

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO LICENSING COMMITTEE

27 OCTOBER 2010

REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND REGULATORY SERVICES

EQUALITY ACT 2010 HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

1. Purpose of Report

To advise the Committee of forthcoming changes to equality legislation which impact on the regulation of taxi drivers and vehicles.

2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

2.1 This report links with the strategic theme of strong communities and assists the Authority to meet its statutory duties in respect of equality and human rights.

3. Background

3.1 The Equality Act 2010 brings together in one Act a number of different pieces of legislation relating to discrimination - including disability discrimination. Sections 160 to 173 of the Equality Act 2010 relate specifically to hackney carriages and private hire vehicles. The following report has been prepared from Department for Transport (Dft) guidance notes.

3.2 Sections 165, 166 and 167 of the Equality Act 2010 deal with the imposition of duties on the drivers of designated wheelchair accessible hackney carriages and private hire vehicles to assist passengers who use wheelchairs. The duties will constitute a substantive change in the law and are likely to formally come into effect after April 2011. The 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; and
- to give the passenger such mobility assistance as is reasonably required.

3.3 Mobility assistance essentially means helping passengers who use wheelchairs by providing physical assistance. If the passenger wishes to remain in the wheelchair, the driver must help the passenger to get into and out of the vehicle. If the passenger wants to transfer to a seat, the driver must help him or her to get out of the wheelchair and into a seat and back into the wheelchair; the driver must also

load the wheelchair into the vehicle. The driver must also offer to load the passenger's luggage into and out of the vehicle.

- 3.4 Section 166 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 him or her to comply with the duties. This section commenced on 1 October 2010.
- 3.5 Consequently, from October 2010, hackney carriage and private hire vehicle drivers who drive designated wheelchair accessible hackney carriages or private hire vehicles will be able to apply an exemption to carry out the above duties.
- 3.6 Section 167 further allows licensing authorities to maintain a list of "designated vehicles", that is, a list of wheelchair accessible hackney carriages and private hire vehicles licensed in their area. The consequence of a vehicle being listed is that the driver must undertake the duties outlined above. The full provisions of the legislation are not likely to come into effect until some time after April 2011. The Department for Transport (Dft) is advising that although the list of designated vehicles will have no actual effect in law until the duties are commenced, they urge licensing authorities to start preparing a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates. They further advise that licensing authorities that intend to maintain a list of wheelchair accessible hackney carriages private hire vehicles licensed in their area should make provision for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt. If the licensing authority refuses to exempt a driver from the duties then the driver may appeal to the Magistrates' Court against the decision.
- 3.7 When section 167 comes into force, and the lists of designated vehicles have a statutory effect, it will also be possible for the owner of a vehicle to appeal against a licensing authority's decision to include his or her vehicle on the list. This appeal will also go to the Magistrates' Court.
- 3.8 Separate, and more detailed, guidance is expected from the Dft in respect of the accessibility requirements which licensing authorities should apply in relation to this provision and other aspects of their functions under this new approach.
- 3.9 Sections 168 to 171 of the Equality Act 2010 deal with the carriage of guide dogs and other assistance dogs and England and Wales. These sections have simply been carried forward from the Disability Discrimination Act 1995 which imposed duties on hackney carriage and private hire vehicle drivers and operators to accept guide and assistance dogs. The change is largely a technical one rather than one with any practical implications. Hackney Carriage and private hire vehicle drivers will continue to have obligations to carrying guide and other assistance dogs and there is already a system in place for dealing with requests to be exempted from the duty to carry dogs, for example, where a driver has a medical condition such as asthma. There is one exemption certificate currently in force in the County Borough.
- 3.10 A further implication of the new legislation affects the power of the authority to impose a limit on the number of hackney carriage vehicle licences issued. Since

the Transport Act 1985 it has been possible for licensing authorities in England and Wales (outside of London) to refuse a taxi licence application if they are satisfied that there is no significant unmet demand for hackney carriages in their licensing area. Section 161 of the Equality Act 2010 qualifies the law in this area, to ensure licensing authorities that have relatively few wheelchair accessible taxis operating in their area, do not refuse licences to such vehicles for the purposes of controlling taxi numbers. For section 161 to have effect, the Secretary of State must make regulations specifying:

- the proportion of wheelchair accessible taxis that must operate in an area before the respective licensing authority is lawfully able to refuse to license such a vehicle on the grounds of controlling taxi numbers; and
- the dimensions of a wheelchair that a wheelchair accessible vehicle must be capable of carrying in order for it to fall within this provision.

The Department for Transport plans to consult on the content of regulations before section 161 comes in to force; the actual date will be announced in due course, but it will not be before April 2011.

4. Current situation / proposal

- 4.1 This authority's policy to date has been to encourage the licensing of a wide variety of vehicle types, including wheelchair accessible vehicles. The effect of the legislation will be to enable the local authority to maintain a formal list of wheelchair accessible vehicles. Work is underway to prepare a list of current wheelchair accessible vehicles as the basis of consultation with owners and drivers relating to the full implementation of the Equality Act 2010 provisions.
- 4.2 It is recommended that the authority begin preparation for the adoption of a list of designated list of wheelchair accessible vehicles and for the assessment of drivers and vehicle owners who apply for exemptions from the duties and listing. In addition, it is proposed that the authority takes the necessary steps to ensure that designated drivers are appropriately qualified to undertake the duties. Once the Department for Transport has provided specifications on the dimensions of a wheelchair that a wheelchair accessible vehicle must be capable of carrying in order for it to fall within this provision, a further report will be provided on the implications for the Council's vehicle licensing policies.
- 4.3 The medical guidelines for vocational drivers do not prevent persons with a disability from being vocational drivers as in some cases vehicles can be specially adapted to assist the individual. However, these measures assist driving, and not the ancillary duties such as providing the mobility assistance to passengers required by the new legislation. It is proposed that applications for an exemption to the duties are determined by the Licensing Sub-Committee.
- 4.4 In respect of new applicants for driver licences it is proposed to include the request for an exemption from the duties within the medical certificate provided as part of the application process. The Committee is therefore requested to approve the following additional question to the current medical certificate as follows:

Does the applicant have a physical condition that would prevent him or her from carrying out the duties set out in the Equality Act 2010 for drivers of designated wheel chair vehicles as follows:

- *to carry the passenger while in the wheelchair;*
- *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; and*
- *to give the passenger such mobility assistance as is reasonably required. Mobility assistance essentially means helping passengers who use wheelchairs by providing physical assistance. If the passenger wishes to remain in the wheelchair, the driver must help the passenger to get into and out of the vehicle. If the passenger wants to transfer to a seat, the driver must help him or her to get out of the wheelchair and into a seat and back into the wheelchair; the driver must also load the wheelchair into the vehicle. The driver must also offer to load the passenger's luggage into and out of the vehicle.*

If so, please give further details and supporting evidence if the applicant wishes to apply for an exemption from carrying out these duties.

- 4.5 Due regard has been given to the impact of the new duties on current drivers, who, although certified as passed fit to drive at the Group 1 or Group 2 medical standards, may have a physical condition which prevents them from undertaking the new duties and who therefore wish to apply for an exemption certificate. Each application will be determined on its merits and the applicant will be required to provide evidence of the physical condition which would prevent them carrying out the required duties. It is not possible to foresee the number of applications or types of conditions which will emerge from the consultation process and a further report will be presented should there be financial implications to sourcing an independent assessment of applications.
- 4.6 The new duties, however, extend the scope of assistance required and the issue of driver training also needs to be addressed as part of the implementation process; the Council has a duty of care to end users of licensed services including those passengers who will require mobility assistance in wheelchairs. The Council's Driver Awareness Course is a mandatory pre-licensing requirement and covers issues such as customer care and how best to meet the needs of people with disabilities. Practical training could be achieved by requiring that drivers of wheelchair accessible vehicles complete the Driving Standards Agency (DSA) wheelchair assessment test or equivalent training. Some drivers will have already completed the DSA wheelchair test and may have received training in preparation for undertaking school or social services contract work but it will be necessary to take steps to ensure that drivers carrying wheelchairs on day to day taxi journeys are properly trained.
- 4.7 The DSA training involves teaching the driver to securely erect the wheelchair and floor ramps, safely put the wheelchair in the vehicle, fasten seat belts or safety harness, secure any wheel belts or clamps where necessary and reverse the process at the end of the journey.

- 4.8 It is necessary to consult with the trade before approving a change to existing policy and Members are asked to approve a consultation with the trade to amend the hackney carriage and private hire policy to include the addition of a pre-licensing requirement in respect of training in the transport of wheelchairs.
- 4.9 Finally, should the authority resolve to introduce a list of designated wheelchair accessible vehicles, the Licensing Sub-Committee would also deal with applications to be removed from the list.

5. Effect upon Policy Framework & Procedure Rules

The Council's policy in respect of the licensing of hackney carriage and private hire vehicles will require a review when the full provisions of the Equality Act 2010 relating to wheelchair accessible vehicles come into effect.

6. Equality Impact Assessment

The Licensing of taxi drivers is a legal responsibility for the Authority and at this stage and with the limited data available, due regard has been given to the impact on equality groups. No negative impact in relation to race is considered. The restrictions on disability and possibly age may exclude some people from being eligible for a taxi driver's licence, but these proposals have a positive impact on the safety and wellbeing of passengers, particularly those with a disability or requirement for accessible taxis. The safety of others is an important factor in the issuing of a taxi driver's licence, and the legal requirements and Council conditions reflect this. Further consultation is being planned in order to assist the monitoring of the longer term implications of the recommendations.

7. Financial Implications

There are no financial implications to this report. A further report to Committee is necessary on the likely cost of obtaining a medical assessment to determine applications for an exemption certificate if required.

8. Recommendations

Committee is requested to:

- 8.1 Approve the preparation of a draft list of wheelchair accessible vehicles proposed to be designated as a basis for consultation with drivers and vehicle owners prior to the full provisions of the Equality Act 2010 coming into effect.
- 8.2 Approve the modification of the medical certificate outlined at paragraph 4.4 to this report
- 8.3 Authorise the Assistant Chief Executive Legal and Regulatory Services to make the necessary change to the Council's Constitution in respect of the functions delegated to the Licensing Committee and officers in respect of the Equality Act 2010.

- 8.4 Approve a consultation with the taxi trade in respect of a proposed amendment to the Council's pre-licensing requirements in respect of the training of drivers of designated wheelchair accessible vehicles.

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Background documents

Equality Act 2010 Taxis and Private Hire Vehicles
Provisions Coming into effect in October 2010 and Are You a taxi or private hire vehicle driver; available at <http://www.dft.gov.uk/pgr/regional/taxis/equality-act/> 15 September 2010
Bridgend County Borough Council – Taxi Driver medical certificate