

SUBJECT: PROPOSAL TO INTRODUCE A LIST OF DESIGNATED WHEELCHAIR ACCESSIBLE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES IN ACCORDANCE WITH THE EQUALITY ACT 2010

DIRECTORATE: COMMUNITIES AND ENVIRONMENT

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1. Purpose of Report

- 1.1 To inform Members of the provisions of the Equality Act 2010 (the Act) in relation to wheelchair user's access to hackney carriage and private hire vehicles.
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 - 1. To seek Members' views on whether to maintain a list of designated wheelchair accessible vehicles for the purpose of the Act.
 - 2. And, if such a list is to be maintained, to request that the authority to grant exemptions to licensed drivers on medical grounds (from their duties in relation to wheelchair passengers) is delegated to the Hackney Carriage and Private Hire Licensing Sub-committee (this is currently undertaken by the Licensing Committee).

2. Executive Summary

- 2.1 Sections 165 and 167 of the Act came into force on the 6th April 2017.
- 2.2 Section 165 of the Act requires the drivers of designated hackney carriage or private hire vehicle to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 2.3 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) on either medical grounds, or on the ground that the person's physical condition makes it impossible or unreasonably difficult for the person to comply with those duties. There are three such Certificates currently which have been granted by the Licensing Committee.
- 2.4 Section 167 of the Act provides Local Authorities with the powers to make lists of designated wheelchair accessible vehicles (WAVs).
- 2.5 Therefore, the three sections allow a licensing authority to make a list of vehicles that are capable of carrying a wheelchair and user. Once the vehicle is on the list, the driver must carry such passengers, assist them and not charge extra for carrying them. An exemption certificate can be issued to drivers who, for medical

reasons, cannot assist wheelchair users.

3. Background

- 3.1 The Act received Royal Assent in 2010 however several sections were not commenced immediately, including sections 165 and 167 which came into effect on the 6th April 2017.
- 3.2 Section 166 has been in force for some time which requires licensing authorities (LAs) to grant exemptions to drivers from their duties under section 165 on medical grounds. Three hackney carriage drivers already hold such exemptions.
- 3.3 LAs were previously able to implement the provisions of section 167 although it was purely discretionary and had no effect in law. This authority felt that there was no need to do so as the hackney carriage fleet are all wheelchair accessible and it had granted exemptions where appropriate.
- 3.4 Following the commencement of the two sections, the Department for Transport issued statutory guidance to assist LAs in their implementation of the relevant sections.

This guidance can be seen at appendix A.

- 3.5 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.

An example of a list maintained by a local authority can be seen at appendix B.

- 3.6 It is felt by officers that wheelchair users should be afforded the same services as everyone without suffering discrimination.
- 3.7 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs.
- 3.8 All the Council's 30 motorised hackney carriages are wheelchair accessible and therefore would be included on a list.
- 3.9 The Hackney Carriage and Private Hire Licensing Policy approved last year made provision for both side loading and rear loading wheelchair accessibility giving the hirer a greater choice when choosing their hiring.
- 3.10 However, none of the requirements of section 165 are directly enforceable in law on the driver of these hackney carriages even though the vehicle is capable of carrying a wheelchair user. This was something that was accepted as the duty of a hackney carriage driver.
- 3.11 Placing the vehicles on the section 167 list would then make the provisions of section 165 enforceable through the courts.

- 3.12 Protection from prosecution would be afforded if the drivers were exempt from giving assistance under the provisions of section 166.
- 3.13 In respect of private hire, there are wheelchair accessibility specifications in the policy but at the moment, although there are wheelchair accessible private hire vehicles licensed none are recorded on our systems.

4. Further Details

- 4.1 The Government has now clearly decided that now is the time to implement the two sections and thus give powers under section 167.
- 4.2 The legislation wishes 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.". (see section 3.8 of the statutory guidance)
- 4.3 The Council can easily accommodate this with its hackney carriage fleet as explained above but there are potentially issues with the private hire trade.
- 4.4 Section 165 places duties on a driver of a designated vehicle. These duties are
- a) to carry the passenger while in the wheelchair;
 - b) not to make any additional charge for doing so;
 - c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
 - d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
 - e) to give the passenger such mobility assistance as is reasonably required.
- 4.5 With these duties come the responsibilities of being properly trained in wheelchair handling. Hackney carriage drivers have to have the training so the issues are all with private hire.
- 4.6 Most, if not all, current private hire wheelchair accessible vehicles undertake County Council contracts and the contract requires properly trained drivers.
- 4.7 Such vehicles are in use on County business for a relatively short period of time and hence when not so used, can form part of the operator's general fleet of available vehicles.
- 4.8 Wheelchair accessible vehicles are more expensive than the equivalent standard vehicle because of the manufacture or conversion costs.
- 4.9 The drivers are more expensive to provide as they have to be specifically trained in wheelchair handling.
- 4.10 Thus, these vehicles are more expensive to hire and operators currently pass this on to the wheelchair users in the form of a surcharge on journey costs. This surcharge is the same irrespective of journey length. It is based on the time to load, secure and unload the wheelchair and its user.
- 4.11 With reference to section 165 (paragraph 4.4) that additional cost would appear to

be in breach of the legislation if a list of vehicles was maintained under section 167.

- 4.12 So, there is a real risk that operators will cease to make wheelchair accessible vehicles available for general private hire and concentrate solely on school contracts.
- 4.13 Another issue is ensuring that the wheelchair accessible vehicles are identified and measured to ensure that they are at least able to carry the 'reference wheelchair'.
- 4.14 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; and
 - height of footrest above floor of 150mm.

See appendix C for a diagram of the above.

- 4.15 To undertake the task, the Council would need to have a 'reference wheelchair' to try in the vehicles.
- 4.16 In respect of hackney carriages their drivers are controlled by the meter. The guidance advises that switching the meter on whilst loading and unloading should not be permitted and a condition could be placed on the vehicle licence to prevent this. The wording of such a condition can be formulated by the Licensing Officer and a Solicitor and then agreed by the Chair of Licensing at a later date. (see section 4.7 of the statutory guidance).
- 4.17 Proprietors of vehicles (either hackney carriage or private hire) can appeal the decision to place their vehicle on a designated list.
- 4.18 Drivers that have medical conditions, disability or physical condition which affect their ability to assist wheelchair users can apply to the licensing authority for an exemption certificate, as outlined above.

5. Strategic Priorities

5.1 Let's drive economic growth

- 5.2 Economic growth insofar as keeping existing jobs is concerned may be affected with the risk of withdrawal of private hire vehicles and hence their drivers. If that occurs wheelchair users may have to use out of town private hire operators. The Council cannot then guarantee quality service. See below.

5.3 Let's reduce inequality

- 5.4 This report is directly concerned with reducing inequality within the wheelchair user community. The creation of a designated list of private hire vehicles as recommended by the Government may have a negative impact. We have not received complaints from users on having to pay the surcharge imposed by the private hire trade.

If a designated list of private hire vehicles is made, the risk is reduced availability of vehicles and hence choice and users may be forced into hackney carriages as their first option and out of town operators as a second.

Placing hackney carriages on the list would not be so problematic.

5.5 Let's enhance our remarkable place

5.6 As stated above, if there was a reduction in the number of private hire wheelchair accessible vehicles this could have a negative impact on Lincoln and its population.

6. Organisational Impacts

6.1 Finance

6.2 There would be an initial cost of creating the designated lists and maybe hiring/buying a reference wheelchair.

6.3 There would be increased enforcement until the duties of drivers was clearly undertaken responsibly. This would be met from existing fees and charges arrangements.

6.4 The cost of any appeals as detailed in 6.7 below cannot be assessed but any costs incurred would have to be met from the Legal Expenses budget.

6.5 Legal Implications

6.6 It is not a mandatory requirement that a local authority implements a "designated vehicle" list under Section 167 of the Act.

6.7 The Act 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.

6.8 Equality Analysis

6.9 Under the general equality duty as set out in the Equality Act 2010, public authorities are required to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as advancing equality of opportunity and fostering good relations between people who share a protected characteristic and those who do not.

6.10 The protected grounds covered by the equality duty are: age, disability, sex, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. The equality duty also covers marriage and civil partnership, but only in respect of eliminating unlawful discrimination. The law requires that this duty to have due regard be demonstrated in decision making processes. Assessing the potential impact on equality of proposed changes to policies,

procedures and practices is one of the key ways in which public authorities can demonstrate that they have had due regard to the aims of the equality duty.

- 6.11 There is no requirement to consult on the potential implementation of section 167 of the Act either with the hackney carriage / private hire trade or the wider public as a whole, 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 hackney carriage and private hire trades locally would be obliged to implement.
- 6.12 A review of the equality analysis process was undertaken to assess if introducing a list could result in less favourable treatment of some groups, and how this could be mitigated and it has been identified that the effect of introducing a list under Section 167 of the Act would potentially have an impact on the protected characteristic of “disability”.
- 6.13 The positive effects would be that in creating a list the Council would be able to show it has taken steps to ensure that it will be easier for disabled people to travel by way of private hire and drivers who can assist them and the charging structure will be equal.
- 6.14 If a list was introduced, the negative effect would be that the provision of wheelchair accessible vehicles could be reduced due to the costs as outlined in some of the responses of the consultation and in doing so the ability of disabled people to travel could be impacted upon.
- 6.15 Consultation and results
- 6.16 The consultation letter incorporating the relevant provisions of the Act can be seen at appendix D.
- 6.17 A list of those consulted can be seen at appendix E.
- 6.18 At appendix F through to appendix N responses to the consultation exercise can be seen.
- 6.19 Appendix J contains partial minutes of the Lincoln Tenants’ Panel meeting of the 6th September 2017, members are directed to minute 104.
- 6.20 Four responses were received that were not a result of direct consultation, these can be seen at appendix K through to appendix N.
- 6.21 At appendix N an email can be seen from Dick Fowler (author of appendix M) who, along with additional comments, provides a link to an extensive research paper created by Doug Paulley. Members may view this 41 page document by using the link below.
- <https://www.kingqueen.org.uk/s167/>
- 6.22 Of the eight responses received six were either against maintaining a list of designated wheelchair accessible vehicles or had made negative comments about the potential introduction of such a list.

- 6.23 Of those six, five worked in the hackney carriage / private hire trade. One of the responses was from the Lincoln Taxi & Private Hire Association but mainly concerned the comments from Cabserve Ltd, a private hire operator in Lincoln.
- 6.24 The remaining response came from the Lincoln Tenants Panel who felt that a premium fare for wheelchair accessible vehicles was reasonable. The Panel also felt that maybe a reduced licence fee could be levied for wheelchair accessible vehicles that are licensed as hackney carriages or private hire vehicles thus potentially increasing their provision in Lincoln, however this would be complicated.
- 6.25 The last two responses were positive towards a list of designated wheelchair accessible vehicles being maintained. Members were asked not to be side-tracked by the expected upset of taxi companies but to put the views of disabled people who use wheelchairs first. The response from Dick Fowler who urged the Council to maintain a list mentioned that research by muscular Dystrophy UK carried out in 2016 indicated that a quarter of wheelchair users had been refused service by a taxi driver purely because they are disabled.

7. Recommendation

- 7.1 The Licensing Committee is asked to consider the following:
1. whether to maintain a list of designated wheelchair accessible vehicles for the purpose of the Equality Act 2010, or not;
 2. if a list is to be maintained; then whether to procure a 'reference' wheelchair at a cost to the Council, or not;
 3. whether to delegate to the Hackney Carriage and Private Hire Licensing Sub-committee the power to determine exemption certificates under Section 166 of the Equality Act 2010, or not;
 4. if needed, to add a condition to the current licensing conditions attached to all hackney carriage licences as detailed in 4.16 of this report above, or not, which will be approved by the Chair of the Licensing Committee.

How many appendices does the report contain? 14

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