

CHESHIRE EAST COUNCIL

Cabinet Member for Safer and Stronger Communities

Date of Meeting:	28 th February 2011
Report of:	Legal Team Manager (Regulatory)
Subject/Title:	Adoption of Part II of the Local Government (Miscellaneous Provisions) Act 1976
Portfolio Holder:	Councillor Rachel Bailey

1.0 Report Summary

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

2.0 Recommendations

- 2.1 The Cabinet Member for Safer & Stronger Communities is requested to resolve that the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 (other than section 45) be adopted to apply throughout the Borough of Cheshire East with effect from 31st March 2011.

3.0 Reasons for Recommendations

- 3.1 At the meeting on 20th December 2010 the Cabinet Member for Safer & Stronger Communities resolved to authorise the Borough Solicitor, or officer acting on her behalf, to provide notice of the Council's intention to pass a resolution to adopt the provisions of Part II of the 1976 Act. The adoption was 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.
- 3.2 Notice of intention has been published in accordance with the provisions of section 45 of the 1976 Act. The Cabinet Member is therefore now requested to adopt the legislation as per the recommendation at paragraph 2.1.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 N/A

**6.0 Policy Implications including - Climate change
- Health**

6.1 None

7.0 Financial Implications (Authorised by the Borough Treasurer)

7.1 None.

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 of 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 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.

9.0 Risk Management

9.1 It is suggested that 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. 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.

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.
- 10.4 At the meeting on 20th December 2010, following a recommendation from the Licensing Committee, the Cabinet Member for Safer & Stronger Communities resolved to authorise the Borough Solicitor, or officer acting on her behalf, to provide notice of the Council's intention to pass a resolution to adopt the provisions of Part II of the 1976 Act.
- 10.5 In accordance with section 45(3) of the 1976 Act, a notice of intention (a copy of which is attached as Appendix A) was published in local newspapers throughout the Borough during the weeks commencing 31st January 2011 and 7th February 2011. In addition the notice was served on the Town and Parish Councils and the Parish Meetings within the Borough.
- 10.6 The Cabinet Member is asked to resolve that the provisions shall apply within the Borough with effect from 31st March 2011. This date is proposed in order to comply with the requirements of section 45(2) of the 1976 Act which prescribes that the date specified "must not be before the expiration of the period of one month beginning with the day on which the resolution is passed."
- 10.7 The alternative option would be not to adopt the provisions. However, this would mean that the benefits identified in paragraph 10.3 above would not be achieved.

11.0 Overview of Year One and Term One Issues

11.1 None

12.0 Access to Information

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

Appendix A – Notice of Intention

Name: Mrs K Khan
Designation: Solicitor, Legal Services
Tel No: 01270 685847
Email: kate.khan@cheshireeast.gov.uk