

REPORT: Regulatory Committee

DATE: 18 January 2016

REPORTING OFFICER: Strategic Director Community & Resources

PORTFOLIO: Community & Resources

SUBJECT: Part II of Local Government (Miscellaneous Provisions) Act 1976

WARD: Boroughwide

1. PURPOSE OF REPORT

To adopt to the extent it is not already in force Part II of the Local Government (Miscellaneous Provisions) Act 1976.

2. RECOMMENDATION: to Council that the Council resolve that it intends to pass a resolution at a future meeting (the “Adoption Resolution”):

- 1. to adopt to the extent that they are not already in force in the Borough the provisions of Part II of Local Government (Miscellaneous Provisions) Act 1976 (the “1976 Act”), (other than section 45), to apply to the whole area of the Council on and after the appointed day stated in that resolution;**
- 2. the Operational Director Legal and Democratic Services be directed to publish and serve notice as required by section 45 of the 1976 Act; and**
- 3. following compliance with item (2) of this resolution the matter be reported back to the Council for the Adoption Resolution to be considered.**

3. General

3.1 A number of Acts of Parliament provide for functions to be exercised by local authorities. Some Acts provide that functions will be exercisable automatically and some that functions may only be exercised after going through adoption procedures.

3.2 The Council has adopted certain functions many years ago and the full records of the adoption procedures no longer exist.

3.3 Failure to prove that adoption provisions were fully complied with is not necessarily fatal to enforcing those provisions as demonstrated by the High Court case of R oao Aylesbury Vale District Council v Call A Cab Ltd [2013] EWHC 3765

(Admin). However, to avoid challenges it is far better to be able to demonstrate full compliance with adoption requirements.

3.4 There is no intention to change the existing position with respect to Part II of the 1976 Act: all policies, practices, conditions and delegations will continue unchanged.

4 Part II Local Government (Miscellaneous Provisions) Act 1976

4.1 This report relates to the adoption of the above provisions. These deal with regulation of private hire and hackney carriage matters.

4.2 The regulation of hackney carriages goes back to the Town Police Clauses Act 1847 (the 1847 Act). Originally these provisions required adoption in each local authority area. But a number of subsequent provisions (including the Public Health Act 1875 and the Transport Act 1985) have meant that the 1847 Act now applies automatically throughout the Borough.

4.3 However, the 1976 Act remains an adoptive provision.

4.4 The procedure is set out in section 45 of the 1976 Act. There are two stages: (1) there must be a resolution of the Council adopting the provisions of Part II of the 1976 Act (the "Adoption Resolution") and (2) there must be compliance with certain matters prior to the Adoption Resolution. In addition to complying with these two stages there is a pre-condition that the 1847 Act is in force in the area.

5 The Adoption Resolution

5.1 Section 45(2) of the 1976 Act provides that:

"... the council may resolve that the provisions of this Part of this Act, other than this section, 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)".

5.2 An appropriate wording for the Adoption Resolution is set out at **Appendix 2**.

6. Matters to be complied with prior to the Adoption Resolution.

6.1 Section 45(3) of the 1976 Act provides that:

"A council shall not pass a resolution in pursuance of the foregoing subsection unless they have—

(a) published in two consecutive weeks, in a local newspaper circulating in their area, notice of their intention to pass the resolution; and

(b) served a copy of the notice, not later than the date on which it is first published in pursuance of the foregoing paragraph, on the council of each parish or community which would be affected by the resolution or, in the case of such a parish which has no parish council, on the chairman of the parish meeting".

6.2 An appropriate form of wording for the notice is set out at **Appendix 3**.

7 History of the adoption of Part II of the 1976 Act.

7.1 The Council adopted Part II of the 1976 Act as from 1st August 1977 as evidenced by the resolutions referred to in **Appendix 4**. Unfortunately, the press notice and the parish council notices do not survive and therefore cannot be produced.

7.2 A similar situation arose in the Aylsebury Vale case referred to above.

8 The way forward

8.1 It is proposed to 're-adopt' the provisions of Part II of the 1976 Act. This can be achieved by adopting the provisions "to the extent that they are not already in force".

8.2 This would avoid any possibility of challenge in the future.

8.3 Since records can now be scanned and held electronically there is a greatly improved chance that the records of adoption will be traceable into the indefinite future.

9 The Local Authorities (Functions and Responsibilities) Regulations 2000

9.1 Regulation 2(11) of the Local Authorities (Functions and Responsibilities Regulations 2000 (the 2000 Regulations) provides that unless otherwise provided by any other provision of the 2000 Regulations a function which by virtue of enactments passed prior to the 2000 Regulations may only be discharged by the Council is not to be the responsibility of the executive. Such potential "otherwise provided" provisions have not been identified elsewhere in the 2000 Regulations but it is apparent that the adoption of the 1976 Act is not an executive function and is a matter reserved to full Council.

9.2 This approach is also consistent with Council function 18 in the Constitution: "To institute new services and discontinue or alter existing services."

10. Policy and finance implications

10.1 There are no policy or finance implications arising out of this agenda.

11. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Background file	Legal Service	John Tully/Kay Cleary

Local Government (Miscellaneous Provisions) Act 1976 c. 57
Part II HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

This version in force from: **November 15, 1976 to present**

◀◀◀ (version 1 of 1) ▶▶▶

45.— Application of Part II.

(1) The provisions of this Part of this Act, except this section, shall come into force in accordance with the following provisions of this section.

(2) If the [Act of 1847](#) is in force in the area of a district council, the council may resolve that the provisions of this Part of this Act, other than this section, 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).

In this subsection "*the relevant area*", in relation to a council, 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.

(3) A council shall not pass a resolution in pursuance of the foregoing subsection unless they have—

(a) published in two consecutive weeks, in a local newspaper circulating in their area, notice of their intention to pass the resolution; and

(b) served a copy of the notice, not later than the date on which it is first published in pursuance of the foregoing paragraph, on the council of each parish or community which would be affected by the resolution or, in the case of such a parish which has no parish council, on the chairman of the parish meeting.

(4) If after a council has passed a resolution in pursuance of subsection (2) of this section the Act of 1847 comes into force for any part of the area of the council for which it was not in force when the council passed the resolution, the council may pass a resolution in accordance with the foregoing provisions of this section in respect of that part as if that part were included in the relevant area for the purposes of subsection (2) of this section.

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Notes

¹.

Words of enactment omitted under authority of Statute Law Revision Act 1948 (c. 62), s. 3

².

Pt. II (ss.45–80) amended by Public Passenger Vehicles Act 1981 (c.14), s. 79 applied with modifications by S.I. 1986/567, regs. 3, 4

NOTICE OF INTENTION TO PASS A RESOLUTION

Local Government (Miscellaneous Provisions) Act 1976 Part II

WHEREAS

- (1) Part II (“Part II”) of the Local Government (Miscellaneous Provisions) Act 1976 (the “1976 Act”) provides for matters relating to hackney carriages and private hire vehicles (the “Provisions”).
- (2) Halton Borough Council (the “Council”) is a district council for the purposes of Part II.
- (3) The Council has previously adopted Part II but all of the records associated with the adoption are not available for production.
- (4) The Council therefore intends to resolve to adopt Part II within the whole of its area (the “relevant area”) “to the extent that it is not already in force”.
- (5) The Council is required, prior to making a resolution to place this notice in a local newspaper for two consecutive weeks and to serve copies of the same on the council of each parish affected by the proposed resolution.

NOW THEREFORE NOTICE IS HEREBY GIVEN that the Council intends to pass a resolution in accordance with section 45 of the 1976 Act that (to the extent that they are not already in force) the provisions of Part II of 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).

Dated:

Issued by:

APPENDIX 3

[introductory text to be determined when appropriate]

RESOLVED: (1) To the extent that they are not already in force the provisions of Part II of Local Government (Miscellaneous Provisions) Act 1976 1976 Act, (other than section 45), are to apply to the whole area of the Council on and after the appointed day;

(2) The appointed day for the purposes of this resolution shall be [] (being not before the expiration of the period of one month beginning with the day on which this resolution is passed).

(3) All powers, duties and provisions in the Council's Constitution relating to Part II of the Local Government (Miscellaneous Provisions) Act 1976 and all existing policies, practices and conditions relating thereto shall continue to apply on and after the appointed day.

APPENDIX 4

Halton Borough Council adopted Part II of the 1976 Act with effect from 1st August 1977. Health Committee minute 534 (2nd March 1977) recommended the Council to adopt Part II of the Local Government (Miscellaneous Provisions) Act 1976 with effect from 1st August 1976.

Council Minute 575 (22nd March 1977) amended Health Committee 534 (2nd March 1977) requiring a Special Meeting of the Health Committee to be held to discuss future steps relating to the Act.

Health Committee Minute 627 (6th April 1977) resolved to hold a special meeting on 18th April 1977.

Health Committee Minute 631 (18th April 1977) recommended that the Council adopt Part II of the 1976 Act as from 1st August 1977.

Council Minute 658 (26th April 1977) adopted Health Committee Minute 631 (18th April 1977).