

COUNCIL

23 APRIL 2020

BYELAW PROVISIONS REVIEW

Report from: Richard Hicks – Director of Place and Deputy Chief Executive

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Summary

This report is a confirmatory report regarding the adoption of byelaws in relation to Pleasure Boats as the original records regarding their adoption cannot be located. It also addresses the update in legislation in relation to the byelaws for Skin Piercing.

The report was initially considered by the Licensing and Safety Committee on 11 March 2020.

1. Budget and Policy Framework

- 1.1 The Council has adopted and enforces a number of byelaws through-out the area. The enforcement function is carried out by a number of teams who work in conjunction with one another.
- 1.2 The byelaws in relation to Pleasure Boat licensing are enforced jointly between Environmental Health and Licensing. The byelaws regarding Skin Piercing are enforced by Environmental Health.

2. Background

Pleasure Boats

- 2.1 The byelaws in respect of Pleasure Boats and Vessels were initially adopted by Gillingham Borough Council on 3 June 1936. All byelaws that had been made by the predecessor authorities were reviewed by the Community and Environment Committee in 1997 during the period when Medway was a shadow authority.
- 2.2 In order for there to be a smooth transition from the predecessor authorities to Medway as a Unitary Authority it operated as a Shadow Authority in the year 1997/1998 so that it could put all the processes and structures required in place ready to begin work formally on the 1 April 1998.

- 2.3 During that shadow period records indicate that a review of byelaws was carried out and decisions were made regarding which were now defunct, which needed to be enlarged to cover the whole of Medway in its new form and which could be left as was. The Pleasure Boats byelaws were to be enlarged to encompass the whole of Medway.
- 2.4 Unfortunately, some of the minutes of Full Council for the period 1 April 1997 to 31 December 1997 are missing from the archive and therefore whilst we believe that Full Council resolved that the byelaws should apply across Medway we cannot evidence that from the minutes. In order to resolve this issue we are recommending that Full Council make a confirmatory resolution now.
- 2.5 There is currently only one Pleasure Boat operating within Medway and it has been operating with no issues. Therefore, no action has been required under these byelaws. The recent discussions around a potential transfer of the licensing of Pleasure Boats from Environmental Health to Licensing is the only reason that the suggestion this clarification would be useful arose.

Skin Piercing

- 2.6 Byelaws in respect of Skin Piercing, Electrolysis and Tattooing were made available to local authorities in the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'), all that was required for those to come into force was for the relevant Authority to make a Full Council resolution formally adopting the byelaws.
- 2.7 The byelaws were adopted by the City Council of Rochester Upon Medway on the 13 December 1984 and confirmed by the relevant Secretary of State on the 27 March 1985, they remain in force. Gillingham Borough Council adopted the byelaws on the 16 February 1987 and were confirmed by the Secretary of State on the 9 May 1988 and again these remain in force.
- 2.8 In this case while we know that the byelaws were adopted and remain in force they are missing a section of standard wording which would be applied if they were adopted now. It is now common practice to add the words "and any subsequent amendments" to the end of a description of legislation being adopted, the byelaws as adopted did not include this wording.
- 2.9 Again this does not pose a significant risk to the Council but given the changes in legislation and the developments in piercing technology it is felt to be sensible to request that Full Council makes a resolution re-adopting the provisions of the 1982 Act including the words "and any subsequent amendments" in the resolution.

3. Options

- 3.1 Do nothing, this potentially leaves the Council open to challenge over any action to enforce the byelaws because it is unable to evidence their previous adoption, therefore this option is not recommended.
- 3.2 Request that Full Council makes a confirmatory resolution to confirm that the Pleasure Boat byelaws apply to the whole of Medway and that the Skin Piercing byelaws incorporate the subsequent amendments to legislation and

will incorporate any future amendments. Officers recommend that this option is taken and the suggested wording for the resolution is set out below.

4. Risk management

- 4.1 If the confirmatory resolutions recommended within this report are not made then there may be a risk of challenge to any action taken to enforce the byelaws. This is not felt to be a significant risk but as the action required to mitigate the risk is straightforward officers believe that it is worthwhile.

5. Consultation

- 5.1 As this report is purely administrative in nature and is being produced because the original records cannot be located no consultation was required and therefore none has been carried out.

6. Licensing and Safety Committee – 11 March 2020

- 6.1 The Assistant Head of Legal presented a confirmatory report regarding the adoption of byelaws in relation to Pleasure Boats and Vessels and Skin Piercing. The Committee noted that, during 1997/1998, when Medway had operated as a Shadow Authority prior to becoming a Unitary Authority, a review of byelaws had been carried out and it had been decided that the existing Pleasure Boats and Vessels byelaws were to be enlarged to encompass the whole of Medway. As the relevant Full Council minute was missing from the Council's archives, it was now necessary to seek Full Council's confirmation that the Pleasure Boats byelaws first adopted in 1936 remain adopted and were in force across the whole of Medway.
- 6.2 The byelaws for Skin Piercing, which were made available to local authorities in the Local Government (Miscellaneous Provisions) Act 1982, had been adopted and remain in force. However, they were missing a section of standard wording which would be applied if they were adopted now. It was now common practice to add the words "and any subsequent amendments" to the end of a description of legislation being adopted.
- 6.3 The Licensing and Safety Committee recommended that:
- a) Full Council resolves to confirm that the byelaws in relation to Pleasure Boats and Vessels first adopted in 1936 remain adopted and are in force across the whole of Medway.
 - b) Full Council resolves to re-adopt the provisions of Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 and any subsequent amendment thereto.

7. Financial implications

- 7.1 There are no financial implications arising directly from this report.

8. Legal implications

- 8.1 Without the current situation being clarified there is a risk that the Council could face a challenge in relation to its enforcement actions. Although the risk

of challenge is felt to be minimal in relation to these matters the action required to mitigate that risk is straightforward therefore it would seem sensible to make the confirmatory resolutions as suggested below.

- 8.2 The functions of the Licensing and Safety Committee include those functions relating to licensing and registration as set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Included in Schedule 1 is the power to licence pleasure boats and vessels and the power to licence premises for acupuncture, tattooing, ear-piercing and electrolysis.
- 8.3 The adoption of byelaws is a matter for Full Council.

9. Recommendations

- 9.1 That Full Council resolves to confirm that the byelaws in relation to Pleasure Boats and Vessels first adopted in 1936 remain adopted and are in force across the whole of Medway.
- 9.2 That Full Council resolves to re-adopt the provisions of Section 15 of the Local Government (Miscellaneous Provisions) Act 1982 and any subsequent amendment thereto.

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Appendices

None.

Background papers

The original byelaws are held by Legal Services and are available for inspection on request.