

CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting: 12th September 2011
Report of: Head of Safer & Stronger Communities
Subject/Title: Re-adoption of Schedule 4 Local Government
(Miscellaneous Provisions) Act 1982 – Street Trading

1.0 Report Summary

- 1.1 The report provides details of a proposal to re-adopt the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 (in relation to street trading) within the Borough of Cheshire East.

2.0 Recommendation

- 2.1 The Licensing Committee is requested to recommend the following resolution to Council:

That Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) shall be adopted and shall apply to the Borough of Cheshire East with effect from 1st December 2011.

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, including Carbon Reduction/Health

- 6.1 The decision requested relates to the re-adoption of legislation which was originally adopted by the predecessor district councils.

7.0 Financial Implications 2011/12 and beyond (Authorised by the Borough Treasurer)

7.1 None

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') makes provision for the regulation of street trading. 'Street trading' for these purposes means, subject to certain prescribed exceptions including markets/fairs, news vendor, pedlars and roundsmen, "the selling or exposing or offering for sale of any article (including a living thing) in a street." Further information about the detail within Schedule 4 is provided within paragraph 10.

8.2 Section 3 of the 1982 Act provides that Councils 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." There is no statutory requirement to publish a notice of adoption of Schedule 4 to the 1982 Act.

8.3 By virtue of paragraph 20 within Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) the function of adopting the legislation is a non-executive function.

9.0 Risk Management

9.1 It is suggested that re-adoption of the legislation, in accordance with section 3 of the 1982 Act, will ensure certainty in any enforcement action.

10.0 Background and Options

10.1 Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) ('the 1982 Act') contains provisions in relation to the regulation of street trading. "Street trading" for the purposes of the 1982 Act means, subject to certain prescribed exemptions, "the selling or exposing or offering for sale of any article (including a living thing) in a street." Councils which have adopted Schedule 4 have the power to designate 'streets' (i.e. any road, footway, beach or other area to which the public have access without payment) within their area as 'consent streets,' 'licence streets' or 'prohibited streets.' A 'consent street' is a street in which street trading is prohibited without the consent of the Council; a 'licence street' is a street in which street trading is prohibited without a licence granted by the Council; and, as the name suggests, a 'prohibited street' is a street in which street trading is prohibited. A person who engages in street trading in a prohibited street or engages in street trading in a licence or consent street without the requisite authorisation is guilty of an offence and would be liable on conviction to a level 3 fine (i.e. not exceeding £1,000).

10.2 Each of the three predecessor district Councils made resolutions to adopt Schedule 4 of the 1982 Act. Crewe and Nantwich Borough Council made a resolution on 29th June 1983; Macclesfield Borough Council on 21st April 1983

and Congleton Borough Council on 3rd February 1983. Each of the district Councils subsequently made further decisions to designate various streets within their areas as either prohibited or consent streets. At present there is one consent in force in the Crewe and Nantwich area, six in the Macclesfield area and twelve in the Congleton area.

- 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. It is proposed that following the adoption, the Licensing Section will carry out a review of the street trading function in order to establish a harmonised approach across the Borough.
- 10.4 The Licensing Committee is therefore requested to make the recommendation to Council contained within paragraph 2 above as the first step in the process of the review of the street trading function.
- 10.5 The alternative option would be not to recommend the adoption of the legislation to Council; however this would mean that the benefits identified in paragraph 10.3 would not be achieved.
- 10.6 There is no statutory requirement within section 3 of the 1982 Act to publish either a notice of intention to adopt Schedule 4, or to publish a notice of adoption after a resolution has been made, however it is proposed that should Council make the requested resolution, a notice of adoption will be published on the Council's website.

11.0 Access to Information

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

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