

SECTION 165 -167 OF THE EQUALITY ACT 2010

POSITION STATEMENT

23rd November 2017

Introduction

The Government commenced sections 165 and 167 of the Equality Act 2010, in so far as they were not already in force, on 6th April 2017.

Section 167 of the Act provides licensing authorities with the powers to make lists of wheelchair accessible vehicles (i.e. "designated vehicles"), and section 165 of the Act then places duties on the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.

The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act.

This allows Local Authorities to exempt drivers from duties under section 165 where 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 those duties.

In adopting this position statement, Warwick District Council has had regard to the guidance issued by the Secretary of State under section 167(6) of the Equality Act 2010.

Maintaining a List of Designated Vehicles

Section 167 of the Act permits, but does not require, a licensing authority to maintain a designated list of wheelchair accessible hackney carriage and private hire vehicles.

Whilst not being under a specific legal duty to maintain a list of designated vehicles, at its Executive Committee meeting of 1st November 2017, Warwick District Council decided that it will do so.

The list of designated vehicles will be published and maintained by Warwick District Council with effect from 2nd January 2018. This will provide a reasonable amount of time for drivers to make applications for exemption from the duties that will be placed upon them once a list of designated vehicles is published.

Once published, the list of designated vehicles will be available to access via the Warwick District Council website. A hard copy of the list of designated vehicles will also be available on request (by appointment).

Accessibility Requirements for Vehicles Included on the List of Designated Vehicles

The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.

Warwick District Council has decided that a vehicle will only be included in the authority's list if it would be possible for the user of a 'reference wheelchair' to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair. For the purposes, a 'reference wheelchair' is as defined in Schedule 1 of the Public Service Vehicle Accessibility Regulations 2000.

The Duties Placed on Drivers of Designated Vehicles

Section 165 of the Act outlines the duties placed on drivers of designated wheelchair accessible hackney carriage and private hire vehicles:

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.

The Act then goes on to define mobility assistance 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 while 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.

It is an offence for the driver (unless exempt) of a hackney carriage or private hire vehicle which is on the licensing authority's designated list to fail to comply with these duties.

Exemptions from the Duties Placed on Drivers of Designated Vehicles

Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows licensing authorities to grant exemptions from the duties to individual drivers.

Section 166 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 or physical grounds. The exemption can be valid for as short or long a time period as the local authority thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties.

If a licenced driver wishes to obtain an exemption from the duties placed on them under section 165, they must complete the relevant application form and submit this to the licensing authority alongside relevant supporting evidence. The supporting evidence must include a report from the licensed driver's general practitioner.

If required, a licensed driver seeking to obtain an exemption from the duties must submit to an examination by an independent medical practitioner. The decision as to whether an exemption is granted and for how long, will be taken by the Head of Health and Community Protection.

If the exemption application is successful then the licensing authority will issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle.

If the exemption application is unsuccessful, the applicant will be informed in writing within a reasonable timescale and provided with a clear explanation of the reasons for the decision.

Section 172 of the Act enables drivers to appeal against the decision of the licensing authority not to issue an exemption certificate. That appeal should be made to the Magistrate's Court and must be made within 28 days beginning with the date of the refusal.

Enforcement

It is important to note that a driver will be subject to the duties set out in section 165 of the Equality Act 2010 if the vehicle they are driving appears on the designated list of the licensing authority that licensed them, and the licensing authority has not provided them with an exemption certificate, regardless of where the journey starts or ends.

Warwick District Council will look to take firm action where drivers breach their duties under section 165 of the Act and will use all their available powers to ensure that drivers who discriminate against disabled passengers are held accountable for their actions.

If a driver receives a conviction for breaching their duties under section 165 of the Act, the authority will review whether or not they remain a fit and proper person to hold a licence to drive hackney carriage or private hire vehicles.