

Report Title:	<b>The Equality Act 2010</b>
Contains Confidential or Exempt Information?	No
Member reporting:	Councillor Grey, Lead Member for Environmental Services (including Parking and Flooding)
Meeting and Date:	Licensing Panel 03 July 2018
Responsible Officer(s):	Andy Jeffs, Executive Director David Scott, Head of Communities, Enforcement and Partnerships
Wards affected:	All

### REPORT SUMMARY

1. The Licensing Panel meeting of 10 April 2018 unanimously agreed to delegate authority to the Head of Communities, Enforcement and Partnerships and the Lead Member for Environmental Services to draw up proposals to amend RBWM licenced vehicles policies to provide for the adoption of sections 165 to 167 of the Equality act 2010, and to bring those proposals to this Panel meeting.
2. This report provides the details of the proposed amendments, and the results of the consultation with the trade on this matter, for the Panel's consideration.

## 1. DETAILS OF RECOMMENDATIONS

**RECOMMENDATION:** That the Licensing Panel notes the report and:

- i) Members consider and agree the proposed changes to Policy, taking into account the results of the consultation with the trade, and by doing so formally adopt sections 165 to 167 of the Equality Act 2010.
- ii) Members delegate to the Head of Communities, Enforcement and Partnerships the implementation of sections 165 to 167 of the Equality Act 2010.

## 2. REASONS FOR RECOMMENDATIONS AND OPTIONS CONSIDERED

- 2.1 In April 2017 sections 165-167 of the Equality Act 2010 (the Act) came into force. These provisions are not mandatory but if adopted by a local authority they impose duties on the drivers of "designated" hackney carriages and private hire vehicles (PHVs) licenced by that authority in respect how they carry, charge and assist wheelchair users.
- 2.2 "Designated" vehicles are those which are wheelchair accessible and which appear on a list published by the local authority. Drivers of such vehicles, unless exempt, will have the following duties;
  - 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

2.3 There are many types of wheelchair, of varying sizes, so it is intended that RBWM follows the Government recommendation “... *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.*” \*\*. A “reference wheelchair” is defined in Sch. 1 of the Public Service Vehicle Accessibility Regulations 2000.

\*\* Dept. for Transport Access for Wheelchair Users to Taxis and Private Hire Vehicles – Statutory Guidance 2017 para 3.5

2.4 The current RBWM Hackney Carriage Driver and Vehicle Policy & Conditions requires that all new hackney carriages are purpose built (eg TX1, TX2, TX4, Metro Cabs and Eurocabs which are designed to be wheelchair accessible) or are otherwise wheelchair accessible. There are also requirements set out for vehicles modified to carry wheelchair passengers. There are currently 107 wheelchair accessible hackney carriages licenced by RBWM (out of a total of 177).

2.5 It is proposed that all such hackney carriages are deemed “designated” vehicles unless the driver is exempt (see 2.7 below). Training on how to work with wheelchair users will have been covered in the Practical Driving Test required to be taken by hackney carriage and combined badge drivers because this test is required to include a wheelchair assessment.

2.6 The current RBWM Private Hire Driver and Vehicle Policy & Conditions does not require that all new PHVs are wheelchair accessible but some drivers choose to licence wheelchair accessible vehicles. It is proposed that all such vehicles will be required to be notified to RBWM Licensing and will be deemed “designated” vehicles unless the driver is exempt (see 2.7 below). Some provision for training on working with wheelchair users will have to be developed as the Practical Driving Test for PHV drivers does not currently include this.

2.7 Section 166 of the Act allows licensing authorities to exempt drivers from the duties set out in 2.2, above, 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 him or her to comply with the duties. The exemption can be valid for as short or long a time period as the local authority thinks appropriate, bearing in mind the nature of the medical grounds or physical condition.

2.8 An application for an exemption must be supported by appropriate evidence. The statutory guidance recommends, as an absolute minimum, that the evidence provided should be in the form of a letter or report from a general practitioner, with independent medical assessors used where a long-term exemption is to be issued. This is reflected in the proposed amendment to Policy.

2.9 A driver who is exempted will be given an exemption certificate and will be permitted to display a valid exemption notice in the prescribed manner.

2.10 A driver who is refused an exemption has the right to appeal to the Magistrates court.

- 2.11 The adoption of sections 165 to 167 of the Act will require amending the RBWM Hackney Carriage Driver & Vehicle Policy and Conditions and the RBWM Private Hire Driver & Vehicle Policy and Conditions. Such an amendment requires consultation with the trade.
- 2.12 The proposed changes to the Policies and the consultation is set out in Appendix A. These take appropriate account the statutory guidance published by the Department of Transport (see 11.1, Background Documents, below).
- 2.13 There was one substantive response to the consultation, this is set out at Appendix B.
- 2.14 The proposed changes to the Policies for consideration by this Panel are the ones set out in Appendix A on pages 7 to 9 of this report.
- 2.15 Members are invited to discuss and consider the options set out in Table 1.

**Table 1: Options considered**

Option	Comments
<p>Members agree to amend the RBWM Hackney Carriage Driver and Vehicle Policy &amp; Conditions and the RBWM Private Hire Driver and Vehicle Policy &amp; Conditions as set out in Appendix A, and in so doing formally adopt sections 165 to 167 of the Equality Act 2010.</p> <p>Members further agree to delegate to the Head of Communities, Enforcement and Partnerships the implementation of sections 165 to 167 of the Equality Act 2010 based on the timetable set out in Appendix C.</p> <p><b>This is the recommended option</b></p>	<p>This will ensure that sections 165 to 167 of the Equality Act are formally adopted without delay and that the timetable for implementing these provisions can be put into place straight away.</p>
<p>Members agree to change the proposed amendments to the RBWM Hackney Carriage Driver and Vehicle Policy &amp; Conditions and the RBWM Private Hire Driver and Vehicle Policy &amp; Conditions as set out in Appendix A.</p> <p><b>Not the recommended option</b></p>	<p>If Members wish to change these amendments to Policy it is likely that it will have to be consulted on again. This would delay the adoption of the provisions until at least the next Panel meeting in October 2018.</p>
<p>Members do not agree to amend the RBWM Hackney Carriage Driver and Vehicle Policy &amp; Conditions and the RBWM Private Hire Driver and Vehicle Policy &amp; Conditions as set out in Appendix A and do not formally adopt sections 165 to 167 of the Equality Act 2010.</p> <p><b>Not the recommended option</b></p>	<p>Again, this would delay the adoption of the provisions until at least the next Panel meeting in October 2018</p>

### **3. KEY IMPLICATIONS**

- 3.1 As was stated in the report to the Licensing Panel of 10 April 2018, all licensing authorities are highly likely to have adopted, or are in the process of adopting, the provisions of the Equality Act 2010 relating to wheelchair accessible hackney carriage and private hire vehicles.
- 3.2 It is not mandatory that the Royal Borough formally adopts these provisions but if it does not do so it will not provide the highest possible legal standards of protection for wheelchair users wanting to use RBWM licenced hackney carriage and private hire vehicles.

### **4. FINANCIAL DETAILS / VALUE FOR MONEY**

- 4.1 The cost to RBWM of implementing these provisions and publishing a list of designated vehicles can be absorbed within existing budgets.
- 4.2 There should be little cost to the drivers of designated vehicles because they are designed to be wheelchair accessible and should therefore have all of the required fittings and facilities.

### **5. LEGAL IMPLICATIONS**

- 5.1 Conditions can be attached to vehicle licenses by virtue of sections 47 & 48 Local Government (Miscellaneous Provisions) Act 1976.
- 5.2 Byelaws can be made under Section 68 of the Town Police Clauses Act 1847 and Section 171 of the Public Health Act 1875, by the Council of the Royal Borough of Windsor & Maidenhead with respect to hackney carriages in the area of the Royal Borough of Windsor & Maidenhead.

### **6. RISK MANAGEMENT**

- 6.1 Any new condition attached to our policy and conditions is in theory subject to challenge or judicial review.
- 6.2 Given the nature of the new conditions under discussion in this paper and its legislative underpinning no legal challenge can reasonably be expected.

### **7. POTENTIAL IMPACTS**

- 7.1 The Equality Act 2010 places a 'General Duty' on all public bodies to have 'due regard' to:
- Eliminating discrimination, harassment and victimisation and any other conduct prohibited under the Act.
  - Advancing equality of opportunity between those with 'protected characteristics' and those without them.
  - Fostering good relations between those with 'protected characteristics' and those without them.
- 7.2 Disability is a "protected characteristic" under this Act. By adopting sections 165 to 167 of the Act RBWM will be fulfilling all three of these duties.

7.3 That being the case, although this report directly addresses matters of equality, no EQIA is anticipated at this stage because the proposed changes to policies will be of benefit to wheelchair users.

## 8. CONSULTATION

8.1 There was one substantive response to the consultation which is set out in Appendix B. There was also response querying whether this report applies to both hackney carriage and PHVs, it was confirmed that it does.

## 9. TIMETABLE FOR IMPLEMENTATION

9.1 If Panel agrees to adopt s165 to 167 of the Equality Act 2010 a proposed timetable for implementing these provisions is set out in Appendix C. Future Panel meetings can be kept up to date on progress.

## 10. APPENDICES

Appendix A – Proposed Changes to Policy and Consultation

Appendix B – Consultation Response

Appendix C – Timetable for implementation

## 11. BACKGROUND DOCUMENTS

11.1 The Department for Transport Access for Wheelchair Users to Taxis and Private Hire Vehicles – Statutory Guidance 2017 can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593350/access-for-wheelchair-users-taxis-and-private-hire-vehicles.pdf)

## 12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Commented & returned
Cllr Grey	Lead Member for Environmental Services, Including Parking	21/06/18	22/06/18
Cllr Cox	Chair of the Licensing Panel	21/06/18	24/06/18
Alison Alexander	Managing Director	12/06/18	15/06/18
Andy Jeffs	Executive Director	12/06/18	12/06/18
David Scott	Head of Communities, Enforcement and Partnerships	12/06/18	21/06/18

### REPORT HISTORY

<b>Decision type:</b> Non-key decision	<b>Urgency item?</b> No
Report Author: Greg Nelson, Trading Standards & Licensing Lead 01628 683561	

# **Appendix A**

## **Proposed Changes to Policy and Consultation**

### **Consultation**

#### **i) Safeguarding Training for Hackney Carriage and Private Hire Drivers**

#### **ii) The Equality Act 2010**

At the Licencing Panel meeting on 10 April 2018 two items were discussed relating to amendments to RBWM's Hackney Carriage Driver and Vehicle Policy and Conditions, the RBWM Private Hire Driver and Vehicle Policy and Conditions and the Private Hire Operators Policy and Conditions ("the Policies").

Both items were agreed in principle but are now required to go out to consultation with the trade.

The results of this consultation and proposals to amend the Policies are to be reported to the next meeting of the Licensing Panel of 03 July 2018.

**This letter seeks your views on the two items as set out below.**

#### ***i) Safeguarding Training for Hackney Carriage and Private Hire Drivers and Operators (NOT INCLUDED IN THIS REPORT)***

#### **ii) The Equality Act 2010**

The Equality Act 2010 ("the Act") gives the power to local authorities to adopt sections 165 to 167 of the Act which introduces duties on certain hackney carriage and private hire drivers in respect of how they carry, assist and charge wheelchair users.

Whilst RBWM policies already provide some protection for wheelchair users the Licensing Panel of 10 April 2018 agreed that the RBWM Policies should be amended so that sections 165 to 167 of the Act and the duties that it brings are formally adopted and brought into force in RBWM.

Section 165 places duties on drivers of designated wheelchair accessible hackney carriages taxis and private hire vehicles (PHVs). "Designated" vehicles are those listed by the licensing authority under section 167 and drivers of these vehicles will have the following duties;

- 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.

Section 166 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 him or her to comply with the duties.

Section 167 allows licensing authorities to maintain a list of "designated vehicles", that is, a list of wheelchair accessible hackneys and PHVs licenced in their area. The consequence of being on this list is that the driver must undertake the duties in section 165 and the driver's details (name, phone number, vehicle details) will be included in a list of "designated" vehicles on the RBWM website.

## **The proposed changes to the Policies are:**

### **1) Hackney Carriage Driver and Vehicle Policy and Conditions**

Hackney Carriage Vehicle Conditions

#### **2. Wheelchair accessible and Purpose Built Vehicle Age Policy**

Add the following paragraphs;

"All wheelchair accessible/purpose built hackney carriages will be regarded as "designated" vehicles for the purposes of section 167 of the Equality Act 2010.

Drivers of these vehicles will have the following duties;

- 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.
- to have their name, contact telephone number and vehicle details included in a list of drivers who are available for wheelchair users. This list will appear on the RBWM website

Drivers can be exempted from these requirements under section 166 of the Equality Act if the Licensing Officer is 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 him or her to comply with the duties.

An exemption can be valid for as short or long a time period as the Licensing Officer thinks appropriate, bearing in mind the nature of the medical issue.

Drivers wishing to claim an exemption from the duties set out above must apply in writing using a form which will be provided by the Licensing Officer. On this form the person applying for an exemption must set out

- why they should be exempted from the duties set out above, and
- the independent evidence that supports this exemption.

Independent medical evidence should, as an absolute minimum, be in the form of a letter or report from a general practitioner.

Where a long-term exemption is to be issued, medical assessments should be undertaken by professionals who have been specifically trained in the relevant field and who are independent of the applicant. Up to the age of 65 long term exemptions will be reviewed every five years at the same time that a medical certificate is required. From the age of 65 long term exemptions will be reviewed every year at the same time that a medical certificate is required.

If the exemption application is unsuccessful the applicant will be informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

Drivers granted an exemption will be issued with an exemption certificate.

Drivers granted an exemption will be permitted to display in their vehicle, when being operated by the exempt driver, a notice prescribed by the Equality Act 2010 (Taxis and Private Hire Vehicles) (Passengers in Wheelchairs – Notices of Exemption) Regulations 2017 or by any subsequent legislation that this is replaced by.

If a designated vehicle is operated by more than one driver, one or more of whom has been granted an exemption, the Notice of Exemption must only be displayed in the vehicle when being operated by an exempted driver.

If a Notice of Exemption is displayed in a designated vehicle being operated by a driver to whom an exemption has not been granted, that driver will be in breach of this Policy and subject to action by the Licensing Officer.

If the display of a Notice of Exemption in a designated vehicle being operated by a driver to whom an exemption has not been granted causes the driver to fail to comply with the duties set out above, that driver commits a criminal offence.”

## **2) Private Hire Driver and Vehicle Policy and Conditions**

Private Hire Vehicle Conditions

Add a new paragraph 2 and renumber subsequent paragraphs;

### **2. Wheelchair Accessible Vehicles**

a) All RBWM Private Hire Vehicle Licence holders must inform the Licensing Officer if their existing, or any new, vehicle is purpose built as a wheelchair accessible vehicle. All purpose built wheelchair accessible private hire vehicles will be regarded as “designated” vehicles for the purposes of section 167 of the Equality Act 2010.

b) Drivers of these vehicles will have the following duties;

- 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.

- to have their name, contact telephone number and vehicle details included in a list of drivers who are available for wheelchair users. This list will appear on the RBWM website

c) Drivers can be exempted from these requirements under section 166 of the Equality Act if the Licensing Officer is 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 him or her to comply with the duties.

d) An exemption can be valid for as short or long a time period as the Licensing Officer thinks appropriate, bearing in mind the nature of the medical issue.

e) Drivers wishing to claim an exemption from the duties set out above must apply in writing using a form which will be provided by the Licensing Officer. On this form the person applying for an exemption must set out

- why they should be exempted from the duties set out above, and
- the independent evidence that supports this exemption.

f) Independent medical evidence should, as an absolute minimum, be in the form of a letter or report from a general practitioner.

g) Where a long-term exemption is to be issued, medical assessments should be undertaken by professionals who have been specifically trained in the relevant field and who are independent of the applicant. Up to the age of 65 long term exemptions will be reviewed every five years at the same time that a medical certificate is required. From the age of 65 long term exemptions will be reviewed every year at the same time that a medical certificate is required.

h) If the exemption application is unsuccessful the applicant will be informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

i) Drivers granted an exemption will be issued with an exemption certificate.

j) Drivers granted an exemption will be permitted to display in their vehicle, when being operated by the exempt driver, a notice prescribed by the Equality Act 2010 (Taxis and Private Hire Vehicles) (Passengers in Wheelchairs – Notices of Exemption) Regulations 2017 or by any subsequent legislation that this is replaced by.

k) If a designated vehicle is operated by more than one driver, one or more of whom has been granted an exemption, the Notice of Exemption must only be displayed in the vehicle when being operated by an exempted driver.

l) If a Notice of Exemption is displayed in a designated vehicle being operated by a driver to whom an exemption has not been granted, that driver will be in breach of this Policy and subject to action by the Licensing Officer.

m) If the display of a Notice of Exemption in a designated vehicle being operated by a driver to whom an exemption has not been granted causes the driver to fail to comply with the duties set out above, that driver commits a criminal offence.

Your views are sought on the following questions

1. Do you have any comments to make on the adoption by RBWM of sections 165 to 167 of the Equality Act 2010, and the amendments to Policy as set out above?
2. What, if any, difficulties would the adoption by RBWM of sections 165 to 167 of the Equality Act 2010 cause you?
3. Do you have any questions about the process for applying for an exemption?
4. Do you have any other comments?

Your replies to the questions at the end of items i) and ii) should be sent by Monday 11 June 2018;

By e-mail to [licensing@rbwm.gov.uk](mailto:licensing@rbwm.gov.uk) with the subject heading "Consultation Response"

By post to  
Consultation Reply  
RBWM Licensing  
Town Hall  
St Ives Road  
Maidenhead  
SL6 1RF

## **Appendix B**

### **The Consultation Results**

ii) The Equality Act 2010

1. *Do you any comments to make on the adoption by RBWM of sections 165 to 167 of the equality Act 2010, and the amendments to Policy as set out above?*

No, I feel that this is fair and it should be adopted. But how this will prove to be practical in real terms is how I would like this to go forward.

2. *What if any, difficulties would the adoption by RBWM of sections 165 to 167 of the Equality Act 2010 cause you?*

No, it would not cause any difficulties.

3. *Do you have any questions about the process for applying for an exemption?*

I feel that it is perfectly straight forward and as a Hackney Carriage Driver with a wheelchair access. I feel that this policy was needed but it needs to be proven how it works for benefit for all and to those applying for exemptions.

4. *Do you have any other comments?*

No

I hope that this is taken into consideration and included in the consultation

Thank you

## **Appendix C**

### **Timetable for implementation**

3 July 2018	RBWM formally adopts sections 165 to 167 of the Equality Act 2010 and agrees appropriate policies
July/August 2018	RBWM Licensing prepares draft lists of designated wheelchair accessible vehicles
September 2018	RBWM Licensing informs owners that their vehicles will be placed on the list, alerts drivers to their upcoming duties and invites applications for exemptions
Oct/Nov 2018	Drivers apply for exemptions where necessary
Dec/Jan	RBWM Licensing issues exemptions
February 2019	RBWM Licensing publishes list of designated wheelchair accessible vehicles in the Licensing area of <a href="https://www3.rbwm.gov.uk/">https://www3.rbwm.gov.uk/</a> and duties on drivers take effect