

AGENDA ITEM NO 3

REPORT NO 129/23

ANGUS COUNCIL

SPECIAL CIVIC LICENSING COMMITTEE – 4 MAY 2023

TAXI AND PRIVATE HIRE DRIVERS – EXEMPTION FROM DUTIES

REPORT BY THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

The purpose of this Report is to inform members of the exemption available to taxi and private hire drivers from duties introduced by amendments to the Equality Act 2010 and to seek approval of arrangements for such exemptions.

1. RECOMMENDATIONS

It is recommended that the Committee: -

- (i) Note the exemption from providing mobilities assistance, in terms of sections 164A(5)(e) and 166 of the Equality Act 2010;
- (ii) Agree that medical opinion shall be required before such an exemption shall be authorised; and
- (iii) Delegate authority to one or other of the Convenor and Vice Convenor or the Director of Legal and Democratic Services to grant applications for exemption from the mobilities assistance duties imposed by the Equality Act sections 164A(5)(e) and 165(4)(e), in line with and in so far as supported by the medical opinion accompanying the application for exemption.

2. BACKGROUND

The Equality Act 2010 (“the Act”) has been amended to make further provision for assistance to disabled passengers of taxis and private hire vehicles, including designated Wheelchair Accessible Taxi and Private Hire Vehicles (“WAVs”).

Section 165 of the Act imposes additional duties on the drivers of designated WAVs to provide assistance for disabled passengers and their companions.

Licensed taxi and private hire WAV drivers who fail to fulfil these duties without a suitable defence or without exhibiting a current exemption certificate, may be committing an offence.

The Equality Act Section 164A(5) imposes additional duties on drivers of taxis and private hire vehicles other than designated WAVs.

3. LEGAL

3.1 Section 165 of the Equality Act 2010 is applicable to WAV drivers. It states:-

- (1) This section imposes duties on the driver of a designated taxi or designated private hire vehicle 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.

- (2A) This section also imposes duties on the driver of a designated taxi or designated private hire vehicle if:-
- (a) the vehicle is being used to provide a local service (within the meaning of section 2 of the Transport Act 1985), and
 - (b) a person within subsection (1)(a) or (b) has indicated to the driver that the person wishes to travel on the service.
- (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) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
 - (c) if the passenger has with them any mobility aids, to carry the mobility aids;
 - (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**
 - (f) not to make, or propose to make, any additional charge for complying with a duty mentioned in paragraphs (a) to (e).
- (4A) For the purposes of this section “*mobility aids*” means any item the passenger uses to assist with their mobility but does not include:-
- (a) a wheelchair, or
 - (b) an assistance dog (sections 168 and 170 make provision about the carrying of assistance dogs).
- (5) For the purposes of this section “*mobility assistance*” means 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 [or mobility aids]¹⁰ 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.
 - (c) to load the passenger's luggage or mobility aids 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.
- 3.2 Angus Council is preparing to publish its list of Wheelchair Accessible Vehicles in terms of section 167 of the Act. Publication of the list will make drivers of designated WAVs who fail to fulfil the additional duties imposed by section 165 of the Act guilty of an offence unless they have and exhibit a certificate exempting them from the duty.
- 3.3 Section 165A of the Act also imposes duties on taxi and private hire drivers with respect to assisting disabled passengers to identify and find a vehicle.
- 3.4 Section 164A(5) of the Act provides additional duties applicable to drivers of taxis and private hire vehicles other than designated WAVs, toward disabled passengers and their companions. It provides:-
- (5) The duties are-
- (a) to carry the passenger;

- (b) if the passenger is in or has with them a wheelchair, to carry the wheelchair;
- (c) if the passenger has with them any mobility aids, to carry the mobility aids;
- (d) to take such steps as are reasonable to ensure that the passenger is carried in safety and reasonable comfort;
- (e) to give the passenger such mobility assistance as is reasonably required;
- (f) not to make, or propose to make, any additional charge for complying with a duty mentioned in paragraphs (a) to (e).

- (6) For the purposes of this section "*mobility aids*" means any item the passenger uses to assist with their mobility but does not include—
- (a) a wheelchair, or
 - (b) an assistance dog (sections 168 and 170 make provision about the carrying of assistance dogs).

- (7) For the purposes of this section "*mobility assistance*" means assistance:-
- (a) to enable the passenger to get into or out of the vehicle;
 - (b) to load the passenger's luggage, wheelchair or mobility aids into or out of the vehicle.

- (8) 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 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.

3.5 Section 166 provides that a Licensing Authority must issue a person with a certificate exempting the person from the mobility assistance duties under sections 164A(5)(e) or 165(4)(e) (in bold above) 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.

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

3.6 The driver of a taxi or private hire vehicle is exempt from the mobility assistance duties 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.

3.7 It is suggested that medical opinion about the driver's medical or physical condition to carry out the mobility assistance duties accompanies an application for exemption.

3.8 It is also suggested that in order to reduce delay and avoid potential discrimination of disabled drivers, members consider delegating authority to the Convenor and Vice Convenor or alternatively the Director of Legal and Democratic Services to grant applications for exemption from the mobilities assistance duties imposed by the Act sections 164A(5)(e) and 165(4)(e), in line with and in so far as supported by the medical opinion accompanying the application for exemption.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report.

5. EQUALITIES AND HUMAN RIGHTS IMPLICATIONS

In dealing with any application for exemption as referred to in this report, regard will be had to any human rights issues in relation to the applicant.

REPORT AUTHOR: Jennifer Burns, Solicitor
EMAIL DETAILS: LEGDEM@angus.gov.u