

Proposals for public list of accessible (licensed) vehicles

South Gloucestershire Council's Regulatory Committee have agreed to consult on a proposal to publish a list of all licensed vehicles. The background to this, which was initially for Wheelchair Accessible Vehicles, is outlined below.

In summary the Committee wishes to provide users of the licensed taxi and private hire service in South Gloucestershire with as much information as they can to enable an informed decision on how best to travel.

The proposal is therefore to publish the following details of all licensed vehicles on the web site:

- a. make and model of the vehicle,
- b. whether taxi or private hire vehicle,
- c. the name of operator.
- d. Contact details
- e. information about the size and weight of wheelchair that can be accommodated, and
- f. whether wheelchairs that are larger than a "reference wheelchair" can be accommodated

If you have any comments or concerns regarding this please respond to this consultation.

Background

- 2 Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful to refuse or charge them extra.
- 3 On 15th September 2010, the Department for Transport issued guidance on the Act which stated, in relation to section 167, *"although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates"*.
- 4 These provisions are now commenced and additional protections now apply to wheelchair users. These make it a criminal 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.
- 5 A statutory guidance document has been issued in order to assist local licensing authorities (LAs) in the implementation of these legal provisions. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communicating with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements. LAs must have regard to this guidance document.
- 6 One of the principles behind the guidance is to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area,

confident of receiving the assistance they need to travel safely, and not charged more than a non-wheelchair user for the same journey.

The issues

Overarching principle

- 7 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs. Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so.
- 8 Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.
- 9 The requirements also do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner.
- 10 At the current time the Council does not maintain or publish such a list and feedback from trade with existing wheelchair accessible vehicles has been against the publication of such a list.
- 11 The guidance states that LAs should only publish lists of wheelchair accessible vehicles for the purposes of section 165 of the Act when procedures meeting the act and guidance have been put in place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate and this should be completed within six months. It was published in 2017.

List requirements

- 12 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.
- 13 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs.
- 14 A vehicle is to be included in the list if it “conforms to such accessibility requirements as the LA thinks fit”. There is therefore a discretion to be exercised, it means that the LA has to choose eg whether just ‘ordinary’ or larger, powered wheelchairs must be catered for, or vehicles that will allow a wheelchair to be carried in the boot so that the disabled passenger transfers to a passenger seat (statutory guidance paras 3.5 to 3.7 and 3.11).
- 15 The consultation will need to seek views on all the various options available, unless members decide otherwise for particular types of wheelchair accessible vehicle – because this will have to be stated in the policy. It should also address whether or not any conditions would be appropriate to specify for vehicles eg turning circles, side loading for wheelchairs (in effect requiring a ‘London cab’ model).
- 16 The Government 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.

- 17 Taking this approach allows the provisions of section 165 of the Act to apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.
- 18 The Government 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. 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.

Publication

19 Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'

20 Lists should set out the details of the:

- a. make and model of the vehicle,
- b. whether taxi or private hire vehicle,
- c. the name of operator.

Where possible:

- d. information about the size and weight of wheelchair that can be accommodated, and
- e. whether wheelchairs that are larger than a "reference wheelchair" can be accommodated

21 Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the taxi and PHV fleet in their area.

22 The guidance also recommends that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle.

Contact Details

23 Section 167 itself only stipulates for vehicles to be listed. The statutory guidance, to which the LA must have regard, adds at para 3.10 the name of the operator. Neither section 167 nor the guidance suggests that contact details for the operator eg telephone number or e-mail address should be included in the list.

24 However there is a question as to the usefulness of the list if contact details are not included. The licensing service envisage complaints from the public if the list does not include contact details.

25 If they are there are not considered to be any data protection issues for operators which trade as limited companies; for those operators which trade as individuals ('sole traders')

or unregistered partnerships), although the GDPR will apply, it should nevertheless be borne in mind that this is a business context and there can be no genuine privacy issues about a list of taxi vehicles and their characteristics. We are not considering drivers' convictions, home addresses or anything like that.

26 However, to be completely transparent and comply with the information notice provisions of Art 14, the proposal should be clearly set out in the consultation, and subsequently in the policy.

Driver's duties

27 Requirements on drivers of section 165:

- 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. 4.3 The Act then goes on to define mobility assistance 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

28 Section 172 of the Act enables 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 Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.

Applying for and issuing exemptions

29 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. LAs can grant exemptions from the duties to individual drivers if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue.

30 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle.

31 Appeals against the decision of a LA not to issue an exemption certificate should be made to the Magistrate's Court and must be made within 28 days beginning with the date of the refusal.

Enforcement Action

32 The Government expects LAs to take tough action where drivers breach their duties under section 165 of the Act and that LAs use their powers to ensure that drivers who discriminate against disabled passengers are held accountable.

- 33 The guidance further states that if a driver receives a conviction for breaching their 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 PHV drivers' licence. The Government's presumption is that a driver who wilfully failed to comply with section 165 would be unlikely to remain a "fit and proper person".
- 34 Authorities might also apply conditions which enable them to investigate cases of alleged discrimination and take appropriate action, even where prosecution did not proceed