



Committee and date
Strategic Licensing
Committee.

16th March 2011
10.00am

Item

9

Public

**Local Government (Miscellaneous Provisions) Act 1976
Town Police Clauses Act 1847**

Policy review - Wheelchair Accessible Hackney Carriages.

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Report

This paper highlights the issues that the Strategic Licensing Committee needs to consider when determining the policy on wheelchair accessible taxis.

Recommendations

That Committee weigh up the Council's obligations, legal opinion and consultation responses prior to recommending a policy to Cabinet on wheelchair accessible Hackney Carriages.

Report

Background

1. Currently Shropshire Council operates five zones for the purpose of licensing Hackney carriages, based on the previous Borough and District Council Boundaries. The Implementation Executive approved the licence conditions for Hackney carriages prior to the formation of Shropshire Council. These conditions did bring a level of consistency across Shropshire, however a number of fundamental differences remain between zones.
2. One of the main differences is the requirement in respect of wheelchair accessibility, with all Hackney carriages in zone 4 (Shrewsbury and Atcham) required to be wheelchair accessible from 2012. No requirement for wheelchair accessibility exists in the other zones.

What is a wheelchair accessible Hackney carriage?

3. The term 'accessible Hackney carriage' can mean different things to different people. For the purpose of the policy, the following terms are used.

Saloon Car Vehicles

4. These vehicles are conventional cars and are not accessible to persons who are confined to a wheelchair and must travel in the chair. They meet the needs of many people, including those with an ambulatory disability. As well as saloons, they may be hatchbacks or estate cars. They are currently licensed as Hackney carriages by Shropshire Council as Hackney carriages in all zones but would not be deemed as a wheelchair accessible vehicle.

Wheelchair Accessible Vehicles

5. These can be purpose built vehicles or converted multi purpose vehicles. Not all these vehicles in reality would meet the Department of Transport interim standard for a wheelchair accessible Hackney carriage but can generally accommodate a person in their wheelchair. Within the trade, there is concern that converted vehicles are less accessible for ambulatory disabled and that rear loading a wheelchair is both difficult and hazardous.

Why the need for a review of policy.

6. Transport affects everyone and is essential for a strong economy and society, providing access to jobs, services and leisure activities. Hackney carriage and Private Hire Vehicles are a vital link in the accessible transport chain and although disabled people are reported to travel a third less often than the public in general, they use Hackney carriages and Private hire vehicles on average 67% more.
7. Over the last ten years, there have been major improvements in the accessibility of the transport network because of the Disability Discrimination Act 1995.
8. The powers in the Disability Discrimination Act (to be replaced by the Equality Act 2010 on 1st April 2011) allow regulation to be made requiring all new land-based public transport vehicles, including Hackney carriages, to be accessible to disabled people including those who need to remain in their wheelchair. Whilst 'end' dates have been set in regulations by which time all trains, buses and coaches must be accessible, the requirement in respect of Hackney carriages has yet to be set. The regulation making powers do not apply to private hire vehicles.
9. In 2003, the Government stated that it intended to set standards for wheelchair accessible Hackney carriages and to introduce regulations that would apply to mainly urban authority areas. Since then however, the Department for Transport has received a number of representations making the case for a broader range of disabled people's needs to be met in any regulations. As this is a complex matter regulations have not been made.
10. In 2008, the Department for Transport consulted on improving access to Hackney carriages, but no regulation or guidance has emerged from that consultation. The government has published an interim standard for

- wheelchair accessible Hackney carriages and this is available on the Department for Transport website.
11. The Department for Transport continues to explore amendments to section 16 of the 1985 Transport Act contained within the Equality Act 2010 and it is suggested that should regulation be made it will require councils to move to a position where between 30% and 35% of the fleet is wheelchair accessible. Guidance on how to achieve this position has not been published.
 12. The Hackney carriage fleet in Shropshire is around 147 vehicles. Of the 147 vehicles, 38 are considered to be wheelchair accessible vehicles. Thus in total around 26% of the fleet is wheelchair accessible. The majority of these vehicles however are currently only licensed to operate in the Shrewsbury and Atcham area.
 13. Shropshire is in an unusual situation (although not unique) in that with local government reorganisation the Council took on responsibility for licensing Hackney carriages from the district and borough councils each or whom had different licensing conditions.
 14. Currently Shropshire Council has retained five zones for licensing Hackney carriages only, based on the previous Borough and District Council boundaries. The Implementation Executive approved the licence conditions for Hackney carriages for Shropshire Council. These conditions did bring a level of consistency across Shropshire, however a number of fundamental differences remain between zones. When setting the licence conditions the Implementation Executive gave a commitment to review the conditions.
 15. One of the main differences is the requirement in respect of wheelchair accessibility, with all Hackney carriages in zone 4 (Shrewsbury and Atcham) required to be wheelchair accessible from 2012. No requirement for wheelchair accessibility exists in the other zones.
 16. The Strategic Licensing Committee at its meeting on 23 March 2010 (Minute No. 26), agreed to propose to Council the removal of the zones for Hackney carriages with effect from 1st April 2011. In removing zones, common license conditions are required across Shropshire and the committee established a Task and Finish Group to develop these common conditions.
 17. Thus, the committee is faced with a decision to achieve a consistent approach from a very diverse base with Hackney carriages in zone 4 generally being wheelchair accessible and not in the other zones.
 18. Through the removal of zones and the introduction of a common policy, the committee needs to consider the implications across the whole of the administrative area of Shropshire, and not to give undue weight to the circumstances in any one particular zone.

Local Need.

19. It is difficult to determine the local need for wheelchair accessible Hackney carriages as no robust database exists of residents who need to travel in their wheelchair.
20. The latest and best records maintained by the Primary Care Trust show currently a total number of wheelchair users in the county as 6,919, 60% (4,142) are residents of Shropshire and 40% are in Telford and Wrekin.
21. This database does not however indicate the number of wheelchair users who must travel in their wheelchair.
22. In February 2009, around 8000 people in Shropshire were claiming benefit due to incapacity or severe disablement.

Equalities.

23. Equality law recognises that bringing about equality for disabled people may mean changing the way in which services are delivered, providing extra equipment and/or the removal of physical barriers.
24. This is the 'duty to make reasonable adjustments'. The duty to make reasonable adjustments aims to make sure, that a disabled person can use an organisation's services as close as it is reasonably possible to get to the standard usually offered to non-disabled people.
25. If an organisation providing goods, facilities or services to the public or a section of the public, or carrying out public functions, finds there are barriers to disabled people in the way it does things, then it must consider making adjustments. If those adjustments are reasonable for that organisation to make, then it must make them.
26. The duty is 'anticipatory'. This means an organisation cannot wait until a disabled person wants to use its services, but must think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.
27. An organisation is not required to do more than it is reasonable for it to do. What is reasonable for an organisation to do depends, among other factors, on its size and nature, and the nature of the goods, facilities or services it provides, or the public functions it carries out. A transport provider is not required to take any steps that would fundamentally alter the nature of its service, operation, trade, profession or business or where a change may compromise someone's health or safety.
28. Currently the Disability Discrimination Act 1995 remains extant and relevant. Members are referred to section 33 of the Disability Discrimination Act 1995 (attached at Annex B). It will be noted in particular that public authorities, when carrying out their functions, must have due regard to the need to take into account disabilities, even where that involves treating disabled people more favourably.

29. Hackney carriages are to be treated differently from Private Hire Vehicles. This is emphasised in the Department for Transport Best Practice Guidance (circulated at the previous meeting of the committee). Members are referred to Paragraphs 13 to 25 under the heading “Accessibility”; in particular paragraph 14 states the different accessibility considerations that apply between Hackney carriages and Private Hire Vehicles. It is explained that, “It is important that a disabled person should be able to hire a Hackney carriage on the spot with the minimum delay or inconvenience, and having accessible Hackney carriages available helps to make that possible.”
30. The Courts have considered what steps a public body must take to comply with a “due regard” duty. In short, it is a “requirement that a process of consideration be undertaken at the time when decisions which could have an impact are being taken”. This will involve looking for opportunities to promote equality as well as negative or adverse impacts that can be removed or mitigated. If any negative or adverse impacts amount to unlawful discrimination, they must be removed. This issue was considered in the 007 Stratford case.
31. In April 2011 the Equalities Act comes into force and this requires public authorities, in the exercise of their functions, to have due regard to the need to
- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
 - Advance equality of opportunity and foster good relations
32. When deciding whether an adjustment is reasonable the Council can consider:
- how effective the change will be in assisting disabled people in general.
 - whether it can actually be done
 - the cost, and
 - the organisation’s resources and size.
33. The aim of making adjustments is, as far as possible, to remove any disadvantage faced by disabled people.
34. The Council can consider whether an adjustment is practicable. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult does not mean it cannot also be reasonable. This has to be balanced against other factors.
35. An organisation’s size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for an organisation to make it if it has substantial financial resources. This is an issue, which has to be balanced against the other factors. Most Hackney carriages in Shropshire are owner operators and are by nature small independent businesses. In assessing what is a reasonable adjustment to

require these businesses to make to eliminate discrimination and advance equality of opportunity the Council needs to consider the costs of the adjustment and the benefits secured.

Consultation.

36. The Licensing Department consulted with the Hackney carriage/private hire trade and access and disability groups on two separate occasions in relation to amending policies for licensed drivers and vehicles.
37. Initial consultation took place between 05 October 2009 and 05 January 2010. This consultation asked for comments on all aspects of the policy and the diversity impact assessment. A further consultation took place between 20 August and 15 November 2010. This second consultation asked specific questions on whether there should be a requirement for Hackney carriages to be wheelchair accessible. The consultation is shown in Annex A.
38. Five options were given for consideration:
 - Option One – To maintain status quo (A requirement for wheelchair accessible Hackney carriages in zone 4 (previous Shrewsbury and Atcham area) only, zones must remain allowing different conditions for Hackney carriages across Shropshire).
 - Option Two – Requirement for all newly registered Hackney carriages to be wheelchair accessible.
 - Option Three – Requirement for all Hackney carriages to be wheelchair accessible from a set date.
 - Option Four – Use of financial incentives.
 - Option Five – To remove entirely any requirement for Hackney carriages to be wheelchair accessible.
39. During the initial consultation, 26 responses were made in relation to wheelchair access. This amounted to; 35 drivers, Members of the Central Area Licensing Committee and drivers from the central area Hackney carriage forum supporting the retention of a wheelchair access policy. 33 drivers and the north area Hackney carriage forum considered there should not be a requirement for any vehicles to be wheelchair accessible.
40. There were 11 representations made during the second consultation. Summarised as follows:
 - A petition signed by 55 drivers stating that they wished to remove entirely any requirement for Hackney carriages to be wheelchair accessible (option five).
 - A letter submitted by 34 drivers stating that the Council should maintain status quo (option One).

- National Private Hire Association and Oswestry Hackney carriage Drivers' Association stated that a sensible approach would be to await the Department of Transport consultation on fleet percentages before making a final decision.
 - Three representations in support for all new vehicles to be wheelchair accessible (option two).
 - One representation stating the fleet as it is at present is about right.
 - One representation stating that the Council should have a mixed fleet.
 - One representation stating that the Council should let market forces determine how many vehicles should be wheelchair accessible.
41. A member who is one of the Council's representatives on the Access Group also made representation and he said that vehicles that are wheelchair accessible are not always suitable for people with different degrees of disability. Often these people find it difficult to climb into a vehicle of this type.
42. A final consultation was undertaken from December 2010 to February 2011, following the recommendation of the Strategic Licensing Committee. This consultation was on the proposal that from the 1st April 2011, all Hackney carriages must be of a wheelchair accessible design, when first licensed by Shropshire Council and that existing non wheelchair accessible vehicles will continue to be licensed until the end of their operational life or such time as the vehicle ceases to be licensed by Shropshire Council.
43. 21 organisations and individuals representing or supporting people with disability were included in this consultation through direct mailing and an article was included in the Shropshire Partnership Newsletter sent to most of the voluntary and community sector organisations in Shropshire.
44. 163 responses were received to this consultation, primarily from drivers, operators and representative trade bodies. This included
- A petition signed by 69 driver/operators to remove any requirement for wheelchair accessible Hackney carriages
 - A standard letter from 83 driver/operators stating that only wheelchair accessible vehicles should be plated as hackneys and that other vehicles being used should have a cut of date at which point they will no longer be licensed of April 2015.
 - A view expressed by a number of respondents that mobile disabled people find it impossible to get into the larger wheelchair vehicles.
 - A view from a charity that provides support and services to people with brain injury, their families and carers that all new Hackney carriages should be wheelchair accessible and that current Hackney carriages that are not are allowed to complete their working life as such. In addition, the comment that training is required for drivers to appropriately assist people with disability.

- A proposal for a mixed fleet achieved by removing any requirement for wheelchair accessible Hackney carriages, to retain zones and permit a wheelchair accessible Hackney carriage to ply for hire in any zone.

45. A copy of all consultation responses has been placed in the member's library and was provided to all members of the Task and Finish Group. Copies are available to members of the committee on request.

Legal Opinion.

46. Officers have taken Counsel's advice on the proposed abolition of the Hackney carriage zones in the Council's area and the matters to be considered regarding this in relation to wheelchair accessibility and Hackney carriages. Counsel opinion is contained in a separate exempt report. Further legal advice has been sought following the determination of the 007 Stratford case and members are advised to refer to this guidance prior to determining this matter. This opinion carries with it legal professional privilege and so should be treated as confidential information.

Task and Finish Group.

47. The Task and Finish Group reconsidered the proposal from Strategic Licensing Committee and consultation feedback at a meeting on Wednesday 2nd March. The group were of the view that a mixed fleet of vehicles is required to meet the needs of the various types of disability suffered by people. And that as such a mixed fleet currently exists within the council's area the recommendation of the Strategic Licensing Committee of the 16th February 2011 be not implemented but the situation be kept under review

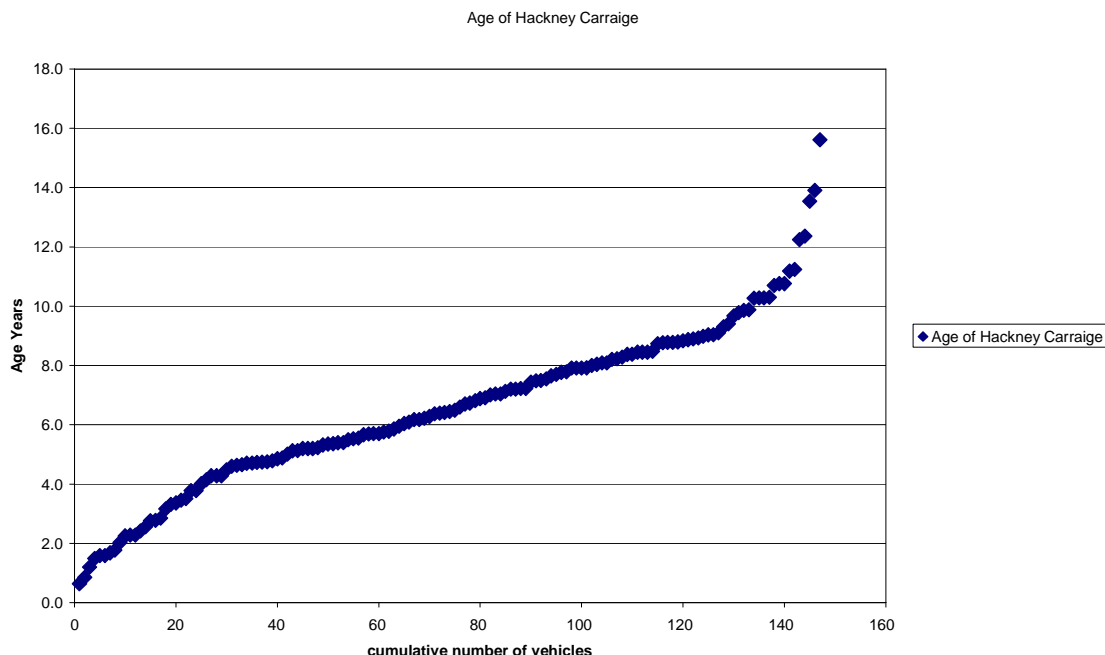
Implications.

48. Nationally there is one main manufacturer of a purpose built wheelchair accessible Hackney carriage and a number of small companies who convert standard production vehicles into wheelchair accessible Hackney carriages.

49. A new wheelchair accessible Hackney carriage (either purpose built or a converted multi purpose vehicle) can cost between £20,000 and £30,000. The second hand market for these vehicles is small but growing, as drivers tend to purchase such a vehicle new and then keep it until the end of its life (typically 12 years).

50. The typical cost of a second hand saloon car for use as a Hackney carriage nationally is between £6000 and £8000. Drivers of these vehicles tend to buy second hand cars when they are three years old and sell them on for very little at seven years old. Anecdotally drivers in Shropshire claim that they tend to spend less than this on a vehicle.

51. The average age of a Hackney carriage in Shropshire is 6.6 years with 56% less than 7 years old. The spread of age is shown in the following table.



52. Annual running costs for a wheelchair accessible vehicle tend to be higher, typically just over £1000 more per year than for a standard saloon car.

53. Many licensed Hackney carriage drivers also hold private hire driver licences and would easily be able to make the switch from a licensed Hackney carriage to the private hire sector if they wished. Alternatively, if there was no requirement for Hackney carriages to be wheelchair accessible a number of private hire drivers may switch to Hackney carriages, selling their wheelchair accessible vehicle and replacing with a lower cost and economic saloon vehicle. This would deplete the fleet of wheelchair accessible vehicles.

54. It is clear that there is a risk that introducing a requirement for all Hackney carriages to be wheelchair accessible might lead to licensed Hackney carriage drivers transferring en masse into the private hire sector thus reducing the overall availability of Hackney carriages. This may inadvertently reduce accessibility for everyone.

55. Committee need to balance the legal duty on the Council to have due regard to the needs of people with disability including those who are wheelchair bound with the financial and other implications on the Hackney carriage trade and other users from introducing such a policy.

56. Whilst a reduction in the number of Hackney carriages may appear undesirable, the market in Shropshire is heavily skewed towards private hire with many Hackney carriages also operating on a pre booked basis. Thus, whilst introducing an all wheelchair accessible policy may result in a decrease in Hackney carriages and increase in private hire the implications for the travelling public that now predominantly pre book may not be as severe as initially thought.

Issues for consideration.

57. It is evident that there are strongly held and polar views by drivers and operators as to whether the Council should require all Hackney carriage vehicles to be wheelchair accessible.
58. There is no strong evidence of unmet demand for wheelchair accessible Hackney carriages.
59. Despite writing specifically to Access Groups and other agencies with an interest in the needs of people with disability very few responses have been received.
60. The Council has a legal duty to have due regard to the needs of people with disability when determining policy and any decision made must be objectively justified; namely a proportionate and necessary response to achieving a legitimate aim.
61. The Government has reiterated the legal obligation on Local Authorities in respect of disability discrimination for public vehicles but has yet to issue comprehensive and dedicated guidance specifically in relation to Hackney carriages. Outline guidance is contained in the Department of Transport Best Practise Guidance.
62. The Equalities and Human Rights Commission are in the process of drafting new guidance for service users about transport and travel. The guidance will explain how the Equality Act 2010 applies to transport or travel services. The guidance will make clear where the Equality Act contains specific provisions for transport and travel or makes exceptions to the law that may apply to transport or travel situations.
63. The Council already has a wheelchair accessible vehicle policy for vehicles in zone 4. To do nothing is therefore not an option. The status quo can only continue if zones are retained.
64. Is zone 4 so different from the other areas of Shropshire to justify a separate policy in that zone only? Certainly as zone 4 contains the main centre of population in Shropshire, it has a larger urban core. It does however also cover a large rural area of some 600 square kilometres. We are unable to break down figures in respect of wheelchair users for each zone but can take the percentage of people reporting limiting long-term illness for each area from the 2001 census, and this does not show any significant variation between zones.

Zone	% population with limiting long term illness
Oswestry	18.7%
North Shropshire	18.3%
Shrewsbury and Atcham	17.5%
Bridgnorth	16.7%
South Shropshire	19%

65. One of the major county hospitals is located in Shrewsbury; however, the specialist orthopaedic hospital is located in the Oswestry zone so again it is difficult to argue a special case in this regard.
66. Shrewsbury does have a rail station with direct connections to Birmingham and onwards to London. The other towns within Shropshire do not have stations with these connections. This does bring increased demand for Hackney carriages at the rail station in Shrewsbury when compared to the other zones.
67. Given the legal obligations on the Council and the advice received the decision of the Strategic Licensing Committee on the 16th February 2011 namely that that from the 1st April 2011, all Hackney carriages must be of a wheelchair accessible design, when first licensed by Shropshire Council and that existing non wheelchair accessible vehicles will continue to be licensed until the end of their operational life or such time as the vehicle ceases to be licensed by Shropshire Council has merit.

Conclusions.

68. Arguably if faced with considering whether to introduce a policy on wheelchair accessible Hackney carriages Shropshire Council could wait for further guidance from the government. However, the Council currently has two policies one requiring wheelchair accessible vehicles in zone 4 and the other making no requirement in the other zones.
69. Should zones remain it is possible to construct an argument that the unique nature of zone 4 is such that it is reasonable to require vehicles in this zone only to be wheelchair accessible as whilst the benefit may be small the cost of compliance is relatively low given the current policy that has been in place for many years. However should Council determine that zones should be removed the cost of compliance to the small Hackney Carriage businesses is significant and must be given weight in determining this matter.
70. It is also interesting to note that it is generally the drivers in zone 4 who wish to see the introduction of a wheelchair accessible vehicle policy, perhaps reflecting the investment they have already incurred.
71. The Council must be mindful of duties under section 49A of the Disability Discrimination Act including the requirement to have due regard to the needs of people with disability and legal advice has been received on this matter.
72. It may also be possible to determine on balance that having given due regard to the needs of all disabled people a wheelchair accessible vehicle policy is not reasonable given the relative costs that would be incurred by the trade against the benefits derived. This could be objective justification that the changes required would be unreasonable.
73. Should Council determine that the Hackney Carriage Zones be abolished the Committee could recommend to Cabinet that on balance a policy requiring all hackney carriages licensed by Shropshire Council to be wheelchair

accessible would be unreasonable. In reaching this decision, the committee will need to have given weight to how effective the change will be in assisting disabled people in general and the cost of providing and operating wheelchair accessible vehicles relative to the resources and size of the individual hackney carriage businesses.

74. In all cases, the Council may be subject to a legal challenge. The Council is unable to prevent such a challenge but must ensure that procedurally the decision has been made correctly and that all matters have been given fair and due consideration.

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) Existing Hackney Carriage/Private Hire Policies. Report & Minutes of meetings of Task and Finish Group Department for Transport Best Practise Guidance Notes Consultation responses Human Rights and Equalities Commission Guidance</p>
<p>Human Rights Act Appraisal The impact of this policy on equalities is addressed in the main body of the report. The committee is also required to consider the consequences any recommendation on the applicant’s human rights.</p>
<p>Environmental Appraisal Wheelchair accessible vehicles are generally reported as less fuel efficient than saloon vehicles. Thus increasing the number of wheelchair accessible vehicles could have negative environmental impact.</p>
<p>Risk Management Appraisal There is a risk that introducing this policy will reduce the number of wheelchair accessible Hackney carriages as the purchase and operating costs of these vehicles is greater than for a saloon vehicle. Committee will need to be mindful if this potential unintended consequence was to arise and may wish to review the policy in such circumstances. Should the Government issue guidance under the Equalities Act 2010 in respect of wheelchair accessible vehicles, committee should review the policy in respect of that guidance.</p>
<p>Community / Consultations Appraisal Three consultation exercises have been undertaken in respect of this policy.</p>
<p>Cabinet Member: Cecilia Motley</p>
<p>Local Member: N/A</p>
<p>Appendices</p>

Disability Discrimination Act 1995.

Taxi accessibility regulations. E+W+S+N.I.

(1) The Secretary of State may make regulations (“taxi accessibility regulations”) for the purpose of securing that it is possible—

(a) for disabled persons—

(i) to get into and out of taxis in safety;

(ii) to be carried in taxis in safety and in reasonable comfort; and

(b) for disabled persons in wheelchairs—

(i) to be conveyed in safety into and out of taxis while remaining in their wheelchairs; and

(ii) to be carried in taxis in safety and in reasonable comfort while remaining in their wheelchairs.

(2) Taxi accessibility regulations may, in particular—

(a) require any regulated taxi to conform with provisions of the regulations as to—

(i) the size of any door opening which is for the use of passengers;

(ii) the floor area of the passenger compartment;

(iii) the amount of headroom in the passenger compartment;

(iv) the fitting of restraining devices designed to ensure the stability of a wheelchair while the taxi is moving;

(b) require the driver of any regulated taxi which is plying for hire, or which has been hired, to comply with provisions of the regulations as to the carrying of ramps or other devices designed to facilitate the loading and unloading of wheelchairs;

(c) require the driver of any regulated taxi in which a disabled person who is in a wheelchair is being carried (while remaining in his wheelchair) to comply with provisions of the regulations as to the position in which the wheelchair is to be secured.

(3) The driver of a regulated taxi which is plying for hire, or which has been hired, is guilty of an offence if—

(a) he fails to comply with any requirement imposed on him by the regulations; or

(b) the taxi fails to conform with any provision of the regulations with which it is required to conform.