

ADMINISTRATION COMMITTEE

Monday 26 June 2017

EQUALITY ACT 2010

Report of the Legal Services Manager

Recommendations

It is recommended that:

1. The Committee consider and approve the publishing of a list of wheelchair accessible vehicles as detailed in Appendix 1 in accordance with the Department for Transport's Statutory Guidance on Access for wheelchair users to Taxis and Private Hire Vehicles; and
 2. The Committee consider and approve the policy as shown in Appendix 2 – Exemption Procedure to enable compliance with the legislation.
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Summary

Sections 165 and 167 of the Equality Act 2010 have now come into effect as of 6 April 2017. Prior to implementation of the Act EBC had maintained a list of wheelchair accessible vehicles, the purpose of the published list being to allow disabled passengers to identify and more easily access suitable vehicles. In order to comply with the statutory scheme and guidance, in addition to the list, the Licensing Authority must have a policy regarding wheelchair accessible vehicles and the circumstances where drivers of such vehicles may be exempt on medical grounds from the duties stipulated.

Statutory Powers

Section 165 and 167 of The Equality Act 2010

Section 37 Town Police Clauses Act 1847

Section 47 Local Government (Miscellaneous Provisions) Act 1976

Human Rights Act 1998

Introduction

1. The provisions of the Equality Act 2010 require Licensing Authorities that maintain a list to exempt drivers from duties stated in the Act however there is no current policy to permit this.

Medical Exemption Policy

2. The Equality Act 2010 requires employers and service providers to make 'reasonable adjustments' or changes to take account of the needs of disabled employees and customers. Eastleigh Borough Council (EBC) is committed to an accessible public transport system in which disabled people have the same opportunities to travel as other members of society. Hackney Carriages and Private Hire Vehicles are a vital link in the accessible transport chain and it is important that people who use wheelchairs or assistance dogs can have confidence that drivers will accept them and their wheelchair or assistance dog and carry them at no extra charge.
3. On 6 April 2017, 6 licensed Hackney Carriages and 43 licensed Private Hire Vehicles licensed by EBC have been identified as being wheelchair accessible. These vehicles will be designated as such and included on the list of wheelchair accessible vehicles maintained in accordance with section 167 of the Equality Act 2010, and as recommended by Department for Transport's Statutory Guidance on Access for wheelchair users to Taxis and Private Hire Vehicles (Appendix 1 – Department for Transport's Statutory Guidance).
4. Section 172 of the Act enables vehicle owners to appeal against the decision to include their vehicles on the designated list. This appeal should be made to the Magistrates' Court and must be within 28 days of the vehicle in question being published on the Licensing Authority's published list. Proprietors of all vehicles included on the list will receive a letter detailing the new provisions of the Act and their right of appeal (Appendix 3 – Letter to Proprietors). Despite having previously maintained a list, fresh opportunity for appeal will arise on publication of the updated list.
5. Once vehicles are designated as wheelchair accessible vehicles, the drivers of such vehicles are subject to duties under section 165 of the Act. The duties are:
 - (i) To carry the passenger while in the wheelchair;
 - (ii) Not to make any additional charge for doing so;
 - (iii) If the passenger chooses to sit in a passenger seat, to carry their wheelchair;
 - (iv) To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort
 - (v) To give the passenger such mobility assistance as is reasonably required.

Mobility assistance is “assistance –

- (i) To enable the passenger to get into and out of the vehicle
- (ii) 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;
- (iii) To load the passenger’s luggage into or out of the vehicle;
- (iv) If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle”.

In addition, Sections 168 and 170 places the following duty on drivers of Hackney Carriages and Private Hire vehicles;

- i. To carry the passenger’s dog, allowing it to remain with the passenger and not make any additional charge for doing so.

A driver who fails to comply with any of the above is guilty of an offence and may receive a fine if convicted.

- 6. In some circumstances a driver of a designated Hackney Carriage or Private Hire vehicle may be unable to fulfil the requirements of the Equality Act 2010 for medical reasons, either short or longer term.

Section 166 of the Act 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 impossible or unreasonably difficult for them to comply with the duties.

Sections 169 and 171 of the Act allow Licensing Authorities to exempt drivers from the duties to transport assistance dogs if they are satisfied that it is appropriate to do so on medical grounds.

Drivers will receive a letter detailing the duties they are subject to and the process to apply for an exemption (Appendix 4 – Letter to Drivers).

- 7. To apply for a Medical Exemption Certificate a driver must submit to the Licensing Team an application form (Appendix 5 – Application Form for Medical Exemption) along with evidence supporting their claim. This evidence shall be a report from their GP which must detail exactly what duties cannot be undertaken, why they cannot be undertaken and for how long they cannot be undertaken. This assessment will be at the applicant’s expense as part of the application process.
- 8. The Licensing Manager will consider the evidence and may request further independent medical assessment to decide if the driver is:
 - (i) Fit for work;
 - (ii) Temporarily unfit to carry passengers in wheelchairs and/or assistance dogs; or

- (iii) Permanently unfit to carry passengers in wheelchairs and/or assistance dogs.
9. If the driver is declared fit for work an exemption certificate will not be issued and a letter explaining this decision will be given to the driver. If the driver does not agree with the decision to refuse the application for a medical exemption, Section 172 of the Act gives the driver a right to appeal the decision to the Magistrates' Court. The driver has 28 days from the date of refusal to appeal.
10. If the driver is declared temporarily unfit, a temporary exemption certificate of up to three months may be issued. Prior to the expiry of the temporary exemption certificate the driver will contact the Licensing Team to either:
- (i) Declare themselves fit, return to normal duties and return the temporary exemption certificate; or
 - (ii) Arrange a further medical assessment to be submitted for the Licensing Manager to consider extending the exemption certificate.
11. If the driver is declared permanently unfit to carry passengers in wheelchairs and/or assistance dogs an exemption certificate and notice will be issued. The certificate will include a photograph of the driver who has been granted the exemption and must be displayed prominently in the vehicle for public viewing (Appendix 6 – Exemption Certificate, Appendix 7 – Exemption Notice).

The exemption may be reviewed at any time with reference to expert medical evidence, and each case will be reviewed on its own merits. This may result in a further referral to independent medical assessors to determine if the driver remains medically unfit to carry passengers in wheelchairs and/or assistance dogs.

Financial Implications

12. The cost of the medical assessment is paid for by the driver as part of the application process. The licensing function is funded by ring fenced licence fees.

Risk Assessment

13. If the Policy is not adopted the Council could be challenged as the new protections for wheelchair users would not be enforceable leaving disabled passengers open to discrimination.

Equality and Diversity Implications

14. The Equality Act is relevant to the decision in this report as the decision relates to eliminating discrimination and advancing equality of opportunity. The decision will result in an improvement for wheelchair users and people with assistance dogs who use Hackney Carriages and Private Hire Vehicles and will have confidence that drivers will accept them and carry them at no

extra charge. A full Equality Impact Assessment (EIA) has not been carried out, because while there are some equalities impacts, it is not proportionate to carry out a full EIA.

Conclusion

15. That the Committee approves the policy outlined in this Report and that Members note the change in legislation.

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LICENSING MANAGER

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Appendices Attached:	7
Report No	1

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

The Equality Act 2010
Department for Transport Statutory Guidance on Access for wheelchair users to Taxis and Private Hire Vehicles