

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 27th June 2017

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WARD(S): ALL

PART I **FOR INFORMATION**

IMPLEMENTATION OF THE NEW PROVISIONS OF SECTIONS 165 AND 167 OF THE EQUALITY ACT 2010

1. **Purpose of Report**

To inform the Committee of the implementation of sections 165 and 167 of the Equality Act 2010 that took effect on 6th April 2017

2. **Recommendation(s)/Proposed Action**

The Committee is requested to note the report.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

The report outlines in full the implementation of Sections 165 and 167 of the Equality Act 2010 that took effect on 6th April 2017 in relation to:

(i) Mandatory duties now placed on all drivers of designated wheelchair accessible vehicles being either a taxi or a private hire vehicle which is placed on the Council's list of designated vehicles (hereinafter called "designated vehicles"); and

(ii) the Council's intention to maintain a list of all designated vehicles.

The purpose of the additional provisions is intended to assist passengers in wheelchairs in their use of designated vehicle services.

It is also a criminal offence for drivers of designated vehicles to refuse to carry passengers in wheelchairs, or to fail to provide them with appropriate assistance, or to charge them extra.

3a. **Slough Joint Wellbeing Strategy Priorities**

The new provisions are a mandatory national requirement for all drivers and proprietors of designated vehicles, other than where a valid exemption has been applied for and granted.

The new provisions will contribute to the Slough Joint Wellbeing Strategies priorities of:

Priorities:

1. Protecting vulnerable children
2. Increasing life expectancy by focusing on inequalities
3. Improving mental health and wellbeing

3b. Five Year Plan Outcomes

The new provisions will contribute to the Five Year Plan with the specific outcomes of:

- Our children and young people will have the best start in life and opportunities to give them positive lives.
- Our people will become healthier and will manage their own health, care and support needs.
- Slough will be an attractive place where people choose to live, work and visit.
- Slough will attract, retain and grow businesses and investment to provide jobs and opportunities for our residents.

4. Other Implications

(a) Financial

There are no financial implications of proposed action.

(b) Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
From section 2 above	There are no threats or opportunities as the new provisions under the Equality Act 2010 are a mandatory requirement for the drivers and proprietors of all designated vehicles.	Section 172 of the Equality Act 2010 provides drivers and vehicle proprietors with statutory right of appeal against the refusal for an exemption from carrying out the duties under section 165 and of the Council's intention to put the vehicle on the list of designated vehicles.

(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(d) Equalities Impact Assessment

An Equality Impact Assessment has not been completed as the new provisions/requirements are laid down in statute and applicable to all drivers and proprietors of designated wheelchair accessible vehicles in England and Wales, and therefore there is no negative or adverse impact on any individual or any equality group.

5. Supporting Information

- 5.1 A full report was put before the Licensing Committee on 23rd February 2011 detailing the provisions of the Equality Act 2010 in relation to Hackney Carriage and Private Hire Drivers and Vehicles, some of which took effect on 1st October 2010.
- 5.2 The Committee resolved to recommend to Council the specific areas detailed in section 6 below in relation to maintaining a list of designated vehicles, medical exemptions and drivers of designated vehicles to undergo passenger assistance training. The internal procedures for applications for medical exemptions have been in place since 2011.
- 5.3 At the time of the original report, an official date had not been set for the provisions in Section 165 (duties placed on drivers of designated vehicles) other than not before April 2011.
- 5.4. In relation to the Committee approving maintaining a list of designated vehicles, at that time the Department of Transport (“DfT”) stated that the list would have no actual effect in law until the provisions of Section 165 (duties) had taken effect, albeit the DfT did recommend that local authorities should start maintaining a list.
- 5.5 On the 6th April 2017 the provisions of Sections 165 and 167 officially took effect with Secretary of State for the DfT publishing guidance for licensing authorities titled – “Access for wheelchair users to taxi and private hire vehicles.”

Guidance issued by the Secretary of State.

- 5.6 The Secretary of State has now issued guidance to licensing authorities as to the accessibility requirements which they should apply and any other aspect of their functions under or by virtue of this section. Any local authority that will maintain a list must have regards to the guidance.
- 5.7 The Secretary of State has also advised that local authorities should put in place sensible and manageable **transitional arrangements and procedures** to ensure full implementation of sections 165, 166 and 167, and in light of this it is proposed to make the effective date for this full implementation 1st October 2017. This will ensure that all owners of ‘designated vehicles’ have been informed of the new requirements and to allow for any appeal against the refusal of an exemption to be heard at the Magistrates Court. The DfT in its guidance has produced a flowchart for the suggested transitional arrangements which is attached at **Appendix A.**

Section 165

- 5.8 This section places a statutory duty on all licensed drivers of **designated vehicles** (see s.167) to carry wheelchair users or a person who wishes to be accompanied by a disabled person who is in a wheelchair.

The duties placed on the driver of a **designated vehicle** under section 165 include:

- (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;

Mobility Assistance

“Is assistance:

- (a) to enable the passenger to get into or out of the vehicle;
- (b) 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;
- (c) to load the passenger's luggage into or out of the vehicle; and
- (d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle”.

Section 166

- 5.9 This section requires a local authority to issue eligible drivers with a medical exemption certificate to exempt them from section 165 duties. The medical exemption procedure is already in place in Slough.

- Since October 2010 any driver of such a vehicle has been able to apply for an exemption from the duties on:
 - (i) medical grounds; or
 - (ii) because the driver's physical condition makes it impossible or unreasonably difficult to comply with Section 165 duties.
- Applications for exemption are subject to – evidence of the medical grounds being verified by a medical practitioner, the consultant treating the condition or an independent medical examiner at the driver's own cost. In addition the medical practitioner or other will have to complete a declaration detailing the full reasons why the driver is prevented from carrying out the duties under Section 165.
- The Licensing Committee has delegated to the Licensing Manager the power to grant exemptions on medical grounds, with all other applications for exemptions on physical capabilities to be referred to the Licensing Committee. The prescribed notice of exemption must be exhibited in the taxi or private hire vehicle.

Appeals – Section 172 of the 2010 Act enables drivers to appeal against the decision of a Local Authority **not** to issue an exemption certificate. That appeal

should be made to the Magistrates Court, and must be made within 28 days beginning with the date of the refusal.

Section 167

- 5.10 This section empowers a local authority to maintain a list of **designated vehicles**. The designation will apply to vehicles that are:
- (i) **either a taxi or a private hire vehicle, and**
 - (ii) the vehicle conforms to such accessibility requirements as the licensing authority thinks fit.

In relation to this, Section 3 of the guidance issued by the Department for Transport states the following;

3.3 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area, confident of receiving the assistance they need to travel safely, and are not charged more than a non-wheelchair user for the same journey.

3.4 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.

3.5 This means that to be placed on a licensing authority's list a designated 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”** to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.

3.6 Taking this approach allows the provisions of section 165 of the Act to apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.

3.7 The Government recognises that 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 LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. **Paragraph 3.10** of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journey.

3.10 LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware.

Lists should set out the following;

- **details of the make and model of the vehicle;**
- **specifying whether the vehicle is a taxi or private hire vehicle;**
- **state the name of operator.**

Where possible it would also be helpful to include

- **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.**

Appeals – Section 172 of the Act enables a vehicle owner to appeal against the decision of the local authority to include its vehicle as a “designated vehicle” on the list. That appeal should be made to the Magistrates Court, and must be made within 28 days of the vehicle in question being included on the local authorities published list.

Passenger Assistance Training

- 5.11 All drivers and owners of designated vehicles that have not previously undergone Passenger Assistance Training must complete the training and produce the certificate to the licensing team by 1st October 2017.
- 5.12 To assist the licensing team in implementing the new procedures, all hackney carriage and private divers and proprietors of designated vehicles have been informed in writing of the new provisions having taken effect and the impact of the new duties, as well as the need for completing passenger assistance training if not already completed. The new provisions have also been published in the latest Taxi and Private Hire Newsletter.
- 5.13 All licence holders have also been provided with and have been asked to complete a questionnaire to be completed and returned to the Licensing Office, which will assist in preparing and publishing the list of designated wheelchair accessible vehicles.

6. Comments of Other Committees

A full report on the then implemented provisions of the Equality Act 2010 was put before the Licensing Committee on 23rd February 2011. The Committee resolved as follows:

Recommended to Council –

- (a) That a list of all designated vehicles be maintained.
- (b) That the Licensing Manager be given delegated authority to grant exemptions on medical grounds following evidence from a medical practitioner, consultant or independent GP. All other applications for exemption based on physical capabilities e.g. weight, strength and height shall be referred to the Licensing Sub-Committee.
- (c) That all drivers of designated vehicles that have not previously undergone passenger assistance training must do so by 30th April 2011 or at the earliest opportunity to be able to comply with the new duties.

7. Conclusion

That the Committee note the contents of the report.

8. **Appendices Attached**

'A' - Flow Chart

9. **Background Papers**

'1' - Equality Act 2010

'2' - Statutory Guidance issued by the Secretary of State for the Department of Transport

Flowchart

Step 1.

Licensing Authorities review this guidance document and compare against any existing policies

Step 2.

Licensing Authorities prepare draft lists of designated wheelchair accessible vehicles

Step 3.

Licensing Authorities set out policies for exempting drivers on medical and physical condition grounds

Step 4.

Licensing Authorities inform owners that their vehicles will be placed on the list and alert drivers to their upcoming duties

Step 5.

Drivers apply for exemptions where necessary

Step 6.

Licensing authority issues exemptions

Step 7.

Licensing authority publishes list of designated wheelchair accessible vehicles and duties on drivers take effect