

Agenda item	7
Report no	HLC/069/19

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 3 December 2019

Report title: Wheelchair accessible vehicles – designated list

Report by: Solicitor – Regulatory Services

1. Purpose/Executive summary

- 1.1 This report relates to the compliance of the licensing authority with the public sector equality duty, specifically with regards to wheelchair accessible vehicles.

2. Recommendation

- 2.1 This report invites the Committee to decide (1) whether or not there should be a list of designated wheelchair accessible vehicles (WAVs) licensed as taxis or private hire cars (PHC's) in The Highland Council area for the purposes of section 165 of the Equality Act 2010 and (2) if there should be any list, that (a) a draft list is prepared (b) intimation is given to the holders of the relevant operators licences that the Committee proposes to designate their licensed vehicle, inform them of the legal consequences of this and to invite representations,(c) after consideration of any representations, determine what the designated list should contain and (d) publish a designated list.

3. Background

3.1 Section 149 of The Equality Act 2010 (“the 2010 Act”) imposes on local authorities a public sector equality duty. Under this duty, the Council must have due regard to, amongst other things, the need to:

- Eliminate discrimination, and;
- Advance equality of opportunity between people who share a relevant protected characteristic, and persons who do not share it.

3.2 This applies to the Council when it is fulfilling its role as a licensing authority under the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

3.3 The 2010 Act does not make it mandatory that all taxis and PHC’s are wheelchair accessible. However, section 167 of the 2010 Act, permits but does not require, licensing authorities to maintain a list of all WAVs that are licensed to operate within their area. These vehicles are known as “designated” vehicles. The minimum requirement for the vehicle to be on the list that it is able to carry the wheelchair user whilst seated in their wheelchair.

4. Consequences of publishing a designated list

The consequences of having a designated list of WAV’s is that section 165 of the 2010 Act imposes statutory duties on the drivers of these designated vehicles, and failure to comply with these duties is an offence (unless exempt) liable to a fine of up to £1000.

4.1 The statutory 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.
- To give the passenger such mobility assistance as is reasonably required.

4.2 With regards to the final point, mobility assistance is defined 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.
- If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

4.3 Drivers of WAV’s can apply to the Council for exemption from complying with these duties but can only do so on medical grounds or grounds of physical difficulty.

4.4 Section 172 of the 2010 Act enables vehicle owners to appeal against the decision of a licensing authority to include their vehicles on the designated list. The right of appeal is to the Sheriff Court and must be made within 28 days of the vehicle in question being included on the published list.

- 4.5 If a driver receives a conviction for breaching their duties under section 165 of the Act, it would be appropriate for the Council to review whether or not the driver remained a fit and proper person to hold a taxi or PHC drivers' licence.
- 4.6 By publishing a designated list, firstly, this makes the failure of driver to comply with the abovementioned statutory duties a criminal offence. Wheelchair users can report discrimination based on these duties to the police as a criminal offence. As we don't currently maintain and publish a designated list of WAV's, an offence would not be committed under this piece of legislation. Currently, if a wheelchair user feels that they have been discriminated against, they would have to raise a civil court action themselves against the driver. That is a lengthy and expensive process that puts many people off seeking legal redress for their rights being breached.
- 4.7 Secondly, it allows wheelchair users to see what WAV availability there is in their area. This will assist the public in being able to find out from a central list what provision there is for their needs in their locality. Currently, there are 32 WAVs licensed as taxis and 18 WAVs licensed as PHCs in the Highland area.
- 4.8 Should the Committee approve the recommendations, the list will be revised from time to time as the Licensing Authority grants licences or substitute vehicles, which changes whether or not the particular vehicle then used as a taxi or PHC licence is, or is not, 'wheelchair accessible'.

5. Procedure

- 5.1 Should the Committee approve the Council producing and publishing a list of designated vehicles, there will be a process that needs to be followed, which will include the following:
- What accessibility requirements must be met before a vehicle will be included in any designated list
 - Producing a specification for vehicles to be considered a WAV
 - Identifying which taxi operators have vehicles which meet that specification
 - Producing a draft list for consultation
 - Set out policies for exempting drivers on medical grounds and physical condition grounds
 - Produce exemption application and certificates
 - Inform owners that their vehicles will be placed on the list and alert drivers to their upcoming duties
 - Allow time for drivers to apply for exemptions or appeal any decision to be included before any designated list is adopted
 - Produce guidance notes to ensure operators are aware of what their responsibilities are including disability awareness training materials

6. Timeline

- 6.1 Should the Committee agree that there should be a list of designated vehicles, a proposed timeline is set out in **Appendix 1** to this report.

7 Impacts

- 7.1** An Equalities Impact Assessment has been completed. The screening for equality impact highlighted that implementation of these recommendations will have a positive impact on older people with mobility difficulties, and disabled wheelchair users, by increasing awareness of available WAVs in the Highland area. It will also reinforce the duties that drivers of WAV's have towards customers who use wheelchairs.

Date: 20 November 2019

Author: Iain Meredith

Background Papers: Appendix 1 – proposed implementation timeline

Equality Act 2010

Civic Government (Scotland) Act 1982

**PRODUCING A SPECIFICATION FOR WHEELCHAIR ACCESSIBLE VEHICLE
(WAV's)**

(December 2019 to February 2020)

- What accessibility requirements must be met before a vehicle will be included in any designated list



**IDENTIFYING WHICH TAXI OPERATORS HAVE VEHICLES WHICH MEET
THAT SPECIFICATION**

(February 2020)

- Producing a draft list for consultation



CONSULTATION PERIOD

(March - April 2020)

- Intimate to the holders of the relevant operator's licences that the Committee proposed to put their WAV on the designated list
- Inform them of the legal consequences of being on the designated list
- Invite these operators to make representations regarding the proposals



HIGHLAND LICENSING COMMITTEE

(14 May 2020)

- Report back to HLC with consultation responses
 - Draft guidance to be produced
- Members to consider responses and approve a final list of designated vehicles



PUBLICATION OF FINAL LIST OF DESIGNATED VEHICLES

(August 2020)

- This allows for a 3 month period to allow any operators who wish to apply for an exemption to do so or any operators wishing to appeal against their vehicles appearing on the designated list