

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 17th January 2011

Title of Report: EQUALITY ACT 2010 PROVISIONS AS TO HACKNEY CARRIAGE & PRIVATE HIRE VEHICLES

Report of: Mr Peter Moore
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Technical Services
Director

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This report contains	Yes	No
CONFIDENTIAL Information/		✓
EXEMPT information by virtue of paragraph(s)..... of Part 1 of Schedule 12A to the Local Government Act, 1972		✓
Is the decision on this report DELEGATED?	✓	

Purpose of Report

To advise the Licensing & Regulatory Committee of provisions contained in the Equality Act 2010 that relate specifically to the Hackney Carriage and Private Hire Trades.

Recommendation(s)

That the Committee:

1. Note the contents of this report, and
2. That the Committee requests a further report following consultation with the Hackney Carriage and Private Hire Trades and the local Equalities Network.

Corporate Objective Monitoring

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1.	Creating a Learning Community		✓	
2.	Creating Safe Communities		✓	
3.	Jobs and Prosperity	✓		
4.	Improving Health and Well-Being	✓		
5.	Environmental Sustainability		✓	
6.	Creating Inclusive Communities	✓		
7.	Improving the Quality of Council Services and Strengthening local Democracy	✓		
8.	Children and Young People		✓	

Financial Implications

There are no financial implications as a result of this report.

<u>CAPITAL EXPENDITURE</u>	2009/ 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure	NIL	NIL	NIL	NIL
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure	NIL	NIL	NIL	NIL
Funded by:				
Sefton funded Resources				
Funded from External Resources	✓	✓	✓	✓
Does the External Funding have an expiry date? ¥/N	N/A			
How will the service be funded post expiry?	N/A			

Departments consulted in the preparation of this Report

Chief Executive's – Performance and Partnerships

List of background papers relied upon in the preparation of this Report

DfT Guidance to Local Authorities on Sections 160 -173 of the Equality Act 2010

Background

1. The Equality Act 2010 (The Act) consolidates a number of different pieces of legislation about discrimination, including disability discrimination. The new Act includes many of the hackney carriage and private hire vehicle provisions which were in the Disability Discrimination Act 1995 (DDA), but it also includes some important changes.
2. Sections 160 to 173 of 'The Act' relate specifically to hackney carriage and private hire vehicles and this report explains which of these sections were brought into force on 1st October 2010.
3. Sections 165, 166 and 167 of 'The Act' deal with the imposition of duties on the drivers of wheelchair accessible hackney carriages and private hire vehicles to assist passengers who use wheelchairs.
4. The duties contained in the DDA had not been brought into force, but as these duties are brought into force under the 2010 Act, it will constitute a substantial change in requirement.

Duties to Assist Passengers in Wheelchairs

5. Section 165 of 'The Act' places a *duty* on a driver of designated wheelchair accessible hackney carriages and private hire vehicles. Designated vehicles are those listed by the licensing authority under section 167. The duties are:
 - 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 enable the passenger to get in or out of the vehicle and to secure / carry the wheelchair as appropriate.
6. Section 166 of 'The Act' *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. This section is now in force.
7. Section 167 of 'The Act' *allows* licensing authorities to maintain a list of "designated vehicles", that is, a list of wheelchair accessible hackney carriages and private hire vehicles licensed in their area. The consequence of being on this list is that the driver must undertake the duties in section 165,

(see paragraph 4). These provisions will be brought into force at a date, later than but not before, April 2011.

8. Consequently, hackney carriage and private hire drivers who drive designated wheelchair accessible hackney carriages or private hire vehicles can apply for exemptions should the Council exercise its discretion to maintain a list. Licensing Authorities that intend to maintain a list of wheelchair accessible hackney carriages and private hire vehicles licensed in their area should therefore be putting in place a system for assessing drivers who they consider should be exempt from the section 165 duty.
9. ***The Council therefore needs to determine policy in respect of this issue as maintaining a list of wheelchair accessible vehicles is a discretionary duty that has positive benefits for those with disabilities. However, the adoption would carry personal liabilities for drivers and a potential impact on the Hackney Carriage number restriction, as discussed later.***
10. The DfT will be making regulations early in 2011 specifying the exact format for the Exemption Notices that licensing authorities will issue and exempt drivers will be required to display in their vehicles. The DfT will also arrange for the printing and distribution of the Exemption Notices (which will be similar to the Notices for drivers who are exempt from carrying guide dogs). These will be ready shortly after the regulations come into force after April 2011.
11. So, although the list of designated vehicles will have no actual effect in law until the duties are commenced, the DfT is urging licensing authorities to start liaising with the trade and issue exemption certificates as appropriate. As of 1st October 2010, it will be possible for drivers to appeal against a decision by the licensing authority not to grant an exemption. Any such appeal will go to the Magistrates' Court.
12. When section 167 comes into force after April 2011 and the lists of designated vehicles have statutory effect, it will be possible for the owner of a vehicle to appeal to the Magistrates' Court against a licensing authority's decision to include his or her vehicle on the list.
13. The DfT will issue separate, more detailed guidance about the accessibility requirements which licensing authorities should apply in relation to this provision and other aspects of their functions under this new approach.

Guide Dogs and Assistance Dogs

14. Sections 168 to 171 of 'The Act' deal with the carriage of guide dogs and other assistance dogs in England and Wales. These sections have been lifted from the DDA, which imposed duties on hackney carriage and private hire vehicle drivers (and private hire vehicle operators) to accept guide dogs.
15. These sections came into force on the 1st October 2010 and the redundant sections in the DDA were repealed. This change is a technical one rather than one with any practical implications. There is nothing new and nothing

additional that drivers (and private hire vehicle operators) need to do in relation to assistance dogs. The obligations carry on under the successor legislation.

16. This change is designed to ensure a smooth transition from the assistance dog's provisions in the DDA to those contained in the new Act. Licensing authorities will continue to be able to issue certificates to drivers who are exempt from the duty to carry guide dogs even though the certificates say "issued under section 37 or 37A of the DDA 1995" on them. The certificates are now deemed issued under the Equalities Act 2010;
15. Licensing authorities will continue to be able to issue the yellow Exemption Notices provided by the DfT, which exempt drivers must display on their vehicles (and exempt drivers will continue to be able to display them), even though the Notices refer to the DDA 1995.
16. The comprehensive guidance issued by the DfT in 2007 about the duties to carry assistance dogs and the procedure for granting medical exemptions etc still stands.

The Control of Hackney Carriage Numbers

17. Since Section 16 of the Transport Act 1985 it has been only possible for licensing authorities in England and Wales (outside of London) to refuse a hackney carriage vehicle licence application if they are satisfied that there is no significant unmet demand for hackney carriages in their licensing area. Sefton currently operates a restriction of 271 hackney carriage vehicle licences of which approximately 60% are wheelchair accessible.
18. Section 161 of 'The Act' qualifies the law in this area to ensure licensing authorities that have relatively few wheelchair accessible hackney carriages operating in their area, do not refuse licences to such vehicles for the purposes of controlling hackney carriage numbers.
19. For section 161 to have effect, the Secretary of State must make regulations specifying:
 - a) The proportion of wheelchair accessible hackney carriages that must operate in an area before the respective licensing authority is lawfully able to refuse to license such a vehicle on the grounds of controlling hackney carriage numbers; and;
 - b) The dimensions of a wheelchair that a wheelchair accessible vehicle must be capable of carrying in order for it to fall within this provision.
20. The DfT plans to consult on the content of regulations before section 161 comes in to force; the actual date will not be before April 2011.
21. It is therefore theoretically possible (although unlikely) that should the Council adopt the provisions of "the Act" it could arrive at a point where there are an

insufficient number of its numerically restricted Hackney Carriage fleet that meet the minimum disability proportion requirement and it would therefore have to accept new applications that could take the fleet number above its stated numerical restriction.

Trade Consultation regarding the Equality Act 2010

21. At the Joint Trades Working Group held on the 5th October 2010 the Trade requested the Council consider the following before determining policy; that:
- a) Should the Council decide to maintain a list of designated hackney carriage and private hire vehicles under Section 167 of 'The Act' then the drivers of such vehicles may be liable to criminal prosecution if they fail to assist passengers in wheelchairs (paragraph 4), unless they hold a medical exemption.
 - b) Creation of a list of wheelchair accessible vehicle in Sefton would mean many drivers would apply and be able to obtain medical exemptions and consequently the supply of wheelchair accessible vehicles with drivers able to carry wheelchair passengers could actually decrease within Sefton.
 - c) That the duties referred to in Section 165 are not clearly set out and open to interpretation.
 - d) The proposals conflict with current Health & Safety legislation and a risk assessment may need to be applied to each job; and
 - e) The construction of some wheelchairs prevents fastening or manoeuvring within the vehicle.
22. Consultation with the Trade regarding the impact of 'The Act' on the number of Hackney Carriage vehicle licences is ongoing and a further report will be brought once the implications of exercising the Councils discretion in adopting the duties of the legislation are fully understood.