

CHESHIRE EAST COUNCIL

Cabinet Member for Safer and Stronger Communities

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| Date of Meeting: | 20 th December 2010 |
| Report of: | Legal Team Manager (Regulatory) |
| Subject/Title: | Re-adoption of Part II Local Government (Miscellaneous Provisions) Act 1976 |

1.0 Report Summary

- 1.1 The report provides details of a proposal to re-adopt the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 within the Borough of Cheshire East.

2.0 Recommendations

- 2.1 The Cabinet Member for Safer & Stronger Communities is requested to
- 2.1.1 note the legislative position as outlined in the report and to express the intention to pass a resolution to adopt the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; and
- 2.1.2 authorise the Borough Solicitor, or officer acting on her behalf, 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.

3.0 Reasons for Recommendations

- 3.1 Re-adoption of the legislation is proposed in order to consolidate the three previous resolutions of the predecessor district authorities into one resolution and to ensure certainty in any enforcement action taken under the legislation.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 None

7.0 Financial Implications

- 7.1 There will be a cost implication relating to the publication of the statutory notices. The estimated publicity costs for the statutory notices is estimated to be £5,000. The Licensing Section has a publicity budget 2010/11 amounting to £3,500. The estimated overspend of £1,500 resulting from the cost of advertising the statutory notices will have to be funded by a budget virement from the Licensing printing & stationery budget.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 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.
- 8.2 Section 45(3) provides that a council shall not pass a resolution adopting Part II of the 197 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 the each Parish or community council within the area to be affected.

9.0 Risk Management

- 9.1 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.

10.0 Background and Options

- 10.1 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.
- 10.2 Each of the three predecessor district Councils made resolutions to adopt Part II of the 1976 Act. Crewe and Nantwich Borough Council resolved on 27th May 1982 that Part II would come into force in its area

on 1st October 1982. Macclesfield Borough Council resolved on 20th October 1977 that the provisions would come into force on 1st April 1978. Congleton Borough Council resolved on 1st October 1981 that the provisions would come into force in its area on 1st November 1981.

- 10.3 It is suggested that it would be beneficial to consolidate the adoption resolutions 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.
- 10.4 On 8th November 2010 the Licensing Committee resolved to recommend to the Cabinet Member for Safer and Stronger Communities that she authorise the Borough Solicitor 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 re-adopt the provisions of Part II of the 1976 Act in relation to the Council's administrative area. In accordance with statutory requirements, as outlined in paragraph 8 above, 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 Councils, Parish Councils and Parish Meetings within the Borough. The alternative option would be not to authorise the publication of the notice of intention; this would mean that the benefits referred to in paragraph 10.3 above would not be achieved.
- 10.5 Once the statutory notice requirements have been met a further report will be brought before the Cabinet Member in relation to the resolution to adopt the legislation.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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