

**Title of meeting:** LICENSING COMMITTEE

**Date of meeting:** 22 MARCH 2019

**Subject:** SECTION 165 AND 167 OF THE EQUALITY ACT 2010 -  
WHEELCHAIR ACCESSIBLE VEHICLES

**Report by:** DIRECTOR OF CULTURE, LEISURE AND REGULATORY  
SERVICES

**Wards affected:** ALL

**Key decision:** No

**Full Council decision:** No

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**1. Purpose of report**

1.1 The purpose of this report is twofold, namely:

- To inform the Committee as regards the provisions of Section 165 and 167 of the Equality Act 2010 ("The Act") in respect of wheelchair accessible vehicles; and
- For the Committee to determine whether to instruct officers to compile a list of designated vehicles in accordance with the requirements of the Act.

**2. Recommendations**

2.1 **1) That the Committee determine whether to progress the introduction of a list of designated vehicles in accordance with the Equality Act 2010; and**

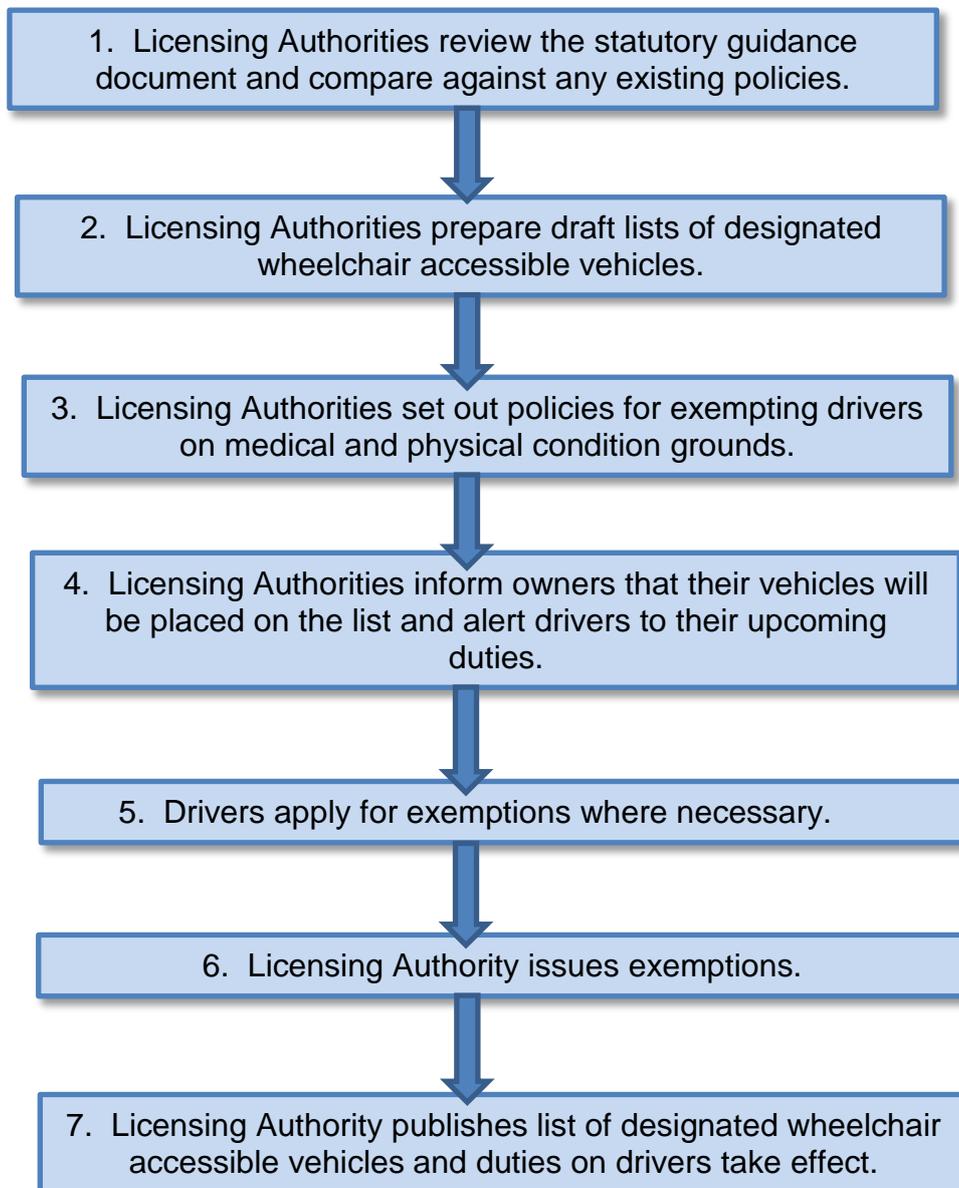
**2) If the Committee wish to approve the arrangements as set out in the Act, that:**

- **Delegated authority is granted to the Head of Culture, Leisure and Regulatory Services to commence action as set out in paragraph 3.9 of this report; and**
- **Delegated authority is granted to the Head of Culture, Leisure and Regulatory Services to introduce and maintain such a list, including updates where appropriate, together with the issue and refusal of exemption certificates to licensed drivers in accordance with 166 of the Act.**

### 3. Background

- 3.1 Section 167 of the Equality Act 2010 permits, but does not require, licensing authorities to maintain a designated list of wheelchair accessible taxis and private hire vehicles.
- 3.2 This section originally had its basis in section 36A of the Disability Discrimination Act 1995, which allowed licensing authorities to maintain lists of wheelchair-accessible vehicles with special licences to operate a local bus service. The 2010 Act now extends this provision to allow licensing authorities to also include wheelchair-accessible vehicles that hold only conventional licences.
- 3.3 If a LA maintains a list of "designated vehicles" in accordance with section 167, section 165 of the Act requires drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 3.4 Section 166 enables drivers to be granted an exemption certificate by the LA, 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.
- 3.5 Sections 165 to 167 of the Act were commenced on 6 April 2017 and the Government has also produced statutory guidance in relation to access for wheelchair users to taxis and private hire vehicles which is attached as **Appendix A**.
- 3.6 The guidance document has been issued under section 167(6) of the Act and provides assistance to licensing authorities in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services.
- 3.7 In particular, the guidance encourages LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of these provisions. Clear advice is given that LAs should only publish lists of wheelchair accessible vehicles for the purposes of section 165 of the Act when they are confident that those procedures have been put into place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate.
- 3.8 The guidance suggests that the above arrangements should take no more than a maximum of six months to put in place, but recognise that this would be dependent upon individual circumstances.

3.9 A flowchart setting out the process the LA could follow has been provided in the guidance and is replicated below for easy reference:



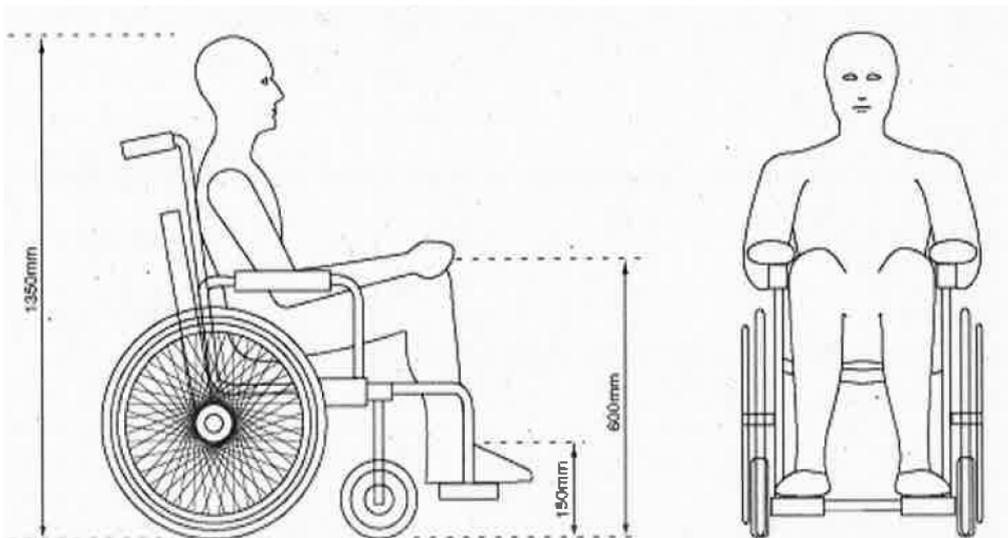
**Officer advice:** It is recommended that if the Committee wish to designate wheelchair accessible vehicles that they follow the above process but may wish to receive a further report from Officers after Action 3 to review and endorse the proposed draft list and policy.

### 3.10 **Vehicles that can be designated**

The Act states that a vehicle can be included on a LA's list of designated vehicles if it conforms to such accessibility requirements as the LA thinks fit. It also states that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.

3.11 This means that to be placed on a LA's list, a vehicle must be capable of carrying some - but not necessarily all - types of occupied wheelchairs. The guidance therefore recommends that a vehicle should only be included in the authority's 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.

3.12 A "reference wheelchair" (as defined in Schedule 1 of the Public Service Vehicle Accessibility Regulations 2000) means an occupied wheelchair having the dimensions shown below:



3.13 The guidance 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 LA's 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.

3.14 By preparing and publishing lists of designated vehicles, it is the aim of the guidance to ensure that passengers in wheelchairs have the information they need to make informed travel choices and, as importantly, drivers and vehicle owners are clear about the duties and responsibilities placed upon them.

3.15 Such 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, and stating the name of the operator. The guidance suggests that 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.

3.16 Section 172 of the Act permits 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 Magistrates' Court and must be made within 28 days of the vehicle in question being included on the LA's published list.

3.17 The Committee are advised that there are currently a total of 118 wheelchair accessible vehicles licensed with PCC. They are split as follows:

Hackney Carriage Vehicles - 87

Private Hire Vehicles - 31

### 3.18 **Driver responsibilities**

Section 165 of the Act sets out the duties placed on drivers of designated vehicles which 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 reasonable required.

3.19 Mobility assistance 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 passengers 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.

3.20 Once the list of designated vehicles is published, it will then become an offence for the driver (unless exempt) of a taxi or private hire vehicle which is on the list to fail to comply with the above requirements. A person found guilty of any offence under this section of the Act is liable to a fine not exceeding level 3 on the standard scale (£1,000).

3.21 The provisions now close a void in that no specific offences for refusing to take a passenger in a wheelchair were previously enabled. The Council has, however, prosecuted hackney carriage drivers under section 53 of the Town Police Clauses Act 1847 for "refusing to drive" but this rather archaic provision does NOT apply to private hire drivers. The enabling provisions of the Equality Act 2010, should the Committee wish to implement them, now effectively provide for a specific offence should drivers of designated vehicles refuse to undertake such journeys.

### 3.22 **Driver exemptions**

Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. The Act, therefore allows the LA to grant exemptions from the duties to individual drivers (as set out in section 166 of the Act).

3.23 The guidance advises that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant.

3.24 In addition to the LA issuing an exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.

3.25 Section 172 of the Act provides an appeal mechanism for drivers to appeal against a decision of the LA not to issue an exemption certificate. That appeal must be made at the Magistrates' Court within 28 days beginning with the date of the refusal.

3.26 The Committee may also be aware of the recent adoption of the Equality and Diversity Strategy for 2019-2022 on 22 January 2019 by the Cabinet Member for Resources. The strategy is available at this link:  
<https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=168&MId=4046&Ver=4>

Reference is made within this document to Section 167 of the Equality Act 2010 and consideration by the Licensing Committee.

## 4. **Reasons for recommendations**

To have regard to the provisions within the Equality Act 2010 and to establish whether or not the Licensing Authority wishes to publish a list of designated wheelchair accessible vehicles having regard to the statutory guidance.

## 5. **Equality impact assessment (EIA)**

A preliminary EIA is attached as **Appendix B**, the main points from the EIA were as follows:

- Introducing this will help to eliminate unlawful discrimination that disabled people experience daily
- This will ensure disabled people experience a service that will not put them at a disadvantage and ensure that are not charged them more for their journey

**6. Legal Implications**

6.1 The legal implications are embodied within this report.

**7. Finance Comments**

7.1 If the Committee wish to introduce a list of designated wheelchair accessible vehicles, it is anticipated that this duty can currently be managed through the existing licensing budget.

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Signed by:

**Appendices:**

- Appendix A - Access for Wheelchair users to Taxis and Private Hire Vehicles - Statutory Guidance**
- Appendix B - Preliminary EIA**

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Equality Act 2010	<a href="https://www.legislation.gov.uk/ukpga/2010/15/contents">https://www.legislation.gov.uk/ukpga/2010/15/contents</a>

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by: