

LICENSING AND REGISTRATION COMMITTEE

12 APRIL 2017

REPORT OF CORPORATE DIRECTOR (OPERATIONAL SERVICES)

A.2 REPORT TO ADVISE THE LICENSING AND REGISTRATION COMMITTEE OF THE COMMENCEMENT AND IMPLEMENTATION PROCESS FOR SECTIONS 165 AND 167 OF THE EQUALITY ACT 2010 (EA 2010) AS IT RELATES TO WHEELCHAIR ACCESSIBLE HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE VEHICLES AND DRIVERS AND OPERATORS OF THESE VEHICLES.

(Report prepared by Simon Harvey)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

The Licensing and Registration Committee is asked to note and agree to the commencement of Sections 165 and 167 of the Equality Act 2010 (EA 2010) as from the 6 April 2017 and the process that the Council and the Tendring Hackney Carriage and Private Hire licenced trades will have to follow in order to lawfully comply with Sections 165 and 167 of the Act.

EXECUTIVE SUMMARY

- The Government has enacted Sections 165 and 167 of the Equality Act 2010 with effect from the 6 April 2017 in respect to Hackney Carriage (Taxi) and Private Hire Drivers, Vehicles and Operators.
- This will require the Council as the Licensing Authority to make a list of taxi and private hire vehicles licensed by Tendring District Council that it considers to be wheelchair accessible; e.g. as a minimum, the vehicle is designed for and is able to carry, a passenger seated in a standard “reference wheelchair “and also publish a list of those vehicles (known as designated vehicles under Section 167 of the EA 2010).
- It will also require the Council to set a date from when it will be unlawful in our area for drivers of licensed Tendring District Council designated wheelchair accessible taxi and private hire vehicles to refuse to carry passengers in wheelchairs; provide assistance to those passengers and prohibit wheelchair passengers from being charged extra for their journey.
- This date is likely to be six months from the date that the Licensing and Registration Committee commences the implementation of this policy in our area. E.g. if it is adopted by Committee at the 12 April meeting then it is likely to come into force in mid-October 2017.
- It will be a criminal offence if a driver of a designated wheelchair accessible vehicle fails to comply with the duties specified and any driver convicted would be liable to receive a level 3 fine which is currently £1,000.
- Drivers can however apply for a medical exemption to undertake the carriage of a wheelchair accessible passenger and the duties associated with that carriage under

Section 165 of the EA 2010. It will be at the discretion of the Council as to who it will accept that medical exemption from, i.e. the drivers own General Practitioner, or one that the Local Authority designates such as an occupational health Doctor. Any such medical requests or examinations will be undertaken at the drivers own expense.

- There is no national or central government set standard for design of wheelchair accessible vehicles in terms of their size and dimensions.
- There is no requirement for Council's to specify that a certain percentage of the taxi and private hire vehicles that they licence must be wheelchair accessible although as at March 2015, 61% of Local Authorities do. In London (since January 2000) and other Metropolitan areas, taxis must be wheelchair accessible in order to be granted a licence.
- Outside London and other Metropolitan areas the average percentage of wheelchair accessible vehicles are 36% in urban areas and 13% in rural areas (as at March 2015).
- In Tendring, it is estimated that we currently have approximately 14 wheelchair accessible taxi and private hire vehicles that are likely to be designated out of around 285 licensed vehicles.
- The number of wheelchair accessible vehicles in Tendring will only be confirmed however once the process of vehicle designation commences in our district.
- The cost of a wheelchair accessible vehicle is considerably higher than that of an ordinary saloon or MPV type vehicle.

RECOMMENDATION(S)

It is Recommended to the Committee that it:

a) Agrees to implement Sections 165 and 167 of the Equality Act 2010 as laid out in the main body of the report and looks to implement within a period of six months from the date of the Committee meeting if it is possible to do so; and

b) Delegates the final setting of this future date to the Head of Commercial Services and/or the Licensing Manager; and

c) Adopts the suggestion made by the Department for Transport (DfT) and the Government that applications and decisions on medical or physical exemptions for drivers will be fairer and more objective if medical assessments are carried out by an appropriately qualified medical professional who is independent of the driver and this will be achieved by referring the driver/applicant to the Council's Occupational Health provider/assessor who is independent of the Council and such a request and referral for an exemption will be entirely at the applicants own expense.

d) Designates the criteria for listing and publishing the details of wheelchair accessible vehicles in the Tendring District as per the details outlined in Appendices 1 and 2 of this report and are those vehicles that are able to carry a passenger seated in a "reference wheelchair" or larger.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The implementation of the requirements of Sections 165 and 167 of the EA 2010 links into

and supports the Council's Corporate Plan for 2016 – 2020 under the following criteria:

Our Council Our Community

- Support the vulnerable
- Support rural communities

Community Leadership- Employment and Enjoyment

- Support business growth

Health and Housing

- Promote healthier lifestyles and wellbeing

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The implementation of Sections 165 and 167 of the EA 2010 will result in additional work and therefore cost for the Licensing team to communicate these requirements out to the hackney carriage and private hire trades in Tendring, identify the relevant vehicles that will need to be classified as 'designated vehicles' under Section 167 of the EA 2010 (i.e. vehicles which are as a minimum, capable of carrying a passenger safely, in reasonable comfort and securely seated in a standard wheelchair) and also process any requests received from licensed drivers for a medical exemption to carry wheelchair assisted passengers.

In addition, there may be added work for Licensing enforcement in dealing with any complaints that may be received in respect to any refusal to carry wheelchair assisted passengers in designated wheelchair accessible vehicles and which ultimately could lead to a prosecution in Court. The numbers of complaints received in respect to matters relating to wheelchair accessible vehicles are currently very low however and we received two in 2016, but these were not about a refusal to carry or pick up a wheelchair seated passenger.

Risk

Statutory Guidance from the Department for Transport issued in February 2017 to assist Local Authorities (LA's) in implementing Sections 165 and 167 of the EA 2010 and titled 'Access for wheelchair users to Taxis and Private Hire Vehicles' advises that Section 167 of the EA 2010 permits, but does not require, LA's to maintain a designated list of wheelchair accessible taxi and private hire vehicles but strongly recommends that they do so. Without the list being maintained by the Council, Section 165 of the EA 2010 which requires drivers to carry wheelchair passengers, provide assistance to them and prohibits charging any extra for doing so cannot be applied, or enforced.

Not maintaining such a list is therefore likely to be detrimental to wheelchair assisted passengers in the District and also potentially be harmful to the Council's reputation for promoting equality and diversity and also contrary to an aim of the Council's Corporate Plan 2016-2020 to support the vulnerable.

LEGAL

Any decision made by the Licensing and Registration Committee in regards to matters of grant, renewal, suspension or revocations of licences and attachment of policies or conditions to individual hackney carriage and private hire licences can be appealed to the Magistrates' Court and from there to the Crown Court.

In the event of the appeal being allowed by these Courts, the costs of any such hearing could be awarded against the Council.

In terms of challenging policy decisions, appeals can also be made by way of a Judicial Review to the Administrative Court in the High Court and again in the event of an appeal being allowed by this Court, the costs associated with the hearing could be awarded against the Council.

There is no scope, caveat, restriction or guidance as to what may be considered as “reasonably necessary” within the Act in terms of adopting policy in regards to taxi or private hire licensing or attaching conditions to a licence but the standard of “reasonableness” imposed by the Courts is high and what is “unreasonable” has been said by the Courts to be “whether an authority had acted, or reached a decision, in a manner so unreasonable that no reasonable authority could ever have come to it” (Associated Provincial Picture Houses Ltd. v Wednesbury Corporation (1948) and in subsequent cases the Courts have considered whether a decision is “... so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.” (Council of Civil Service Unions v Minister for the Civil Service (1985))

The Courts have upheld a Council’s powers to set local conditions and policy on a number of occasions as stated cases.

The most recent stated cases of interest being R v Hyndburn Borough Council ex p Rauf and Kasim 12 February 1992 QBD and R v City & County of Swansea (Respondent) Ex Parte Julie Amanda Jones (Applicant) 1996 EWHC Admin 290

While these cases have involved the setting of maximum age policies in respect to hackney carriage and private hire vehicles, nonetheless the Courts of appeal have upheld the principle of a Council’s right to set reasonable policies that do not fetter the discretion of the Council in relation to the hackney carriage and private hire drivers, vehicles and operators that it licences.

The EA 2010 also allows for appeals to be made to the Magistrates Court against a Council’s refusal to exempt a driver on medical grounds from the requirements of Section 165 of the EA 2010 and also against a Council’s decision to include a wheelchair accessible vehicle on its ‘designated vehicles’ list in accordance with Section 167. Under the EA 2010 any such appeals must be made within 28 days of either the refusal to exempt a driver, or the date the decision was made to designate a vehicle.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Consultation/Public Engagement.

CRIME AND DISORDER

Not applicable to this matter

EQUALITY AND DIVERSITY

All Equality and Diversity issues and implications will be encompassed within, and will have been considered by, the EA 2010 as the primary legislation in regards to implementing Sections 165 and 167 of this Act in our District. The recommendation of this report is that this Council does implement Sections 165 and 167 of the EA 2010.

AREA/WARDS AFFECTED

All

CONSULTATION

All hackney carriage and private hire drivers licensed by Tendring District Council have been advised via a taxi newsletter sent out in April 2017 of the implementation of Sections 165 and 167 of the EA 2010 and what this will mean for them as drivers and for the taxi trade generally. There is no requirement or need to consult on this implementation either with the taxi trade or in any wider public capacity, as this is not an initiative that has been introduced locally by the Council, but comes about as a result of primary national legislation. It is a measure that the Council and the hackney carriage and private hire trades locally will be obliged to implement.

It is likely to be necessary however on a smaller scale to consult and liaise with a number of individual companies or proprietors over the requirements of Section 167 of the EA 2010 in order to be able to identify and confirm the use of a particular vehicle or vehicles that they operate to determine their use as wheelchair accessible vehicles.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The Equality Act 2010 brought together in one Act a number of different pieces of legislation concerning discrimination and disability discrimination.

As it relates to taxi and private hire drivers, vehicles and operators, the Act came into effect in October 2010 and technically transferred and formalised the requirements previously made under the Disability Act 1995 (DDA 1995) in relation to the carriage of guide and assistance dogs. It also set into statute the mechanism for implementing the designation and listing of wheelchair accessible vehicles and the duties that taxi and private hire driver and operators would be placed under to carry wheelchair passengers, to reasonably assist them and not to charge extra for that carriage and assistance.

Under the DDA 1995 and then transferred within the remit of the EA 2010, it has been unlawful since March 2001 for hackney carriage (taxi) and March 2004 for private hire drivers and operators to refuse to carry passengers with assistance dogs, e.g. guide dogs, hearing dogs, support dogs and assistance dogs or to charge passengers extra for carrying them and their dog. If convicted of doing so, the driver or operator will have committed a criminal offence.

The only exception is if the driver had an agreed medical exemption for carrying an

assistance dog. There is no exemption on religious grounds or similar for example.

The implementation of Sections 165 and 167 will also now make it unlawful for taxi and private hire drivers and operators to refuse to carry wheelchair seated passengers in a designated wheelchair accessible vehicle or to charge the passenger extra for carrying them in a wheelchair or providing the passenger with reasonable mobility assistance.

Refusing to carry a wheelchair seated passenger in a designated wheelchair accessible vehicle will on conviction be classed as a criminal offence. The only exceptions will be for individual drivers on accepted/confirmed medical grounds.

Sections 165 and 167 of the EA 2010 along with accompanying Regulations will come into effect as from the 6 April 2017.

CURRENT POSITION

The Council does not hold a list of wheelchair accessible vehicles and has not formally been required to designate a list of wheelchair accessible vehicles in its District, or to hold and publish a list and the details of such vehicles licensed in its area up until now.

With the implementation of Section 167 of the Equality Act 2010 (EA 2010), the Government through the Department of Transport (DfT) have signalled that Local Authorities should now designate vehicles that it considers to be wheelchair accessible within a likely period of six months from the 6 April 2017. Council's should also agree the criteria for designating such vehicles and adopt a policy and a process for accepting applications from individual drivers to be exempted from the requirement to carry a wheelchair seated passenger and offering them reasonable mobility assistance on accepted and confirmed medical grounds only.

In addition, the Council will be required to publish on its web site for public access a list of those vehicles that have been designated as wheelchair accessible taxi and private hire vehicles in its area. I.e. those vehicles capable of carrying a passenger seated in a standard "reference wheelchair".

The details of this published list will include the make and model of the vehicle along with the name of the operator. It would also be helpful if known or where known, to include whether or not a vehicle is capable of carrying a passenger seated in a wheelchair larger than a standard reference wheelchair such as an electric wheelchair for example. While it is not a legal requirement to do so, the Licensing manager suggests as part of this report that including the operators business contact details such as e-mail if known and business telephone number contact will also be helpful to passengers wishing to book this type of transport.

The timescale for this implementation is however at the Council's own discretion although the DfT suggest a period of six months from 6 April 2017, but this will inevitably differ amongst authorities depending on local factors and circumstances.

There is an appeal mechanism within the EA 2010 for owners of vehicles that have been designated as wheelchair accessible by the Council to appeal this decision to Magistrates Court within 28 days of the vehicle in question being published on the public list.

It is notionally optional for a Local Authority not to designate any wheelchair accessible vehicles in its area, but the effect of doing so would mean that no driver or private hire operator could be prosecuted for refusing to carry a wheelchair seated passenger in an appropriate wheelchair accessible vehicle and it is likely that a decision not to designate wheelchair accessible vehicles in accordance with Sections 165 and 167 of the EA 2010 would be viewed with considerable disappointment and frustration by local and national mobility groups generally and others such as representatives of the wheelchair disabled.

It is hoped that the taxi and private hire trades locally will understand the reasons and need for the Council and their own industries to ensure fair access to local taxi and private hire services by wheelchair assisted passengers and work in partnership with the Council to promote and ensure that this reasonably happens.

The first step in this process is for the Council as the Licensing Authority for taxi and private hire drivers, vehicles and operators, to identify the vehicles that are licensed by the Authority that are likely to be designated vehicles. I.e. vehicles that will be listed by the Authority as those that are capable of carrying passengers seated in a wheelchair.

These vehicles must be clearly identified and published as 'designated for the purposes of Section 165 of the EA 2010'. In other words, Section 165 of the EA 2010 places a legal duty on the driver of that vehicle to carry out the following:

- 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.

In terms of defining what constitutes 'mobility assistance' for the wheelchair passenger, Section 165 of the EA 2010 describes it as assistance by the driver of a taxi or private hire vehicle (PHV) to do the following:

- 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.

Once the duties are commenced, it will be an offence for the driver (unless they are medically exempt from these requirements) of a taxi or PHV which is on the licensing authority's designated wheelchair accessible list to fail to comply with them.

Some drivers may however have a medical condition, disability or physical condition which either makes it impossible or unreasonable to offer and give physical mobility assistance as outlined above to a wheelchair seated passenger.

In which case, the driver concerned will be able to apply to the Council for an exemption from this requirement; although such an exemption will only be agreed on medical or physical grounds as substantiated or confirmed by a written report or letter from a General

Practitioner, or where a medical or physical assessment has been carried out by a medical professional who has been specifically trained to undertake such an assessment.

The DfT and Government suggest however decisions on exemptions will be fairer and more objective if medical assessments are carried out by appropriately qualified medical professionals who are also independent of the applicant, particularly where a long term or permanent exemption is being applied for. This could be achieved for example by referral of the applicant to the Council's Occupational Health provider/assessor who is independent of the Council. Such a request for an exemption referral should however be paid for entirely at the applicants own expense as the person applying for and asking for such an exemption.

Medical exemptions are entirely related to the individual in question and will not cover any other person. The exemption also covers the person and not the vehicle. While driving a licensed vehicle, the person subject to the exemption must display a prescribed 10cm x 10cm notice on the nearside of and immediately behind the windscreen so that it is clearly visible from the outside of the vehicle and its back is clearly visible from the driver's seat of the vehicle. If the licensed vehicle is driven by another non exempted licensed driver the notice must be removed.

The exemption notice and certificate issued by the Council is only applicable to the person exempted.

The requirements of Section 167 of the EA 2010 do not necessarily mean that the vehicles which are designated as wheelchair accessible by the Council are capable of carrying all types and sizes of wheelchair however. The DfT/Government's criteria for wheelchair carriage is that the user of what is termed as a "reference wheelchair", is able to enter, leave and travel in the passenger compartment of the vehicle in safety and reasonable comfort whilst seated in their wheelchair. An example of the type of wheelchair that is defined as a "reference wheelchair" is shown attached to this report as **APPENDIX 1**.

The dimensions of a "reference wheelchair" are as defined in Schedule 1 of the Public Service Vehicles Accessibility Regulations 2000 and are shown attached to this report as **APPENDIX 2**.

It also does not mean that wheelchairs passengers have to be transported while seated in their wheelchair. They may prefer for example to choose to transfer from their wheelchair into a passenger seat of the vehicle and stow their wheelchair in the boot. This could equally apply to designated wheelchair accessible vehicles or ordinary four door saloon, estate or Multi Purpose type vehicles. However only drivers of 'designated vehicles' would be subject to prosecution for failing to carry or provide assistance to a wheelchair assisted passenger for example.

To sum up for Members, a proposed stepped process to introduce the implementation of Sections 165 and 167 of the EA 2010 over the next six months depending on circumstances such as ease of identifying vehicles to be designated as wheelchair accessible, the availability of a medical exemption provider/assessor for drivers and the prevailing workload and availability of Licensing staff to carry out these functions is suggested in the flow chart shown below:

Licensing Authority (Council) L&R Committee agrees to implement Sections 165 and 167 of the EA 2010.



Licensing Authority sets out policy for exempting drivers on medical and physical condition grounds (i.e. own GP or independent Occupational Health at own cost)



Licensing Authority identifies and prepares draft lists of designated wheelchair accessible vehicles identified



Licensing Authority liaises with owners that their vehicles will be placed on the list and alert drivers to their new legal responsibilities



Drivers to apply for medical or physical exemptions where necessary



Licensing authority issues medical or physical exemptions



Licensing authority publishes list of designated wheelchair accessible vehicles and new legal responsibilities on drivers of wheelchair accessible vehicles under EA 2010 take effect

ADDITIONAL BACKGROUND INFORMATION

- There is no national or central government set standard for design of wheelchair accessible vehicles in terms of their size and dimensions. No vehicle manufacturer has yet been able to offer or provide a template for such a vehicle and this has been an ongoing aspiration and challenge for vehicle manufacturers, transport and mobility groups and Councils for a considerable number of years now.
- There is no requirement for Council's to specify that a certain percentage of the taxi and private hire vehicles that they licence must be wheelchair accessible although as at March 2015, 61% of Local Authorities do; including Councils which specify that all taxi's in their area must be wheelchair accessible in order to be granted a hackney carriage vehicle licence. An example of this would be London since January 2000.
- Outside London and other Metropolitan areas the average percentage of wheelchair accessible vehicles per taxi and private hire fleets are 36% in urban areas and 13% in rural areas (as at March 2015).
- In Tendring, it is estimated that we currently have approximately 14 wheelchair accessible taxi and private hire vehicles that are likely to be designated out of around 285 licensed vehicles. If accurate, this would make the percentage of wheelchair accessible vehicles at just over 5% of the total number of licensed vehicles in our District.
- The number of wheelchair accessible vehicles in Tendring will only be confirmed however once the process of vehicle designation commences in our district.
- The cost of a wheelchair accessible vehicle is considerably higher than that of an ordinary saloon or MPV type vehicle and is likely to be in the range of £20,000 to £30,000 for new purpose built or converted vehicles or more if electric tail lifts are integral or added. Costs of second hand vehicles are lower.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

APPENDIX 1 – Example of a “Reference Wheelchair”.

APPENDIX 2- Dimensions of a “Reference Wheelchair”.