



ENVIRONMENT POLICY DEVELOPMENT AND SCRUTINY PANEL

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

HIRE CAR LICENSING

REPORT BY HEAD OF CORPORATE SERVICES

A. PURPOSE OF REPORT

To inform the Panel of

1. The outcome of research into how the provisions of the Equality Act 2010 affect hire car licensing;
2. A new power for the council to introduce an overprovision policy to restrict the numbers of private hire cars licensed locally;
3. A power for the council to publish a list of licensed hire car vehicles under the provisions of Section 167 of the Equality Act 2010; and
4. A number of other issues connected to hire car licensing which may be included in a review of hire car licensing
5. Proposals to set up a Hire Car Forum comprised of local hire car trade organisations and other key stakeholders
6. Proposals to undertake a review of hire car licensing involving a public and stakeholder consultation and evidence gathering process

B. RECOMMENDATION

It is recommended that the Panel scrutinises the terms of the report and comments on the proposals.

C. SUMMARY OF IMPLICATIONS

I Council Values	<ul style="list-style-type: none">• focusing on our customers' needs;• being honest, open and accountable;• providing equality of opportunities;• working in partnership
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	<p>Sections 10– 21 of Part II and Schedule 1 of the Civic Government (Scotland) Act 1982</p> <p>The Equality Act 2010, in particular Sections 165 -167</p> <p>There will be an Equality Impact Assessment carried out in relation to all proposed policy changes which arise out of this report.</p>

III	Implications for Scheme of Delegations to Officers	These will be identified as part of the review process.
IV	Impact on performance and performance Indicators	None
V	Relevance to Single Outcome Agreement	None
VI	Resources - (Financial, Staffing and Property)	None
VII	Consideration at PDSP	N/A
VIII	Other consultations	The three local hire car trade organisations will be sent a copy of this report once it has been approved for inclusion in the agenda.

D. TERMS OF REPORT

D.1 Background

At the meeting of West Lothian Council on 25 September 2018 an instruction was issued to officers to carry out research into

- Discounted fares and how they affect disabled people;
- The use of meters when disabled persons are accessing hire cars
- The implications arising from the provisions of Sections 165-167 of the Equality Act 2010 on the council's taxi accessibility policy.

In addition there have been requests received from the local hire car trade organisations that the council considers setting up a Hire Car Forum. It has been suggested that the Forum would be comprised of council officers, elected members, representatives of the hire car trade organisations, disability groups, Police Scotland and the Taxi Examination Centre and any other key stakeholders. The purpose of the Forum would be to meet from time to time to discuss hire car issues and suggested changes to the council's hire car licensing scheme.

In particular the trade organisations have identified a number of hire car conditions which they would like to see amended. The Licensing Team is also of the view that following the research referred to above the conditions require updating and they also need rewording generally to make them easier to understand. The last review of hire car licence conditions took place between 2008 and 2011.

D.2 Issuing of exemption certificates to taxi and private hire car drivers

The issue raised was that disabled people wishing to travel within their wheelchairs are being refused entry to taxis and private hire cars because drivers have exemption

certificates. It was suggested that the issuing of exemption certificates to drivers appears to defeat the purpose of having wheelchair accessible vehicles as taxis.

Local authorities are obliged in terms of the Equality Act to make reasonable adjustments to their policies for persons with protected characteristics. Hire car drivers suffering from certain medical conditions which prevent them from assisting passengers are covered by that legislation. Therefore the council cannot discriminate against disabled drivers and refuse to grant them licences on the basis that because of their medical conditions they are unable to provide reasonable assistance to passengers.

The council takes a robust stance regarding the issuing of exemption certificates. A driver who applies for one must be medically assessed by the council's medical advisors who are experienced in undertaking occupational health assessments. The driver must satisfy the physician that they are fit to undertake the duties of a hire car driver in terms of the DVLA group 2 standards for professional drivers but unable to provide reasonable assistance to passengers because of a medical condition. Medical exemption certificates are reviewed regularly. At present only around 30 out of 840 licensed drivers (190 taxi and 650 private hire car drivers) currently have exemption certificates.

There are a number of reasons why passengers wishing to travel in wheelchairs may be refused entry to hire cars. In terms of the licence conditions it is the duty of a hire driver to ensure that there is a good reason why a hire is refused otherwise the hire must be fulfilled. One key reason would be if the passenger cannot be loaded or transported safely. It is accepted that not all passengers travelling within wheelchairs can be safely transported within taxi vehicles. It is the responsibility of the driver to undertake training in using restraint systems for the carrying of wheelchairs and follow the manufacturer's instructions for use of these. In particular the driver must be aware of the safe load weight of the ramps used to load wheelchair passengers and must have a discussion with passengers to assess whether he can safely transport a passenger before refusing a hire.

It is recommended that a review of the hire car conditions in this respect be undertaken to ensure that the conditions in this respect remain fit for purpose.

D.3 Discounted fares and how they affect disabled people

Following officers' research into how equality legislation impacts on hire car licensing the legal position on discounted fares has now been clarified.

The issue raised was that disabled people wishing to travel within their wheelchairs and thus requiring a journey in an accessible taxi or larger private hire car rather than a saloon private hire car are not being offered discounted fares by some local booking offices as these discounted fares are only offered for particular journeys or within particular vehicle types.

Discounted fares offered by certain booking offices for particular journeys have been common locally for some time. Generally these are offered by private hire cars which have the advantage of lower running costs than taxis due to all taxis requiring to be larger accessible vehicles.

Given that the Equality Act is relatively new and complex legislation the position about discounted fares is far from clear. The Act extends the circumstances in which a person is protected against discrimination, harassment or victimisation because of a protected characteristic. The protected characteristics include disability. The booking office licence holder, the hire car licence holder and the driver (if different) are "service-providers" under the Act. By refusing to give a disabled person a discounted fare because they are in a wheelchair it is likely that they are failing in two duties under the Equality Act 2010 i.e. the duty to make "reasonable adjustments" and the duty of the service-provider not to discriminate or victimise.

In terms of the Equality Act there is a requirement on service-providers where any provision, criterion or practice puts a disabled person at a substantial disadvantage in relation to a service provided in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. It is likely therefore that a booking office should as a reasonable adjustment, consider offering the discounted fare to the disabled person.

Although most booking offices are licensed (there is an exemption for those which only have up to 3 vehicles on their system) the conditions of booking office licences do not cover service issues such as pricing structures. However, licensed drivers driving vehicles with meters are bound by their conditions of licence not to charge more than the maximum metered fares set by the council for local journeys. There is no legislation or conditions which set minimum fares.

The responsibility of ensuring that booking offices do not infringe the requirements of the Equality Act 2010 lies with the booking offices themselves and this is enforced through the civil courts like the rest of the Equality Act. Given that the Equality Act contains specific provisions about taxis and private hire cars, Parliament could have given Licensing Authorities the power to enforce all provisions of the Equality Act which relate to hire cars. As these powers do not exist it is clear that the council has no role in investigating complaints about potential breaches of the Equality Act.

However, it is proposed that the Council make contact with booking offices and encourage them to review their discounted fare policies to ensure that they are not in breach of the Equality Act.

D.4 Use of meters when disabled persons are accessing hire cars

Following officers' research into how equality legislation impacts on hire car licensing the legal position on the use of meters has now been clarified.

The issue raised was that when disabled people wishing to travel within their wheelchairs are being loaded into taxi or private hire cars the meter should not be started until after the passenger has been loaded and secured. This is because in terms of the Equality Act, disabled persons are entitled to such mobility assistance as is reasonably required and the driver cannot make any additional charge for doing so.

The requirements for the use of meters in hire cars are set out in the council's licensing conditions. In terms of these conditions the driver is permitted to start the meter when the passengers have been alerted that the vehicle has arrived at the arranged collection point or when the taxi is engaged by hailing it, or hiring it at a rank. The driver must stop the meter when they arrive at the destination and allow the passengers to view the meter before they pay and leave the vehicle. In practice many drivers do not start the meter until the passengers are loaded and the vehicle is ready to move off.

Following the research it is clear that these conditions require to be updated in view of the provisions of the Equality Act. It is proposed that the conditions be updated to state that when a disabled person travelling in a wheelchair is a passenger, the meter must not be started until the vehicle is ready to move off. The conditions regarding stopping the meter would not change but require to be reworded to make this clear.

D.5 Hire Car Forum

A forum to discuss hire car issues with key stakeholders would be a useful way to provide an opportunity for hire car issues to be regularly discussed with a view to keeping the hire car licensing scheme up to date. The forum members could include an elected member, representatives from the hire car trade organisations, Police Scotland, the Taxi Examination Centre, organisations representing disabled persons and council officers. The forum would need to have an agreed remit and procedures. A draft remit and procedure is attached at Appendix 1 of this report.

D.6 PHC overprovision

Changes were made to the Civic Government (Scotland) Act 1982 in 2017 to give councils the power to restrict numbers of private hire cars (PHCs) operating in their areas on the grounds of overprovision. In order to do this the council would have to introduce an overprovision policy. Such a policy must be evidence based or decisions to refuse applications on the basis of the policy would be vulnerable to appeal. The Scottish Government is working on guidance to assist councils in developing overprovision policies.

This is a new power and assessing overprovision of PHCs in an area is not something which it is easy to evidence. Assessing overprovision is not as narrow a statutory test as assessing unmet demand which is the method of restricting taxi numbers. Guidance is likely to suggest that councils look at the mileage covered by PHCs, waiting times for bookings, numbers of PHCs and taxis operating on booking office systems, availability of accessible PHCs and latent demand. None of this information is readily available to the council and it is likely to be difficult to obtain. The only Scottish council which has an overprovision policy at the moment is Glasgow City Council. Glasgow's policy is based on research undertaken by external consultants at significant cost.

This council restricted the numbers of licensed taxis operating locally until 4 October 2011. As licences cannot be transferred this prevented any new licences being issued unless licences were surrendered or licence holders died.

The main reasons for derestricting taxi numbers were that the policy prevented additional accessible vehicles being licensed and created a black market in taxi licences whereby some licence holders rented their plates to others within the trade who could not obtain a licence of their own. This was not a good situation for two reasons. Firstly the council did not know who was actually operating the vehicle and that prevented the real operators being vetted. Secondly it put the plate renters in a perilous situation as they may have paid for the vehicle but the licence could easily be lost if the licence holder died.

It is recommended that consultation be undertaken regarding whether there is overprovision of PHCs within West Lothian and whether a policy could be justified.

D7 Drug testing for hire car drivers

Drug testing for hire car drivers is an issue which has arisen several times in the course of the last year. Licensing Committee members have raised the issue in the context of their consideration of applications from potential hire car drivers who have convictions for drug related offences. Members have expressed a wish to be able to send some applicants for drug testing to confirm that the applicant is not using illegal drugs.

In addition over the last few months the Licensing Team have received a number of complaints from members of the public and others within the hire car trade alleging that drivers are using drugs. In order to undertake drug testing without delay and to investigate these allegations the council's medical advisors Optima Healthcare have advised that there needs to be a policy of referring drivers for drug testing when there is reason to suspect drug use.

Other councils both within Scotland and in England and Wales have such policies in place. In particular this is very common in England and Wales. If the council introduced such a policy there would need to be a change to the hire car conditions to provide for that.

It is recommended that consultation be undertaken regarding the introduction of a drug testing policy for hire car drivers.

D8 Electric/hybrid vehicles

When the low emission zones (LEZs) are launched in Scotland's cities from late 2020 this will have an effect on the local hire car fleet as there will be areas where certain vehicles are no longer able to operate.

It is understood that there may be Government funding available both directly and through local authorities which could act as incentives for the hire car trade to licence more electric and hybrid vehicles. These opportunities could be explored through the Hire Car Forum.

D9 Training

Police Scotland and Licensing Committee members have highlighted a worrying lack of knowledge by licence holders of the conditions of their licences. This is clear from complaint investigation and committee hearings. Mandatory training for all hire car licence holders was due to have been introduced after the last hire car review but could not be taken forward due to a lack of training providers. Since then an SQA accredited course has been developed which could be offered either by the council or a local college. It is recommended that consultation be undertaken regarding the introduction of mandatory training for hire car licence holders.

D10 Review of conditions

The hire car trade organisations have identified a number of hire car conditions which they would like to see amended. The Licensing Team is also of the view that following the research into equality issues several of the conditions require updating and they also need rewording generally to make them easier to understand. The last review of hire car licensing took place between 2008 and 2011. It is recommended that consultation be undertaken regarding the amendment of the hire car licence conditions.

D11 Sections 165 - 167 of the Equality Act 2010

In terms of Section 167 of the Equality Act 2010 the council has power to publish a list of wheelchair accessible vehicles. We already have lists of all hire car licence holders on our webpages which are updated every 12 weeks but these do not identify which vehicles are accessible. Even if the list stated which vehicles are accessible this would not assist the public to book these vehicles as it cannot state which systems the vehicles operate on as the council does not hold that information.

The effect of the publication of a list under Section 167 is that when such a list exists the drivers of these vehicles are bound by the terms of Section 165 of the Act which imposes a number of duties on the drivers of the wheelchair accessible vehicles. If a list of accessible vehicles is not published by a council the section 165 duties (and the Section 166 exemptions from these duties) do not apply in that council's area.

The Section 165 duties are:

- (a) to carry the passenger while in the wheelchair;
- (b) not to make any additional charge for doing so;
- (c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
- (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.

However, in West Lothian our current conditions are more onerous than the duties in Section 165. Our conditions oblige all drivers to carry passengers with wheelchairs. The only caveat to that is if the driver holds an exemption certificate from assisting passengers he is only obliged to carry the passenger if they can be assisted by another person to enter the vehicle and secure the wheelchair safely. The other person would need to follow the instructions of the driver to use the ramps or lift and secure the wheelchair. All drivers of accessible vehicles are obliged to have had training in the use of restraint systems.

In contrast Section 166 allows for medical exemption certificates to be granted which exempt the driver from carrying wheelchair passengers.

So if the council introduced a Section 167 list this would have a negative impact on

- our 100% accessible taxi fleet as operators with exemption certificates would be able to successfully argue that they should not be required to licence accessible vehicles if they said they were the only driver of the taxi and they would therefore be able to licence saloon vehicles as taxis; and
- the availability of taxis to transport wheelchair passengers as drivers with exemption certificates would be entitled to refuse to carry wheelchair passengers even if the passengers could access the vehicles with assistance or by folding up their wheelchairs and placing them in the vehicles themselves.

The introduction of a Section 167 list would also be likely to lead to an increase in requests for exemption certificates.

The council must therefore make a decision as to whether a Section 167 list should be published. It is understood that the Department for Transport is aware of the shortcomings of the legislation which we have identified. It may be that once this issue has been fully considered the council would wish the Department to be contacted regarding this issue and encouraged to consider amending the provisions. It is recommended that consultation be undertaken regarding the introduction of a section 167 list.

E. CONCLUSION

The Panel is asked to note the outcome of the research which has been carried out in relation to hire car accessibility issues and also that the Council Executive will be asked to consider consulting on changes to the hire car licensing conditions and providing information to booking offices as a result.

The Panel is asked to note the other issues outlined in the report and that the Council Executive will be asked to consider launching a consultation regarding a hire car licensing review to seek views on the issues which should be included in that review and which should be given priority.

The Panel should also note that the Council Executive will be asked to consider setting up a Hire Car Forum and to agree the remit and procedure for that body.

The Panel is asked to comment on the terms of this report.

F. BACKGROUND REFERENCES

Guidance on taxi and private hire car licensing issued by the Scottish Government in 2012

<https://www2.gov.scot/Resource/0039/00391287.pdf>

Appendices/Attachments:

Appendix 1: Remit and Procedure for Proposed Hire Car Forum

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Date: 5 November 2019

DRAFT REMIT AND PROCEDURE FOR PROPOSED HIRE CAR FORUM

Remit

The Hire Car Forum will have powers to discuss

- issues related to the hire car licensing system
- proposed changes to hire car licensing policies and conditions

Procedures

The following representatives can attend meetings or send someone else to represent them at meetings

- an elected member (to be nominated by the Council Executive)
- two representatives from each of the hire car trade bodies (to be nominated by each trade body)
- a representative from Police Scotland (to be nominated by that body)
- a representative from the Taxi Examination Centre (to be nominated by that body)
- two representatives from the Access Committee (to be nominated by that Committee)
- council officers (to be nominated by the elected member)

The Forum will meet every six months unless the elected member decides that the Forum will meet more frequently. Additional persons may be invited to attend the meetings at the request of the elected member.

Agendas and action notes will be produced by the Licensing Team. Action notes will include any actions to be undertaken by members following the meeting and will record any key decisions taken. No details of discussions will be formally recorded and no formal minutes will be issued. It will be a matter for all members of the Forum to take their own notes and to cascade information to the organisations which they represent.

Ideas for agenda items must be received at least 7 working days prior to the date of the meeting. Agendas will be issued by email at least 5 working days prior to the date of the meeting.

Actions will be allocated against individual Forum members as appropriate and the actions must be completed to allow the issues to be discussed further.

Legal advice must be sought by individual Forum members before issues can be fully discussed. Solicitors from the Council's Licensing Team are employed to give advice to the council and cannot provide advice to the group.

The Forum will not have decision making powers other than to approve action notes. Decisions regarding changes to hire car licensing policies and conditions will continue to be made by the Council Executive following consideration of reports by the Head of Corporate Services which would firstly have been considered at the Environment Policy Development and Scrutiny Panel.