

REPORT TO	DATE OF MEETING
GENERAL LICENSING COMMITTEE	21 March 2017

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
ACTIVATION OF ELEMENTS OF SECTION 165 AND 167 OF THE EQUALITIES ACT 2010 RELATING TO WHEELCHAIR USERS – IMPLICATIONS FOR LICENSING AUTHORITIES	PUBLIC HEALTH, SAFETY AND WELLBEING	PETER HAYWOOD	4

SUMMARY AND LINK TO CORPORATE PRIORITIES

This report refers to the imminent activation of elements of sections 165 and 167 of the Equalities Act 2010, and outlines the implications that this will have for licensing authorities.

RECOMMENDATIONS

That the General Licensing Committee:

1. notes the activation of sections 165 and 167 of the Equalities Act 2010 from 6 April 2017;
2. determines whether it would wish officers to draw up a list of “designated vehicles” for the purposes of the Equality Act;
3. if so, agrees to receive a report at a future meeting outlining a provisional designated list, a proposed exemptions policy, and a proposed communication plan for drivers.

BACKGROUND

The government has stated its intention to make public transport more accessible for all members of the community, including disabled people. As part of this process, since 2010 the Equalities Act of that year has placed a duty on hackney carriage and private hire drivers to carry guide and other assistance dogs at no extra cost. Drivers that cannot carry assistance dogs are obliged to carry a certificate of exemption confirming they have permission to refuse on medical grounds.

The government has indicated that it now wishes to extend this policy further. Accordingly, from 6 April 2017 it wants similar protections to apply to wheelchair users. This will be achieved by activating the remaining parts of sections 165 and 167 of the Equality Act 2010. Section 167 of the Act provides licensing authorities 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; to provide assistance to those passengers; and prohibits them from charging extra for their services.

Licensing authorities are not obliged to produce a list of designated vehicles under the legislation, but are empowered to do so if they so choose. The criminal provisions giving protection to wheelchair users will not come into effect until and unless such a list is drawn up by the licensing authority.

It is estimated that around 80 (one third) of the number of licensed vehicles in the Borough are currently wheelchair-accessible.

WHAT VEHICLES CAN GO ON THE DESIGNATED LIST?

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.

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" (as defined in regulations) to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.

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 designated list. The Act recognises this possibility, and provides an appropriate defence for drivers in this situation.

DRIVER RESPONSIBILITIES

Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and private hire vehicles. 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.

The Act 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; and
- 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 exempt) of a hackney carriage or private hire vehicle which is on the licensing authority's designated list to fail to comply with them. 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 hackney carriage or private hire 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".

EXEMPTED DRIVERS

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. The Act therefore allows licensing authorities to grant exemptions from the duties to individual drivers, requiring a local system to be put in place for assessing drivers and granting exemption certificates for those drivers who they consider should be exempt.

As an absolute minimum, the evidence provided by drivers wishing to be exempted should be in the form of a letter or report from a general practitioner.

If the exemption application is successful then the licensing authority should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle.

ISSUES FOR SOUTH RIBBLE BOROUGH COUNCIL TO ADDRESS

This authority does not currently have a designated list in place. If it is decided that a designated list of vehicles should be compiled by officers (and the protection to wheelchair users therefore activated), then the following measures will need to be taken:

- a) a list of designated vehicles must be produced, and clearly marked as ‘designated for the purposes of section 165 of the Act’. The list 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;
 - the name of the operator; and
 - 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;
- b) policies for the identification of exempted drivers to be developed; and
- c) policies to advise drivers that their vehicle is on a designated list should be drawn up, as well as a plan to train them on their responsibilities under the legislation. This could be done in writing and/or by holding a training event for those requiring further support;

It is suggested that the above documents could be produced and then brought back to General Licensing Committee for further consideration, with a view to approving the consultation of the exemption policy with stakeholders. Once these are approved, drivers can be invited to apply for medical exemption as appropriate, and the designated list then published and brought into effect.

In addition, any future report could contain the views of local disability groups, whose members may have a real interest in supporting the proposed adoption of the legislation.

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these. The risk assessment which has been carried out forms part of the background papers to the report.

FINANCIAL	There are no financial implications arising from this report.
LEGAL	The council does not have a designated list of vehicles and has no legal obligation to do so. However, it is accepted that a section of the travelling public are wheelchair users. Therefore, in an effort to ensure that all individuals are treated equally, the council could choose to implement a designated list by virtue of S167 of the Equality Act 2010. If implemented, this will mean that drivers of designated vehicles (except those with exemption certificates) would be committing a criminal offence should they refuse to carry passengers in wheelchairs, to fail to provide them with assistance and to charge an extra sum.
RISK	The Council does not have to decide to implement a designated list. However, failure to do so may result in criticism for failing to support the equalities agenda.
OTHER (see below)	

<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Efficiency Savings</i>	<i>Equality, Diversity and Community Cohesion</i>
<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>
<i>Respect Agenda</i>	<i>Staffing</i>	<i>Sustainability</i>	<i>Training and Development</i>

BACKGROUND DOCUMENTS

Appendix 1 – Equalities Impact Assessment