

Agenda item	7
Report no	HLC/030/22

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 20 June 2022

Report title: Wheelchair accessible vehicles – Equality Act 2010 update

Report by: Solicitor – Regulatory Services

1. Purpose/Executive summary

- 1.1** This report relates to amendments made to the Equality Act 2010 which strengthens the public sector equalities duty, specifically with respect to taxis and private hire vehicles.

2. Recommendation

- 2.1** This report invites the Committee to note the upcoming changes to the Equality Act 2010 with respect to taxi and private hire car driver's obligations to disabled persons and the duty on the Council, as licensing authority, to maintain and publish a designated list of wheelchair accessible vehicles.

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
 - Advance equality of opportunity between people who share a relevant protected characteristic, and persons who do not share it
 - Foster good relations between persons 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** At its meeting of 3 December 2019, Highland Licensing Committee agreed to publish a designated list of Wheelchair Accessible Vehicles (“WAV’s”) under section 167 of the 2010 Act. At that time section 167 of the 2010 Act permitted, but did not require, licensing authorities to maintain a list of all WAVs that are licensed to operate within their area.
- 3.4** The procedure for implementing a designated list was laid out to the Committee and a timetable agreed. Unfortunately, due to the Covid pandemic, it was not possible to proceed with the scheduled timetable.
- 3.5** Subsequently, the 2010 Act has been amended by the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 and these changes will come into force from 28 June 2022. The 2022 Act aims to reduce discrimination against disabled people and address the barriers they face when accessing taxi and private hire vehicles.

4. Changes to the legislation

4.1 Lists of wheelchair accessible vehicles

It will become mandatory for all local authorities to keep a register of licensed wheelchair-accessible taxis and private hire vehicles and they must make that register available to the public.

4.2 Disabled passengers: duties of drivers

The updated 2010 Act imposes duties on the drivers of taxis or private hire vehicles which have been hired by or for a disabled person or by another person who wishes to be accompanied by a disabled person. This section is applicable to a disabled person who is able and wants to travel in a non-wheelchair accessible vehicle. The duties are:

- To carry the passenger
- If the passenger is in or has with them a wheelchair, to carry the wheelchair
- If the passenger has with them any mobility aids, to carry the mobility aids
- To take such steps, are reasonable to ensure that the passenger is carried in safety and reasonable comfort
- To give the passenger such mobility assistance as is reasonably required
- Not to make, or to propose to make, any additional charge for complying with these duties

The driver of a taxi or private hire vehicle commits an offence by failing to comply with the above duties and would be liable on a summary conviction to a fine of up to £1,000. The onus would be on the driver to prove that their refusal was reasonable using the defences set out in the 2010 Act.

4.3 Disabled passengers in wheelchairs: duties of drivers of designated vehicles

The new legislation has also updated the requirements for drivers of a designated taxi or designated private hire vehicle which has been hired by or for a disabled person who is in a wheelchair or by another person who wishes to be accompanied by a disabled person who is in a wheelchair.

This section will become applicable once the Council has maintained and published their designated list of wheelchair accessible vehicles.

The duties for designated vehicles are:

- To carry the passenger while in the wheelchair
- If the passenger chooses to sit in a passenger seat, to carry the wheelchair
- If the passenger has with them any mobility aids, to carry the mobility aids
- 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
- Not to make, or propose to make, any additional charge for complying with these duties

The driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with the above duties and would be liable on summary conviction to a fine of up to £1,000. The onus would be on the driver to prove that their refusal was reasonable using the defences set out in the 2010 Act.

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.

4.4 Disabled passengers: assistance to identify and find vehicle

There is a new duty on the driver of a private hire vehicle or pre-booked taxi where (1) the vehicle has been booked by or for a disabled person or by another person who wishes to be accompanied by a disabled person and (2) the driver of the vehicle has been made aware before the start of the passenger's journey in the vehicle that the passenger requires assistance to identify or find that vehicle.

The duties are:

- To take such steps as are reasonable to assist the passenger to identify and find the vehicle which has been hired
- Not to make, or propose to make, any additional charge with the above duty

The driver commits an offence by failing to comply with this duty and is liable on summary conviction to a fine of up to £1,000.

4.5 Duties of operators of private hire vehicles

The updated 2010 Act creates a new offence for private hire car operators who fail or refuse to accept a booking requested by or on behalf of a disabled person, when the reason is that the passenger has a disability or to prevent the driver being made subject to a relevant duty. It also creates a new offence for private hire car operators who make, or propose to make, an additional charge for the carrying out of any duty imposed on the driver. This offence would be punishable by a fine of up to £1,000. It is a defence for a person charged with this offence to show that it was reasonable not to have accepted the booking due to a lack of suitable vehicles.

5. Exemption Certificates

5.1 Currently, the legislation makes provision for a driver of a designated wheelchair accessible taxi or private hire car vehicle to apply for an exemption on medical grounds or owing to a physical condition. A driver with an exemption is, by default, exempt from all of the above duties.

5.2 The legislation has been amended so that the exemptions apply only to duties to give the passenger such mobility assistance as is reasonably required. Other duties, such as to carry the passenger and not to impose additional charges, would still apply to driver who hold medical exemption certificates.

6. Procedure for maintaining a designated list

6.1 Officers will shortly recommence the procedure to ensure that the Council, as licensing authority, is compliant with the statutory duties imposed by the 2010 Act. This will involve the following:

- Assessing what accessibility requirements must be met before a vehicle will be included in any designated list
- Producing a specification for vehicles to be considered as 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

6.2 A proposed timeline for implementing the designated list is set out in **Appendix 1** to this report.

7. Consequences of maintaining a designated list

- 7.1** 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 area. Currently, there are 32 WAVs licensed as taxis and 18 WAVs licensed as PHCs in The Highland Council area.
- 7.2** It will also allow the Council, as licensing authority, to consider whether any further policies should be implemented in relation to WAV requirements for The Highland Council area.
- 7.3** The duties outlined at paragraph 4.3 of this report would become applicable.
- 7.4** If a driver receives a conviction for breaching their duties, it would be appropriate for the Council, as licensing authority, to review whether or not the driver remained a fit and proper person to hold a taxi or private hire car drivers' licence.

8. Appeals

- 8.1** 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.

9. Impacts

An Equalities Impact Assessment will be completed prior to implementation of the above duties.

Date:

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Appendix 1 – Implementation timeline

Background Papers:

Equality Act 2010

Taxi and Private Hire Vehicles (Disabled Persons) Act 2022

Civic Government (Scotland) Act 1982

PROPOSED TIMELINE

August 2022 – September 2022

- Assessing what accessibility requirements must be met before a vehicle will be included in any designated list
- Producing a specification for vehicles to be considered as a WAV



September - October 2022

- Identifying which taxi operators have vehicles which meet that specification
- Producing a draft list
- Set out policies for exempting drivers on medical grounds and physical condition grounds
- Produce exemption application and certificates



November - February 2023

- 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 on the designated list
- Produce guidance notes to ensure operators are aware of what their responsibilities are, including disability awareness training materials



HIGHLAND LICENSING COMMITTEE

February/March 2023

- Report back to HLC
- Members to approve a list of designated vehicles (any ongoing appeals will be excluded at this stage)



March 2023

- Publication of list of designated vehicles