

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Commencement of Section 165 and 167 of the Equality Act 2010. Changes to the legislation affecting drivers of wheelchair accessible vehicles.

Meeting/Date: Licensing and Protection Committee – 5 July 2017

Executive Portfolio: Executive Councillor for Housing and Regulatory Services - Cllr Ryan Fuller

Report by: Licensing Manager – Christine Allison

Ward(s) affected: All

Executive Summary:

On 6 April 2017 Sections 165 and 167 of the Equality Act 2010 came into force making it illegal for taxi drivers of designated wheelchair accessible vehicles to discriminate against wheelchair users unless they are certified as being exempt from the requirements to assist. Statutory Guidance has been issued by the Department for Transport, to which a licensing authority should have regard.

Any financial implications arising will be reflected in the cost of providing the service.

Recommendation(s):

The Licensing and Protection Committee is recommended to

1. Agrees to implement Sections 165 and 167 of the Equality Act 2010 as laid out in the main body of the report.
2. Agree that the timeframe for its implementation be within a period of six months if possible to do so, but if not, the final setting of the implementation date be delegated to the Head of Community and the Licensing Manager, in consultation with the Executive Councillor for Housing and Regulatory Services and Chairman of Licensing & Protection Committee.
3. Agree that all procedural matters including the application form, the evidential requirement in support of claims, the system for assessing drivers and the duration of an exemption certificate be delegated to the Head of Community and the Licensing Manager.
4. Agree that any breaches will require the driver to appear before the Licensing and Protection Sub-committee to determine whether they are or a 'fit and proper' to hold a Hackney Carriage and Private Hire Driver's licence. Alternatively, delegated powers could be given to the Head of Community to suspend or revoke a licence. The Council's guidance on the relevance and treatment of convictions will be amended to reflect the change.

1. WHAT IS THIS REPORT ABOUT/PURPOSE?

- 1.1 With effect from 6 April 2017 the Government commenced Sections 165 and 167 of the Equality Act 2010 ('the Act').
- 1.2 The Department for Transport has also issued Statutory Guidance regarding access for wheelchair users to Taxis and Private Hire Vehicles. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communication with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements. Local Authorities must have regard to the guidance document.
- 1.3 Local Authorities now have the powers to make lists of wheelchair accessible vehicles and require the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibit them from charging extra.
- 1.4 It will be a criminal offence for drivers in designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, fail to provide them with appropriate assistance or to charge them extra. The Committee will also be able to consider the suspension or revocation of the driver's licences.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 From 6 April 2017, Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and private hire vehicles. These are:
- To carry the passenger while in the wheelchair;
 - Not to make an 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 the passenger is carried in safety and reasonable comfort; and
 - To give the passenger such mobility assistance as is reasonably required.
- 2.3 The Act defines 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 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
- 2.4 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 these duties require. The Act allows licensing authorities to grant exemptions to individual drivers, can be granted for as short or long a time period as the licensing authority thinks appropriate and must be displayed in a prescribed form.
- 2.5 Before drivers can be subject to the duties under Section 165, the licensing authority must first publish a list of designated vehicles that are available to passengers and that vehicle owners are made aware. The list will include information such as the make and model of the vehicle, whether taxi or private hire and stating the name of the operator.

3. OPTIONS CONSIDERED/ANALYSIS

- 3.1 Section 167 of the Act permits, but does not require Licensing Authorities to maintain a designated list of wheelchair accessible Hackney Carriage and Private Hire vehicles.
- 3.2 Whilst Licensing Authorities are under no legal obligation to maintain a list under section 167, the Government recommends strongly that they do so.
- 3.3 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.

4. KEY IMPACTS/RISKS? HOW WILL THEY BE ADDRESSED?

- 4.1 Drivers will be subject to the duties set out in Section 165 if the vehicle they are driving appears on the designated list and the licensing authority has not provided them with an exemption certificate, regardless of where the journey starts or ends. Where drivers breach their responsibilities, the Government expects licensing authorities to take tough action.
- 4.2 The guidance recommends that upon receipt of a conviction for breaching their duties under Section 165, it would be appropriate for the authority to consider whether they were 'fit and proper' to hold a taxi 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 'fit and proper'. This would need to be included within the Licensing and Protection Committees guidance on the relevance and treatment of convictions and within any policy document subsequently produced.

5. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 5.1 The guidance recognises that time is needed 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 requirements. It also states that licensing authorities will need to ensure that the new procedures comply with the guidance and that exemption notices are issued in accordance with Government Regulations.
- 5.2 Licensing Authorities are encouraged to put into place transitional procedures to insure the smooth and effective implementation of the new law, with drivers and owners being notified of the new requirements and given time to apply for exemptions where appropriate. The guidance suggests six months as being a sensible period of time. Only when confident that such procedures have been put into place should the list be published.
- 5.3 The guidance suggests that authorities will need to follow a series of steps to ensure the new requirements are implemented effectively in their area. The process is summarised as follows:
- The Licensing and Protection Committee agrees to implement Sections 165 and 167 of the Equalities Act 2010.
 - Licensing Authority reviews the guidance document and compares against any existing policies (we do not currently have such a policy).
 - Licensing Authority sets out a 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 informs owners that their vehicles will be placed on the list and alert drivers to their new legal responsibilities.
- Drivers 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 take effect.

5.4 An application form will need to be devised, a system for assessing drivers, the evidence required to support their claim and a system for granting exemption certificates. Medical assessments will be carried out by at least a letter/ report from a general practitioner; however the guidance recommends that medical assessments should be undertaken by professionals who have been specifically trained and are independent of the applicant. Officers estimate that the transitional process will take at least the full six months and will require amendment to any new taxi policy that may be formulated in the future.

6. LINK TO THE CORPORATE PLAN

6.1 The Government is committed to ensuring that transport works for everyone, including disabled people and to improve transport accessibility with the aim of removing any discrimination disabled passengers face when attempting to travel. We want to ensure that a safe and secure taxi service is made available to the public and that the service provides value for money. If Sections 165 and 167 are implemented, drivers licenced by this authority will not be permitted to charge extra for wheelchair users.

7. CONSULTATION

7.1 There is no requirement to undertake consultation upon the agreement to implement Sections 165 and 167 of the Equalities Act 2010 as it is primary legislation. However in accordance with the guidance recommendation, we will be making drivers and operators aware of the new requirements and give them time to apply for exemptions where appropriate.

7.2 The intention of Sections 165 and 167 are to have a positive impact for passengers in wheelchairs, ensuring they are better informed about the accessibility of designated taxis and private hire vehicles in our area and are confident of receiving the assistance they need to travel safely. We can convey this message by a variety of methods, including a statement within a taxi licensing policy, by liaising with relevant community groups and producing a press release upon implementation.

8. LEGAL IMPLICATIONS

8.1 The Equality Act 2010 (Commencement) Order 2017 brings into force Sections 165 and 167 (in so far as they are not already in force) of the Equality Act 2010.

8.2 Section 165 imposes duties on drivers to carry passengers who are either wheelchair users or wheelchair users accompanying passengers, so as to enable wheelchair users to access and exit designated vehicles. It also creates a new criminal offence if the driver of a designated vehicle fails to comply with the duties specified in Section 165.

- 8.3 Section 166 provides that the driver of a designated vehicle is exempted from the duties imposed by Section 165 if a licensing authority issues the driver with an exemption certificate which is in force and the prescribed notice of the exemption is exhibited in the designated vehicle in the prescribed manner. Section 166 also provides that a vehicle is 'designated' if it appears on the list maintained under Section 167.
- 8.4 Section 167 provides that for the purposes of Section 165, a licensing authority may maintain a list of vehicles which are either taxis or private hire vehicles and conform to such accessibility requirements as the licencing authority thinks fit.
- 8.5 Section 172 of the Act enables vehicle owners to appeal against the decision of a Licensing Authority to include their vehicles on the designated list. Any appeal should be made to the Magistrates' Court within 28 days of the vehicle in questions being included on the published list.
- 8.6 Section 172 of the Act also enables drivers to appeal against the decision of a Licensing Authority not to issue an exemption certificate. Any appeal should be made to the Magistrates' Court within 28 days beginning with the date of refusal.
- 8.7 The Guidance suggests that a Licensing Authority may choose to establish its own appeal process for drivers in addition to the statutory process. However, it would be difficult to determine any perceived advantage of this approach and would need to be undertaken rapidly in order to allow any formal appeal to the Magistrates' Court to be made within the 28 day period.

9. RESOURCE IMPLICATIONS

- 9.1 The implementation, processing of requests, ongoing maintenance and any compliance/ enforcement actions arising from complaints will result in additional work for the licensing team. The licensing of taxis and private hire vehicles should be cost neutral, so any additional costs incurred in providing the service will need to be recovered within licence fees.

10 REASONS FOR THE RECOMMENDED DECISIONS

- 10.1 That the change in legislation which came into force on 6 April 2017 be noted, together with the steps required to implement the new arrangements.

11. LIST OF APPENDICES INCLUDED

Appendix 1 – Department for Transport, Access for wheelchair users to Taxis and Private Hire Vehicles, Statutory Guidance – Moving Britain Ahead -2017.

BACKGROUND PAPERS

The Equality Act 2010 (Commencement No12) Order 2017
Sections 165-167 Equality Act 2010 .

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