

Wiltshire Council

Licensing Committee

11 December 2017

Subject: Equality Act 2010

Cabinet Member: Councillor Jerry Wickham – Adult Social Care, Public Health and Public Protection

Key Decision: No

Executive Summary

This report informs members of the commencement of Sections 165 and 167 of the Equality Act 2010 which came into force on 6 April 2017. These sections impact on the Council's hackney carriage and private hire driver and vehicle licensing regime.

The report is asking members to agree the implementation of the powers provided in these sections and their addition to the Wiltshire Council guidelines for taxis and private hire drivers and vehicles. The guidelines are currently under review and a report will be brought to a future licensing committee to agree a full set of guidelines.

The aim of the new provisions in the Equality Act 2010 is to:

- Remove any discrimination against wheelchair users wishing to use designated taxi or private hire vehicles
- Assist passengers in wheelchairs in their use of designated taxi and private hire vehicle services
- Provide advice on designating vehicles as being wheelchair accessible so that the new protections for consumers apply.

Implementation of the powers available in these sections of the Equality Act 2010 will afford wheelchair users an improved choice and information, creating greater freedom of movement when travelling within Wiltshire.

Proposals

The Licensing Committee is asked to:

- (i) Agree the implementation of the powers available to the Council in Sections 165 and 167 of the Equalities Act 2010 and their addition to the Council's Guidelines for taxis and private hire drivers and vehicles, in line with the Department for Transport statutory guidance

- (ii) Authorise officers to:
- (a) Create a list of designated vehicles and make available to the public
 - (b) Publish the list of designated vehicles for the Equality Act 2010 on the Wiltshire Council website
 - (c) Consider exemptions on medical grounds in line with the Department of Transport Guidance based on medical evidence submitted by drivers from their doctors saying that they are unfit to fulfil their duties outlined in Section 165 of the Equality Act 2010
 - (d) Implement the change, giving drivers 56 days to submit their exemption request, from date of 1 February 2018 to comply with Section 165 of the Equality Act 2010.
 - (e) All applicants for hackney carriage and private hire driver licences, received after the implementation date will be required to submit exemption request at the time of application.

Reason for Proposals

The commencement of Sections 165 and 167 of the Equality Act 2010 came into force on 6 April 2017. Due to the commencement of these sections, Wiltshire Council should give consideration to the new powers available to it and decide if the Wiltshire Council guidelines document needs to be updated to include these new changes.

Section 167 of the Act provides local authorities with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”).

Section 165 of the Act then requires the drivers of those vehicles to convey passengers in wheelchairs; provide assistance to those passengers and prohibits them from charging extra.

Tracy Carter
Director, Waste and Environment

Wiltshire Council

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Key Decision: No

Purpose of Report

1. This report informs members of the commencement of Sections 165 and 167 of the Equality Act 2010 which came into force on 6 April 2017. These sections impact on the Council's hackney carriage and private hire driver and vehicle licensing regime.
2. The report is asking members to agree the implementation of the powers set out in these sections and to add them to the Wiltshire Council guidelines for taxi and private hire drivers and vehicles. The guidelines are currently under review and a report will be brought to a future licensing committee to agree a full set of guidelines.
3. The aim of the changes to the Equality Act 2010 is to:
 - Remove any discrimination against wheelchair users wishing to use designated taxi or private hire vehicles
 - Assist passengers in wheelchairs in their use of designated taxi and private hire vehicle services
 - Provide advice on designating vehicles as being wheelchair accessible so that the new protections for consumers apply.

Implementation of the powers available in these sections of the Equality Act 2010 will afford wheelchair users an improved choice and information, creating greater freedom of movement when travelling within Wiltshire.

Relevance to the Council's Business Plan

4. The process of controlling and licensing hackney carriage and private hire vehicle operators assists the Council in achieving a number of our priorities in the Business Plan 2017-2027.

Business Plan Goals:

Growing the Economy

Transport and Infrastructure – I can get around and access good services

Strong Communities

Safe Communities (Protection) – Good regulation and consumer protection.

Main Considerations for the Council

5. Wiltshire Council's current guidelines for taxi and private hire drivers and vehicles cover some of the aspects that assist the objectives set out in Sections 165 and 167 of the Equality Act 2010; however, these new powers are more robust in two key areas:
 - (i) The penalties - under the Equality Act 2010 are more robust than our existing policy for example:
 - A person who breaches the duties in Section 165 is liable on summary conviction to pay a fine not exceeding level three on the standard scale and the current maximum for this is £1,000.
 - Any person that receives a conviction under Section 165 should have consideration made as to whether they remain a fit and proper person to hold a taxi or private hire driver licence.

Our current guidelines for taxis and private hire allow for:

 - A maximum of 5 penalty points to be awarded for "Refusal to carry passengers without reasonable excuse"
 - 12 penalty points to be awarded before a review therefore a driver could refuse to carry a wheelchair user twice, effectively without penalty.
 - (ii) The second area where the Equality Act 2010 Section 167 is more robust is the requirement for Wiltshire Council to have a list of designated vehicles. This list is available to the public and will assist travellers in making informed travel choices. Currently, we have no way for the public to access details of the wheelchair accessible vehicles in Wiltshire.
6. There is no obligation on the Council to maintain a list of designated vehicles. However, the Government strongly recommends that local authorities do maintain such lists and there is a risk of a challenge should it not do so without good reason.
7. Wiltshire Council's guidelines for taxi and private hire drivers and vehicles fall short in dealing with issues regarding the users of wheelchairs in a proportionate and effective manner. The implementation of Sections 165 and 167 of the Equality Act 2010 will enable the Council to rectify this shortcoming.
8. Publishing a list of designated vehicles under Section 167 will provide a service that empowers users of taxis and private hire vehicles to make an informed decision.

9. The Secretary of State has issued formal guidance on the implementation of the Equality Act 2010 Sections 165 and 167. Wiltshire Council needs to demonstrate it has given due consideration to this document (see **Appendix 1**).

Background

10. The Equality Act 2010 came into force on 1 October 2010. The Equality Act 2010 provides a legal framework that brings together earlier discrimination legislation. This aim of the 2010 Act is to protect the rights of individuals and advance equality and opportunity for all.
11. Since its commencement in October 2010 the Act has been amended several times.
12. Sections 165 and 167 of The Equality Act 2010 came fully into force on 6 April 2017:
 - Section 167 provides local authorities with the power to make lists of wheelchair accessible vehicles (see **Appendix 2**).
 - Section 165 requires the drivers of those vehicles to provide assistance to wheelchair users and prohibits them from charging extra for this service (see **Appendix 3**).
13. Census data from 2011 shows that in Wiltshire there are 31,408 (6.7%) residents that identify as having “day to day activities limited a lot”. This is a significant number of people. While the census does not specify the number of wheelchair users among the 31,408 it does point to a need to have available wheelchair accessible vehicles.
14. These changes will assist wheelchair users who visit Wiltshire when they are using taxis and private hire vehicles and people that are using a wheelchair on a temporary basis due to issues such as broken bones.
15. Guidance from the Department for Transport says “If a driver receives a conviction for breaching duties under Section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or private hire vehicle drivers’ licence.” Wiltshire Council’s current guidelines for taxi and private hire drivers have no exact provision for such an event. Under such circumstances we would have to rely on either “Refusal to carry passengers without a reasonable cause” which enables the award of five penalty points or “Any other breach or unsatisfactory behaviour” which enables the award of between one and six penalty points. Under our current system a driver could potentially refuse two journeys without being subject to the level of sanction that the guidance recommends. As a consequence of this Wiltshire Council will have to review its fit and proper person policy.
16. The power in Section 167 of the Equality Act 2010 for a list of designated wheelchair accessible vehicles to be maintained serves dual purpose. The first is to enable the enforcement of the obligations in Section 165 of the Equality Act 2010. The second is to ensure that passengers in wheelchairs are able to make informed travel choices, confident that they will receive the assistance they require to travel safely and that they will not be charged extra for doing so. The

list will be publically available via the Wiltshire Council Website and will contain the following information about designated vehicles:

- Make
- Vehicle registration number
- Number of passengers
- Contact phone numbers
- Model
- Plate number
- Proprietor's name

17. The adoption of these changes will mitigate the potential for legal challenge should an incident occur. We will be able to show that we have been proactive in taking consideration of the Department for Transport guidance, making the appropriate changes to our policy.
18. Drivers of wheelchair accessible vehicles are able to apply for exemption to the duties laid out in Section 165 of the Equality Act 2010 under medical grounds. If they have a condition that would prevent them from assisting a wheelchair user, an exemption will be issued. The driver of the designated vehicle will be required to obtain a completed medical form from a doctor stating that they are unable to carry out such duties. Once the compliance team has received a satisfactorily completed medical form then an exemption card will be issued. The exemption must be displayed on the nearside of the windscreen at all times while the driver is working.
19. Should the powers in these sections be implemented there will be a period of 56 days before the changes come into force. This will afford drivers time to apply for exemption. After this 56 day period the list of vehicles designated under Section 167 of the Equality Act 2010 will be published and the duties under Section 165 of the Equality Act 2010 will come into force. Any driver that applies for a hackney carriage or private hire driver licence after the implementation date will be expected to apply for exemption upon application, where applicable.
20. Implementation of Sections 167 and 165 of the Equality Act 2010 will reduce the potential for negative news stories regarding disabled passengers not being able to travel by taxi or private hire vehicle or being charged extra to do so.
21. Currently, members of the traveling public have no easy route to find wheelchair accessible vehicles. If a member of the public required such a vehicle they would need to contact local companies direct to enquire about wheelchair accessible vehicle availability. As there are lots of taxi and private hire companies and self-employed drivers whose vehicles have no capacity for carrying wheelchairs this could lead to several phone calls and dissatisfaction. A single register for such vehicles would alleviate this issue, making Wiltshire a better place for wheelchair users to arrange travel.

Safeguarding Implications

22. These sections provide protections to wheelchair users by making it an 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 extra.

Public Health Implications

23. Public Health has a role in reducing inequalities, the focus of which is captured throughout the paper in terms of ensuring equality of access.

Corporate Procurement Implications

24. There are no direct procurement implications arising from this report.

Environmental and Climate Change Considerations

25. There are no environmental or climate change considerations.

Equalities Impact of the Proposal

26. The impact of these proposals is assessed as `medium` against the Council's statutory responsibilities.
27. There is a clear need to implement the changes outlined in the Department for Transport guidance issued in 2017. The result of these changes will be greater ability to find wheelchair accessible vehicles for members of the public, more accountability by the taxi and private hire trade and a clear course of action for Wiltshire Council.
28. Should the changes be implemented, the first phase of this action must be the communication of the changes to the taxi and private hire trade and the invitation for those drivers effected to apply for exemption on medical grounds.
29. We will allow 56 days for exemptions to be requested and this will commence once the changes have been communicated to the drivers affected. In that time a list of designated vehicles will be drafted. Once the 56 days has passed, the list of designated vehicles will be published on the Wiltshire Council website and the changes will be implemented.
30. From that point on the drivers of vehicles designated under Section 167 of the Act will be required under Section 165 of the Equality Act 2010 to convey passengers with wheelchairs.
31. By issuing exemptions to drivers of vehicles designated under Section 167 of the Equality Act 2010 we are complying with the guidance issued and taking into account any driver that may be adversely affected by these changes.
32. The results of this assessment will be reported along with the other proposed changes to the Wiltshire Council guidelines for taxi and private hire drivers at a future Licensing Committee meeting.
33. Should the Licensing Committee agree that Sections 165 and 167 of the Equality Act 2010 be implemented, the taxi and private hire trade will be notified via a newsletter that will be sent out via email. Printed copies will be sent to those without email via post.
34. Wiltshire Council currently has no way to monitor the use of wheelchair accessible vehicles in Wiltshire. Should the changes come into force then we will be able to monitor the number of times the list of designated vehicles created

to enable compliance with Section 167 of the Equality Act 2010 is accessed on the Wiltshire Council website. This will provide the authority with feedback on the effectiveness of any changes that come into force and illustrate a baseline to measure improvement against.

35. Wiltshire Council will monitor the impact of these changes through quarterly meetings with the taxi and private hire trade and engagement with the public during regular enforcement visits to taxi ranks around the County, carried out by compliance officers, ensuring that any feedback is logged.
36. The Council will monitor the Department for Transport guidance for any further updates on implementation of the Equality Act 2010. Should these occur then a further review of the policy will be undertaken.

Risk Assessment

Risks that may arise if the proposed decision and related work is not taken

37. The guidance issued by the Department for Transport is statutory guidance, therefore if the Council fail to introduce the proposed changes regarding the implementation of Sections 167 and 165 of the Equality Act 2010, without reasonable cause it would be open to judicial review. There is also the risk of negative press for Wiltshire Council.
38. The Council has already received freedom of information requests regarding the implementation of Sections 167 and 165 of the Equality Act 2010, asking if the Council has implemented it, if it proposes to do so and if not the reason for this.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

39. If the decision is taken to implement Sections 167 and 165 of the Equality Act 2010, the Council will need to ensure a smooth transition, in line with the Department for Transport guidance. Training needs for both council officers and taxi and private hire drivers will be identified and undertaken.
40. Communication of the changes to the taxi and private hire trade and public, including an explanation of the new process and risk of conviction, will need to be clear and timely. Drivers that require exemptions will have 56 days to obtain medical forms completed by their doctors and to arrange appointments to discuss with council officers.
41. To mitigate this risk the Council will notify drivers of the changes via email or letter should they occur at the soonest possible juncture. We will complete this action by sending out a newsletter to all registered hackney/private hire drivers and operators via email or post. The public will be notified on the Wiltshire Council website.
42. During the implementation period, there is the risk of increased demand on council officer time from the taxi and private hire trade. Officers will have to deal with exemption applications, drafting a list of designated wheelchair accessible vehicles and amending Wiltshire Council's website. The increased demand will be resolved during the 56 day exemption application period.

Financial Implications

43. There are no direct financial implications arising from this report.

Legal Implications

44. There is no obligation on the Council to implement the new powers available to it by the commencement of Sections 165 and 167 of the Equality Act 2010. However, there is clear Government guidance that local authorities should take advantage of these powers and a failure to do so without good reason could leave the Council at risk of challenge. Once the Council has established a list of designated vehicles, the driver of any vehicle included in that list becomes subject to the obligations in Section 165, regarding the carrying of wheelchairs and providing assistance to wheelchair users.

Options Considered

45. We have two possible options regarding the proposal as set out below.

- (i) Remain with the current guidelines. Officers will continue to make decisions based on the current guidelines for taxi and private hire drivers and vehicles, with penalty points being applied in line with these guidelines.

The benefits of this include:

- The compliance team will not need to learn a new process
- The license holders will not need to learn a new process.

The risks of this include:

- Potential for negative press exposure
- The Council will not be compliant with Government Guidance regarding the use of the new powers and there would be the potential for legal challenge
- No ability for conviction of taxi and private hire vehicle drivers for non-compliance with the current guidelines for taxis and private hire.

- (ii) Accept the proposals laid out in this document. The guidelines for taxi and private hire drivers and vehicles will be amended. A list of wheelchair accessible vehicles will also be published on the Wiltshire Council website.

The benefits of this include:

- The public will be able to use the published list to make informed decisions regarding their travel
- The revised guidelines for taxi and private hire drivers and vehicles will enable the fleet licensing team to deal with contraventions of the guidelines policy for taxi and private hire drivers and vehicles in a more robust manner
- The Wiltshire Council guidelines for taxi and private hire drivers and vehicles will align with the guidance from the Secretary of State.

The risks include:

- The Council will need to learn and implement the new process
- Communicating the changes to the guidelines policy for taxi and private hire drivers and vehicles to the taxi and private hire trade and public
- The taxi and private hire drivers and vehicle owners will need to be made aware of the new process and possibility of conviction
- An increase in demand on council officer time dealing with applications for exemptions, drafting the designated wheelchair accessible vehicles list and amending the Wiltshire Council website.

Conclusions

46. The issue of conveying passengers with wheelchairs by hackney carriage and private hire vehicles required reassessment. On 6 April 2017, Sections 167 and 165 of the Equality Act 2010 were commenced. Section 167 of the Equality Act 2010 provides local authorities with the powers to make lists of wheelchair accessible vehicles, Section 165 of the Act then requires the drivers of those vehicles to convey passengers in wheelchairs; to provide assistance to wheelchair users; and not to charge them extra.
47. Should the Council choose to implement these sections into the Wiltshire Council guidelines for taxi and private hire drivers and vehicles, the public will be able to attain information regarding the availability of wheelchair accessible vehicles, Wiltshire Council will have greater powers of enforcement and licensed drivers will have unequivocal guidance on expected behaviour regarding the conveyance of wheelchair users.

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8 November 2017

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices

Appendix 1 - Department for Transport Guidance

Appendix 2 - Section 167 of The Equality Act 2010

Appendix 3 - Section 165 of The Equality Act 2010