



Guildhall Gainsborough
Lincolnshire DN21 2NA

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AGENDA

This meeting will be recorded and the video archive published on our website

Regulatory Committee

Thursday, 15th March, 2018 at 6.30 pm

Council Chamber - The Guildhall, Marshall's Yard, Gainsborough, DN21 2NA

Members:

- Councillor Mrs Jessie Milne (Chair)
- Councillor Mrs Angela Lawrence (Vice-Chairman)
- Councillor Mrs Gillian Bardsley
- Councillor Owen Bierley
- Councillor David Cotton
- Councillor Paul Howitt-Cowan
- Councillor Mrs Pat Mewis
- Councillor Richard Oaks
- Councillor Mrs Maureen Palmer
- Councillor Mrs Judy Rainsforth
- Councillor Mrs Diana Rodgers
- Councillor Lewis Strange

1. **Apologies for Absence**
2. **Public Participation**
Up to 15 minutes are allowed for public participation. Participants are restricted to 3 minutes each.
3. **Declarations of Interest**
Members may make declarations of Interest at this point or may make them at any point in the meeting
4. **Minutes of Previous meetings** (PAGES 3 - 4)
To agree the minutes of the meeting held on 12 December 2017.
5. **Matters Arising** (PAGES 5 - 7)
6. **Public Reports for approval**
 - i) Wheelchair Accessible Vehicles in relation to the Equality Act 2010 (PAGES 8 - 27)
 - ii) Hemswell Cliff Public Space Protection Order - (PAGES 28 - 37)

Agendas, Reports and Minutes will be provided upon request in the following formats:

Large Clear Print: Braille: Audio: Native Language

recommendation on making an order

Mark Sturgess
Head of Paid Service
The Guildhall
Gainsborough

7 March 2018

WEST LINDSEY DISTRICT COUNCIL

MINUTES of the Meeting of the Regulatory Committee held in the Council Chamber - The Guildhall, Marshall's Yard, Gainsborough, DN21 2NA on 12 December 2017 commencing at 6.30 pm.

Present: Councillor Mrs Jessie Milne (Chair)
Councillor Mrs Angela Lawrence (Vice-Chairman)

Councillor Owen Bierley
Councillor Paul Howitt-Cowan
Councillor Mrs Pat Mewis
Councillor Mrs Judy Rainsforth

In Attendance:
Phil Hinch
James Welbourn
Licencing & Local Land Charges Manager
Democratic and Civic Officer

Apologies: Councillor Mrs Gillian Bardsley
Councillor David Cotton
Councillor Mrs Diana Rodgers
Councillor Lewis Strange

Membership: There were no substitutes for this meeting.

20 PUBLIC PARTICIPATION

There was no public participation.

21 DECLARATIONS OF INTEREST

There were no declarations of interest.

22 MINUTES OF PREVIOUS MEETING

RESOLVED that the minutes of the meeting of the Regulatory Committee of 19 September 2017 be signed as a correct record.

23 MATTERS ARISING

The Governance and Civic Officer highlighted that there were two matters arising, due for discussion at the March meeting of the Regulatory Committee.

24 SAFEGUARDING TRAINING FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS

Members considered a report that sought to obtain Members' agreement on setting a deadline of 5 January 2018 for Hackney Carriage/Private Hire Drivers to complete safeguarding training e-learning modules.

The following information was provided:

- Drivers who do not have access to a computer would be able to come into the Guildhall to complete the online modules;
- The training module that West Lindsey Hackney Carriage/Private Hire Drivers have to take has to be Lincolnshire County Council Safeguarding Children's Board approved training;
- There are several different types of safeguarding training provided by Lincolnshire County Council, but there was specifically designed training aimed at Hackney Carriage/Private Hire Drivers for West Lindsey and other districts, which drivers must complete.

RESOLVED to agree that all existing Hackney Carriage/Private Hire Drivers who have not successfully completed the specific e-learning safeguarding modules must do so by 05 January 2018 and that failure to do so will result in their Hackney Carriage/Private Hire Drivers' Licence being suspended.

The meeting concluded at 6.47 pm.

Chairman

Matters arising update for Regulatory Committee 15th March 2018

1 Introduction

- 1.1 Whilst considering previous proposed Public Space Protection Orders (PSPOs), members of the committee requested information that was added as Matters Arising to be responded to at a future date.
- 1.2 One request was that a comparison be carried out as to the costs of the District wide PSPO to tackle dog fouling, including enforcement, against the cost of employing a dog warden over a six month period.
- 1.3 The second was to have an update as to the success of all PSPOs, and how enforcement was to be carried out

2 Cost comparison

- 2.1 In a search of current vacancies for dog wardens it was noted that the salary range for the post was circa £18000 - £21500. This is without on costs or expenses the role may incur.
- 2.2 It is difficult to put exact costs on the District wide PSPO, as much of the cost has been around resources. Enforcement of the PSPO has been encompassed in to other work roles, so is not proactively enforced, but has also not added to the wage bill. This has meant that there has been no income from PSPOs to date.
- 2.3 Costs in the last six months have included
 - £330 to procure new updated fixed penalty notice books – this would have been required with either option given the changes in legislation
 - £650 to train 9 Parish and Town Council Wardens to issue fixed penalty notices on our behalf. Again, this cost would have been required even with a full time dog warden, due to the size and rurality of the District.
 - £500 for internal officer training
- 2.4 Currently the comparison shows that it would be significantly more costly to employ a dedicated dog warden, even with the likely increase in income from issued fixed penalties.
- 2.5 This does not mean such a role has been totally disregarded however.

3 Enforcement

- 3.1 Consideration is being given to creating a post dedicated to low level complaints, and supporting the PSPOs in the District, especially in the Gainsborough South West Ward and Hemswell Cliff (should the PSPO be made).

- 3.2 This post would be responsible for issuing fixed penalty notices for breach of all PSPOs, including the District wide order for dog fouling, the Trinity Arts Centre PSPO, and the proposed order in Hemswell Cliff.
- 3.3 The trained Parish and Town Wardens will still provide on the ground presence in their areas.
- 3.4 All Town and Parish councils have been provided with literature on the evidence needed to enforce the PSPOs and how to report it to the Council to help them act on it. This reporting is needed and will be further promoted to ensure resources can be best targeted.
- 3.5 Several internal staff have also undergone training to refresh their skills and knowledge and to enable delegations to allow them to issue Fixed Penalty Notices (FPNs).
- 3.6 CCTV is now available in Hemswell Cliff, and is available in areas of Market Rasen, Caistor and Gainsborough, including at the Trinity Arts Centre, to support the PSPOs. Should offences be witnessed, footage can be passed to enforcement officers to investigate.
- 3.7 It is not anticipated that targets will be set for issue of fixed penalties as this leaves the council open to challenge that tickets are issued unfairly to reach a target, and can lead to the focus being on 'quick wins' rather than trying to change embedded behaviour.
- 3.8 We intend to put out further publicity around the District wide order, and launch both the Trinity Arts and Hemswell Cliff (if made) orders in the new financial year.
- 3.9 Any paid fixed penalty notices or prosecutions will be publicised in the local media.

4 Evaluation

- 4.1 District wide PSPO: there have been no fixed penalty notices issued to date. In the past only a few penalties were given per year under previous legislation. Though we haven't yet made full use of the PSPO, it being in place allows us to enforce dog fouling which we couldn't do without it. With delegations being progressed for Parish and Town wardens, and the training of internal staff, we hope to see successes within the next financial year.
- 4.2 Trinity Arts Centre PSPO: this has not formally launched yet. Police have agreed support for a launch however we need to match this. Signage has been designed. Problems have reduced with colder weather. We aim to be in a position to launch in early spring to tackle the issue as it arises again.
- 4.3 It is early days for West Lindsey PSPOs, and it is likely that we will see more enforcement in the coming financial years. It is positive that we have these in

place, have the options for enforcement we wouldn't otherwise have, and can respond to the needs of our communities in this way.

Agenda Item 6a



Regulatory Committee

15 March 2018

Subject: Wheelchair Accessible Vehicles in relation to the Equality Act 2010.

Report by:

Mark Sturgess
Head of Paid Service

Contact Officer:

Phil Hinch
01427-676610
Licensing and Land Charges Team Manager
Phil.hinch@west-lindsey.gov.uk

Purpose / Summary:

To seek Members' views on whether this Authority should introduce and maintain a list of designated wheelchair accessible vehicles under the Equality Act 2010.

RECOMMENDATION(S):

- 1) That, under the Equality Act 2010, the Committee approves the introduction of a list of designated wheelchair accessible vehicles licensed by this Authority. The list is to be made up of all relevant hackney carriage and private hire vehicles.**
- 2) That the Committee delegates the authority to grant long-term exemptions (in excess of 3 months to licensed drivers on medical grounds and/or the driver's physical condition) to the Regulatory Sub Committee.**
- 3) That the Committee delegates to the Head of Paid Service the authority to grant short-term exemptions (up to 3 months) to licensed drivers on medical grounds and/or the driver's physical condition – this matter to be included in the annual review of the Constitution at Governance and Audit committee.**

IMPLICATIONS:

Legal: Section 167 of the Equality Act permits, but does not require Local Authorities to maintain a designated list of wheelchair accessible taxis and private hire vehicles. Therefore the provisions contained in the legislation should be viewed as being a power or an option, they are not a legal duty. If the Committee resolve to introduce a designated list of vehicles, this would attach criminal penalties to breaches of the requirements.

Financial: FIN/152/18/CC There are no financial implications to the council resulting from this report that cannot be met from within existing budgets.

Staffing: This piece of work will be carried out by current officers within the team and met from within existing budgets.

Equality and Diversity including Human Rights :
An E.I.A. has not been carried out because these measures are enabled under the Equality Act 2010 and are intended to prevent discrimination and improve equality.

Risk Assessment :
Not applicable

Climate Related Risks and Opportunities :
None as a result of this report.

Title and Location of any Background Papers used in the preparation of this report:
None.

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes No

Key Decision:

Yes No

1. Introduction

- 1.1 The Equality Act 2010 (the Act) came into effect in April 2010. It replaced previous anti-discrimination laws with a single Act, making the law easier to understand and strengthening protection in some situations. It sets out the different ways in which it's unlawful to treat someone. Sections 160 to 173 deal specifically with taxi and private hire vehicles.
- 1.2 Sections 165,166 and 167 deal with the imposition of duties on the drivers of certain wheelchair accessible taxis and private hire vehicles to assist passengers who use wheelchairs. Sections 165 and 167 were not enacted until 6 April 2017.
- 1.3 The Act provides that a licensing authority may maintain a list of wheelchair accessible taxi or private hire vehicles which conform to such accessibility requirements as the licensing authority thinks fit. Wheelchair accessible vehicles (WAV) on such a list are referred to as 'designated vehicles'.
- 1.4 The Government has strongly indicated that it expects Councils to introduce and maintain a list of designated vehicles. The introduction of a list means that any breaches of the duties imposed become criminal offences.
- 1.5 The Secretary of State has published statutory guidance to licensing authorities, any local authority that intends to maintain a list must have regard to the guidance.
- 1.6 These measures are not aimed at increasing or promoting the provision of wheelchair accessible vehicles. They are solely concerned with the publication of lists of designated vehicles, the imposition of statutory duties on the drivers of those vehicles and the application of criminal penalties to drivers who refuse to carry passengers in wheelchairs.
- 1.7 The government hopes that these measures will send a clear signal to the minority of drivers who think it acceptable to discriminate on grounds of disability that such behaviour will not be tolerated and, more importantly, to enable wheelchair users to travel with confidence.
- 1.8 Department for Transport - Statutory Guidance is attached at Appendix 2.

2. Duties to assist passengers in wheelchairs

- 2.1 From 6 April 2017 it is illegal for drivers of 'designated vehicles' to discriminate against wheelchair users. Drivers of such vehicles face a fine of up to £1,000 if they refuse to transport wheelchair users or attempt to charge them extra. Drivers of designated vehicles, will be obliged by law to:

- transport wheelchair users in their wheelchair.
- provide passengers in wheelchairs with appropriate assistance.
- charge wheelchair users the same as non-wheelchair users.

2.2 If the Council chooses to keep a list of designated vehicles the criminal penalties will apply to WLDC licensed taxi drivers who fail to comply with the provisions.

3. Provisions in Detail

3.1 Section 165 places a statutory duty on all drivers of designated vehicles to carry wheelchair users or another person who wishes to be accompanied by a disabled person who is in a wheelchair. The consequence of being on the list is that the driver of the designated vehicle must undertake the following duties:

- To carry the passenger while in a wheelchair.
- Not to make an additional charge for doing so.
- To carry the wheelchair in the vehicle if the passenger chooses to sit in a passenger seat.
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort: and
- To give the passenger such mobility assistance as is reasonably required (i.e. to enable the passenger to get into or out of the vehicle, if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair, to load the passenger's luggage into or out of the vehicle and if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle).

3.2 Section 166 allows Licensing Authorities to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it unreasonably difficult for him or her to comply with the duties. The Government has made regulations prescribing the form and manner of exhibiting a notice of exemption issued under this Section.

3.3 Section 167 allows Licensing Authorities to maintain a list of designated vehicles, this is a list of suitable wheelchair accessible vehicles licensed in their area. A vehicle may be designated if:

- a) it is either a taxi (hackney carriage) or a private hire vehicle, and
- b) it conforms to such accessibility requirements as the licensing authority thinks fit.

“Accessibility requirements” are requirements for securing that it is possible for disabled persons in wheelchairs:

- a) to get into and out of vehicles in safety, and
- b) to travel in vehicles in safety and reasonable comfort, either staying in their wheelchairs or not (depending on which they prefer).

The Secretary of State has issued statutory guidance to licensing authorities, including the accessibility requirements which they ought to consider. A licensing authority which maintains a list must have regard to any guidance issued by the Secretary of State.

- 3.4 Government guidance is that to be placed on a licensing authority's list a vehicle must be capable of carrying some, but not necessarily all, types of occupied wheelchairs. They recommend that a vehicle should only be included in the list if it would be possible for the user of a "reference wheelchair" to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair. The diagram at the end of this report shows the dimensions of a "reference wheelchair" attached as Appendix 1.
- 3.5 Officers recommend the adoption of the criteria detailed in paragraph 3.4. as the measure by which vehicles will be considered for inclusion on any list of vehicles.
- 3.6 The Act provides that vehicle owners may appeal against the decision of the Council to include their vehicle(s) on the designated list. The appeal must be made to a Magistrate's Court within 28 days beginning with the date of the inclusion.

4. Exemptions

- 4.1 A driver will be able to apply for an exemption if they have a medical condition, disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which the Act requires. The exemption can be valid for such a time period as the licensing authority thinks appropriate, bearing in mind the nature of the condition.
- 4.2 Any driver who is granted an exemption will not be required to perform any of the duties included in the requirements of Section 165. Officers intend to consider information supplied by the driver's own GP or by another doctor who has full access to the patient's medical records.
- 4.3 If the Council decides to maintain a list then officers will make early contact with drivers and owners in order to provide ample time to allow licence holders to obtain medical evidence if they feel that they ought to be subject of an exemption. Drivers granted an exemption will be issued with an exemption certificate and a prescribed notice to display in the vehicle.

- 4.4 Officers propose that exemptions be defined as either short-term (up to 3 months) or long-term (in excess of 3 months). It is recommended that authority to grant short-term exemptions is delegated to the Head of Paid Service whilst authority to grant long-term exemptions is delegated to the Regulatory Sub Committee. Officers feel that an application for a long-term exemption may well call into question the applicant's general fitness to hold a hire driver licence and thus ought not to be an officer decision.
- 4.5 Officers propose that, if agreed by the committee, the publication of the designated list will take place before the end of 2018, subject to other demands and priorities. Following this date, it will become an offence for a driver to fail to give reasonable assistance to a wheelchair passenger. This date should allow sufficient time for decisions to be made regarding any applications for exemption. A driver may appeal to the Magistrates' Court against a decision by the Licensing Authority not to grant an exemption. The appeal must be made to a Magistrate's Court within 28 days beginning on the date of the refusal.

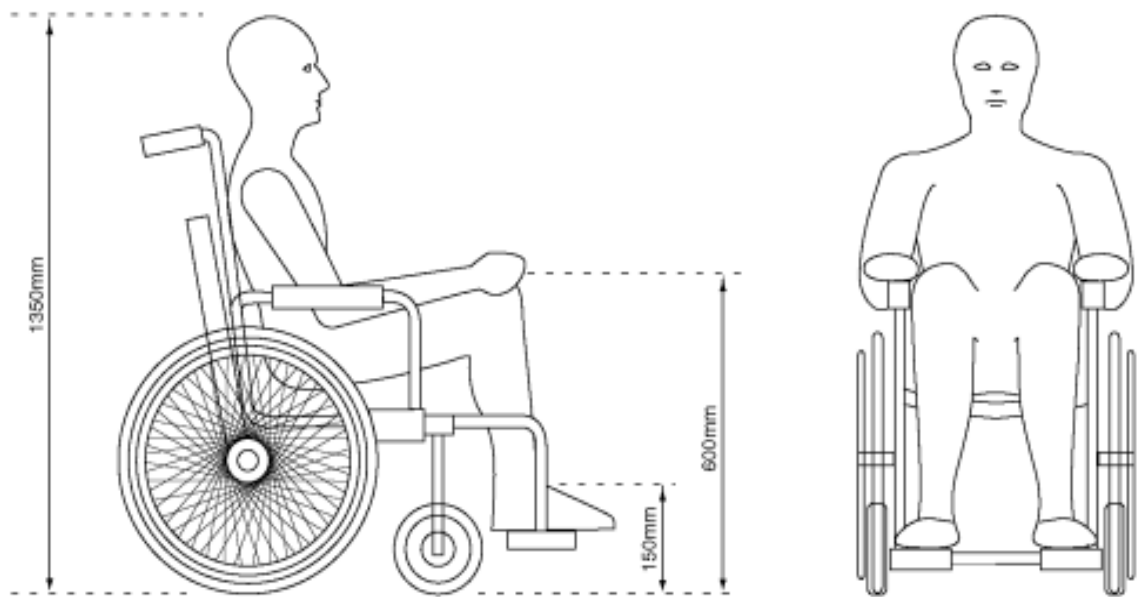
5. Additional Actions

- 5.1 If the Committee resolves that the licensing authority should maintain a list then the following actions will be taken:
- Officers write to vehicle owners in order to obtain up to date information regarding their vehicles, including any wheelchair accessibility.
 - Preparation of a draft list of designated vehicles.
 - Preparation of a policy for dealing with medical exemptions.
 - Inform owners of their vehicles inclusion on the list and inform drivers of the statutory requirements placed upon them.

6. Conclusion and reasons for recommendation

- 6.1 The recommendations are based on the recognition that the Government sees the introduction of these measures as highly desirable and strongly recommends Local Authorities introduce and maintain a list under section 167 of the Act and have issued statutory guidance to that effect. Licensing officers across the County have recommended or are recommending the introduction of these measures.
- 6.2 Alternatively, Members could resolve not to approve the introduction of a list of designated wheelchair accessible vehicles licensed by this Authority, whereby the status quo will remain. In practice this means, without such a list, the requirements of section 165 of the act do not apply and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

Appendix 1



The reference wheelchair has:

- total length of 1200mm, including extra-long footplates
- total width of 700mm
- sitting height (from ground to top of head) of 1350mm
- height of footrest above floor of 150mm



Department
for Transport

Access for wheelchair users to Taxis and Private Hire Vehicles

Statutory Guidance

Moving Britain Ahead

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

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Ministerial Foreword



This Government is committed to ensuring that transport works for everyone, including disabled people. Since joining the Department for Transport in 2015, and taking on Ministerial responsibility for transport accessibility, I have made it my mission to challenge the status quo and encourage innovative thinking to improve access to transport across the modes.

I know however, that despite the real improvements which have taken place in recent years, some disabled passengers still face discrimination when attempting to travel. I am clear that this is unacceptable.

Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful to refuse or charge them extra. I want similar protections to apply to wheelchair users, which is why I am delighted that we have commenced the remaining parts of sections 165 and 167 of the Equality Act 2010, making it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance, or to charge them extra. I hope that in so doing we will send a clear signal to the minority of drivers who think it acceptable to discriminate on grounds of disability that such behaviour will not be tolerated – and, more importantly, to enable wheelchair users to travel with confidence.

A handwritten signature in blue ink that reads "Andrew Jones". The signature is written in a cursive, flowing style.

**Andrew Jones MP,
Parliamentary Under Secretary of State, Department for Transport**

1. Introduction

Status of guidance

- 1.1 This guidance document has been issued in order to assist local licensing authorities (LAs) in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communicating with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements.
- 1.2 This is a statutory guidance document, issued under section 167(6) of the Equality Act 2010 and constitutes the Secretary of State's formal guidance to LAs in England, Wales and Scotland on the application of sections 165 to 167 of the Equality Act 2010. LAs must have regard to this guidance document.

2. Putting the law into practice

Background

- 2.1 We have commenced sections 165 and 167 of the [Equality Act 2010](#) (“the Act”), in so far as they were not already in force. Section 167 of the Act provides LAs with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”), and section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 2.2 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows LAs to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 2.3 On 15th September 2010, the Department for Transport issued guidance on the Act which stated, in relation to section 167, *“although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates”*.
- 2.4 We therefore recognise that many LAs have already implemented some of these provisions, including publishing lists of wheelchair accessible vehicles and exempting drivers. Therefore, there are likely to be a range of approaches being used in practice by LAs across England, Wales and Scotland.

Transitional arrangements

- 2.5 We want to ensure that the commencement of sections 165 and 167 of the Act has a positive impact for passengers in wheelchairs, ensures they are better informed about the accessibility of designated taxis and PHVs in their area, and confident of receiving the assistance they need to travel safely.
- 2.6 But we recognise that LAs will need time to put in place the necessary procedures to exempt drivers with certain medical conditions from providing assistance where there is good reason to do so, and to make drivers aware of these new requirements. In addition, LAs will need to ensure that their new procedures comply with this guidance, and that exemption notices are issued in accordance with Government regulations. This will ensure that we get a consistent approach and the best outcomes for passengers in wheelchairs.
- 2.7 As such, we would encourage LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of this new law. LAs should only publish lists of wheelchair accessible vehicles for the purposes of

section 165 of the Act when they are confident that those procedures have been put in place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate. We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions, but this will of course be dependent on individual circumstances.

2.8 A flowchart setting out the sorts of processes that a LA could follow is set out below. This is an indicative illustration, and it will be down to each LA to determine the actions they need to take to ensure this new law is implemented effectively in their area.



3. Vehicles

Overview

- 3.1 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs.
- 3.2 Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

Vehicles that can be designated

- 3.3 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area, confident of receiving the assistance they need to travel safely, and not charged more than a non-wheelchair user for the same journey.
- 3.4 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.
- 3.5 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a "reference wheelchair"¹ to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.
- 3.6 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.
- 3.7 The Government recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. Paragraph 3.10 of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journeys.

¹ As defined in Schedule 1 of the [Public Service Vehicle Accessibility Regulations 2000](#)

Preparing and publishing lists of designated vehicles

- 3.8 We want to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 3.9 Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'.
- 3.10 LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator. Where possible it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated.
- 3.11 However, we recognise that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the boot. Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the taxi and PHV fleet in their area.
- 3.12 We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance. Authorities may however wish to use existing licensing powers to require such drivers to provide assistance, and impose licensing sanctions where this does not occur.

Appeals

- 3.13 Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.

4. Drivers

Driver responsibilities

- 4.1 Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and PHVs.
- 4.2 The duties are:
- to carry the passenger while in the wheelchair;
 - not to make any additional charge for doing so;
 - if the passenger chooses to sit in a passenger seat to carry the wheelchair;
 - to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
 - to give the passenger such mobility assistance as is reasonably required.
- 4.3 The Act then goes on to define mobility assistance as assistance:
- To enable the passenger to get into or out of the vehicle;
 - If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
 - To load the passenger's luggage into or out of the vehicle;
 - If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 4.4 Once the duties are commenced, it will be an offence for the driver (unless exempt) of a taxi or PHV which is on the licensing authority's designated list to fail to comply with them. We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication. The Disabled Persons Transport Advisory Committee's Disability Equality and Awareness Training Framework for Transport Staff² may provide a useful resource.
- 4.5 Although each situation will be different, we take the view that reasonable mobility assistance will be subject to other applicable law, including health and safety legislation. However, we would always expect drivers to provide assistance such as folding manual wheelchairs and placing them in the luggage compartment, installing the boarding ramp, or securing a wheelchair within the passenger compartment.
- 4.6 Depending on the weight of the wheelchair and the capability of the driver, reasonable mobility assistance could also include pushing a manual wheelchair or

²

light electric wheelchair up a ramp, or stowing a light electric wheelchair in the luggage compartment.

- 4.7 It is our view that the requirement not to charge a wheelchair user extra means that, in practice, a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment. We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running.

Applying for and issuing exemptions

- 4.8 Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010.
- 4.9 Section 166 allows LAs to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties. Since October 2010, taxi and PHV drivers who drive wheelchair accessible taxis or PHVs have therefore been able to apply for exemptions. If they do not do so already, LAs should put in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.
- 4.10 We suggest that authorities produce application forms which can be submitted by applicants along with evidence supporting their claim. We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner.
- 4.11 However, the Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant. LAs may already have arrangements with such assessors, for example in relation to the Blue Badge Scheme.
- 4.12 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle. As section 166 has been in force since 2010, many LAs will already have processes in place for issuing exemption certificates, and as such we do not intend to prescribe the form that those certificates should take. We are however keen to ensure that passengers in wheelchairs are able to clearly discern whether or not a driver has been exempted from the duties to provide assistance, and as such will prescribe the form of and manner of exhibiting a notice of exemption.
- 4.13 If the exemption application is unsuccessful we recommend that the applicant is informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

Demonstrating exemptions

- 4.14 In addition to the exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.
- 4.15 The Department will soon make regulations which will prescribe the form of and manner of exhibiting a notice of exemption. Where a driver has been exempted from the duties under section 165 of the Act, they must display an exemption notice in the vehicle they are driving in the form and manner prescribed by the regulations. If the notice is not displayed then the driver could be prosecuted if they do not comply with the duties under section 165 of the Act.
- 4.16 The Department aims to distribute copies of the notice of exemption to LAs, but they are of course free to produce their own in accordance with the regulations.
- 4.17 Only one exemption notice should be displayed in a vehicle at any one time.

Appeals

- 4.18 Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal.
- 4.19 LAs may choose to establish their own appeal process in addition to the statutory process but this would need to be undertaken rapidly in order to allow any formal appeal to the Magistrate's Court to be made within the 28 day period.

5. Enforcement

Licensing measures and prosecution

- 5.1 It is important to note that a driver will be subject to the duties set out in section 165 of the Equality Act 2010 if the vehicle they are driving appears on the designated list of the LA that licensed them, and the LA has not provided them with an exemption certificate, regardless of where the journey starts or ends.
- 5.2 The Government expects LAs to take tough action where drivers breach their duties under section 165 of the Act.
- 5.3 LAs have wide-ranging powers to determine the rules by which taxis and private hire vehicles within their respective areas may operate. We recommend that they use these powers to ensure that drivers who discriminate against disabled passengers are held accountable.
- 5.4 If a driver receives a conviction for breaching their duties under section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or PHV drivers' licence. The Government's presumption is that a driver who wilfully failed to comply with section 165 would be unlikely to remain a "fit and proper person".
- 5.5 Authorities might also apply conditions which enable them to investigate cases of alleged discrimination and take appropriate action, even where prosecution did not proceed.

Agenda Item 6b



Regulatory Committee

Date 15 March 2018

**Subject: Hemswell Cliff Public Space Protection Order –
recommendation on making an order**

Report by:

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Purpose / Summary:

To present the results of public consultation on the proposed order, and make a recommendation to members

RECOMMENDATION(S):

Elected members are asked to:

- 1. Note the results of the public consultation**
- 2. Approve the making of the Public Space Protection Order (PSPO), with an effective date of 16th April 2018**

IMPLICATIONS

Legal: These Orders are made under section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014. A minimum 30 day consultation period is required by Legislation.

Power to make a PSPO has been added to the Terms of Reference of this Committee

Breach of a PSPO may be dealt with by a fixed penalty notice or prosecution. Delegated powers are in place for service of fixed penalty notices.

Appeals against the making of a PSPO can be made in the High Court within 5 weeks of the PSPO being made, on the grounds that the process has not been followed, or that the council did not have the authority to make the Order or put certain restrictions in the Order.

Financial : Fin Ref:FIN/76/18

There will be costs associated with implementation, signage and publicity and resource costs. These should be relatively low and met from within existing budget provision.

Fixed penalty notices for breach of a PSPO are set at £75 with a £50 early payment incentive in fees and charges. This will increase from 1 April 2018 to £100 with a £75 early payment incentive. Income from fixed penalty notices may be used to support the service issuing the FPN.

Staffing :

Staff time will be required to deal with breaches to support the PSPOs. It is intended that multi-skilling enforcement staff will enable this with minimal impact on individual officers by sharing the load.

Equality and Diversity including Human Rights :

The PSPOs will not disadvantage any social groups over another, and the process will be applied fairly. Exemptions for fixed penalty notices for reasons of physical or mental impairment are detailed in the Fixed Penalty Enforcement Strategy. An Equality Impact Assessment has been completed.

Risk Assessment :

Challenge in the High Court – reduced by following process and considering reasonableness throughout process

Climate Related Risks and Opportunities :
Nil

Title and Location of any Background Papers used in the preparation of this report:

None.

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

x

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

x

1 Introduction

- 1.1 West Lindsey District Council has held consultation on a proposal to make a Public Space Protection Order in Hemswell Cliff village.
- 1.2 These Orders can be made on any land open to the air that the public have a right or entitlement of access to. This means that the legislation can apply to land belonging to local authorities, as well as, for example, Church grounds and land belonging to a resident owned management company.
- 1.3 To make an Order, the local authority needs to be satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:
 - Have had, or are likely to have a detrimental effect on the quality of life of those in the locality;
 - Is, or is likely to be persistent or continuing in nature;
 - Is, or is likely to be unreasonable;
 - Justifies the restrictions imposed.
- 1.4 A PSPO can require something to happen e.g. requirement to keep dogs on a lead, or ban something from happening e.g. banning drinking alcohol in a public space.
- 1.5 A PSPO lasts for three years, after which it can be removed or extended. A PSPO can be removed or varied within the three year period if no longer needed.
- 1.6 Breach of a PSPO is a criminal offence, punishable by a fixed penalty notice or prosecution.
- 1.7 The PSPO is considered proportionate given the multiple and increased reports of anti-social behaviour and crime over the last few years, with environmental issues making a large part of the reports, and the visual deterioration in the village.
- 1.8 The PSPO is part of the actions towards Priority 2: 'Address Anti-Social Behaviour issues affecting both the environment and community safety' within the Hemswell Cliff Stabilisation and Normalisation Strategy, which was approved in December 2017 by Prosperous Communities Committee. The making of the PSPO will support stabilisation, and the enforcement normalisation, over the next three years.

2 Scope of the PSPO proposed

- 2.1 The proposed PSPO which is the subject of this report aims to reduce unreasonable environmental incidents in the village and business park of Hemswell Cliff, which is having a severe detrimental effect on the amenity of the area, and the residents living there.

- 2.2 These include:
- Animals being grazed or housed on public spaces;
 - Burning and bonfires in public areas;
 - Numerous parked vehicles, including cars, vans and caravans on green spaces;
 - Use of public land for personal use;
 - Quad bikes, mini motos and scooters being used on public land causing nuisance and damage.
- 2.3 A copy of the full draft order can be found at Annex B.

3 Consultation

- 3.1 Public consultation was held from 11th December 2017 to 22nd January 2018. This exceeded the statutory minimum consultation period of 30 days, and met the standard council consultation period of 6 weeks.
- 3.2 A Public Notice was placed in the local media on Thursday 7th December 2017 as required by legislation.
- 3.3 Articles on the consultation were placed in local press, on social media and the West Lindsey District Council (WLDC) website. The Parish Council for Hemswell Cliff also placed information about the consultation with links to the documents on their website and social media.
- 3.4 Consultation documents were available on the website, including the proposed order and the electronic consultation questionnaire, and paper copies of both were also made available in the West Lindsey offices in Gainsborough, and at the reception of the Hemswell Cliff Primary School.
- 3.5 Statutory consultees were notified by direct email, including a link to the website consultation page. Those notified in this way included:
- Police and Crime Commissioner;
 - Representatives of Lincolnshire Police including the area Inspector and Beat Team;
 - Hemswell Cliff Parish Council;
 - Elected Member for Hemswell Ward;
 - Directors of Resident Owned Management Company;
 - Managing Director of Hemswell Cliff Antiques, representing businesses on the Industrial site;
 - Head teacher Hemswell Cliff Primary School.

4 Outcome

- 4.1 A total of 35 people responded to the consultation;

- 4.2 The responses were received from a wide range of users of the site (two indicated more than one option):
- | | |
|--------------------------|-----|
| Resident | 18; |
| Business | 5; |
| Landlord | 2; |
| Visitor to business park | 2; |
| Visiting a resident | 2; |
| Visitor to school | 4; |
| Teacher at school | 4; |
| School Governor (Chair) | 1. |
- 4.3 33 respondents indicated they had witnessed anti-social behaviour (ASB) or environmental issues in the village, with the other 2 stating that though they had not seen it they knew someone who had.
- 4.4 The following were mentioned as environmental issues seen in the village:
- Waste and litter (33 respondents);
 - Grazing animals (27 respondents);
 - Inconsiderate parking/parking on green spaces (30 respondents);
 - Quad bikes (25 respondents);
 - Bonfires (5 respondents);
 - Mini motos/motorbikes/scooters (4 respondents);
 - Caravan parked in public space;
 - Damage to fencing and hedges.
- 4.5 There were other matters raised, such as drinking in public spaces and fighting, which cannot come within the remit of a PSPO so are not listed here. These comments have been collated and will be considered within the scope of the wider place based strategy to ensure any possible action can be taken to tackle these issues too.
- 4.6 34 respondents were in favour of making the PSPO, and 1 was unsure. No respondents felt the PSPO should not be made.
- 4.7 A large number of comments were made and some of those relevant to what the PSPO can cover are listed at Annex A. Comments on issues outside the remit of the PSPO will be considered as mentioned in 4.5.

5. Recommendation

- 5.1 Elected members are asked to:
1. Note the results of the public consultation
 2. Approve the making of the Public Space Protection Order, with an effective date of 16th April 2018

Annex A – comments relating to the PSPO

The litter and general disrepair to the site reflects badly on the entrance to Hemswell Cliff Business Centre and is not welcoming to customers.

If you issue fines make sure you follow them up! Be strong in enforcing the law, rule hard to clear up the mess and be swift!!

The grazing of animals is not such an issue as long as they are looked after in an appropriate manner and cleaned up after.

Consistency, intent information distribution & formal sanctions for repeat offenders.

The rubbish/scrap metal and general waste in the area is an eyesore.

Annex B - RECOMMENDED ORDER

WEST LINDSEY DISTRICT COUNCIL

Anti-Social Behaviour, Crime and Policing Act 2014, section 59 Public Space Protection Order

This order may be cited as the West Lindsey District Council – Hemswell Cliff Public Space Protection Order 2018.

West Lindsey District Council (“the Council”), being satisfied that the conditions set out in Section 59(2) of the Anti-Social Behaviour, Crime and Policing Act 2014 (“the Act”) have been met in relation this order in that the activities set out below have occurred in the vicinity and have had a detrimental effect on the quality of life of those in the locality, and it is likely that those activities will be carried out in the area and have such an effect in future without the order. The Council is also satisfied that the effect, or likely effect, of the activities is, or is likely to be, of a persistent or continuing nature, and these activities are unreasonable and justify the restrictions imposed by the notice, and that it is in all circumstances expedient to make this order for the purpose of reducing crime and/or anti-social behaviour in a public place.

The Council in exercise of its powers under Sections 59, 64 and 72 of the Act and under all other enabling powers, hereby makes the following order:

- That within the area shown in the attached map, all land which to which the public has a right or entitlement of access will have the following prohibitions attached:
 1. No domestic or farm animals may be grazed or kept on the land, whether under tether or within a cage, or freely roaming
 2. Burning and bonfires are banned unless arranged by or with the written permission of the local authority
 3. Structures and equipment, including tents, trampolines, marquees and playground equipment, whether permanent or temporary, may not be placed on the land unless with the written permission of the local authority

- That within the area shown in the attached map, all land to which the public has a right or entitlement of access with the exception of roads and car parks will have the following prohibitions attached
 1. No vehicle may be parked on the designated land; for the purposes of the order ‘vehicle’ includes any motor propelled vehicle including off road bikes and quad bikes or anything designed to be trailed by a motor propelled vehicle e.g. a trailer, horsebox or caravan. This does not apply to emergency vehicles responding to an emergency call, or vehicles used in or for an event arranged or agreed in writing by the local authority
 2. No vehicle may be driven on the designated land; for the purposes of the order ‘vehicle’ includes any motor propelled vehicle including off road bikes

and quad bikes or anything designed to be trailed by a motor propelled vehicle e.g. a trailer, horsebox or caravan. This does not apply to emergency vehicles responding to an emergency call, or vehicles used in or for an event arranged or agreed in writing by the local authority

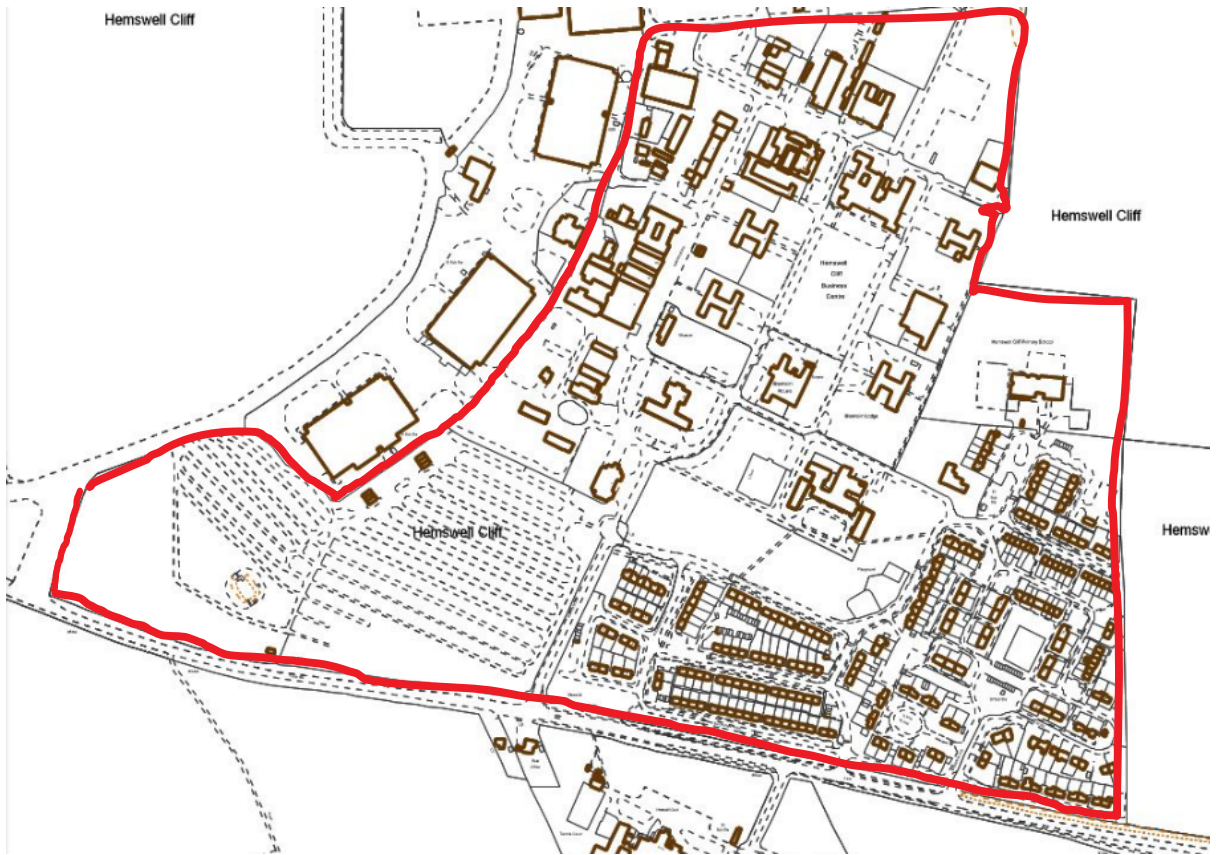
- Exemptions are listed at Schedule 1
- A map of the area is contained at Schedule 3

Schedule 1

1. There are no exemptions to this order further to those contained in the wording of the order.
2. The order will not apply to private land that the public have no right of access to, including gardens

Schedule 2

1. It is an offence for a person without reasonable excuse to fail to comply with this order.
2. A person found to be in breach of this order is liable on summary conviction to a maximum penalty of a level 3 fine or to a fixed penalty notice of up to £100.
3. Fixed penalty notices may be issued by an authorised officer. An authorised officer will be an officer of the District council, or any other suitably trained person, to whom the council has delegated powers under this legislation to issue fixed penalty notices. Warranted police officers and PCSOs in Lincolnshire are also authorised officers under this legislation.



The Order shall come in to operation on 16th April 2018 and shall have effect for a period of 3 years thereafter, unless extended by further orders under the Councils statutory powers.

If any interested person requests to question the validity of this order on the grounds that the Council did not have the power to make the order or that a requirement under the Act has not been complied with, then he or she may apply to the High Court within six weeks from the date in which the order is made.

GIVEN under the Common Seal of West Lindsey District Council on the Day of 2017

The Common Seal of
West Lindsey District Council
was hereunto affixed
in the presence of

Authorised Officer