

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	POLICY FOR MEDICAL EXEMPTION FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS UNDER THE EQUALITY ACT 2010		
DATE OF DECISION:	24 July 2017		
REPORT OF:	SERVICE DIRECTOR – TRANSACTIONS AND UNIVERSAL SERVICES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY

Not applicable

BRIEF SUMMARY

Sections 165 and 167 of the Equality Act 2010 have now come into effect as of 6th April 2017. The relevant statutory guidance strongly recommends the publication of a list of wheelchair accessible vehicles, the authority is bound to consider and take into account statutory guidance. The purpose of the list is to inform disabled passengers of available vehicles that are capable of assisting in meeting their travel needs. In order to lawfully implement a list the authority must have a policy regarding wheelchair accessible vehicles and provide for drivers of such vehicles to be exempt, where relevant, on medical grounds from the duties stipulated in this legislation.

RECOMMENDATIONS:

	(i)	That the Committee consider and approve the publication of a list of designated wheelchair accessible vehicles in accordance with Department for Transport's Statutory Guidance on Access for wheelchair users to Taxis and Private Hire Vehicles as detailed in Appendix 1.
	(ii)	That the Committee consider and approve the policy as shown in Appendix 2 – Exemption Procedure to enable compliance with the legislation.
	(iii)	That the Committee delegates authority to the Licensing Manager to maintain / amend / re-publish the list as required in future and to amend or update the policy regarding exemptions if required in future.

REASONS FOR REPORT RECOMMENDATIONS

1.	Statutory guidance strongly recommends adoption of a list. The provisions of the Equality Act 2010 require Licensing Authorities to exempt drivers that are medically unfit from duties stated in the Act however there is no current policy to permit this.
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ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
2.	Given the statutory nature of the function there are no alternative options.
DETAIL (Including consultation carried out)	
3.	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. Southampton City 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.
4.	On 6 th April 2017 of the 283 licensed Hackney Carriages licensed by SCC, 71 have been identified as being wheelchair accessible and of 668 licensed Private Hire Vehicles, 23 are wheelchair accessible. It is proposed that these vehicles will be designated as such and included on the list of wheelchair accessible vehicles in accordance with section 167 of the Equality Act 2010 and as recommended by Department for Transport's Statutory Guidance on Access for wheelchair users to Taxis and Private Hire Vehicles (Appendix 1 – Department for Transport's Statutory Guidance).
5.	Section 172 of the Act enables vehicle owners to appeal against the decision to include their vehicles on the designated list. This appeal should be made to the Magistrates' Court and must be within 28 days of the vehicle in question being published on the Licensing Authority's published list. Proprietors of all vehicles included on the list will receive a letter detailing the new provisions of the Act and their right of appeal (Appendix 3 – Letter to Proprietors).
6.	<p>Once vehicles are designated as wheelchair accessible vehicles, the drivers of such vehicles are subject to duties under section 165 of the Act. The duties are:</p> <ol style="list-style-type: none"> i. To carry the passenger while in the wheelchair; ii. Not to make any additional charge for doing so; iii. If the passenger chooses to sit in a passenger seat, to carry their wheelchair; iv. To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; v. To give the passenger such mobility assistance as is reasonably required. <p>Mobility assistance is "assistance –</p> <ol style="list-style-type: none"> (i) To enable the passenger to get into and out of the vehicle (ii) 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; (iii) To load the passenger's luggage into or out of the vehicle; (iv) If the passenger does not wish to remain in the wheelchair, to load

	<p>the wheelchair into or out of the vehicle”.</p> <p>In addition, Sections 168 and 170 places the following duty on drivers of Hackney Carriages and Private Hire vehicles;</p> <ol style="list-style-type: none"> i. To carry the passenger’s dog, allowing it to remain with the passenger and not make any additional charge for doing so. <p>A driver who fails to comply with any of the above is guilty of an offence and may receive a fine if convicted.</p>
7.	<p>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.</p> <p>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.</p> <p>Sections 169 and 171 of the Act allow Licensing Authorities to exempt drivers from the duties to transport assistance dogs if they are satisfied that it is appropriate to do so on medical grounds.</p> <p>Drivers will receive a letter detailing the duties they are subject to and the process to apply for an exemption (Appendix 4 – Letter to Drivers).</p>
8.	<p>To apply for a Medical Exemption Certificate a driver must submit to the Licensing Team an application form (Appendix 5 – Application Form for Medical Exemption) along with evidence supporting their claim. This evidence shall be a report from their GP which must detail 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.</p>
9.	<p>The Licensing Manager will consider the evidence and may request further independent medical assessment to decide if the driver is:</p> <ol style="list-style-type: none"> (i) Fit for work; (ii) Temporarily unfit to carry passengers in wheelchairs and/or assistance dogs; or (iii) Permanently unfit to carry passengers in wheelchairs and/or assistance dogs.
10.	<p>If the driver is declared fit for work an exemption certificate will not be issued and a letter explaining this decision will be given to the driver. 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.</p>
12.	<p>If the driver is declared temporarily unfit, a temporary exemption certificate of</p>

	up to three months may be issued. Prior to the expiry of the temporary exemption certificate the driver will contact the Licensing Team to either; (i) declare themselves fit, return to normal duties and return the temporary exemption certificate; or (ii) arrange a further medical assessment to be submitted for the Licensing Manager to consider extending the exemption certificate.
13.	<p>If the driver is declared permanently unfit to carry passengers in wheelchairs and/or assistance dogs an exemption certificate and notice will be issued. The certificate will include a photograph of the driver who has been granted exemption and must be displayed prominently in the vehicle for public viewing (Appendix 6 – Exemption Certificate, Appendix 7 – Exemption Notice).</p> <p>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.</p>
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
14.	None, medical assessment paid for by drivers as part of application process.
<u>Property/Other</u>	
15.	This function will be carried out within the Licensing Team within existing resource constraints.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
16.	Sections 165 and 167 of The Equality Act 2010 came into effect from 6 th April 2017. Sections 166, 169 and 171 of the Act provide for the exemption of drivers from the statutory duties set out in this report in certain circumstances.
17.	Section 37-68 Town Police Clauses Act 1847, Licensing of Hackney Carriages and Hackney Carriage Drivers.
18.	Sections 45-80 Local Government (Miscellaneous provisions) Act 1976, Licensing of Private Hire Vehicles, drivers and operators and provides powers and requirements with regards to Hackney Carriages and Hackney Carriage drivers.
19.	Section 149 of the Equality Act 2010 imposes a public sector equality duty (PSED). This duty requires the authority (<i>inter-alia</i>) to eliminate discrimination, advance equality of opportunity and foster good relations when exercising any of its functions.
<u>Other Legal Implications:</u>	

20.	<p>Human Rights Act 1998</p> <p>The Act 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 affect 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.</p>
POLICY FRAMEWORK IMPLICATIONS	
21.	None

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	Not applicable
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Appendix 1 – Department for Transport's Statutory Guidance on Access for Wheelchair Users to Taxis and Private Hire Vehicles
2.	Appendix 2 - Medical Exemption Policy for Hackney Carriage and Private Hire Drivers under The Equality Act 2010
3.	Appendix 3 – Letter to Proprietors
4.	Appendix 4 – Letter to Drivers
5.	Appendix 5 – Application Form for Medical Exemption
6.	Appendix 6 – Exemption Certificate
7.	Appendix 7 - Exemption Notice
Documents In Members' Rooms	
1.	
2.	
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessments (ESIA) to be carried out?	No
Privacy Impact Assessment	

Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.		No
Other Background Documents		
Equality Impact Assessment and Other Background documents available for inspection at:		
Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)	
1.		
2.		