

Licensing Sub-Committee of the Regulatory Committee

9.00am, Tuesday, 17 December 2019

Application to Vary the Conditions of Taxi Driver's Licence – Wheelchair Exemption Request

Executive/routine

Wards

All

Council Commitments

N/A

Executive Summary

The Equality Act 2010 outlines specific duties of drivers of licensed taxis and private hire vehicles to provide assistance to passengers using wheelchairs, unless they have been issued with an exemption certificate.

The Licensing Service has received an application to issue such an exemption certificate. This is referred to the committee to determine whether the licence holder should be granted an exemption from the duties imposed in the Equality Act 2010 and relevant licence conditions, as sufficient reasons for granting an exemption have not been identified for officers to grant under Delegated Authority.

Application to Vary the Conditions of Taxi Driver's Licence – Wheelchair Exemption Request

1. Recommendations

- 1.1 After hearing from Council officers and the licence holder, the Committee is recommended to refuse the exemption request and subsequent variation to licence conditions.

2. Background

- 2.1 The Equality Act 2010 ("The 2010 Act") provides that drivers of taxis and private hire vehicles, designated by the local licensing authority as being wheelchair accessible, must comply with the duties outlined in Section 165 of "The 2010 Act", unless they have been issued with an exemption certificate (issued under S.166 of "The 2010 Act").
- 2.2 Section 166 allows a local authority to exempt drivers from these duties, of providing assistance to passengers in wheelchairs, if it is satisfied that it is appropriate to do so for;
 - 2.2.1 medical grounds, or
 - 2.2.2 on the grounds that the person's physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 2.3 An extract of both section 165 and section 166 of "The 2010 Act" is included on Appendix 1 for members reference.
- 2.4 The Council's Licensing Conditions for Taxi Drivers (Appendix 2) provide that the driver of a licensed vehicle suitable for transporting passengers travelling in wheelchairs shall:
 - 2.4.1 assist passengers travelling in wheelchairs to access the vehicle using the ramp; unless
 - 2.4.2 the driver has an Exemption Certificate issued in terms of Section 166 of the Equality Act 2010
- 2.5 All taxi vehicles in Edinburgh are wheelchair assessable.

- 2.6 A driver holding an Exemption Certificate must display a copy of the certificate on the passenger doors of the vehicle and on the windscreen so it can be read by passengers attempting to enter.
- 2.7 At the time of writing the Council had issued 461 Exemption Certificates, thus exempting approximately 14% of licensed taxi drivers from their duty to assist passengers in wheelchairs.
- 2.8 All of these exemptions issued by the Council have been done so on medical grounds, upon the recommendations from the Councils medical assessment provider for taxi and private hire drivers.
- 2.9 At its meeting on 1 February 2016 the Regulatory Committee provisionally agreed to a programme of improvement actions with respect to taxi customers using wheelchairs (Appendix 5). Officers understand that at the time of this decision a request for a further report was recorded in error and the recommendations agreed by committee were implemented.

3. Main report

- 3.1 On 6 August 2018 the Licensing Service received an application from the holder of a Taxi Driver's Licence, Elizabeth Williams, to be granted an Exemption Certificate issued in terms of Section 166 of the Equality Act 2010.
- 3.2 If granted, such a certificate exempts the holder from complying with Conditions 131(a) – (d) of the "Licensing Conditions for Taxis, Private Hire Cars And Their Drivers" – these being the conditions requiring a licensed driver to assist passengers who use wheelchairs to get into and out of the licensed vehicle; and also to load the wheelchair into the licensed vehicle. An extract of these conditions is included on Appendix 2 for members reference.
- 3.3 At the time of her application, Ms Williams did not provide the Council with reasons as to why she required an exemption.
- 3.4 As is standard procedure upon receipt of such an application, the Licensing Service referred Ms Williams to the Council's medical assessment provider to carry out a medical assessment, with respect to the issuing her an Exemption Certificate. The report from the assessing doctor details that Ms Williams "*..wanted an exemption on the basis of age/gender alone; there is no medical reason for a wheelchair exemption*". The medical report details that Ms Williams is fit to drive a taxi without restriction. A copy of this report is provided on Appendix 3.
- 3.5 On 19 September 2018 the Licensing Service sent Ms Williams a letter advising her that the Council were due to refuse her request for an exemption certificate and invited her to make representations in support of her application. Two further letters were sent on 24 and 25 October 2018 (Appendices 3a-3c). No representations were received from Ms Williams.

- 3.6 Subsequently, as the reasons for granting an exemption under S.166 of “The 2010 Act” (as outlined in 2.2 above) were not met, the application was refused by officers. However, the applicant can request a review of this decision.
- 3.7 Ms Williams has asked for this decision to be reviewed and as such, this application is referred to the committee to determine whether the exemption should be granted.
- 3.8 At the meeting council officers will address the committee. The licence holder and her representative will then be provided with an opportunity to address the Committee. Members of the Committee can then ask questions of the council officers and of the licence holder.

4. Measures of success

- 4.1 Not relevant, as decisions on individual licences must be considered on their own merits.

5. Financial impact

- 5.1 None, as the costs of these matters are recovered through taxi and private hire car vehicle and driver licence application fees.

6. Risk, policy, compliance and governance impact

- 6.1 The licence holder has a right of appeal against any decision made. The appeal lies to the Sheriff Court.

7. Equalities impact

- 7.1 There is no equalities impact arising from the contents of this report, as decisions on individual licences have to be considered on their own merits.

8. Sustainability impact

- 8.1 None.

9. Consultation and engagement

- 9.1 None.

10. Background reading/external references

- 10.1 None.

Andrew Mitchell
Regulatory Services Manager

Contact: Andrew Mitchell, Regulatory Services Manager
E-mail andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

11. Appendices

- 11.1 Appendix 1: Section 165 Equality Act 2010
- 11.2 Appendix 2: Extract from “Licensing Conditions for Taxis, Private Hire Cars and Their Drivers” effective from 1 December 2016
- 11.3 Appendix 3: Letter from City Health Clinic dated 26 September 2018
- 11.4 Appendices 4a-4c: Letters dated 19 September 2018, 24 October 2018, 25 October 2018
- 11.5 Appendix 5: Report to Regulatory Committee 1 February 2016

Appendix 1 - Equality Act 2010

165 - Passengers in wheelchairs

- (1) This section imposes duties on the driver of a designated taxi which has been hired—
- (a) by or for a disabled person who is in a wheelchair, or
 - (b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
- (2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that the person wishes to travel in the vehicle.
- (3) For the purposes of this section—
- (a) a taxi or private hire vehicle is “designated” if it appears on a list maintained under section 167;
 - (b) “the passenger” means the disabled person concerned.
- (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.

(7) A driver of a designated taxi or designated private hire vehicle commits an offence by failing to comply with a duty imposed on the driver by this section.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) It is a defence for a person charged with the offence to show that at the time of the alleged offence—

- (a) the vehicle conformed to the accessibility requirements which applied to it, but
- (b) it would not have been possible for the wheelchair to be carried safely in the vehicle.

(10) In this section and sections 166 and 167 “private hire vehicle” means—

- (a) a vehicle licensed under section 48 of the Local Government (Miscellaneous Provisions) Act 1976;
- (b) a vehicle licensed under section 7 of the Private Hire Vehicles (London) Act 1998;
- (c) a vehicle licensed under an equivalent provision of a local enactment;
- (d) a private hire car licensed under section 10 of the Civic Government (Scotland) Act 1982.

166 - Passengers in wheelchairs: exemption certificates

(1) A licensing authority must issue a person with a certificate exempting the person from the duties imposed by section 165 (an “exemption certificate”) if satisfied that it is appropriate to do so—

- (a) on medical grounds, or
- (b) on the ground that the person's physical condition makes it impossible or unreasonably difficult for the person to comply with those duties.

(2) An exemption certificate is valid for such period as is specified in the certificate.

(3) The driver of a designated taxi is exempt from the duties imposed by section 165 if—
(a) an exemption certificate issued to the driver is in force, and
(b) the prescribed notice of the exemption is exhibited on the taxi in the prescribed manner.

(4) The driver of a designated private hire vehicle is exempt from the duties imposed by section 165 if—

- (a) an exemption certificate issued to the driver is in force, and
- (b) the prescribed notice of the exemption is exhibited on the vehicle in the prescribed manner.

(5) For the purposes of this section, a taxi or private hire vehicle is “designated” if it appears on a list maintained under section 167.

(6) In this section and section 167 “licensing authority”, in relation to any area, means the authority responsible for licensing taxis or, as the case may be, private hire vehicles in that area.

Appendix 2 – City of Edinburgh Council Taxi and Private Hire Licence Conditions

Passenger Assistance

131. The Driver shall give such reasonable assistance to passengers or potential passengers to access the Licensed Vehicle as is required. In particular:

- (a) in relation to persons with obvious mobility difficulties the Driver shall make appropriate enquiries of that person to identify their preferred method of accessing the Licensed Vehicle and seating requirements;
- (b) in relation to passengers who use wheelchairs the Driver must ascertain whether the passenger wishes to remain within their wheelchair and if so must help the passenger to get into and out of the Licensed Vehicle; the Driver must also load the wheelchair into the Licensed Vehicle; the Driver must also offer to load the passenger's Luggage into and out of the Licensed Vehicle;
- (c) the Driver shall make use of the Licensed Vehicle's step as and when required and make reasonable enquiries of passengers, where appropriate, to ascertain this;
- (d) the Driver shall take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort. Regulatory Committee Licensing conditions update November 2016

132. The Driver shall give such reasonable assistance to his passengers as he is able to give with loading and unloading their Luggage when required to do so, but the Driver of the Licensed Vehicle will not be required to leave the immediate proximity of the Licensed Vehicle in doing so.

133. The Driver shall either:-

- (a) assist passengers travelling within wheelchairs to access the Licensed Vehicle using the ramp and shall ensure that they are properly secured by means of the fixed seatbelts before starting the journey; or
- (b) if the Driver has an Exemption Certificate issued in terms of Section 169 of the Equality Act 2010 from complying with Conditions 131(a) – (d) above he shall explain that to the potential passengers, show them his Certificate of Exemption and enquire as to whether they are able to load the wheelchair themselves or alternatively ask them to wait for the next suitable Licensed Vehicle.

134. The Driver holding a Certificate of Exemption from compliance with condition 131 shall display a copy of the Certificate on the passenger doors of the Licensed Vehicle and on the windscreen so it can be read by passengers attempting to enter the Licensed Vehicle.

135. Conditions 131(a) – (d) above will not apply if the Licence Holder is not driving a Licensed Vehicle suitable for transporting passengers travelling within wheelchairs.