

Agenda item	7
Report no	HLC/031/23

THE HIGHLAND COUNCIL

Committee: THE HIGHLAND LICENSING COMMITTEE

Date: 9 May 2023

Report title: Wheelchair accessible vehicles – Equality Act 2010 implementation update

Report by: Solicitor – Regulatory Services

1. Purpose/Executive summary

- 1.1 This report relates to amendments made to the Equality Act 2010 which strengthens the public sector equalities duty, specifically with respect to taxis and private hire vehicles.

2. Recommendation

- 2.1 This report invites the Committee to approve the Council's updated vehicle specification and timetable on implementing requirements for licensed wheelchair accessible vehicles (WAV).

3. Background

3.1 Section 149 of The Equality Act 2010 (“the 2010 Act”) imposes on local authorities a public sector equality duty. Under this duty, the Council must have due regard to, amongst other things, the need to:

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

3.2 This applies to the Council when it is fulfilling its role as a licensing authority under the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

3.3 At its meeting of 29 November 2022, Highland Licensing Committee approved a timetable for implementation of the licensing authority’s new obligations under the 2010 Act, particularly the publication of a list of specified vehicles. This is attached as **Appendix 1**.

4. Next Steps

4.1 Due to staff absence and business pressures, Officers were unable to consult during January and February 2023 as outlined in **Appendix 1**. The original timetable, therefore, requires to be reviewed and an updated timetable has been set out in **Appendix 2** for approval.

4.2 Correspondence was sent to WAV operators on 6 March 2023 informing them of the Council’s intention to place their vehicles on the published list and the legal consequences of doing so.

4.3 Feedback was subsequently received from a number of drivers expressing their concerns regarding the approved vehicle specification.

4.4 The particular elements that were highlighted were the requirements for vehicles to have a mechanical lifting mechanism and for the passenger to be forward facing. It is understood that some of the more popular models of WAV do not necessarily have these features, despite being purpose built and safe for carrying passengers securely in their wheelchairs.

4.5 The vehicle specification has, therefore, been re-considered and the proposed amendments are outlined in **Appendix 3**.

4.6 Further correspondence was sent to WAV operators in the week commencing 17 March 2023 to inform them that the WAV specification will be further considered and providing them with an opportunity to make any comments on the proposed vehicle specification.

4.7 No responses have been received regarding the further consultation.

5. Appeals

5.1 Following publication of the list of designated vehicles, any operator that is unhappy that their vehicle has been included on the list will have 28 days to appeal the decision to the Sheriff Court.

5.2 Once the list has been published it will remain a live list with WAVs being added and removed as they are licensed, or their licence expires. Each new WAV that is added to the list going forward will have the same appeal rights as set out above.

6. Policies

The following policies are relevant to this case:

Wheelchair Accessible Vehicles – Duties under the Equality Act 2010
Wheelchair Accessible Vehicles – Vehicle Specification

A copy of these policies are attached as **Appendix 3**.

7. Impacts

An Equalities Impact Assessment will be completed prior to implementation of the above duties.

Date: 20 April 2023

Author: Iain Meredith

Appendix 1 – Implementation Timeline (November 2022)

Appendix 2 – Revised Implementation Timeline

Appendix 3 – WAV – Duties and Vehicle Specification policies

Background Papers:

Equality Act 2010

Civic Government (Scotland) Act 1982

AS APPROVED AT HLC ON 29th NOVEMBER 2022

**PRODUCING A SPECIFICATION FOR VEHICLES TO BE CONSIDERED A
WHEELCHAIR ACCESSIBLE VEHICLE (WAV's)**

(December 2022/early January 2023)

- What accessibility requirements must be met before a vehicle will be included in any designated list



**IDENTIFYING WHICH TAXI OPERATORS HAVE VEHICLES WHICH MEET
THAT SPECIFICATION**

(December 2022 /early January 2023)

- Producing a draft list for consultation



CONSULTATION PERIOD

(13 January 2023 – 10 February 2023)

- Intimate to the holders of the relevant operator's licences that the Committee proposed to put their WAV on the designated list
- Inform them of the legal consequences of being on the designated list
- Invite these operators to make representations regarding the proposals



HIGHLAND LICENSING COMMITTEE

(28 March 2023)

- Report back to HLC with consultation responses
 - Draft guidance to be produced

- Members to consider responses and approve a final list of designated vehicles



PUBLICATION OF FINAL LIST OF DESIGNATED VEHICLES

(30 June 2023)

- This allows for a 3 month period to allow any operators who wish to apply for an exemption to do so or any operators wishing to appeal against their vehicles appearing on the designated list

REVISED IMPLEMENTATION TIMELINE

**PRODUCING A SPECIFICATION FOR VEHICLES TO BE CONSIDERED A
WHEELCHAIR ACCESSIBLE VEHICLE (WAV's)**

(December 2022/early January 2023)

- What accessibility requirements must be met before a vehicle will be included in any designated list



**IDENTIFYING WHICH TAXI OPERATORS HAVE VEHICLES WHICH MEET
THAT SPECIFICATION**

(December 2022 /early January 2023)

- Producing a draft list for consultation
 - Draft guidance



CONSULTATION PERIOD

(1 March 2023 – 31 April 2023)

- Intimate to the holders of the relevant operator's licences that the Committee proposed to put their WAV on the designated list
- Inform them of the legal consequences of being on the designated list
- Invite these operators to make representations regarding the proposals



HIGHLAND LICENSING COMMITTEE

(9 May 2023)

- Report to HLC with update on progress



PUBLICATION OF FINAL LIST OF DESIGNATED VEHICLES

(September 2023)

- This allows for a period to allow any operators who wish to apply for an exemption to do so or any operators wishing to appeal against their vehicles appearing on the designated list
 - Approval of final list to go to HLC on 5 September 2023

Wheelchair Accessible Vehicles

Duties under the Equality Act 2010

Policy and Vehicle Specifications

Under the Equality Act 2010, all licensing authorities must maintain and publish a list of licenced taxis and PHVs they designate as being wheelchair accessible vehicles (WAV). This will identify the vehicles whose drivers are subject to the duties at section 165 of the 2010 Act on providing assistance to wheelchair users and refraining from charging extra for this.

The list of WAVs for Highland can be found at [*insert link*].

Duties of Drivers

The duties 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

Mobility assistance is 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.

Medical exemptions

It is recognised that in some circumstances a driver of a taxi or PHC may be unable to comply with these duties for medical reasons or due to the driver's physical condition.

Driver must make a request to the licensing authority for exemption from the duties on medical grounds. This must be accompanied by supporting evidence from a qualified medical professional confirming that the licence holder cannot comply with the duties for medical reasons or due to the licence holder's physical condition.

An exemption once granted will be valid until the expiry of the driver's taxi or PHC driver's licence. On renewal of that licence the driver will also be required to reapply for an exemption.

Drivers should be aware that the exemption only applies to the duties to provide mobility assistance to the passenger, not to any of the other requirements under the 2010 Act.

A driver granted an exemption will be exempt from the following duties under the 2010 Act:

S.165 - Passengers in wheelchairs

(4) The duties are—

- (a) To carry the passenger while in the wheelchair;
- (b) Not to make any additional charge for doing so;
- (c) If the passenger chooses to sit in a passenger seat, to carry the wheelchair;
- (d) To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
- (e) To give the passenger such mobility assistance as is reasonably required.

(5) Mobility assistance is assistance—

- (a) To enable the passenger to get into or out of the vehicle;
- (b) 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;
- (c) To load the passenger's luggage into or out of the vehicle;
- (d) If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

(6) This section does not require the driver—

- (a) Unless the vehicle is of a description prescribed by the Secretary of State, to carry more than one person in a wheelchair, or more than one wheelchair, on any one journey;
- (b) To carry a person in circumstances in which it would otherwise be lawful for the driver to refuse to carry the person. Assistance Dogs

S.168 - Assistance dogs in taxis

(1) This section imposes duties on the driver of a taxi which has been hired—

- (a) by or for a disabled person who is accompanied by an assistance dog, or

(b) by another person who wishes to be accompanied by a disabled person with an assistance dog.

(2) The driver must—

(a) carry the disabled person's dog and allow it to remain with that person;

(b) not make any additional charge for doing so.

Vehicle Specification

- (a) the vehicle must be Wheelchair Accessible (either side-loading or rear-loading);
- (b) the vehicle must be fitted with a lifting mechanism which can raise an occupied wheelchair from ground level without requiring it to be pushed by the driver or anyone else;
- (c) the vehicle must have a means of securing the wheelchair against movement once in the vehicle;
- (d) the vehicle must have at least one other passenger seat;
- (e) the wheelchair must face the vehicle's direction of travel; and
- (f) the wheelchair compartment must be glazed on 3 sides.