

Committee: Full Council

Date: Tuesday,

Title: Refreshment of the evidential trail regarding the Council's ability to prosecute offences under Part II Local Government (Miscellaneous Provisions) Act 1976

6 December 2022

Lead Member: Councillor Lavelle, Chair of the Licensing and Environmental Committee

Report Author: Elizabeth Smith, Solicitor.
esmith@uttlesford.gov.uk

Summary

1. This report is submitted to advise Members regarding the steps required to provide up to date evidence of the Council's adoption of Part II Local Government (Miscellaneous Provisions) Act 1967

Recommendations

2. That Members a) resolve to confirm the resolution in this regard dated 31st January 1989 and b) that the steps required under S45 of the 1976 Act to publicise the making of the said resolution are undertaken

Financial Implications

3. As part of its statutory responsibilities the Council regulates those hackney carriage and private hire vehicle drivers and operators who choose to licence within the District of Uttlesford. This includes a large number of Home to School Transport contractors (HtST) working in various locations throughout England.
4. Part II of the Act contains a number of powers including that to bring a prosecution for a number of offences created by the Act. If the adoption of the Act and the publicization of that adoption cannot be properly evidenced, then the prosecution will fail and the Council could be found liable to pay the Defendant's legal costs.

5. Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection: -

- a. Part II Local Government (Miscellaneous Provisions) Act 1976
- b. Byelaws made under S68 Town Police Clauses Act 1847, S171 Public Health Act 1875 and S15 Transport Act 1985 in respect of hackney carriages, confirmed by the Secretary of State on 5th May 1987.

- c. Minutes of meeting of Policy and Resources Committee dated 17th January 1989 recommending the extension of the licensing regime to the private hire vehicle trade. (Appendices A1 and A2)
- d. Minutes of Full Council dated 31st January 1989 resolving to accept the recommendation set out at c) above. (Appendix B)
- e. Newspaper advertisements and copy covering emails as required by S45(3) (a) and (b)

Impact

7.

Communication/Consultation	None.
Community Safety	The purpose of the HC/PHV licensing regime is to ensure the safety of the travelling public and the Council takes this responsibility very seriously.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	The European Convention of Human Rights sets out 18 Convention rights incorporated into UK law by S1(3) Human Rights Act 1998 and set out in full in Schedule 1 Part I thereof. Article 3 states as follows:- Everyone has the right to “life, liberty and security of person”.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

- 8. The Council licenses some 1981 HC/PHV drivers and 74 operators and since approximately 70% of the former are engaged on HtST contracts throughout England it is regarded as being essential that the full range of powers under Part II of the 1976 Act are available to officers. The powers under all of the legislation relating to this activity are not automatically available and have to be specifically adopted by local authorities. Those relating to hackney

carriages (“taxis”) were adopted by the making of byelaws in 1986/7 and they were extended to private hire vehicles (popularly known as “minicabs”) in 1989.

9. S45 of the 1976 Act prescribes the procedure that must be followed in order secure this. The resolution to adopt the provisions of Part II of the Act must be made by the local authority involved and notice of intent to make that resolution must be advertised for two consecutive weeks in a local newspaper. Notice must similarly be served on the date of the first publication, upon all the Parish Councils within the District of Uttlesford.
10. In order to validly prosecute an offence under the Act the Council must be able to prove all the requirements of S45 have been met.
11. Due to the age of the original resolution the Council finds itself unable to prove the advertising and service requirements were complied with. Inquiries have been made of other authorities finding themselves in this position, and Buckinghamshire Council (the successor body to Aylesbury Vale Council, the Respondent in the leading case in the area) advise that given the age of the legislation that this is not uncommon and that the simplest mode of resolving the problem is passing a confirmatory resolution and re-publicising the same. Members are thus respectfully requested to do this and it is confirmed the advertisements and copy correspondence with Parish Councils will be placed in safe storage with the Byelaws, a copy of this report and the minutes of this meeting.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
(1) A prosecution might be dismissed with costs against the Council in default of this resolution.	Since the problem has been identified no prosecutions have been brought but officers wish to do so as soon as possible.	Serious misconduct might go unsanctioned.	Adopting these recommendations without delay

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.