

Summary Sheet

Council Report

Licensing Board – 30th October 2017

Title

Equality Act 2010 Licensed Driver Medical Exemption Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Damien Wilson, Strategic Director of Regeneration and Environment

Report Author(s)

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene

Ward(s) Affected

All

Summary

The operative parts of Sections 165 and 167 of the Equality Act 2010 came into effect in April 2017. Section 167 of the Act gives Local Authorities the power to publish a list of wheelchair accessible vehicles (known as the Section 167 list). Section 165 places duties on the drivers of those vehicles in relation to the carriage of passengers in wheelchairs.

Drivers of vehicles that are on the Section 167 list are able to apply for a medical exemption from any of the duties listed under Section 165. In order to process an application for a medical exemption, the Council is required to set out a policy for exempting drivers on medical grounds.

Approval for the policy will be sought from the Cabinet and Commissioner's Decision Making Meeting on 13th November 2017. The policy is brought before the Licensing Board today for noting and comment prior to submission to the 13th November meeting.

Recommendations

1. To note the Licensed Driver Medical Exemption Policy attached at Appendix 1.
2. To provide any comments on the policy to the Licensing Manager for inclusion in the final report.

List of Appendices Included

- Equality Act 2010 Licensed Driver Medical Exemption Policy

Background Papers

The following documents have been considered when preparing this report:

- Equality Act 2010
- Rotherham Metropolitan Borough Council Licensing Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Equality Act 2010 Licensed Driver Medical Exemption Policy

1. Recommendations

- 1.1. To note the Licensed Driver Medical Exemption Policy attached at Appendix 1.
- 1.2. To provide any comments on the policy to the Licensing Manager for inclusion in the final report.

2. Background

2.1 The Equality Act 2010 replaced several anti-discrimination laws with a single Act. In broad terms, the Act provides protections to consumers, that is, those who access goods, facilities or services, in relation to direct discrimination on the basis of a 'protected characteristic'. The relevant characteristics are:

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race – this includes ethnic or national origins, colour and nationality
- Religion or belief
- Sex
- Sexual orientation

2.2 Many of the requirements of the Act came into effect in October 2010, however, a phased approach was introduced in relation to certain discretionary aspects. Most notably, in relation to the way that the Act was applied to hackney carriage and private hire licensing, (particularly with reference to Sections 165 and 167 of the Act), these have been introduced from April 2017.

2.3 Section 165 of the Act makes it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance or, to charge them an extra fee.

2.4 Section 167 of the Act gives Councils the discretionary power to produce a list of designated vehicles to which Section 165 will apply, known as a Section 167 list.

2.5 The introduction of such a list requires the Council to inform all drivers of vehicles that appear on the list of their obligations under the Act. Additionally, the Council would need to make drivers aware that they may apply for exemptions from these obligations on medical and physical

condition grounds. Subsequently, the Council is required to develop a policy that deals with whether or not a medical exemption should be granted.

- 2.6 Once the list has been produced, it should be published by the Council so that it is easily available to passengers.
- 2.7 Vehicle owners have the right to appeal against a Council decision to include their vehicle on a Section 167 list, or to refuse to issue a driver with a medical exemption. Such appeals must be made to the local Magistrates Court.
- 2.8 The Equality Act 2010 also imposes duties on the drivers of taxis hired by or for a disabled person who is accompanied by an assistance dog, or by another person who wishes to be accompanied by a disabled person with an assistance dog. The driver must carry the disabled person's dog and allow it to remain with them, and not make any additional charge for doing so. It is a criminal offence not to comply with these duties. Drivers may apply for a similar exemption certificate as they with regard to their obligations to wheelchair users.

3. Key Issues

- 3.1 Statutory guidance in relation to the Equality Act 2010 makes it clear that the production of a Section 167 list is strongly recommended. It is therefore appropriate that the Council develops and publishes a Section 167 list. This will ensure that passengers that use wheelchairs are better informed about the accessibility of designated vehicles in Rotherham, and consequently more confident of receiving the assistance they need to travel safely.
- 3.2 There are currently seven vehicles licensed by the Council that are considered suitable for inclusion in a Section 167 list. These vehicles are all capable of carrying a passenger whilst seated in their wheelchair.
- 3.3 The owners of the identified vehicles have been written to and informed of the proposal to develop a Section 167 list, making the details available to the public on the Council's website. In addition, information has been provided that informs of the appeals process against inclusion on the list.
- 3.4 Similarly, drivers of these vehicles have been informed of their duties under the Act, together with details of the exemptions that might apply.
- 3.5 A draft policy has been prepared (Appendix 1) that provides detail on the medical exemption process. This policy is to be presented to the Council's Licensing Board on 30th October 2017 for comment. These comments will be incorporated into the report prior to submission to the Cabinet and Commissioners' Decision Making Meeting on the 13th November.

- 3.6 The Section 167 list will be published on the Council's website, and paper / electronic copies will be available on request from the Council's Licensing team.
- 3.7 The Council recognises that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the vehicle's 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, Department for Transport guidance recommends that Local Authorities 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.
- 3.8 The Council has taken the view that all vehicles are accessible to wheelchair users who are able to transfer from their wheelchair into a seat within the vehicle, although this will vary depending on the degree of disability and the type of vehicle. Therefore, rather than publish a list of 'transferable vehicles', the Council will add a statement to the Section 167 list that confirms the Council's position regarding these vehicles and advises passengers to make Private Hire Operators or Hackney Carriage Drivers aware of their needs when requesting a booking. The statement will also confirm that all drivers are trained in the provision of assistance to passengers in wheelchairs (as part of the BTEC / NVQ), and are required to provide reasonable assistance to passengers that wish to travel in their vehicle.

4. Options considered and recommended proposal

- 4.1 The Council is not obliged to produce and publish a Section 167 list, and consequently might consider it unnecessary to alter current arrangements.
- 4.2 The publication of information that will assist disabled passengers is clearly desirable and strongly recommended by statutory guidance issued by the Department for Transport. If such a list is published it is necessary for the Council to adopt a policy that outlines how medical exemptions will be handled.
- 4.3 In order to improve information available to disabled passengers, and to increase confidence in services available, it is proposed that the policy to enable the Section 167 list is agreed. A draft of this policy is attached at Appendix 1 of this report.

5. Consultation

- 5.1 Any comments made by the Council's Licensing Board will be incorporated into the proposed policy prior to submission the Cabinet and Commissioner's Decision Making Meeting on 13th November 2017.
- 5.2 In addition, this report has been passed to the Council's Equalities Forum for information and noting.

6. Timetable and Accountability for Implementing this Decision

- 6.1 If approved, the policy will come into effect on the first day of the following month from the decision.

7. Financial Implications

- 7.1 Any administration costs incurred by the Council in the issuing of the medical exemption will be recovered via licensing fees.
- 7.2 The cost of the medical examination will be met by the driver making the application for an exemption.
- 7.3 The cost of issuing medical exemption certificates is already incorporated within the existing charging structure for licences (the Council currently has the facility to issue exemption certificates and the cost of this has previously been considered during the fee setting process).

8. Legal Implications (including procurement)

- 8.1 The statutory authority to introduce the proposed policy, publish a list of wheelchair accessible vehicles and provide exemption certificates is provided to the Council by virtue of Part 12, Chapter 1 of The Equality Act 2010. The proposed policy conforms with this legislation.

9. Human Resources Implications

- 9.1 There are no human resource implications arising from these proposals.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no direct implications for Children and Young People and Vulnerable Adults arising from this report.

11. Equalities and Human Rights Implications

- 11.1 Section 149 of the Equality Act 2010 imposes a public sector equality duty (PSED). This duty requires the authority (inter-alia) to eliminate

discrimination, advance equality of opportunity and foster good relations when exercising any of its functions.

11.2 The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in any way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality: the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

11.3 This report has been passed to the Council's Equalities Forum for information and noting.

12. Implications for Partners and Other Directorates

12.1 There are no specific implications for partners and other directorates introduced by this report.

13. Risks and Mitigation

13.1 Failure to maintain the Section 167 list on a regular basis may lead to inaccuracies in relation to the vehicles that are detailed on the list. This would give misleading information to passengers seeking the services of a wheelchair accessible vehicle.

13.2 In order to mitigate this risk, it is proposed that the responsibility for maintaining the list is given to the Council's Licensing Manager to ensure that the information is relevant and maintained in an effective manner.

14. Accountable Officer(s)

Karen Hanson Assistant Director, Community Safety and Street Scene
Damien Wilson Strategic Director, Regeneration and Environment

Approvals Obtained from:-

John Crutchley (HR Business Partner)

Joanne Kirk (Procurement Category Manager)

Neil Concannon (Legal Services)

Jon Baggaley (Finance)

Zaidah Ahmed (Equalities)

This report is published on the Council's website or can be found at:-

<http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

Appendix 1: Equality Act 2010 Licensed Driver Medical Exemption Policy

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

EQUALITY ACT 2010 LICENSED DRIVER MEDICAL EXEMPTION POLICY

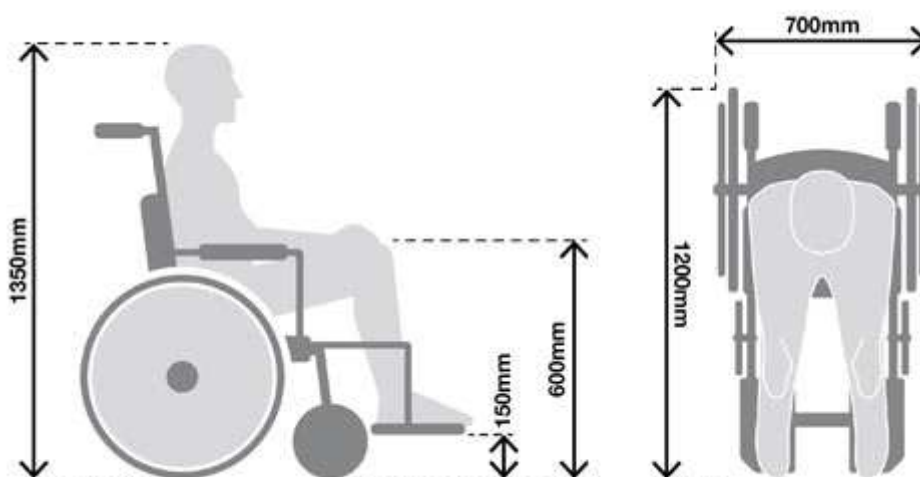
Introduction

The Equality Act 2010 requires employers and service providers to make 'reasonable adjustments' or changes to take account of the needs of disabled employees and customers.

Rotherham Metropolitan Borough Council is committed to an accessible public transport system in which disabled people have the same opportunities to travel as other members of society. Hackney Carriages and Private Hire Vehicles are a vital link in the accessible transport chain and it is important that people who use wheelchairs or assistance dogs can have confidence that drivers will accept them and their wheelchair or assistance dog and carry them at no extra charge.

Section 167 of the Equality Act 2010 permits the Licensing Authority to designate Hackney Carriages and Private Hire Vehicles as being wheelchair accessible. The Department for Transport's Statutory Guidance on Access for wheelchair users recommends that vehicles should only be included in the list if it would be possible for the user of a "reference wheelchair" to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.

A reference wheelchair is illustrated below:



Vehicles identified as such shall be included on a list of designated vehicles.

Duties under the Act

The Equality Act 2010 (Section 165) places the following duties on drivers of designated wheelchair accessible Hackney Carriages and Private Hire Vehicles:

- 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 their 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.

In addition, Sections 168 and 170 places the following duty on drivers of Hackney Carriages and Private Hire vehicles;

- To carry the passenger's assistance dog, allowing it to remain with the passenger and not make any additional charge for doing so.

Failure to comply with any of the above is an offence under the Act. A person that is found guilty of such an offence is liable, on conviction by the Magistrates Court, to a fine of up to £1000.

Exemptions and appeals

In some circumstances a driver of a designated Hackney Carriage or Private Hire vehicle may be unable to fulfil the requirements of the Equality Act 2010 for medical reasons, either short or longer term.

Section 166 of the Act allows Licensing Authorities to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that 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 the duties.

Sections 169 and 171 of the Act allow Licensing Authorities to exempt drivers from the duties to transport passengers assistance dogs if they are satisfied, that it is appropriate to do so on medical grounds.

To apply for a medical exemption certificate a driver must submit an application form to the Licensing Team along with a medical report from their General Practitioner or an Independent Medical Assessor appointed by the Council. The medical report must be dated no more than 28 days prior to submission of the application, detailing exactly what duties cannot be undertaken, why they cannot be undertaken and for how long they cannot be undertaken. This assessment will be at the applicant's expense as part of the application process.

Upon receipt the Licensing Manager will consider the evidence and may request further independent medical assessment to decide if the driver is:

- Fit for work
- Temporarily unfit to carry passengers in wheelchairs and / or assistance dogs

- Permanently unfit to carry passengers in wheelchairs and / or assistance dogs (see below regarding Independent Medical Assessor).

If the driver is declared fit for work no exemption certificate will be issued and a letter explaining the decision will be given to the driver.

All decisions on whether an exception should be granted or not are delegated to the Licensing Manager (or in their absence, a more senior officer of the Council). There is no provision under this policy for decisions to be referred to the Licensing Board (or Sub-Committee of the Licensing Board).

Exemption certificates will be issued for a period of up to 12 months on the basis of information provided by the driver's GP. Drivers will only be given a permanent exemption from duties under the Act if such an exemption is supported by medical evidence provided by an Independent Medical Assessor that has been appointed by the Council.

If the driver does not agree with the decision to refuse the application for a medical exemption, Section 172 of the Act gives the driver a right to appeal the decision to the Magistrates Court. The driver has 28 days from the date of refusal to appeal.

If the driver is declared temporarily unfit, a time limited exemption certificate of up to three months may be issued. Prior to the expiry of the temporary exemption certificate the driver must contact the Licensing Team to either:

- Confirm that they are fit to return to normal duties and return the temporary exemption certificate; or
- Arrange for a further medical assessment to be submitted for the Licensing Manager to consider extending the exemption certificate.

If the driver is declared permanently unfit to carry passengers in wheelchairs and / or assistance dogs an exemption certificate will be issued. The certificate will include a photograph of the driver who has been granted the exemption and must be displayed prominently in the vehicle for public viewing.

The exemption may be reviewed at any time with reference to expert medical evidence, and each case will be reviewed on its own merits. This may result in a further referral to independent medical assessors to determine if the driver remains medically unfit to carry passengers in wheelchairs and / or assistance dogs.

Complaints

Any person that wishes to make a complaint regarding any matter covered by this Policy should address their concerns to the Licensing Manager using the contact details below:

Address : Rotherham MBC Licensing, Riverside House, Main St, Rotherham.
Email : licensing@rotherham.gov.uk
Phone : 01709 382121

Complaints will be investigated in accordance with the Council's published enforcement policy and any other relevant guidelines.