

REPORT: Regulatory Committee

DATE: 18 January 2016

REPORTING OFFICER: Strategic Director Community & Resources

PORTFOLIO: Community and Resources

SUBJECT: Local Government (Miscellaneous Provisions) Act 1982 Section 3 and Schedule 4 – Street Trading

WARD: Boroughwide

1. PURPOSE OF REPORT

To the extent they are not already so designated under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (relating to street trading) to designate streets as prohibited streets and consent streets.

2. RECOMMENDATION to Council that the Council resolve: (1) to pass the Designation Resolution set out at Appendix to this report; (2) that the OD-LD be authorised to prepare and to publish notice as required by Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

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.

4 Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”) Section 3 and Schedule 4

4.1 This report relates to the designation of streets for the purposes of the above provisions. These deal with regulation of street trading. Previous Council minutes have established the principles of which streets should be designated as prohibited streets or consent streets and why designation as licence streets is not appropriate in the Borough. This report is not designed to make any changes to those principles.

4.2 The street trading provisions of the 1982 Act are adoptive provisions.

4.3 The procedure is set out in Schedule 4 to the 1982 Act (The legislation is set out at **Appendix 1** below). There are five stages:

4.3.1 There must be a resolution of the Council stating the Schedule 4 to the 1982 shall apply within the Borough from a stated date (the “Adoption Resolution”);

4.3.2 There must be compliance with certain matters relating to advertising and notices prior to the Designation Resolution;

4.3.3 The Council must not make a Designation Resolution before taking into considerations any representations received in response to the advertisement and notices in (3) above;

4.3.4 When Schedule 4 is in force the Council may by resolution designate any street in their area as a prohibited street, a licence street, or a consent street (the “Designation Resolution”); and

4.3.5 Having made the Designation Resolution there are further advertisement requirements.

5 The Adoption Resolution (Stage 1)

5.1 Section 3 of the 1982 Act provides that:

“A district council may resolve that Schedule 4 to this Act shall apply to their district and, if a council so resolve, that Schedule shall come into force in their district on such day as may be specified in the resolution”.

5.2 The Adoption Resolution is a matter of record and did not require advertisement or notices. Consequently, Minute 394 passed by the Council on 6th January 1983 is still in effect and does not need to be repeated. This is referred to in **Appendix 3** below.

6. Matters to be complied with prior to the Designation Resolution. (Stages 2 and 3)

6.1 Schedule 4 paragraph 2 of the 1982 Act provides *inter alia* that:

“(3) A council shall not pass such a resolution unless—

(a) they have published notice of their intention to pass such a resolution in a local newspaper circulating in their area;

(b) they have served a copy of the notice—

(i) on the chief officer of police for the area in which the street to be designated by the resolution is situated; and

(ii) on any highway authority responsible for that street; and ...”

6.2 The notice referred must contain a draft of the resolution; and must state that representations relating to it may be made in writing to the council within such period, not less than 28 days after publication of the notice, as may be specified in the notice.

6.3 A copy of an appropriate notice is set out at **Appendix 2** below.

6.4 The council must consider any representations relating to the Designation Resolution which they have received before the expiry of the period set out in the notice.

7 The Designation Resolution (Stage 4)

7.1 Schedule 4 paragraph 2 of the 1982 Act provides that:

“(1) A district council may by resolution designate any street in their district as—

(a) a prohibited street;

(b) a licence street; or

(c) a consent street.

(2) If a district council pass such a resolution as is mentioned in sub-paragraph (1) above, the designation of the street shall take effect 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)”.

7.2 The text of the proposed Designation Resolution is set out in the Schedule to the Notice contained in **Appendix 2** below.

8 Matters which must be complied with after the Designation Resolution (Stage 5)

8.1 The council must publish notice that they have passed the Designation Resolution in two consecutive weeks in a local newspaper circulating in their area: the first publication must not be later than 28 days before the day specified in the resolution for the coming into force of the designation.

8.2 A draft of the proposed newspaper advertisement is set out at **Appendix 4** below.

9 History of the adoption of street trading provisions of the 1982 Act

9.1 The Council adopted the street trading provisions of the 1982 Act in April 1983 as evidenced by the resolutions referred to in **Appendix 3** below. Unfortunately, the press advert and associated notices do not survive and therefore cannot be produced.

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

10 The way forward

10.1 It is proposed to 're-adopt' the street trading provisions of the 1982 Act. This can be achieved by adopting the provisions "to the extent that they are not already in force".

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

10.3 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.

11 The Local Authorities (Functions and Responsibilities) Regulations 2000

11.1 Regulation 2(11) of 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.

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

12. Policy and finance implications

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

13 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

APPENDIX 1

Local Government (Miscellaneous Provisions) Act 1982 c. 30 Part III STREET TRADING

This version in force from: **July 13, 1982 to present**

⏪⏩ (version 1 of 1) ⏪⏩

3. Power of district council to adopt Schedule 4.

A district council may resolve that [Schedule 4](#) to this Act shall apply to their district and, if a council so resolve, that Schedule shall come into force in their district on such day as may be specified in the resolution.

Schedule 4 STREET TRADING Designation of streets

This version in force from: **April 1, 2012 to present**

⏪⏩ (version 5 of 5) ⏪⏩

2.—

- (1) A district council may by resolution designate any street in their district as—
- a prohibited street;
 - a licence street; or
 - a consent street.
- (2) If a district council pass such a resolution as is mentioned in sub-paragraph (1) above, the designation of the street shall take effect 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).
- (3) A council shall not pass such a resolution unless—
- they have published notice of their intention to pass such a resolution in a local newspaper circulating in their area;
 - they have served a copy of the notice—
 - on the chief officer of police for the area in which the street to be designated by the resolution is situated; and
 - on any highway authority responsible for that street; and
 - where sub-paragraph (4) below applies, they have obtained the necessary consent.
- (4) This sub-paragraph applies—
- where the resolution relates to a street which is owned or maintainable by a relevant corporation; and
 - where the resolution designates as a licence street any street maintained by a highway authority; and in sub-paragraph (3) above “*necessary consent*” means—
 - in the case mentioned in paragraph (a) above, the consent of the relevant corporation; and
 - in the case mentioned in paragraph (b) above, the consent of the highway authority.
- (5) The following are relevant corporations for the purposes of this paragraph—
- the British Railways Board;
 - the [new towns residuary body] ¹ ;
- [
- ba) a Mayoral development corporation;
-] ²
- a development corporation for a new town; [and] ³
 - an urban development corporation established under the [Local Government, Planning and Land Act 1980](#) ; [...] ⁴
- [...] ⁴
- [
- (5A) In sub-paragraph (5)(b) above “*new towns residuary body*” means—
- in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in [section 52\(1\)\(a\) to \(d\)](#) of the [Housing and Regeneration Act 2008](#) [or the Greater London Authority so far as exercising its new towns and urban development functions] ⁶ ; and

(b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in [section 36\(1\)\(a\)\(i\) to \(iii\)](#) of the [New Towns Act 1981](#).

]⁵

(6) The notice referred to in sub-paragraph (3) above—

(a) shall contain a draft of the resolution; and

(b) shall state that representations relating to it may be made in writing to the council within such period, not less than 28 days after publication of the notice, as may be specified in the notice.

(7) As soon as practicable after the expiry of the period specified under sub-paragraph (6) above, the council shall consider any representations relating to the proposed resolution which they have received before the expiry of that period.

(8) After the council have considered those representations, they may, if they think fit, pass such a resolution relating to the street as is mentioned in sub-paragraph (1) above.

(9) The council shall publish notice that they have passed such a resolution in two consecutive weeks in a local newspaper circulating in their area.

(10) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation.

(11) Where a street is designated as a licence street, the council may resolve—

(a) in the resolution which so designates the street; or

(b) subject to sub-paragraph (12) below, by a separate resolution at any time, that a street trading licence is not to be granted to any person who proposes to trade in the street for a number of days in every week less than a number specified in the resolution.

(12) Sub-paragraphs (3)(a) and (6) to (10) above shall apply in relation to a resolution under sub-paragraph (11)(b) above as they apply in relation to a resolution under sub-paragraph (1) above.

(13) Any resolution passed under this paragraph may be varied or rescinded by a subsequent resolution so passed.

Notes

1.

Words substituted by Housing and Regeneration Act 2008 c. 17 [Sch.8 para.34\(2\)](#) (December 1, 2008)

2.

Added by Localism Act 2011 c. 20 [Sch.22 para.8](#) (January 15, 2012)

3.

Word inserted by Government of Wales Act 1998 c. 38 [Sch.15 para.5](#) (October 1, 1998)

4.

Sch.4, para.2(5)(e) and the word "and" immediately preceding it by Government of Wales Act 1998 c. 38 [Sch.18\(IV\) para.1](#) (October 1, 1998)

5.

Added by Housing and Regeneration Act 2008 c. 17 [Sch.8 para.34\(3\)](#) (December 1, 2008)

6.

Words inserted by Localism Act 2011 c. 20 [Sch.19 para.9](#) (April 1, 2012 subject to SI 2012/628 arts 9, 11, 14, 15 and 17)

APPENDIX 2

NOTICE OF INTENTION TO PASS A [DESIGNATION] RESOLUTION

Local Government (Miscellaneous Provisions) Act 1982

WHEREAS

(1) Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the "1982 Act") provides for matters relating to street Trading and is in effect within the Borough of Halton.

(2) Halton Borough Council (the "Council") is a district council for the purposes of Schedule 4 of the 1982 Act.

- (3) The Council has previously designated streets within the meaning of paragraph 2 to Schedule 4 of the 1982 Act but all of the records associated with the designation are not available for production.
- (4) The Council therefore intends to resolve to designate streets within the Borough of Halton as consent streets and prohibited streets within the whole of its area (the “relevant area”) “to the extent that such designations are not already in force”.
- (5) The Council is required, prior to making a resolution to place this notice in a local newspaper and to serve copies of the same as directed by Schedule 4 of the 1982 Act.

NOW THEREFORE NOTICE IS HEREBY GIVEN that the Council:

1. Intend to pass a resolution in accordance with paragraph 2 of Schedule 4 of the 1982 Act to designate streets within the Borough of Halton as consent streets and prohibited streets (to the extent that they are not already so designated) and the designations shall take effect on and after a date to be specified 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 text of the draft resolution is set out in the Schedule to this Notice.
2. Representations relating to the proposed resolution may be made in writing to the council at the address shown below by [].

Dated:

Issued by:

Address:

SCHEDULE

Draft text of proposed resolution

[introductory text to be determined when appropriate]

RESOLVED: (1) To the extent that they are not already so designated for the purposes of schedule 4 of the Local Government (Miscellaneous Provisions) Act

1982 the streets listed in the Schedule to this resolution shall be designated on and after the designation day as prohibited streets or consent streets as indicated in the Schedule;

(2) The designation day for the purposes of this resolution shall be [REDACTED] (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 the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 and all policies, practices and conditions relating thereto shall continue to apply on and after the designation day.

Schedule

Part 1 – Prohibited Streets

The following is a list of prohibited streets within the Borough of Halton

<p>Halton Borough Council – Street Trading List of Prohibited Streets Widnes</p> <p>Albert Road Barrows Green Lane Bechers Birchfield Road Bradley Way Chorleys Lane Cronton Lane Dans Road Deacon Road Derby Road Ditchfield Road Ditton Road Dundalk Road Everite Road Fiddlers Ferry Road Ditchfield Road Ditton Road</p>	<p>Dundalk Road Everite Road Fiddlers Ferry Road Greenoaks Way Hale Park Hale Road Halebank Road Halegate Road Halton View Road Heath Road Highfield Road Hough Green Road Kingsway Leigh Avenue Liverpool Road Lowerhouse Lane Lowerhouse Lane East Lugsdale Road Lunts Heath Road Marshgate Milton Road Moor Lane</p>	<p>Moor Lane South Moorfield Road Norlands Lane Peelhouse Lane Prescot Road Queensway St Mary’s Road St Michael’s Road Speke Road Terrace Road Town Lane Victoria Avenue Victoria Road Warrington Road Waterloo Road Widnes Road Watkinson Way Wilmere Lane Windfield Way</p>
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Halton Borough Council – Street Trading List of Prohibited Streets Runcorn		
Alcock Street Ascot Avenue Astmoor Road Astmoor Spine Road Balfour Street Bankes Lane Barkers Hollow Road Barnfield Avenue Boston Avenue Bridge Street Bridgewater Street Brookvale Avenue North Bus Station Calvers Camelot Way Castlefields Avenue East Castlefields Avenue North Castlefields Avenue South Cavendish Farm Road Chester Road Church Street Clifton Lane Clifton Road Coppice Close Coronation Rd, Preston Brook Cross Road Daresbury By-Pass Delph Lane Devonshire Square Expressway Festival Way Gorsey Well Lane Grangemoor Grangeway	Granville Street Greenhouse Farm Road Greenway Road Hallwood Link Road Halton Brook Avenue Halton Brow *Halton Lea Shopping Centre *East Lane *Eastway *Northway *Southway *West Lane *West Way * Second Avenue * Third Avenue * Fourth Avenue Halton Lodge Avenue Halton Station Road Heath Road Heath Road South High Street Higher Lane Highlands Road Hilltop Road Irwell Lane Keckwick Lane King Street King Arthur’s Walk Lamsickle Lane Latham Avenue Leaside Loch Street Lowlands Road Lydiat Lane Main Street Meadway Mersey Road Motorway M56 Moughland Lane Murdishaw Avenue	Newton Lane Northwich Road Norton Lane Norton View Old Quay Street Palacefields Avenue Park Road Picow Farm Road Princess Street Pump Lane Regent Street Richard Close Runcorn Road Russell Road Sandy Lane Sandy Lane, Preston Brook South Parade Southgate Approach Rd Southwood Avenue Spur Road Stockham Lane Stockham Lane Approach Road Stockham Lane Car Park Stonelea Summer Lane The Croft Vicar Street Victoria Road Warrington Road Westfield Road Weston Road Windmill Hill Avenue North Windmill Hill Avenue South Windmill Hill Avenue East Windmill Hill Avenue West Windmill Lane Wood Lane

Part 2 - Consent Streets

All streets within the Borough of Halton which are not designated as prohibited streets are designated as consent streets except streets owned or maintained by relevant corporations.

APPENDIX 3

Adopted as from 1st April 1983
Council Meeting 6th January 1983 Minute 394 adopting recommendation from
Policy & Resources Committee meeting 6th December 1982 Minute 382 (applying to
[so far as still relevant] Sex Establishments, **Street Trading** and Tattooing, Ear-
piercing and Acupuncture).

APPENDIX 4

NOTICE OF PASSING OF A [DESIGNATION] RESOLUTION

Local Government (Miscellaneous Provisions) Act 1982

WHEREAS

1. Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”) provides for matters relating to street Trading and is in effect within the Borough of Halton.
2. Halton Borough Council (the “Council”) is a district council for the purposes of Schedule 4 of the 1982 Act.
3. The Council has previously designated streets within the meaning of paragraph 2 to Schedule 4 of the 1982 Act but all of the records associated with the designation are not available for production.
4. The Council have resolved (to the extent that such designations are not already in force) to designate streets within the Borough of Halton as consent streets and prohibited streets as set out in the resolution.
5. The Council is required, having made a resolution to place this notice in a local newspaper for two consecutive weeks as directed by Schedule 4 of the 1982 Act.

NOW THEREFORE NOTICE IS HEREBY GIVEN that the Council have on []
passed a resolution in accordance with paragraph 2 of Schedule 4 of the 1982 Act to
designated streets within the Borough of Halton as consent streets or prohibited
streets (to the extent that they are not already so designated) and the designations
shall take effect on and after [.....]

Dated:

Issued by: