



Regulatory Committee

15 March 2018

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

Report by:

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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.

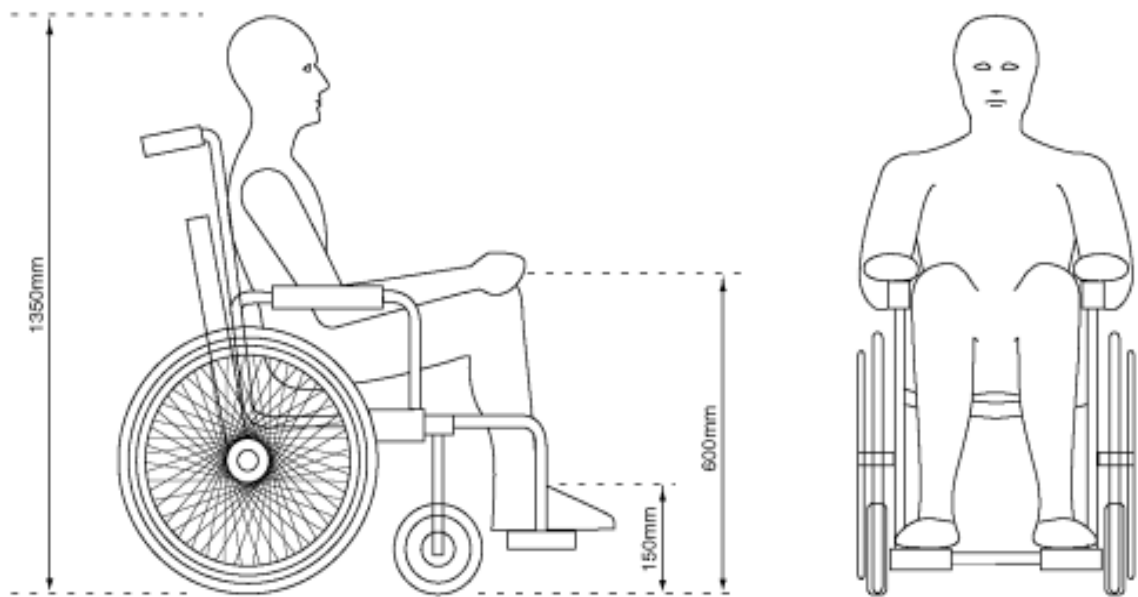
5. Additional Actions

- 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