

Agenda item	<b>6.</b>
Report no	<b>HLC/03/24</b>

**THE HIGHLAND COUNCIL**

**Committee:** THE HIGHLAND LICENSING COMMITTEE

**Date:** 11 December 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 by the Taxis and Private Hire Cars (Disabled Persons) Act 2022, 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 publishing of the Council's list of licensed wheelchair accessible vehicles (WAV) in accordance with the amended 2010 Act.

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

Licensing authorities are now required to maintain and publish a list of wheelchair-accessible vehicles in their area. This list became a requirement for all Local Licensing Authorities following amendments made to the 2010 Act by the Taxis and Private Hire Cars (Disabled Persons) Act 2022 (“the 2022 Act”). The change is intended to better inform disabled people of the transport options available to them and may assist licensing authorities to identify gaps in local wheelchair accessible vehicle provision.

3.3 The 2022 Act amended section 167 of the 1982 Act to place a duty on Local Licensing Authorities to publish and maintain a list of designated wheelchair accessible taxis and private hire vehicles.

3.4 The amended section 166 of the 2010 Act places a duty on Local Licensing Authorities to provide drivers with a certificate exempting them from "mobility assistance" duties, only if satisfied that it is appropriate to do so on medical grounds or on the ground that the person's physical condition makes it impossible or unreasonably difficult for the person to comply with those duties.

Licensing authorities are required to keep a record of such exemptions.

3.5 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.

3.6 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, was updated and a revised timetable was approved by the Highland Licensing Committee on 9 May 2023.

3.7 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.

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

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.

The vehicle specification was, therefore, re-considered and the proposed amendments are outlined in Appendix 2.

- 3.8 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.

No responses were received regarding the further consultation.

#### **4. Next Steps**

- 4.1 Further correspondence was sent to WAV operators in the week commencing 20 November 2023 to inform them of their intended inclusion on the WAV list. No responses have been received to date seeking exemption.

The Committee is therefore invited to approve the publishing and maintenance of a WAV operator list. This list shall be subject to regular update.

#### **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**

- 6.1 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 2.

#### **7 Impacts**

- 7.1 An Equalities Impact Assessment will be completed prior to implementation of the above duties and a draft is attached as Appendix 4.

**Date:** 11 December 2023

**Author:** Maureen Duffy

Appendix 1 – Implementation Timeline

Appendix 2 – WAV – Duties and Vehicle Specification policies

Appendix 3 – Draft WAV list for publication

Appendix 4 – Equality Impact Assessment

**Background Papers:**

Equality Act 2010

Civic Government (Scotland) Act 1982

Taxis and Private Hire Vehicles (Disabled Persons) Act 2022

AS APPROVED AT HLC ON 29<sup>th</sup> 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**

**(31 January 2024)**

- 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

### **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 [link to be provided once published].

#### **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, 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 have a means of securing the wheelchair against
- (c) movement once in the vehicle;
- (d) the vehicle must have at least one other passenger seat;
- (e) the wheelchair must face either the vehicle's direction of travel, or be rear-facing; and
- (f) the wheelchair compartment must be glazed on 3 sides.



**Equality Impact Assessment:**

**Purpose of the Equality Impact Assessment:**

The Equality Act 2010 introduced a Public Sector Equality Duty (PSED) requiring public bodies to give due regard to the need to:

- Eliminate unlawful discrimination
- Advance equality of opportunity
- Foster good relations

Consideration must be given to the protected characteristics covered by the Equality Act. Assessments should ‘consider relevant evidence relating to persons with protected characteristics in relation to assessments of impact’.

The purpose of an Equality Impact Assessment (EQIA) is to ensure that policies, functions, plans or decisions (hereafter referred to as ‘policy’) do not create unnecessary barriers for people protected under the Act. Where negative impacts are identified these should be eliminated or minimised, and opportunities for positive impact should be maximised.

Screening is a short exercise to determine if a policy is relevant to equality and whether a full EQIA should be carried out.

Title/description of the policy	Wheelchair Accessible Vehicle policies	
Name of the person(s) carrying out the assessment?	Iain Meredith	
Service and Department	Regulatory Services, Corporate Governance	
Date of assessment	8/12/23	
What are the aims and objectives of the policy/function/strategy?		
To implement amendments to the Equality Act 2010 in respect of the duties of the local authority and taxi and private hire car drivers with regard to wheelchair users.		
Who may be affected by the policy	Wheelchair users and others with mobility issues Taxi and PHC driver licence holders	
How have stakeholders been involved in the development of the policy?	Formal written consultation with all proposed WAV operators on WAV vehicle specification and their proposed inclusion on published list. Informal discussion with several WAV drivers.	
<i>Which parts of the public sector duty is the policy relevant to?</i>		
1. Eliminate unlawful discrimination		
2. Advance equality	X	
3. Promote good relations		

**Screening: Which of the protected characteristics is the policy relevant to? Tick and briefly describe any likely equalities impact (positive/negative/neutral).**

Characteristic	Positive	Negative	Neutral	Comments
Gender				
Age	x			
Disability	x			
Religion or Belief			x	

Race			x	
Sexual Orientation			x	
Gender reassignment			x	
Pregnancy/maternity			x	
Marriage and Civil Partnership*			x	

\*applies only to Employment and the duty to give regard to the elimination of discrimination

**Recommend this policy for full Equality Impact Assessment?**

**Yes/No**

If the answer is "Yes", continue to the next section. If the answer is "No", please give brief reasons here.

Yes
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## Equality impact Assessment:

<b>Evidence and consultation</b>	
<p>What existing sources of information have you gathered to help identify how people covered by the protected characteristics may be affected by this policy or service?</p> <p>Consultations, national or local data and/or research, complaints or customer feedback. Are there gaps in available data?</p>	
<p>This is a statutory requirement which must be implemented. The people covered by the protected characteristics are those whom the legislation is specifically directed at helping, namely wheelchair users and those who use mobility aids.</p> <p>Regard has been given to Transport Scotland's Scottish Transport Statistics 2021 and to Transport Scotland's Accessible Travel Framework, running until 2026. A key barrier faced by disabled people when accessing taxi services is the unavailability of Wheelchair Accessible Vehicles, particularly in rural locations. In 2021, excluding Edinburgh and Angus Councils, there were 18,311 taxis and private hire cars operating in Scotland and of these 3,661 (less than 20%) were wheelchair accessible vehicles. The Framework recommends a minimum of 20% of taxis at any one time are accessible to wheelchair users in each local authority area.</p> <p>There are 383 taxi and private hire car operators in Highland Council and 20 proposed designated WAV vehicles (5.2% of fleet).</p> <p>A draft WAV specification was drawn up by January 2023 and a list of identified possible WAVs were written to by April 2023, which resulted in an amendment of the vehicle specification (removal of requirement for lift mechanism). Operators identified as having such compliant vehicles were again written to in November 2023 to inform them of their duties under the legislation and how to seek a driver exemption if appropriate.</p> <p>Following this latest communication, taxi drivers anecdotally advised that wheelchair accessible vehicles are more expensive than non WAV cars both to purchase and operate; therefore, any move towards a mandatory WAV compliant taxi policy as a number of other local authorities have implemented, appears not to be supported by the taxi trade in the Highlands. Some drivers have requested exemptions from the WAV published list as they wish to only operate as a WAV for school contract purposes. This is due reportedly to a fear of drivers injuring themselves assisting adult wheelchair users.</p>	
<b>Impact</b>	
a) Describe any evidence of, or potential for, negative impact, and/or	
b) Does the policy contribute positively to the promotion of equality on any particular group	
Gender:	
Age:	

Disability:	The policy will promote greater access to taxis and private hire cars for disabled persons. There will be increased awareness of WAVs in the Highland area on account of a published list; increased awareness of drivers of their equalities duties; and increased awareness of disabled persons as to how to make representations to the Highland Council of any perceived breach. The Licensing Team is under a duty to (1) publish and maintain a designated WAV list (2) maintain a list of drivers with medical exemptions and to provide certification of same to such drivers and (3) take action as appropriate against WAV drivers who fail to carry out their statutory duties.
Religion or belief:	
Race:	
Sexual Orientation:	
Gender reassignment:	
Pregnancy/maternity:	
Marriage and civil partnership:	
<b>Justification</b>	
If negative impact is identified, can this be justified?	No negative impacts have been identified.
<b>mitigation</b>	
Can the potential for negative impact on particular groups be removed or minimised?	No negative impacts have been identified.

<b>ations</b>	
Are there actions identified to advance or promote equality, or to mitigate potentially negative impact? Please detail or attach an action plan.	
<p>the circumstances it is necessary and proportionate for the Committee to approve and require the publishing and maintenance of such WAVs as operating in the Council region in order to meet the public sector duties under the Equality Act legislation.</p> <p>ould a disabled passenger believe that they have been discriminated against, Highland Council should consider such complaints in adherence to the procedures for such licensing complaints. Highland Council should ensure it has the necessary procedures in place to fully support the submission and handling of these complaints. Subject to taxi/PHC licensing conditions, Highland Council can consider the application of sanctions including the suspension or revocation of taxi or private hire car driver licenses where deemed appropriate.</p> <p>ghland Council also requires to consider applications for WAV driver medical exemptions, to maintain a list of all exempt drivers and to provide certification of same for these drivers to display in their vehicles.</p>	

Please provide details of arrangements to monitor and review the policy and any associated actions.

The policy will be subject to review every 5 years. If the Committee so wish relevant interest groups will be consulted, e.g. disability groups and taxi drivers.

Full impact assessments require to be published, please state where the EQIA will be published:

On the Highland Council website within same page as WAV published list.

**Equality Impact Assessment Sign off: For completion by Director or Head of Service**

1. Please check if you are satisfied that the following elements of the EQIA have been considered:

- Gathering information
  - Consultation and involvement
  - Assessing impact for all protected characteristics
  - Mitigating actions identified (if required)
  - Opportunity to promote equality
  - Arrangements to monitor and review
  - Publication arrangements

2. a) Are you prepared to sign off the EQIA? YES  NO

b) If "NO" provide details of why and next steps

Name

Position

Date:

For publication and monitoring, please send a copy of the completed EQIA to:  
[equal.opportunities@highland.gov.uk](mailto:equal.opportunities@highland.gov.uk) or contact the Policy Team for support on tel 01463 702094.