

Agenda item	7
Report no	HLC/057/22

## THE HIGHLAND COUNCIL

**Committee:** THE HIGHLAND LICENSING COMMITTEE

**Date:** 29 November 2022

**Report title:** Wheelchair accessible vehicles – Equality Act 2010 implementation

**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 approve the Council's policies on licensed wheelchair accessible vehicles (WAV) and medical exemptions for drivers under the Equality Act 2010.

### 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 20 June 2022, Highland Licensing Committee noted changes to the obligations placed on licensing authorities and taxi and private hire car (PHC) drivers under the 2010 Act, as amended by the Taxi and Private Hire Vehicles (Disabled Persons) Act 2022. A copy of the report is attached as **Appendix 1** for reference.

### 4. Lists of wheelchair accessible vehicles

4.1 As noted in the attached report, it is now mandatory for local authorities to publish and maintain a list of WAVs in their area that are licensed as taxis and PHCs. Section 167 of the 2010 Act states that a vehicle will fall within the category of WAV if it conforms to such accessibility requirements as the licensing authority sees fit. “Accessibility requirements” are requirements for making it possible for disabled persons in wheelchairs to get in and out of vehicles safely, and to travel in vehicles in safety and reasonable comfort.

4.2 **Appendix 2** sets out the proposed specifications for WAVs in compliance with section 167 of the 2010 Act. All WAV operators will be written to and informed that their vehicle will be placed on the list. Operators will be given the opportunity to request that their vehicle should not be included on the list. They will, however, have to provide evidence that their vehicle does not meet the proposed specifications.

### 5. Appeals

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.

### 6. Exemption Certificates

6.1 **Appendix 3** sets out the proposed policy for any medical exemption from the duty of a taxi or PHC driver’s licence to provide mobility assistance.

6.2 The legislation was amended so that the medical exemption now only applies to the duty 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 drivers who hold medical exemption certificates.

6.3 Exemptions will only be granted if the licence holder can produce medical evidence that they are physically incapable of carrying out their duties. The evidence must be from a

qualified medical practitioner, for example, a letter from a GP. Exemptions will be temporary and will only last as long as the duration of a driver's taxi or PHC licence. Should they wish to renew their licence, they will be required to make a fresh application for an exemption.

## **7. Next Steps**

**7.1 Appendix 4** is the timeline for implementation that was agreed at the meeting of 20 June 2022.

**7.2** It had been anticipated that the policy and specifications would have been put before the October meeting of the Committee but that was not possible due to other pressures on Officer time. Nevertheless, it is anticipated that the overall timescales will be met with Officers communicating with operators and drivers over the coming months and reporting back to Committee by March 2023 with the final list of WAVs. Members will also be updated at that meeting on progress in implementing the exemption policy.

Date: 8 November 2022

Author: Iain Meredith

Appendix 1 – HLC Report – 20 June 2022

Appendix 2 – WAV Specification

Appendix 3 – Medical Exemption Policy

Appendix 4 – Implementation timeline

Background Papers: Equality Act 2010

## APPENDIX 1

Agenda item	
Report no	<b>HLC/0**/22</b>

### 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, as 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.

### **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:

Author: Iain Meredith

Appendix 1 – Implementation timeline

Background Papers:

Equality Act 2010

Taxi and Private Hire Vehicles (Disabled Persons) Act 2022

Civic Government (Scotland) Act 1982



## **Wheelchair Accessible Vehicles**

Any vehicle complying with these specifications are considered to be “wheelchair accessible” in accordance with section 167 of the Equality Act 2010.

### **Vehicle Specification**

- (a) the vehicle must be Wheelchair Accessible (either side-loading or rear-loading);
- (b) the vehicle must be fitted with a lifting mechanism which can raise an occupied wheelchair from ground level without requiring it to be pushed by the driver or anyone else;
- (c) the vehicle must have a means of securing the wheelchair against movement once in the vehicle;
- (d) the vehicle must have at least one other passenger seat;
- (e) the wheelchair must face the vehicle's direction of travel; and
- (f) the wheelchair compartment must be glazed on 3 sides.

### **Driver Obligations**

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.

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.

**Wheelchair Accessible Vehicles  
Duties under the Equality Act 2010**

Under the Equality Act 2010, all licensing authorities must maintain and publish a list of licensed taxis and PHVs they designate as being wheelchair accessible vehicles (WAV). This will identify the vehicles whose drivers are subject to the duties at section 165 of the 2010 Act on providing assistance to wheelchair users and refraining from charging extra for this. The list of WAVs for Highland can be found at [insert link].

**Duties of Drivers**

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, as 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

Mobility assistance is 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.

**Medical exemptions**

It is recognised that in some circumstances a driver of a taxi or PHC may be unable to comply with these duties for medical reasons or due to the driver's physical condition.

Driver must make a request to the licensing authority for exemption from the duties on medical grounds. This must be accompanied by supporting evidence from a qualified medical professional confirming that the licence holder cannot comply with the duties for medical reasons or due to the licence holder's physical condition.

An exemption once granted will be valid until the expiry of the driver's taxi or PHC driver's licence. On renewal of that licence the driver will also be required to reapply for an exemption.

Drivers should be aware that the exemption only applies to the duties to provide mobility assistance to the passenger, not to any of the other requirements under the 2010 Act.

A driver granted an exemption will be exempt from the following duties under the 2010 Act:

#### S.165 - Passengers in wheelchairs

(4) The 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.

(5) 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;
- (d) If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

(6) This section does not require the driver—

- (a) Unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;
- (b) To carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person. Assistance Dogs

S.168 - Assistance dogs in taxis

(1) This section imposes duties on the driver of a taxi which has been hired—

(a) by or for a disabled person who is accompanied by an assistance dog, or

(b) by another person who wishes to be accompanied by a disabled person with an assistance dog.

(2) The driver must—

(a) carry the disabled person's dog and allow it to remain with that person;

(b) not make any additional charge for doing so.

**PRODUCING A SPECIFICATION FOR VEHICLES TO BE CONSIDERED A  
WHEELCHAIR ACCESSIBLE VEHICLE (WAV's)**

**(December 2019/ early January 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**

**(December 2019 / early January 2020)**

- Producing a draft list for consultation



**CONSULTATION PERIOD**

**(13 January 2020 – 10 February 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**

**(31 March 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**

**(30 June 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