

**Bolsover District Council**

**Council**

**22<sup>nd</sup> May 2019**

**PART II OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS)  
ACT 1976 WITHIN THE DISTRICT OF BOLSOVER**

**Report of the Joint Head of Corporate Governance and Monitoring Officer**

This report is public

**Purpose of the Report**

- On 3<sup>rd</sup> April 2019 Council approved the intention to pass a resolution to adopt, to the extent it was not already in force, the Provisions of the Local Government (Miscellaneous Provisions) Act 1976. This report explains what steps have been taken to so far and set out the final stages of the legal process to confirm the re-adoption of the 1976 Act for the whole of Bolsover District Council, administrative area.

**1 Report Details**

- 1.1 Licensing of hackney carriage and private hire vehicles, drivers and operators is governed by several pieces of legislation. All licensing of private hire, and some provisions relating to hackney carriages, derive from Part II of the Local Government (Miscellaneous Provisions) Act 1976.
- 1.2 All Councils which licence these trades were required to adopt Part II of the Act. Bolsover District Council is unable to evidence the date that the Act was formally adopted.
- 1.3 In 2013 Aylesbury Vale District Council was involved in a legal challenge after Defendants argued that the Council had not properly adopted the relevant provisions of the 1976 Act. The Council could not prove that they have properly consulted with the parish councils and their case was dismissed. Since that case a number of District Councils have taken steps to ensure that they can evidence both stages of the process of adoption, as outlined below. It is therefore considered that Council formally (re)adopt the Act (to the extent it is not already in force) as a high priority.
- 1.4 There is no intention to change the existing position with respect to Part II of the 1976 Act therefore all policies, practices, conditions and delegations will continue unchanged where applicable.

- 1.5 The procedure for formal adoption of the provisions is set out in full in section 45 of Part II the 1976 Act. The Act can be viewed online at <http://www.legislation.gov.uk/ukpga/1976/57> and a copy can be made available on request to the Legal Services team.
- 1.6 There are two stages: (1) there must be a resolution of the Council adopting the provisions of Part II of the 1976 Act (the “Adoption Resolution”) and (2) there must be compliance with certain matters prior to the Adoption Resolution as set out below.
- 1.7 Prior to adoption the Council is required to:
- (a) Publish for two consecutive weeks, in a local newspaper circulating in our area, a notice of our intention to pass the resolution.

An appropriately worded notice was to be published in the Derbyshire Times on 11<sup>th</sup> and 18<sup>th</sup> April 2019. The wording of the notice is shown in show in Appendix 1 however for copyright reasons, scanned copies of the original notices cannot be included in this published/publically available report, however copies and originals are held on internal records.

- (b) Serve a copy of the notice, not later than the date on which it is first published above, on the council of each parish or community which would be affected by the resolution.

A copy of the notice was served by email to the clerks of the relevant parish and town council clerks on 9<sup>th</sup> April 2019. A full list of all parish and town councils within the district and who have been served is shown in Appendix 2.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 The Council need to ensure that we can evidence formal adoption of the Act and comply with the statutory requirements in terms of notice in the local paper and within each parish.

## **3 Consultation and Equality Impact**

- 3.1 Consultation issues are outlined in the report.

## **4 Alternative Options and Reasons for Rejection**

- 4.1 Not being able to evidence formal adoption of the Part II of the Local Government (Miscellaneous Provisions) Act 1976 but the Council at risk of challenge and is not an option.

## 5 Implications

### 5.1 Finance and Risk Implications

5.1.1 The cost implication relating to the publication of statutory notices has been met from the existing licensing budget.

### 5.2 Legal Implications including Data Protection

5.2.1 Having a formal resolution to adopt the Act, and evidence of the notice and consultation with Parishes in the district is essential to ensure that we have complied with the requirements for Adoption of the Act and to enable enforcement action.

### 5.3 Human Resources Implications

5.3.1 None.

## 6 Recommendations

6.1 That Council adopts, to the extent they are not already in force, the provisions of Part II of the 1976 Act in relation to the whole district as set out in Annexe 3 to the report.

6.2 That it be agreed that adoption of Part II of the 1976 Act shall come into effect on 23<sup>rd</sup> June 2019, this being a date not less than one-month after the day the resolution is passed.

## 7 Decision Information

<b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC:</i> <i>Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC:</i> <i>Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No

<b>Has the relevant Portfolio Holder been informed</b>	Yes
<b>Links to Corporate Plan priorities or Policy Framework</b>	All

## 8 **Document Information**

<b>Appendix No</b>	<b>Title</b>
1.	Wording of the notice to be published in Derbyshire Times.
2.	A full list of all parish and town councils within the district and who will have been served.
3.	Appropriate wording for the Adoption Resolution is set out in Annexe 3.
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
None	
<b>Report Author</b>	<b>Contact Number</b>
Victoria Dawson, Solicitor (Contentious Team Manager)	Ext 2231

## **Appendix 1**

### BOLSOVER DISTRICT COUNCIL

#### Part II Local Government (Miscellaneous Provisions) Act 1976

NOTICE IS HEREBY GIVEN in accordance with section 45(3) of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act'), that it is the intention of Bolsover District Council ('the Council'), to pass a resolution at a meeting of Council on 22<sup>nd</sup> May 2019 that the provisions of Part II of the 1976 Act (other than section 45) shall be adopted and shall apply within the District of Bolsover District Council, with effect from 23<sup>rd</sup> June 2019

A handwritten signature in black ink that reads "Sarah Sternberg". The signature is written in a cursive, flowing style.

Sarah Sternberg  
Head of Corporate Governance and Monitoring Officer

## **Appendix 2**

List of parish and town councils served via email with the statutory notice detailed in Appendix 1 on 9<sup>th</sup> April 2019

- Ault Hucknall
- Barlborough
- Blackwell
- Clowne
- Elmton with Creswell
- Glapwell
- Hodthorpe and Belph
- Langwith
- Old Bolsover (town)
- Pinxton
- Pleasley
- Scarcliffe
- Shirebrook (town)
- South Normanton
- Tibshelf
- Whitwell

### **Appendix 3**

#### ADOPTION RESOLUTION

#### RESOLVED:

(1) To the extent that they are not already in force the provisions of Part II of Local Government (Miscellaneous Provisions) Act 1976 1976 Act, (other than section 45), are to apply to the whole area of the Council on and after the appointed day;

(2) The appointed day for the purposes of this resolution shall be 23<sup>rd</sup> June 2019 (being not before the expiration of the period of one month beginning with the day on which this resolution is passed).

(3) All powers, duties and provisions in the Council's Constitution relating to Part II of the Local Government (Miscellaneous Provisions) Act 1976 and all existing policies, practices and conditions relating thereto shall continue to apply on and after the appointed day.