

**Committee:** Licensing and Environmental Health Committee

**Date:** 1<sup>st</sup> February 2023

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

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## Summary

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

## Recommendations

2. That Members do note the report.

## Financial Implications

3. 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.

## Background Papers

4. 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 5<sup>th</sup> May 1987.
  - c. Minutes of meeting of Policy and Resources Committee dated 17<sup>th</sup> January 1989 recommending the extension of the licensing regime to the private hire vehicle trade.
  - d. Minutes of Full Council dated 31<sup>st</sup> January 1989 resolving to accept the recommendation set out at c) above.
  - e. Newspaper advertisements and copy covering emails as required by S45(3) (a) and (b)

**Impact**  
**5.**

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**

6. 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. 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.
7. The relevant notices were published on the Saffron Walden Reporter and Dunmow Broadcast on 24<sup>th</sup> November and 1st December 2022 and notice was served electronically upon the Clerks to all the Parishes within Uttlesford on 20<sup>th</sup> October 2022. A confirmatory email was sent to them on 7<sup>th</sup> December 2022 following the meeting of Full Council on 6<sup>th</sup> December 2022.

8. Copies of all relevant documents have been placed in the strongroom alongside the Council's hackney carriage byelaws.

### Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
A prosecution might be dismissed with costs against the Council in default of this resolution.(1)	Since the problem has been identified no prosecutions have been brought but officers wish to do so asap.	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.