

## APPENDIX A

Report to the Licensing Committee on 13 February 2018

### **ITEM                      Re-adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976**

Report of the Head of Legal and Democratic (Portfolio: Corporate)

#### **Recommended:**

- 1. That notice be given of the Council's intention to pass a resolution applying the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 with effect from 12 May 2018.**
- 2. That notice of such intention be published for two consecutive weeks in a local newspaper/s circulating in the area.**
- 3. That notice of such intention be served upon all parish councils, and on the Chairman of any parish meeting, affected by the resolution.**

#### **Recommended to Council:**

**That the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 be adopted to apply throughout the Borough of Test Valley with effect from 12 May 2018.**

#### **SUMMARY:**

- Part II of the 1976 Act contains provisions relating to the licensing of private hire and hackney carriage vehicles, drivers and operators.
- Although previously adopted by the Council, previous case law and a legal challenge involving another local authority necessitate the re-adoption of the legislation.

#### **1 Introduction**

- 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 Council's area.

#### **2 Background**

- 2.1** Part II of the 1976 Act contains provisions in relation to the licensing of private hire and hackney carriage vehicles, drivers and operators. The legislation contains provisions that 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.

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- 2.2 The Borough Council previously resolved on 8 August 1978 to adopt Part II of the Act and that it would come into force on 9 October 1978. 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. A review of the Borough Council's records evidenced the resolution above, but unfortunately there is no evidence of the other aspects of the adoption process as set out in paragraph 2.4 of this report.
- 2.3 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 readopt the resolution for the purpose of clarity for the future and to ensure certainty in any enforcement action take under the legislation. In doing so, Council records will ensure that the necessary paperwork to evidence the re-adoption is available.
- 2.4 It is therefore proposed that the Committee recommend to Council that authority be given for the provision of notice of the Council's intention to readopt the provisions of Part II of the 1976 Act. In accordance with the statutory requirements notice will consist of the publication of a notice of intention in a local newspaper for two consecutive weeks and service of the notice on the Parish and Town Councils within the Borough.

### **3 Corporate Objectives and Priorities**

- 3.1 There are no direct links to the Corporate Plan. Nonetheless re-adoption will help ensure taxi licensing standards within the Borough in addition to ensuring public safety of our community and visitors.

### **4 Consultations/Communications**

- 4.1 A public notice will be placed in a local newspaper for two consecutive weeks and all Parish and Town Councils will be served with a copy of the notice. No further consultation is necessary as the re-adoption merely confirms the existing position with regard to private hire and hackney carriage licensing.

### **5 Options and Option Appraisal**

- 5.1 The options are either to readopt the legislation or, not to readopt. Re-adoption of the Act will provide clarification and certainty whereas failure to readopt the legislation may result in uncertainty in the Council's ability to take enforcement action, particularly against unlicensed drivers, vehicle owners and operators. Re-adoption is without prejudice to the Council's previous adoption made pursuant to the Act. There is no intention to change the existing position with respect to Part II of the 1976 Act and therefore all policies, practices, conditions and delegations will continue unchanged.

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### **6 Resource Implications**

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

### **7 Legal Implications**

- 7.1 Where the Town Police Clauses Act 1847 (relating to the licensing of hackney carriages) is in force throughout a District Council, section 45(3) of the 1976 Act provides that a Council may resolve that Part II of the Act is to apply in the area. The Council may 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.

### **8 Equality Issues**

- 8.1 An Equalities Impact Assessment (EQIA) has not been undertaken as the report does not concern the implementation of a new policy or procedure; it is concerned with remedying a specific legal matter only.

### **9 Other Issues**

- 9.1 Community Safety – none specific.
- 9.2 Environmental Health Issues – none specific.
- 9.3 Sustainability and Addressing a Changing Climate – none specific.
- 9.4 Property Issues – none.
- 9.5 Wards/Communities Affected – the whole Borough.

### **10 Conclusion**

- 10.1 Adoption of Part II of the 1976 Act is vital if the Borough Council is to be able to undertake its activities in respect of the licensing of hackney carriage and private hire drivers, vehicles and operators. Unfortunately, some evidence that the adoption process has been fully complied with has not survived in the nearly 40 years since the original adoption. To remedy this it is proposed to readopt the legislation; this is purely an administrative procedure and has no implication for the ongoing provision of the licensing function.

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<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Part II Local Government (Miscellaneous Provisions) Act 1976			
Council minute dated 8 August 1978			
Decision in Aylesbury Vale District Council -v- Call a Cab			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	0		
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