

Item: 4

Licensing Committee: 1 September 2022.

Equality Act 2010 Amended – Taxis and Private Hire Cars, Drivers and Wheelchair Accessible Vehicles.

Report by Corporate Director for Strategy, Performance and Business Solutions.

1. Purpose of Report

To advise of amendments made to the Equality Act 2010 which strengthens the public sector equality duty, specifically with respect to taxis and private hire vehicles.

2. Recommendations

The Committee is invited to note:

2.1.

Amendments to the Equality Act 2010 with respect to:

- The duties of taxi and private hire car drivers and operators to disabled persons.
- The duty of the Council, as licensing authority, to maintain and publish a list of designated wheelchair accessible vehicles.

2.2.

That the Licensing Service will advise all taxi and private hire car operators and drivers of:

- Their new duties to disabled passengers.
- The new provision for drivers to apply for an exemption from the duty to give the passenger such mobility assistance as is reasonably required on medical grounds or due to a physical condition.

2.3.

That three wheelchair accessible vehicles are licensed and are eligible to be designated by the Council in terms of section 167 of the Equality Act 2010.

It is recommended:

2.4.

That, in terms of section 167 of the Equality Act 2010, the details of three licensed vehicles and their operators, attached as Appendix 1 to this report, should be published as the Council's list of designated wheelchair accessible vehicles.

2.5.

That the Corporate Director for Strategy, Performance and Business Solutions should arrange for the Council's list of designated wheelchair accessible vehicles in terms of section 167 of the Equality Act 2010 Act to be routinely updated and maintained.

3. Introduction

3.1.

The Council licenses taxis and private hire cars (PHCs) and their drivers in terms of the Civic Government (Scotland) Act 1982 (the 1982 Act). The licensing regime only applies to the Mainland and linked south isles of Orkney.

3.2.

Arising from the 1982 Act, the main differences between taxis and PHCs are as follows:

Taxi	PHC
<ul style="list-style-type: none">• May wait on a taxi stance for trade.• May pick up passengers on the street without prior arrangement.• May display a taxi sign on top of the vehicle.• Must have a meter fitted in the vehicle.• Must be driven by a licensed taxi driver.	<ul style="list-style-type: none">• Cannot wait on a taxi stance.• Can only pick up passengers by prior arrangement.• Cannot have a sign or other advertisement that suggests it is available for hire as a taxi.• May have a meter fitted in the vehicle.• Must be driven by either a licensed taxi driver or a licensed private hire car driver.

3.3.

The Council as a licensing authority has powers available to it in terms of section 10(2) of the 1982 Act to set suitable vehicle specifications in terms of taxis and private hire cars.

3.4.

The Council has [approved standards](#) for vehicles to be licensed as taxis or private hire cars which it believes to be acceptable in terms of safety and comfort. The Council does not specify any particular types of vehicles as suitable and there are no age limitations on vehicles which can be licensed. The principle is that if a vehicle passes the inspection, then it is suitable to be licensed.

4. Equality Act 2010

4.1.

The Equality Act 2010 (the 2010 Act) imposes a duty on public authorities in terms of section 149 to have due regard to the need to:

- Eliminate discrimination.
- Advance equality of opportunity.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.2.

At its meeting held on 10 October 2019, the Licensing Committee noted:

- That a consultation process, to identify any unmet need in relation to wheelchair accessible vehicles licensed as taxis or private hire cars, was undertaken during the period 11 April to 24 May 2019 inclusive, with the outcome detailed in section 5 of the report by the Executive Director of Corporate Services.
- The options in respect of considering what action to take with regard to wheelchair access to licensed taxis and private hire cars, as detailed in section 9 of the report by the Executive Director of Corporate Services, with the preferred option being Option 4, namely to engage with and encourage operators to deploy increased numbers of wheelchair accessible vehicles in their taxi and private hire car fleet without introducing formal requirements and encourage operators to advertise their wheelchair accessible vehicles more.

4.3.

The Committee resolved, in terms of delegated powers:

- That the Council should encourage operators to deploy increased numbers of wheelchair accessible vehicles in their taxi and private hire car fleets and to advertise their wheelchair accessible vehicles more without introducing formal requirements.
- That the policy position, referred to above, be continuously reviewed over the following three years, with the Executive Director of Corporate Services submitting a report, to a meeting of the Committee no later than 2023, detailing the outcome of the review and, if necessary, recommending amendments to the policy.

4.4.

In October 2019, section 167 of the 2010 Act permitted, but did not require, licensing authorities to maintain a list of all wheelchair accessible vehicles which were licensed to operate within their area. The Council did not maintain a list. From March 2020, the COVID-19 pandemic impacted all taxi and PHC services nationally.

4.5.

The 2010 Act has been amended by the Taxis and Private Hire Vehicles (Disabled Persons) Act 2022 (the 2022 Act), which came 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.

5. Amendments to the Equality Act 2010

5.1. Lists of Designated Wheelchair Accessible Vehicles (WAVs)

5.1.1.

Licensing authorities must now maintain and publish a list of wheelchair accessible vehicles (WAVs) for taxis and PHCs in terms of section 167 of the 2010 Act as amended. Authorities may require that the vehicles conform to such accessibility requirements as they think fit. These are known as lists of “designated” vehicles.

5.1.2.

The Department for Transport (DfT) has published [Guidance](#), made up of both statutory and non-statutory guidance. Licensing authorities must have regard to the statutory parts of the Guidance issued under section 167(6) of the 2010 Act, relating to lists of designated wheelchair accessible taxis and PHCs.

5.1.3.

The DfT Guidance recommends that a WAV should be included in a local authority's published list "only 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."

5.1.4.

A "reference wheelchair" is defined as 700mm in width, 1200mm in length, and 1350mm in height. A diagram of a "reference wheelchair" can be found on page 97 of the DfT's 2022 Reference Wheelchair Standard and Transport Design [research report](#).

5.2. Disabled Passengers: Duties of Drivers

5.2.1.

The amended 2010 Act imposes specific duties on the drivers of all 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. If a disabled person who is able wishes to travel in a non-wheelchair accessible vehicle, the duties of the driver 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.

5.2.2.

Mobility assistance in respect of a non-wheelchair accessible vehicle is defined as assistance:

- To enable the passenger to get into or out of the vehicle.
- To load the passenger's luggage, wheelchair or mobility aids into or out of the vehicle.

5.2.3.

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 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.

5.3. Disabled Passengers in Wheelchairs: Duties of Drivers of Designated Vehicles (WAVs)

5.3.1.

The new legislation has also amended the requirements for drivers of a designated taxi or designated PHC 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. These duties will become applicable once the Council has maintained and published its list of designated WAVs.

5.3.2.

The duties of drivers of designated WAVs 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.

5.3.3.

Mobility assistance in respect of a designated WAV 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.

5.3.4.

The driver of a designated taxi or designated PHC 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.

5.4. Disabled Passengers: Assistance to Identify and Find Vehicle

5.4.1.

There are new duties on the driver of a PHC or pre-booked taxi where:

- 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
- 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.

5.4.2.

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 for complying with the above duty.

5.4.3.

The driver commits an offence by failing to comply with the above duties and is 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.

5.5. Duties of Operators of Private Hire Vehicles

The amended 2010 Act creates a new offence for PHC 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 PHC operators who make, or propose to make, an additional charge for the carrying out of any duty imposed on the driver. The operator is liable on summary conviction to a fine of up to £1,000. The onus would be on the operator to prove that their refusal was reasonable using the defences set out in the 2010 Act.

5.6. Drivers' Exemption Certificates

5.6.1.

The legislation previously made provision for a driver of a designated WAV to apply for an exemption on medical grounds or due to a physical condition. Only WAV drivers were subject to duties. A driver with an exemption was, by default, exempt from all of the applicable duties.

5.6.2.

The legislation has been amended so that the exemptions apply to all drivers, but only to duties to give the passenger such mobility assistance as is reasonably required. Other duties, such as not to impose additional charges when carrying the passenger, would still apply to drivers who hold exemption certificates.

5.6.3.

The Council has an application form for drivers to apply for exemption from separate statutory requirements to carry guide, hearing or other assistance dogs, although none has ever been applied for or issued. The form requires the driver to:

- "State the medical grounds which you claim entitle you to exemption. You must attach a letter from your GP in support of your application.
- State any physical characteristics of the vehicle(s) which you drive which support your application and which you wish the Council to have regard to.
- State the name and address of your GP (the Council may require you to undergo a medical examination)."

5.6.4.

A similar form will be provided to enable drivers to apply for exemption from the duty to give the passenger such mobility assistance as is reasonably required on medical grounds or due to a physical condition.

6. Wheelchair Accessible Vehicles in Orkney

6.1.

The Council must now maintain and publish a list of designated WAVs, taking account of the DfT Guidance referred to at sections 5.1.2 to 5.1.4 above.

6.2.

In Orkney, there are currently:

- 17 licensed PHCs.
- 7 licensed PHC drivers.
- 35 licensed taxis.
- 82 licensed taxi drivers (the licence includes authority to drive PHCs).

6.3.

Of those vehicles, there are:

- Two WAV PHCs, one of which is contracted for use primarily by NHS Orkney.
- One WAV taxi.

6.4.

The operators have confirmed that the three vehicles can carry a "reference wheelchair" in accordance with the DfT Guidance referred to at sections 5.1.3 and 5.1.4 above.

6.5.

It is therefore recommended that the details of the three vehicles and the operators, attached as Appendix 1 to this report, should be published as the Council's list of designated wheelchair accessible vehicles in terms of section 167 of the updated 2010 Act. The operators have been advised of this proposal.

6.6.

The Council's application form for taxi or PHC licences includes a question about whether the vehicle is wheelchair accessible. The form will be amended to clarify whether the vehicle can carry a "reference wheelchair" in accordance with the DfT Guidance referred to at sections 5.1.3 and 5.1.4 above. Details of wheelchair accessible vehicles which can carry a "reference wheelchair" and their operators will be added to the Council's list of designated wheelchair accessible vehicles in terms of section 167 of the updated 2010 Act.

7. Consequences of Maintaining a List of Designated Vehicles

7.1.

Publication of a list of WAVs 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.

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 Orkney Mainland and linked south isles.

7.3.

The duties outlined at sections 5.3.1 to 5.3.4 above 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 PHC driver's licence.

8. Appeals Against Inclusion on List of Designated Vehicles

Section 172 of the 2010 Act enables vehicle operators to appeal against the decision of a licensing authority to include their vehicles on the list of designated wheelchair accessible vehicles. 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. Corporate Governance

This report relates to the Council complying with its statutory duties as a Licensing Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

10. Financial Implications

There are no direct financial implications to the Council arising from the recommendations of this report.

11. Legal Aspects

The legal aspects are contained within the body of this report.

12. Contact Officers

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, Email karen.greaves@orkney.gov.uk.

Gavin Mitchell, Head of Legal and Governance, extension 2233, email gavin.mitchell@orkney.gov.uk.

Sheila Tulloch, Service Manager (Legal Services), extension 2213, Email sheila.tulloch@orkney.gov.uk.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.

13. Appendix

Appendix 1: List of Wheelchair Accessible Vehicles in terms of section 167 of the Equality Act 2010.

Orkney Islands Council – Civic Government (Scotland) Act 1982

List of Wheelchair Accessible Taxis and Private Hire Cars designated in accordance with Section 167 of the Equality Act 2010

1 September 2022

Operator Business Name and Contact Details	Vehicle Registration Number	Vehicle Make and Model and other Details	Size and weight of wheelchairs that can be accommodated	Whether Taxi or PHC and Licence Number	Licence Expiry Date
Brian Murray – Orkney Cabs. Phone: 01856 875000. Email: orkneycabs@gmail.com	SC63 YKB	Peugeot Horizon. Passenger in wheelchair + 1 other passenger.	Standard: 700mm width x 1200mm length x 1350mm height. Up to 110 kgs.	Private Hire Car 8/22	25/04/2023
Donna Spence – Scapa Taxis. Phone: 01856 603603 or 07368 657231. Website: http://orkneytaxis.com/ Email: dspence191987@gmail.com	SA58 KYE	Peugeot Boxer. 2 passengers in standard wheelchairs + 6 other passengers.	800mm width x 1400mm length x 1450mm height. Up to 300 kgs.	Private Hire Car 7/22	27/06/2023

Operator Business Name and Contact Details	Vehicle Registration Number	Vehicle Make and Model and other Details	Size and weight of wheelchairs that can be accommodated	Whether Taxi or PHC and Licence Number	Licence Expiry Date
Garry A Donohoe. Phone: 01856 881700 or 078100 99976. Email: gdonohoe26@gmail.com	G20 KWL	Peugeot Horizon. Passenger in wheelchair + 2 other passengers.	Standard: 700mm width x 1200mm length x 1350mm height. Up to 300 kgs.	Taxi 11/21	01/11/2022