



<u>Committee and Date</u>
Strategic Licensing Committee
20 June 2018

<u>Item</u>
12
Public

EQUALITY ACT 2010 – LIST OF DESIGNATED WHEELCHAIR ACCESSIBLE VEHICLES

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1. Summary

- 1.1 This report sets out the way in which the Council will enhance the visibility of and access to Wheelchair Accessible Vehicles across the administrative area of Shropshire Council in accordance with the provisions set out in Section 165 and Section 167 of the Equality Act 2010 (the Act).
- 1.2 It is the aim to provide a List of Designated Wheelchair Accessible Vehicles (the List) through the Council's website to enable wheelchair users to more readily access suitable transport.

2. Recommendation

- 2.1 The Committee agrees for the Transactional and Licensing Team Manager to undertake the necessary work to establish the Wheelchair Accessible Vehicles that will be included on the List of Designated Wheelchair Accessible Vehicles.
- 2.2 The Committee approves the publication of the List of Designated Wheelchair Accessible Vehicles as set out in this report.

REPORT

3. Risk Assessment and Human Rights Act Appraisal

- 3.1 There is no legal obligation to publish the List under Section 167 of the Act but the Government 'strongly recommends' that Local Authorities (LAs) should publish a List.
- 3.2 The Department for Transport (DFT) recommends that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of Section 165 of the Act and drivers of those vehicles are therefore not

subject to the legal duties to provide assistance. The DFT further states that LAs may however wish to use existing licensing powers to require such drivers to provide assistance, and impose licensing sanctions where this does not occur.

- 3.3 Furthermore, there is a strong desire for the Council to implement the List as quickly as possible from disability support groups. Freedom of Information requests have regularly been received by the Council since the Act came into effect requesting details of timescales for the implementation of the List.
- 3.4 The Council is at risk of reputational damage if it fails to act on the DFT recommendation and it will fail in the responsibility it has to support minority groups.
- 3.5 Transitional arrangements for the implementation of the List and the Hackney Carriage and Private Hire Drivers responsibilities are set out in the background section of this report.
- 3.6 The Act requires the Council to inform proprietors of Hackney Carriages and Private Hire Vehicles that their details will be published on the List and provide a specified time whereby Hackney Carriage and Private Hire Drivers can apply for an exemption from the List.
- 3.7 The Act states that a vehicle can be included on the List 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 List should be able to carry passengers in their wheelchairs should they prefer.
- 3.8 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if the Council only included on the list vehicles capable of taking a larger type of wheelchair.
- 3.9 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 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.
- 3.10 The Council wants to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 3.11 Before drivers can be subject to the duties under section 165 of the Act, the Council must first publish the List and clearly mark it as 'designated for the purposes of section 165 of the Act'.
- 3.12 The Council should ensure that the List is made easily available to passengers and that vehicle owners and drivers are made aware.

- 3.13 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible Hackney Carriages and Private Hire Vehicles.
- 3.14 Whilst LAs are under no specific legal obligation to maintain a list under Section 167, the Government recommends strongly that they do so. Without such a list the requirements of Section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.
- 3.15 The List will enable the Council to take formal enforcement action against those Hackney Carriage and Private Hire Drivers who refuse to transport wheelchair using passengers or those who attempt to overcharge them.
- 3.16 The recommendation is not at variance with the Human Rights Act 1998 and is unlikely to result in any adverse Human Rights Act implications. The recommendation is in line with relevant legal procedures prescribed by the Act and with guidance issued by the Department for Transport.
- 3.17 There is no anticipated environmental impact associated with the recommendations in this report.
- 3.18 Equality and Social Inclusion Impact Assessment (ESIIA) has been prepared. This document is produced at **Appendix A**.

4. Financial Implications

- 4.1 There are no additional resources required with the recommendation in this report, the administration needed to publish the list will be undertaken within the existing administrative processes.

5. Background

- 5.1 The Council currently licence 84¹ wheelchair accessible vehicles this includes a mix of Hackney Carriages and Private Hire Vehicles.
- 5.2 On 6th April 2017 Section 165 and Section 167 of the Equality Act 2010 (“the Act”) came into effect.
- 5.3 Section 165 imposes legal duties on the driver of a designated hackney carriage and private hire vehicle, which has been hired by or for a disabled person in a wheelchair, or by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
- 5.4 The key components of Section 165 are summarised below:

¹ This figure was correct as at 8 June 2018.

- Hackney carriage/private hire drivers will be required to carry the passenger while in the wheelchair
- Hackney carriage/private hire drivers are prohibited from charging wheelchair-users an additional fare for a journey
- Hackney carriage/private hire drivers will be required to carry the passenger's wheelchair if the wheelchair-user chooses to sit in a passenger seat during the journey
- Hackney carriage/private hire drivers will be obliged to take such steps as are necessary to ensure that the wheelchair-user is carried in safe and reasonable comfort
- Hackney carriage/private hire drivers must provide reasonable levels of mobility-assistance to the disabled passenger
- Hackney carriage/private hire drivers cannot refuse hires from wheelchair users

5.5 Mobility assistance is defined as assistance:

- to enable the passenger to get into or out of the vehicle
- where 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

5.6 Section 167 of the Act provides Local Authorities with the powers to make lists of wheelchair accessible vehicles (i.e. "designated vehicles"), and section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.

5.7 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows LAs to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver's physical condition makes it impossible or unreasonably difficult for them to comply with those duties.

5.8 The Act states that a vehicle can be included on the List 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 List should be able to carry passengers in their wheelchairs should they prefer.

5.9 This means that to be placed on a licensing authority's list a 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 List if it would be possible for the user of a 'reference

wheelchair² to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair. Specifications for a reference wheelchair are produced at **Appendix B**.

Publishing the List of Designated Wheelchair Accessible Vehicles

- 5.10 The Council wants to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 5.11 Before drivers can be subject to the duties under section 165 of the Act, the Council must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'.
- 5.12 The Council 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 details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating 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.
- 5.13 However, it is recognise that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the boot. Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the Hackney Carriage and Private Hire Vehicle fleet in their area.
- 5.14 Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.

Transitional arrangements

- 5.15 Shropshire Council intends to publish a list of designated wheelchair accessible vehicles licensed by this authority on 1 November 2018.
- 5.16 All drivers will be notified of the intention of the Council to produce the list and this provides them with the opportunity to apply for an exemption from the list.

² As defined in Schedule 1 of the [Public Service Vehicle Accessibility Regulations 2000](#)

- 5.17 Drivers wishing to apply for an exemption from the duties under Section 165 of the Act will be required to complete an application form. An example of an exemption form is produced at **Appendix C**.
- 5.18 Where an application is received requesting an exemption from the duties it will be referred to the Licensing Panel for determination. Licensing Panel will treat each case on its own merits and may resolve to grant the exemption or to refuse the exemption.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Equality Act 2010

Department for Transport - Access for wheelchair users to Taxis and Private Hire Vehicles – Moving Britain Ahead

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf

Cabinet Member: Councillor Joyce Barrow Portfolio Holder for Communities, Waste & Regulatory Services.

Local Member: Cover all areas of Shropshire

Appendices:

Appendix A - Equality and Social Inclusion Impact Assessment (ESIIA)

Appendix B - Specifications for a 'Reference Wheelchair'

Appendix C – Example Exemption Form