it." (Tattoo business)

"Who should do this? Difficult but a group of suitably qualified people in each area via committee is one possibility. e.g. tattoos, beauty therapist, control of infection nurse, someone with a degree of knowledge of anatomy." (Primary care NHS trust)

Summary

5.19 This chapter described responses to questions about training of piercing practitioners and the possibility of an accredited qualification as a licensing condition.

- three quarters of respondents answered this question, and of those 90% favoured the introduction of a qualification as a condition of licensing
- respondents were not able to suggest an existing qualification which would be appropriate for the purpose
- responses supported the establishing of an accredited qualification possibly made up from existing modules provided adequate lead time were allowed and a consensus of all stakeholders developed
- responses from all interest groups suggest that considerable development work will be necessary to build confidence in an accrediting body among both enforcing agencies and piercing practitioners
- electrolysis and acupuncture were governed by self-regulating bodies trusted by practitioners who could accredit qualification

CHAPTER SIX IMPLEMENTATION COSTS

6.1 The consultation document asked respondents about the additional costs arising from implementation of the options for control of skin and body piercing, and this chapter reports responses on this issue.

6.2 Many respondents volunteered views on other aspects of enforcement based on their current experience, and particularly on what agencies should be involved in enforcement. This chapter lists the issues addressed by these contributions.

Costs

6.3 A few contributors attempted to estimate costs or the factors which would contribute to them, all of which are quoted below.

> *"The suggested cost for the introduction of a licensing regime is a £200 initial fee for a premise to be licensed and thereafter a £100 annual renewal charge. The charge is to cover the administration costs of processing applications and visiting premises." (Environmental health officer)*

> *"Our civic licence application fees for similar licences will be £110 and £150 from 1 April 2001. … We would supply small-scale operators with advice leaflets free of charge. … If medical or professional advice on the more advanced procedures were required, it is not anticipated that the health board would require a consultation fee, but any charges by other experts will have to be passed on to the operator." (Environmental health officer)*

> *" … significant financial implications in terms of staff time involved in assessing and monitoring such practices. The time cannot be quantified absolutely, but the experience of this department is that premises applying for any type of licence usually request additional visits to this premises, often right up to the day of the licensing committee, to check for compliance where it has previously been found lacking. It is estimated that the time required is likely to be of the order of 8 hours per premises per licence, with the total cost depending on the number of premises requiring licensing and the interval between licence renewal." (Environmental health officer)*

> *"The total costs to the piercer would be greater if this legislation was passed. This would not deter anyone serious about the business and the end result would be passed on to the clients at around £5 per head. The total costs to implement this entire change would be around £2,000 for the first year and £750 to £1,000 every year thereafter which is not a large amount especially if you spread this cost over approximately 1000 clients." (Tattoo business)*

6.4 These specific comments were exceptional. Most respondents made more general comments on the factors which affect costs and their impact. These contributions are summarised by interest group below.

Piercing practitioners

6.5 Some piercing practitioners welcomed the possible barrier to entry that complying with control requirements would give to irresponsible practitioners.

> *"The total costs to the piercer would be greater if this legislation was passed. This would not deter anyone serious about the business … " (Tattoo business)*

> *"There will be costs, but that is a worthwhile expense to ensure high quality piercing is conducted. Any piercer that is not prepared to have a high quality environment due to the expense or any other reason should consider another line of business." (Body jewellery supplier)*

6.6 Some were concerned, however, that costs of enforcement would be passed on to them with no direct benefit. Underlying this is a lack of confidence that enforcement will be effective in deterring competitors who do not bear these costs.

> *"I would object to paying a high price for a licence or other high charge to the local authority. This would inevitably end up penalising quality businesses with the more shady operators avoiding the authorities." (Body jewellery supplier)*

6.7 The effectiveness of controls in deterring underground practice did not emerge strongly as a factor mentioned by practitioners in connection with their preferred option for regulation of skin and body piercing (Chapter 4). However these comments on cost suggest that effective control of poor practice is essential to minimising the cost impact on responsible practitioners, and will be a key factor in winning their support.

6.8 An acupuncturist, who pointed out the cost of complying with the already rigorous requirements of her professional body, nonetheless accepted that there would be benefits from additional costs associated with new controls.

> *"If these [controls] lead to overall better practice in Scotland then we must of course conform, but I am sure I am not alone in hoping that the charges levied won't be too hefty." (Acupuncturist)*

6.9 The suspicion of an ear piercing equipment manufacturer that businesses offering ear piercing as a secondary activity would be deterred from piercing was confirmed by a hairdresser's English experience.

"15 years ago whilst having two businesses in the West Yorkshire area all hairdressing and beauty businesses were contacted regarding the risks of transferring HIV, Hepatitis and other serious diseases through skin piercing. This was followed up by a visit from environmental health, which advised us that we would (1) have to be registered with environmental health department (2) have to be inspected regularly (3) invest in expensive sterilising equipment (4) add skin piercing to the insurance cover - very expensive. It was this latter point that decided me to stop completely. Plus the fact that I did not want to put my operatives at risk. Since then I did not sustain ear-piercing at any of my businesses." (Hairdresser)

Public protection group

6.10 Some in the public protection group were clear that all enforcement costs should be recoverable from practitioners and ultimately from customers, but there were concerns that too high an enforcement cost would deter applicants and fail to control underground practice.

"To ensure license applications are made, local authorities should absorb costs, as the likely numbers of applications in Scotland would be relatively small. In addition there may well be a saving to the country as a whole if infection control, etc is reduced." (Environmental health officer)

"We consider that cost of registration should be economic to ensure that reputable operators continue to provide a safe service without jeopardising the profitability of their enterprise. It is important that no encouragement is given for less reputable operators to avoid registration and provide unregulated and potentially unsafe service." (British Medical Association Scottish Office)

"Clearly, any ongoing costs after the development of legislation etc should be borne by the practitioners but consideration will have to be given to the effect of this on the businesses" (Consultant in public health medicine)

6.11 There were conflicting views on whether customers would be deterred by the increased prices which would arise from higher costs.

" … there would be benefits to the operator's business, in that they could be more confident in offering a safe service to their customers, with a reduction of risks of complaint or legal action" (Consultant in public health medicine)

"It is felt that the people obtaining tattoos and body piercing may appreciate the fact that a parlour meets certain standards and there will be a reduction in the risk of infections." (Director of nursing)

"If the cost to the customer of skin/body piercing increased, more individuals may seek a DIY solution with unsterile procedures and unsafe consequences." (British Medical Association Scottish Office)

6.12 Some respondents were convinced that increased costs to both enforcers and responsible operators would be minimal, since systems were already in place.

" . . there should be little or no additional expenses involved in complying with any new regulatory requirements. The most likely expense which might be faced by some operators may be the provision of sterilising facilities (autoclaves) and the need to have these calibrated and examined for efficiency and safe use. Experience … shows that operators have used autoclaves but had not considered calibration of examination by others as being necessary. Payment for the licence would be an additional cost but could be limited to a one-off payment which would apply as long as the same applicant and premises were used. As such premises should or would be liable to inspection in terms of health and safety enforcement, no cost should arise from enforcement." (British Medical Association Scottish Office)

"As regards the premises already known to my department, these are inspected and therefore any additional costs would be minor. As regards other unknown premises obviously inspections will be required but I do not envisage a vast number of premises … and therefore the implications for resources would not be substantial." (Environmental health officer)

"The only additional costs would be incurred in the cost of the licensing of the premises. All shops should have the appropriate equipment installed at present if they are operating a safe practice. Any cost to new equipment is expected as new types of equipment become available or due to existing equipment becoming faulty." (Tattoo business)

Other aspects of enforcement

6.13 Respondents made contributions on the following practical aspects of enforcement, which are indexed in the database provided by the contractor and could provide a useful resource in the drafting of controls:

- the role of health boards in enforcement – some health service contributors had conflicting views
- a possible role for the Social Services Council in enforcement
- the need for enforcer training and how this should be provided

- the creation of a new industry body involving both practitioners and public agencies with relevant expertise or enforcement responsibilities, not only for accreditation of a qualification but for an overall enforcement role

- sanctions – fines, prohibition from practice, and the right of appeal

- a possible role for clinical waste collection services in opportunistic practitioner education

- the need for collaboration of enforcing bodies – HSE, police, local authorities – if control is not brought within a single framework enforced by one body.

Summary

6.14 This chapter presented respondents' estimates of the cost impact of further controls on skin and body piercing, and summarised their concerns about cost. Key points are:

- a few contributors made quantified estimates of consequent cost all of which are quoted in this chapter
- piercers who commented on cost were willing to accept additional costs provided that poor practitioners could effectively be prevented from practice
- some were, however, unconvinced that this was possible
- local authorities had varying views about whether costs would be greater with new controls
- some authorities wished to ensure that costs were recovered
- others were concerned that passing on the full cost to businesses could deter applications and encourage underground practice

CHAPTER SEVEN CONCLUSIONS

7.1 This report analyses written responses to a consultation on control of skin and body piercing. This chapter brings together findings from quantitative and qualitative analyses and suggests conclusions.

Conclusions

New regulation of skin and body piercing

7.2 In the light of these responses, the general conclusion can be drawn that further controls of skin and body piercing are advisable, and will be acceptable to key stakeholders (Chapter 4).

7.3 These controls should take the form either of licensing which is mandatory across Scotland, or new primary legislation (Chapter 4).

7.4 Regulation should apply uniformly across Scotland, and should be effective in minimising health risks from body piercing by ensuring that only those practitioners willing and able to practise safely remain in practice (Chapters 4, 5, and 6).

7.5 Regulation should minimise the burden on enforcing agencies through use of existing structures and enabling cost recovery, unless a clear public health gain can be demonstrated from new practices which justifies extra duties and expense (Chapters 4 and 6).

7.6 Some material to inform the content of new regulation, both on enforcement mechanisms and the practices necessary to control harm arising from skin and body piercing, is available in the responses to this consultation (indexed in the database supplied on completion of the research project and referred to in Chapters 4, 5 and 6).

Communication with stakeholders

7.7 Effective communication is needed to ensure the support of stakeholders for new controls. For all stakeholders, this should stress uniform controls across Scotland which are effective in minimising harm arising from skin and body piercing (Chapter 4).

7.8 For a local authority audience it is important to demonstrate that all additional administrative burdens and costs are justified by public health gains, and that their experience has been drawn from in the consideration of enforcement mechanisms (Chapters 4 and 6).

7.9 For a piercing practitioner audience it is important to demonstrate that closer control, new practices to minimise health risks and increased costs will be applied fairly to all practitioners. Poor practitioners will either have to improve their practice to a level satisfactory for licensing or cease practice. No ‘underground’ practitioners will remain to

compete unfairly with those who satisfy licensing conditions. Example of successful regulation of other trades could be persuasive in winning the support of piercers, particularly those tattooists who think of themselves as responsible, and of whom the respondents to this consultation are probably typical (Chapters 4 and 6).

Scope of proposed controls

7.10 Regulation should include control of piercing of minors which is uniform across different forms of piercing. Widespread support for further regulation of piercing of minors was demonstrated in this consultation (Chapter 3).

7.11 It is probably impractical to ban particularly forms of piercing, but some forms, particularly piercing of the male and female genitals, nipples and tongue could be the subject of more stringent licensing conditions (Chapter 3).

7.12 Further research may be needed to investigate the possibility of less stringent regulation of establishments which conduct ear piercing using a purpose built gun, and no other piercing activity, as a secondary activity within a pharmacy, jewellery, hairdressing or beauty salon premises. Two issues were unresolved by this consultation:

- there were conflicting views on the health risks of this type of practice
- the views of practitioners conducting ear piercing as a secondary activity were unclear – there was only a single response from this type of practitioner.

Since it is argued that these practitioners will be deterred from trade unless regulation for them is less stringent, resulting in a dramatic alteration in the supply of ear piercing services, resolution of these issues is desirable. Further primary or secondary research may be needed (Chapters 3 and 6).

7.13 If less stringent regulation is considered for premises providing ear piercing only, as a secondary activity to another business, a clear case based on evidence of risk will be needed to maintain the support of those whose primary business is piercing (Chapters 3 and 6).

Establishing an accredited qualification and an accrediting body

7.14 A process is needed to develop consensus across all stakeholders for the identification of an appropriate qualification which can be among the conditions to be met by licensed skin and body piercing practitioners, and an accrediting body or bodies. Support existed for the introduction of an accredited qualification, but responses on what the qualification and the accrediting body should be were diverse, and the majority were vague (Chapter 5).

7.15 The model of a self regulating profession with a strong professional body which can accredit a membership qualification and to which other regulatory tasks can be devolved has advantages for both professionals and enforcing bodies, but outside acupuncture and

electrolysis no piercing bodies emerged from this consultation as being ready to take on this role. Consideration could be given to working with piercers' trade bodies to develop such a role (Chapters 4, 5 and 6).

REGULATION OF SKIN PIERCING:

A CONSULTATION PAPER

Comments requested by 13 April 2001

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SCOTTISH EXECUTIVE

January 2001

CONTENTS

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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Scottish Executive Health Department
Public Health Division
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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.

Annex A

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

ANNEX 2 DISTRIBUTION LIST

Public health and public protection interest groups

Local Authorities and Local Authority Associations

Local authorities
- Chief executives
- Environmental Health Chief Officers
- Directors of social work

CoSLA
The Royal Environmental Health Institute for Scotland (REHIS)
- Health and Safety Co-ordinating Group (HASCOG) of the Royal Environmental Health Institute for Scotland (REHIS)

Scottish Civic Forum
The Society of Chief Officers of Environmental Health in Scotland

NHS and Public Health Interests

Health boards
- General managers
- Aids co-ordinators
- Directors of public health/consultants in public health medicine

Chief executives NHS trusts
Director, Scottish Healthcare Supplies
National Director, Scottish National Blood Transfusion Service
Scottish Centre for Infection and Environmental Health (SCIEH)
Department of Health, England

Advisory Groups and experts

Advisory Group on Hepatitis
Expert Advisory Group on AIDS
Health & Safety Executive
HSBBC Gibbs Insurance
- Ros McDonnell, HSBCC Gibbs Insurance

M R McVittie, The W S Society
Professor Norman Noah

Medical Professional Bodies (not piercing practitioners)

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)

Advocacy bodies

Children 1st
Children in Scotland
Save the Children
Scottish Child Law Centre
Women's National Commission

Piercing practitioners

Acupuncture business and professional representative 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

Acupuncture businesses

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
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
Lim Paul Chong-Kui, Falkirk
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

Tattooing, body piercing, beauty therapy, jewellery trade and electrolysis business and professional representative bodies

Association of Professional Piercers
Association of Professional Tattooists
British Association of Beauty Therapy and Cosmetology (BABTAC)
British Association of Electrolysists 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
Mr T Wigley (ex Chair International Tattoo Artists)

Tattooing and body piercing businesses

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 Inkhouse, 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

Legislative interests and consumer groups

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

Mainstream political parties

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

Law bodies

The Law Society of Scotland
Scottish Law Commission

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