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**Report to:** Licensing and Regulatory      **Date of Meeting:** 6 November 2013  
Urgent Referrals Committee  
Cabinet      7 November 2013  
Council      21 November 2013

**Subject:** Re-adoption of the Local Government (Miscellaneous Provisions) Act 1976

**Report of:** Head of Corporate Legal Services      **Wards Affected:** All

**Is this a Key Decision?** No      **Is it included in the Forward Plan?** No

**Exempt/Confidential**      No

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### **Purpose/Summary**

The report provides details of the proposal to re-adopt the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976 (“the 1976 Act”) within the Borough of Sefton.

### **Recommendation(s)**

That the Licensing and Regulatory Urgent Referrals Committee:

1. Recommends the Cabinet to recommend to the Council that the Head of Corporate Legal Services be authorised to provide notice, in accordance with Section 45 of Part II of the Local Government (Miscellaneous Provisions) Act 1976, (‘the Act’) of the Council’s intention to pass a resolution to re-adopt the provisions of Part II of the Act in relation to the Council’s administrative area, with effect from 7<sup>th</sup> February 2014, subject to no adverse comments being received in relation to that notice; and
2. If such adverse comments are received this matter be referred back to the Licensing and Regulatory Committee and that Council be advised; and

That the Cabinet:

3. Receives and approves the recommendation of the Licensing and Regulatory Committee and recommends to Council for approval; and

That Council:

4. Receives and approves Cabinet’s recommendation

**How does the decision contribute to the Council’s Corporate Objectives?**

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity	✓		
3	Environmental Sustainability		✓	
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities	✓		
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy	✓		

**Reasons for the Recommendation:**

A recent judgment has been made regarding decisions to prosecute under Part II of the Act. A local authority has been successfully challenged where it could not demonstrate that the prescribed notice procedure had been followed in its adoption of the Act some 35 years previously.

Re- adoption Part II of the Act is proposed for the purposes of clarification for the future, without prejudice to the Council’s previous adoption made pursuant to the Act, and to ensure certainty in any enforcement action taken under the Act.

Generally, Cabinet is not involved in matters pertaining to licensing. However, this re-adoption is not determination, approval, consent and licence or registration concerning a licence, permission and therefore falls to be considered by the Council’s Executive

**What will it cost and how will it be financed?**

**(A) Revenue Costs:** Publication of the statutory notices will be financed from the Taxi Licensing budget, are likely to be in the region of £1,000.

**(B) Capital Costs:** Nil

**Implications:**

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

**Legal**

Where the Town Police Clauses Act 1847 is in force throughout a district Council, Section 45(3) of the 1976 Act provides that a council may resolve that Part II of the 1976 Act is to apply in the area.

The Council may 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.

**Human Resources****None****Equality**

- |   |                                     |
|---|-------------------------------------|
| 1. No Equality Implication                          | <input checked="" type="checkbox"/> |
| 2. Equality Implications identified and mitigated   | <input type="checkbox"/>            |
| 3. Equality Implication identified and risk remains | <input type="checkbox"/>            |

**Impact on Service Delivery:**

Re-adoption of the Act will provide clarification and certainty.

**What consultations have taken place on the proposals and when?**

The Head of Corporate Finance and ICT (FD2627) has been consulted and any comments have been incorporated into the report.

**Are there any other options available for consideration?**

No, failure to re-adopt the Legislation may result in uncertainty in the Council's ability to take enforcement action.

**Implementation Date for the Decision:**

Action will be taken immediately following Council, to notify of the proposed re-adoption. If no adverse comments are received, the re-adoption will be effective from 7 February 2014.

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**Background Papers:**

The following papers are available for inspection by contacting the above officer:

1. Decision in Aylesbury Vale District Council –v- Call a Cab and Ahtiq Raja .

## **1. Introduction/Background**

- 1.1 Part II of the Local Government (Miscellaneous Provisions) Act 1976 regulates 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. The local authority must be able to demonstrate that the provisions of Part II of the 1976 Act have been adopted by the Council following the proper procedures.
- 1.2 Recent case law has seen decisions to prosecute for offences under Part II challenged successfully where a Council was unable to demonstrate, some 35 years after the event, that it had followed the prescribed notice procedure in its adoption of Part II. The paperwork was simply not available. In order to have a robust position, which would not be challengeable, it is suggested that it would be beneficial to re-adopt the resolution for the purpose of clarity for the future and to ensure certainty in any enforcement action taken under the legislation. In doing so, Council records will ensure that the necessary paperwork to evidence the re-adoption is available.
- 1.3 It is therefore proposed that the Committee recommend to Cabinet that authority be given for the provision of notice, in accordance with section 45 of the Local Government (Miscellaneous Provisions) Act 1976, of the Council's intention to re-adopt the provisions of Part II of the 1976 Act. In accordance with statutory requirements, such 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 and Parish Councils within the Borough.