

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

**DESIGNATED LIST OF WHEELCHAIR ACCESSIBLE TAXI AND PRIVATE HIRE
VEHICLES**

1. EXECUTIVE SUMMARY

- 1.1 This report relates to the compliance of the licensing authority with the public sector equality duty, specifically with regards to wheelchair accessible vehicles.

2. RECOMMENDATIONS

- 2.1 This report invites the Committee to;

2.1.1 Decide whether or not Argyll and Bute Council should publish a list of designated wheelchair accessible vehicles (WAVs) for licensed taxis and private hire cars (PHCs) within the Council's area for the purposes of Section 165 of the *Equality Act 2010*; and

2.1.2 if there should be such a list, to agree that:

- (i) a draft specification of what accessibility requirements must be met before a vehicle will be included in any designated list will be presented to the PPSL Committee for approval at their meeting on 15th December 2021;
- (ii) a draft list of designated wheelchair accessible vehicles (WAVs), based on the approved specification, is initially prepared by officers;
- (iii) intimation is given to the relevant licence operators that the Council propose to designate their licensed vehicle, inform them of the legal consequences of this, and to invite representations;
- (iv) after consideration of any representations, the PPSL Committee, at their meeting in April 2022, approve a final list of designated WAVs; and
- (v) the designated list is published consequent to the decision of members.

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3. INTRODUCTION

- 3.1 This report relates to the compliance of the Licensing Authority with the public sector equality duty, specifically with regards to wheelchair accessible vehicles.

4. RECOMMENDATIONS

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- (v) the designated list is published consequent to the decision of members.

5. BACKGROUND

5.1 Section 149 of the *Equality Act 2010* (the 2010 Act) imposes on local authorities a public sector equality duty. Under this duty, the Council must have due regard to, amongst other things, the need to:

- eliminate discrimination; and
- advance equality of opportunity between people who share a relevant protected characteristic, and persons who do not share it.

5.2 This applies to the Council when fulfilling its role as a licensing authority under the *Civic Government (Scotland) Act 1982* (the 1982 Act).

5.3 The 2010 Act does not make it mandatory that all taxis and PHCs are wheelchair accessible. However, Section 167 of the 2010 Act, permits (but does not require) licensing

authorities to maintain a list of all WAVs that are licensed to operate within their area. These vehicles are known as “designated” vehicles. The minimum requirement for the vehicle to be on the list that it is able to carry the wheelchair user whilst seated in their wheelchair.

6. CONSEQUENCES OF PUBLISHING A DESIGNATED LIST

- 6.1 The consequences of having a designated list of WAVs is that Section 165 of the 2010 Act imposes statutory duties on the drivers of these designated vehicles, and failure to comply with these duties is an offence (unless exempt) liable to a fine of up to £1000.
- 6.2 The statutory duties are:
- To carry the passenger whilst 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.
 - To give the passenger such mobility assistance as is reasonably required.
- 6.3 With regards to the final point in the above list, “mobility assistance” is defined as assistance:
- to enable the passenger to get into or out of the vehicle;
 - if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle whilst in the wheelchair;
 - to load the passenger’s luggage into or out of the vehicle;
 - if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 6.4 Drivers of WAVs can apply to the Council for exemption from complying with these duties but can only do so on medical grounds or grounds of physical difficulty.
- 6.5 Section 172 of the 2010 Act enables vehicle operators to appeal against the decision of a licensing authority to include their vehicles on the designated list. The right of appeal is to the Sheriff Court and must be made within 28 days of the vehicle in question being included on the published list.
- 6.6 If a driver receives a conviction for breaching their duties under Section 165 of the Act, it would be appropriate for the Council to review whether or not the driver remained a fit and proper person to hold a taxi or PHC driver licence.
- 6.7 By publishing a designated list, firstly, this triggers the statutory duties on the driver of that vehicle under Section 165 of the 2010 Act, and makes the failure of driver to comply with the abovementioned statutory duties a criminal offence. Wheelchair users can report discrimination based on these duties to the police as a criminal offence. As Argyll and Bute Council do not currently maintain and publish a designated list of WAVs, an offence would not be committed under this piece of legislation. Currently, if a wheelchair user feels that they have been discriminated against, they would have to raise a civil court action themselves against the driver. That is a lengthy and expensive process that puts many people off seeking legal redress for their rights being breached.
- 6.8 Secondly, it allows wheelchair users to see what WAV availability there is in their area. This will assist the public in being able to find out from a central list what provision there is for their needs in their locality. By way of a provisional indication, data gathered as part of the recent renewal application process for taxi and private hire operators in June 2021

suggests that there are currently 10 WAVs licensed as taxis and 3 WAVs licensed as PHCs in the Argyll and Bute Council area.

- 6.9 Should the Committee approve the recommendations, the list will be revised from time to time as the Licensing Authority grants new licences, or substitutes vehicles - which changes whether or not the new vehicle then used as a taxi or PHC is, or is not, "wheelchair accessible".
- 6.10 Members may recall a previous decision of the Committee to publish a list of designated WAVs at their meeting on 20th June 2018. However the first recommendation of this report invites members to revisit the position in light of the indicative timescales and processes as detailed herein and seeks fresh agreement on that basis.

7. PROCEDURE

- 7.1 Should the Committee approve the Council producing and publishing a list of designated WAVs, there will be a process that needs to be followed, which shall include the following:
- Consideration of what accessibility requirements must be met before a vehicle will be included in any designated list.
 - Producing a specification for vehicles to be considered a WAV.
 - Identifying which taxi operators have vehicles which meet that specification.
 - Producing a draft list for consultation.
 - Set out policies for exempting drivers on medical grounds and physical condition grounds.
 - Produce exemption application and certificates.
 - Inform identified operators that their vehicles will be placed on the list and alert drivers to their upcoming duties.
 - Allow time for drivers to apply for exemptions or appeal any decision to be included before any designated list is published.
 - Produce guidance notes to ensure operators are aware of what their responsibilities are including disability awareness training materials.

8. CONCLUSION

- 8.1 Should the Committee agree that a list of designated WAVs should be published, a proposed indicative timeline for the overall process towards implementing this decision is set out at **Appendix 1** to this report.

9.0 IMPLICATIONS

- 9.1 *Policy:* If the recommendations of this report are approved, a number of policies will be developed in relation to the designated list (i.e. vehicle specification, exemptions for drivers, guidance notes for operators/drivers, etc.)
- 9.2 *Financial:* None
- 9.3 *Legal:* The recommendations made in this report have taken due consideration of the Council's statutory role, duties and powers under the *Civic Government (Scotland) Act 1982* and the *Equality Act 2010* respectively.
- 9.4 *HR:* None
- 9.5 *Fairer Scotland Duty:*

9.5.1 *Equalities - protected characteristics*: The proposals as set out in this report are formulated with the intention of increasing wheelchair users' accessibility to taxi and private hire car services in Argyll and Bute, and protecting the rights of those individuals. Adoption of these proposals would also demonstrate compliance by the Licensing Authority with their public sector equality duty, specifically with regards to wheelchair accessible vehicles.

9.5.2 *Socio-economic Duty*: None

9.5.3 *Islands*: None

9.6. *Risk*: None

9.7 *Customer Service*: Publication of a designated list will result in information about the availability of WAVs in the area to be more accessible to customers.

DOUGLAS HENDRY

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28th October 2021

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APPENDICES

Appendix 1: Proposed Timeline

**STAGE 1: PRODUCING A SPECIFICATION FOR WAVS
(November – December 2021)**

- What accessibility requirements must be met before a vehicle will be included in any designated list?
- A draft specification will be presented to the PPSL Committee for approval at their meeting on 15th December 2021.

**STAGE 2: IDENTIFYING WHICH OPERATORS HAVE VEHICLES WHICH MEET THAT SPECIFICATION
(January 2022)**

- Review information in light of Stage 1 and agreed specification approved by members to produce up to date draft list for consultation.

**STAGE 3: CONSULTATION PERIOD
(February – March 2022)**

- Intimate to the relevant operators in writing that the Council propose to put their WAV on the designated list.
- Inform them of the legal consequences of being included on the designated list.
- Invite these operators to make representations regarding the proposals.

**STAGE 4: PPSL COMMITTEE
(20th April 2022)**

- Report back to Committee with consultation responses.
- Draft guidance to be produced.
- Members to consider responses and approve a final list of designated WAVs.

**STAGE 5: PUBLICATION OF FINAL LIST OF DESIGNATED WAVS
(July 2022)**

- This allows for a three month period for any operators who may wish to apply for an exemption to do so, or for any operators wishing to appeal against their vehicle(s) appearing on the designated list.