

EXECUTIVE 11 SEPTEMBER 2013

RE-ADOPTION OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

WARDS AFFECTED: ALL WARDS



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. **PURPOSE OF REPORT**

- 1.1 The report provides details of a proposal to readopt the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 within the Borough of Hinckley & Bosworth.

2. **RECOMMENDATION**

- 2.1 That the Executive approves the Principal Licensing Officer be authorised to provide notice, in accordance with section 45 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), of the Council's intention to pass a resolution to adopt the provisions of Part II of the 1976 Act in relation to the Council's administrative area.

3. **BACKGROUND TO THE REPORT**

- 3.1 Part II of the Local Government (Miscellaneous Provisions) Act 1976 contains provisions in relation to the licensing of private hire and hackney carriage vehicles, drivers and operators. The legislation contains provisions which allow local authorities to control the operation and use of private hire and hackney carriage vehicles and to protect the public by ensuring that vehicles are fit for use as licensed vehicles and drivers are 'fit and proper' to act as such if the provisions of Part II of the 1976 Act have been adopted by the Council.
- 3.2 Recent case law has seen decisions to prosecute for offences under Part II challenged successfully because a Council could not demonstrate, some 35 years after the event, that it had given the appropriate notices in its adoption of Part II. The paperwork was simply not available. There is a general awareness that these challenges have taken place and in order to have a recent and robust position which would not be challengeable it is suggested that it would be beneficial to re-adopt the resolution for the purpose of clarity for the future and to ensure certainty in any enforcement action taken under the legislation. The function of adopting Part II of the 1976 Act is, by virtue of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended) a function of the Executive.
- 3.3 It is therefore proposed that the Committee recommend to the Executive that authority be given for the provision of notice, in accordance with section 45 of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), of the Council's intention to re-adopt the provisions of Part II of the 1976 Act. In accordance with statutory requirements, as outlined in section 5 below, notice will consist of the publication of a notice of intention in local newspapers for

two consecutive weeks and service of the notice on the Town and Parish Councils within the Borough.

4. FINANCIAL IMPLICATIONS [PE]

- 4.1 There will be a cost implication relating to the publication of the statutory notices which will be met by existing budgets.

5. LEGAL IMPLICATIONS [MR]

- 5.1 Section 45(2) of the 1976 Act provides that if the Town Police Clauses Act 1847 is in force in the area of a district council, the council may resolve that the provisions Part II of the 1976 Act (other than section 45), are to apply to the relevant area; and if the council do so resolve those provisions shall come into force in the relevant area on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed). "The relevant area" for these purposes means: (a) if the Act of 1847 is in force throughout the area of the council, that area; and (b) if the Act of 1847 is in force for part only of the area of the council that part of that area. The 1847 Act is in force throughout the entire area of Hinckley & Bosworth Borough Council.

- 5.2 Section 45(3) provides that a council shall not pass a resolution adopting Part II of the 1976 Act unless it has (a) published a notice of intention to pass the resolution in a local newspaper circulating in the area for two consecutive weeks; and (b) served a copy of the notice, not later than the date on which it is first published in the newspaper, on each Parish or community council within the area to be affected.

6. CORPORATE PLAN IMPLICATIONS [RP]

- 6.1 Will help improve the control of hackney carriage and private hire trade within the Borough and thereby contribute towards the Council aims of creating a safe vibrant place to work and live.

7. CONSULTATION [MB]

- 7.1 Public Notices will be placed in a local newspaper for two consecutive weeks and all Town and Parish Councils will be served with a copy of the notice.

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant Risks		
Risk Description	Mitigating actions	Owner
Reputation, Legal, Regulatory	It is suggested that re-adoption of the legislation, in accordance with section 45 of the 1976 Act, will ensure certainty in any enforcement action.	Mark Brymer

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS [RP]**

9.1 No implications as enforcement work in respect of Taxi Licensing are carried out consistently with reference to adopted policies and procedures across the whole Borough.

10. **CORPORATE IMPLICATIONS**

10.1 Will help ensure Taxi Licensing standards within the Borough and thereby contribute towards the Council aims of Creating a vibrant place to work and live, supporting individuals and providing value for money and pro active services

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: Local Government (Miscellaneous Provisions) Act 1976

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