

REPORT TO:	GENERAL LICENSING COMMITTEE
DATE:	03 JUNE 2024
SUBJECT:	EQUALITY ACT 2010 – HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER WHEELCHAIR EXEMPTION
PURPOSE:	The Committee is asked to consider an application submitted by a licensed driver under Section 166 of the Equality Act 2010 for an exemption from the duties to assist passengers in wheelchairs.
REPORT OF:	Group Manager Public Protection.
REPORT AUTHOR:	Mr Adrian Twiddy (Principal Licensing Officer).
EXEMPT REPORT?	<p>No – However, Appendices A and B of this Report are exempt by virtue of Paragraphs 1 & 2 of Schedule 12A of the Local Government Act 1972 because they contain confidential and sensitive information relating to an individual.</p> <p>The Appendices to this Report contain information regarding an individual, which is of a confidential and sensitive nature. The information must be stored securely and not disclosed to any person outside the decision-making process. The Report must not be kept any longer than is necessary and copies must be confidentially and securely destroyed.</p>

SUMMARY

The Committee is asked to consider an application submitted by a licensed driver under Section 166 of the Equality Act 2010 for an exemption from the duties to assist passengers in wheelchairs.

The exemption application, together with other relevant information, is detailed at the **Confidential Appendices A and B** of this Report.

Section 166 of the 2010 Act allows the Council to exempt drivers from the duties to assist passengers in wheelchairs if the Authority is satisfied that it is appropriate to do so on medical grounds or because the driver's physical condition makes it unreasonably difficult for them to comply with the duties.

RECOMMENDATIONS

That the Committee consider the application submitted under Section 166 of the Equality Act 2010 for an exemption from the duties to assist passengers in wheelchairs. The options available to the Committee are:

1. To issue a temporary exemption (the expiry date to be determined by the Committee) or a lifetime exemption.
2. To refuse to issue an exemption.

REASONS FOR RECOMMENDATIONS

In order to comply with the legal requirements of the Equality Act 2010.

OTHER OPTIONS CONSIDERED

Not Applicable.

1. BACKGROUND

1.1. Section 165 of the Equality Act 2010 places the following duties on drivers of designated wheelchair accessible hackney carriage (taxi) and private hire vehicles:

- 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 their wheelchair;
- To take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
- To give the passenger such mobility assistance as is reasonably required.

1.2. A licensed driver who fails to comply with the wheelchair assistance provisions of the Act (unless he/she holds a relevant exemption certificate) is guilty of an offence and may receive a fine if convicted.

1.3. Under the terms of Section 166 of the 2010 Act the Council may provide an exemption to these wheelchair duties, to drivers who have genuine medical conditions which are aggravated by assisting people in wheelchairs.

1.4. The Council is responsible for issuing exemption certificates and needs to be satisfied that it is appropriate to do so on medical grounds.

1.5. On 11 September 2017 the Committee approved the adoption of a wheelchair exemptions policy. The policy, and further information regarding the hackney carriage and private hire provisions of the Equality Act, can be found on the Council's website at:

<https://www.e-lindsey.gov.uk/article/5462/Hire-Vehicles-Equality-Act-2010>

The policy authorises Licensing Officers, under delegated powers, to issue temporary exemptions for a maximum period of three months. Any application, for a period longer than three months, will need to be considered by the Committee.

2. REPORT

- 2.1. An existing licensed driver has indicated to the Licensing Team that they wish, under Section 166 of the Equality Act 2010, to apply for an exemption from the duties to assist passengers in wheelchairs.
- 2.2. The exemption application, and other relevant information, is detailed at the **Confidential Appendices A and B** of this Report. The Appendices are confidential because they refer to a person's medical condition and history. The **Confidential Appendix A** includes Officer comments relating to this specific case.
- 2.3. The Council's policy indicates that applicants for an exemption will normally be expected to attend the licensing hearing and respond to any relevant questions from Committee Members.
- 2.4. This Authority has stated that it will seek to promote the following objectives when undertaking the hackney carriage and private hire vehicle licensing function:
 - the protection of the public;
 - the establishment of professional and respected hackney carriage and private hire trades;
 - access to an efficient and effective public transport service;
 - the protection of the environment;
 - improved disability access and awareness.
- 2.5. Under the Equality Act 2010 the Council can consider two types of wheelchair exemption – a temporary exemption or a lifetime exemption. This Authority's licensing policy indicates that lifetime exemptions will only be granted in exceptional circumstances.
- 2.6. In exempting drivers from the duties to assist passengers in wheelchairs the Council needs to be 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 them to comply with their duties.
- 2.7. To apply for a Medical Exemption Certificate, this Authority's policy indicates that a driver must obtain information from their Doctor detailing exactly what duties cannot be undertaken and why. The process undertaken by applicants is that they complete an application form (available from the Council's Licensing Team) and their Medical Practitioner completes a separate part of the same form which outlines the medical condition. The cost of the certification from the Doctor must be borne by the applicant.

2.8. The options available to the Committee are:

- Issue a temporary exemption certificate (the expiry date to be determined by the Committee).
- Issue a lifetime exemption certificate.
- Refuse to issue an exemption certificate.

3. CONCLUSION

3.1. The Council has a legal duty under the Equality Act 2010 to consider an exemption application from a hackney carriage and private hire driver in relation to the wheelchair duties placed on such a driver.

3.2. The Council must only provide an exemption to the wheelchair duties, to those drivers who have a genuine and proven medical condition(s) which is aggravated by assisting people in wheelchairs or it is impossible for the driver to undertake the duties.

EXPECTED BENEFITS TO THE PARTNERSHIP

Not Applicable.

IMPLICATIONS

SOUTH AND EAST LINCOLNSHIRE COUNCIL'S PARTNERSHIP

None.

CORPORATE PRIORITIES

The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

STAFFING

None.

WORKFORCE CAPACITY IMPLICATIONS

None.

CONSTITUTIONAL AND LEGAL IMPLICATIONS

The 2010 Act makes it possible for drivers to appeal against a decision by the Licensing Authority not to grant a medical exemption; the appeal will go to the Magistrates' Court.

DATA PROTECTION

The Appendices to this Report contain information regarding an individual, which is of a confidential and sensitive nature.

FINANCIAL

As with all licence decisions it is possible that if a Licensing Authority decision is appealed to the Courts and the appeal is upheld, costs may be awarded against the Council. However, the judgement of the Courts is that costs should not normally be awarded against the Local Authority provided the Authority has acted properly and reasonably.

This exemption application is being processed as part of the normal duties carried out by the Licensing Team with no additional costs to the Authority involved.

RISK MANAGEMENT

There is a theoretical risk of civil action against the Council if it is found not to have exercised due diligence in licensing matters.

STAKEHOLDER / CONSULTATION / TIMESCALES

None.

REPUTATION

Having a robust licensing scheme protects public safety and commands the confidence of the public.

CONTRACTS

Not Applicable.

CRIME AND DISORDER

None.

EQUALITY AND DIVERSITY/ HUMAN RIGHTS/ SAFEGUARDING

Equality Implications: The Council's wheelchair exemption procedures do not have the potential to cause negative impact or discriminate against different groups in the community based on age, disability, gender, race/ethnicity, religion or religious belief (faith), or sexual orientation.

Human Rights: The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e., is the decision / action proportionate to what it wishes to achieve, or, colloquially does the end justify the means.

The applicant for an exemption is entitled to a fair hearing.

The human rights of the wider community are also engaged.

Safeguarding: Not Applicable.

HEALTH AND WELL BEING

Not Applicable.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Not Applicable.

ACRONYMS

None.

APPENDICES

Appendices are listed below and attached to the back of the report:

CONFIDENTIAL APPENDIX A	Relevant information relating to the application for an exemption from the duties to assist passengers in wheelchairs.
CONFIDENTIAL APPENDIX B	Letter from the Applicant's Medical Practitioner

BACKGROUND PAPERS

None.

CHRONOLOGICAL HISTORY OF THIS REPORT

A Report on this item was adjourned to a later date by the General Licensing Committee on 11 March 2024.

REPORT APPROVAL

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