SUMMARY

Provisions of the Equality Act 2010, in respect of wheelchair accessible hackney carriages and private hire vehicles, commenced on 6 April 2017. The provisions allow a licensing authority to create a list of “designated vehicles” which are capable of carrying passengers in wheelchairs (section 167) and then require drivers of those vehicles to provide mobility assistance (section 165).

It is an offence for a licensed driver of a designated vehicle, unless they have been granted a medical exemption, to fail to comply with the duty to provide mobility assistance.

By creating a list of designated vehicles the council will be able to publish and make clear to the public, vehicle operators and drivers, the licensed vehicles capable of carrying a passenger in a wheelchair and the assistance the drivers of those vehicles will be required to provide.

RECOMMENDATIONS

1. That under the Equality Act 2010 the committee approves the introduction of a list of designated wheelchair accessible vehicles licensed by the council.

2. The committee considers the draft amendments to the specification for wheelchair accessible vehicles and makes any appropriate amendments to the draft prior to it being issued to the licensed trade and other interested parties for consultation.
3. That the procedure outlined at paragraph 3.5 of this report for applying for a driver exemption is adopted and the council's policy is amended to reflect this.

4. The committee agree the next steps outlined at paragraph 4.1 of this report and delegate the task of undertaking these steps to the Principal Licensing & Land Charges Officer.

REASONS FOR RECOMMENDATIONS

By making a decision to implement the provisions of the Equality Act, the Licensing Authority will be able to demonstrate to both passengers and the trade a clear policy and working practise in relation to sections 165, 166 and 167 of the Equality Act 2010.

It is the Government's view that the provisions are intended to assist passengers in wheelchairs in their use of designated taxi’s and private hire vehicles.

ALTERNATIVES CONSIDERED

1. To resolve not to introduce a list of designated taxis and Private Hire Vehicles.

REPORT

1. BACKGROUND

1.1 The Government commenced sections 165 and 167 of the Equality Act on 6 April 2017. Section 167 of the Act provides local authorities with the power to make lists of wheelchair accessible vehicles (“designated vehicles”) and section 165 then requires the drives of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits drivers from charging extra for this service. The requirements of s.165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under s.166 of the Act, which is already in force. Section 166 allows local authorities to exempt drivers from the duties under s.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.
A copy of sections 165, 166 and 167 of the Equality Act is attached at Appendix A.

1.2 Section 167 states that a local authority “may maintain a list of vehicles”. This is seen as a power rather than a duty therefore the council is under no legal obligation to maintain a list.

1.3 Section 172 of the Equality Act 2010 enables vehicle owners to appeal against the decision of a local authority to include their vehicle(s) on the designated list. The appeal must be made to the Magistrate’s Court, within 28 days of the vehicle in question being included on the published list.

1.4 There are currently 239 vehicles licensed by the council and 47 (approx. 20%) of these are wheelchair accessible.

2. VEHICLE SPECIFICATION

2.1 The Act states that a vehicle can be included on a local authority’s list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it goes on to explain that vehicles placed on the designated list should be able to carry a passenger in their wheelchair should they prefer. This means that to be placed on the list a vehicle must be capable of carrying some, but not necessarily all, types of occupied wheelchairs. The Government recommends that a vehicle should 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.

2.2 Boston Borough Council currently has a policy specifying the requirements and dimensions for wheelchair accessible vehicles. However, the current vehicle specification falls short of that required for carrying a “reference wheelchair”. Therefore all vehicles will need to be inspected to determine which ones meet the standard to be included on the list.

2.3 It would be appropriate to revise the current policy specifying the requirements and dimensions for wheelchair accessible vehicles, and consult on those revisions, to ensure that any vehicles licensed in the future are capable of carrying a reference wheelchair and thus meet the recommended requirement to be placed on the list of designated vehicles. A copy of the council’s current policy for wheelchair accessible vehicles is attached at Appendix B. A draft revised policy is attached at Appendix C. The committee is asked to consider the draft, make any appropriate amendments, and resolve the draft revised specification be issued to the licensed trade and other interested parties for consultation.
3. **DRIVERS**

3.1 Section 165 sets out the duties placed on drivers of designated wheelchair accessible taxis and PHVs. These 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 necessary.

“Mobility assistance” is defined in the Act 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.

3.2 It is an offence for a licensed driver, driving a vehicle on the designated list, unless exempt, to fail to comply with the duties outlined at paragraph 3.1 above.

3.3 The driver’s obligations to comply with section 165 apply regardless of where the journey starts or ends. If a driver fails to comply with their duties, it would be appropriate for the licensing authority to review whether or not the driver remains a fit and proper person to hold a licence.

3.4 Where a driver has a medical or physical condition, which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require, the local authority may grant exemptions from the duties to individual drivers under the provisions of section 166 of the Act. Drivers who are granted exemptions will be issued with an exemption certificate and a notice to display in the vehicle. The purpose of the notice is to clearly communicate to passengers in wheelchairs that the driver has been exempted from the duties to provide assistance.

3.5 The authority will require a policy on the evidence required to determine whether or not a driver exemption should be issued. Medical exemptions for drivers from requirement to carry assistance dogs is currently determined upon receipt of a report from the drivers GP or a person who has access to the drivers medical records. Any
fee charged by the medical practitioner for undertaking the assessment or completing a report is at the driver’s expense. The council reserves the right to seek clarification of an individual’s case from a medical practitioner appointed by the council. Exemptions are approved by officers under delegated powers and where there are concerns that an exemption needs further consideration this is referred to a sub-committee of the Regulatory & Appeals Committee for consideration.

It is recommended that this process be extended to include consideration of exemptions from the duties placed on drivers of vehicles on the list of designated wheelchair accessible vehicles.

4. **THE NEXT STEPS**

4.1 If the committee are minded not to maintain a list of designated vehicles, no further action is required. If however the committee resolve, as recommended, that the authority should maintain such a list, the following next steps are recommended:

- Identify vehicles which meet the requirements to be included on the designated list
- Notify proprietors of indentified vehicles advising them that the authority proposes to include their vehicle on the authority’s list of designated vehicles.
- Consult vehicle proprietors and other relevant parties on the amendments to the specification for wheelchair accessible vehicles
- Report responses to the vehicle owner and driver consultations to Regulatory & Appeals Committee at the meeting on 26 September 2017 with a recommendation the policy, with any appropriate amendments, be adopted.
- Following the Regulatory & Appeals Committee meeting on 26 September 2017 publish the list of designated wheelchair accessible vehicles.
- Publish the revised policy with respect to the specification for wheelchair accessible vehicles.
- Alert drivers to the duties when driving a vehicle on the list and of the procedure for applying for an exemption.
- Advise owners of vehicles that their vehicle has been included on the published list and that they have a right to appeal this decision.
- Issue a press release to inform the public of the Equality Act 2010 provisions and to raise awareness that a list of vehicles has been published and is available on the council website.

**CONCLUSION**

A decision not to implement the powers available to the Local Authority to publish a list of designated vehicles would not promote the authorities statutory equality duties. It is therefore strongly recommended that the council fully implements the powers provided by sections 165 and 167 of the Equality Act 2010.
FINANCIAL IMPLICATIONS

There are no financial implications with respect to this report. The cost for stationery and postage for full consultation, estimated at a maximum of £100, will be met from existing budgets. Consultation will, as far as practicable, be carried out electronically to keep costs to a minimum.

LEGAL IMPLICATIONS

The provisions are an option rather than a legal duty. However, failure to implement the Equality Act may give rise to a challenge that the authority is failing to fully exercise its equality duties.

The requirements, if implemented, carry a criminal penalty if a licensed driver fails to comply with the requirements to carry and assist passengers who use a wheelchair.

ANY OTHER IMPLICATIONS

Human Rights – The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, in other words the end must justify the means.

Equality and Diversity – Failure to implement the sections of the Equality Act 2010 with respect to wheelchair accessible taxis and private hire vehicles may cause a negative impact on persons with disabilities who wish to travel in a taxi or private hire vehicle. An Equality Assessment has been undertaken and considered by the Equality Board on 6 June 2017. Any recommendations made by the board will be verbally reported to the committee at the meeting.

Risk - There is a risk of civil action against the council if it is found not to have exercised due diligence in the setting of its hackney carriage and private hire policy.

CONSULTATION

CMT
Equality Board

Further consultation will be undertaken as outlined in paragraph 4.1 of the report.
APPENDICES

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

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<thead>
<tr>
<th>APPENDIX A</th>
<th>Equality Act 2010 ss.165, 166 &amp; 167</th>
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<tbody>
<tr>
<td>APPENDIX B</td>
<td>Current Wheel Chair Accessible Vehicle Specification</td>
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<tr>
<td>APPENDIX C</td>
<td>Draft revised Wheel Chair Accessible Vehicle Specification</td>
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BACKGROUND PAPERS

Background papers used in the production of this report are listed below: -

<table>
<thead>
<tr>
<th>Document title</th>
<th>Where the document can be viewed</th>
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CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.
FINANCE PROFORMA

BOSTON BOROUGH COUNCIL
PROFORMA FOR EXECUTIVE APPROVAL OF THE RELEASE OF RESOURCES (CAPITAL AND REVENUE BUDGETS)

FROM: Rachel Hilton

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<th>REPORT: REGULATORY &amp; APPEALS COMMITTEE</th>
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<td>OPTION 1</td>
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Funding required: To be covered by existing budgets

Considered by: Enter committee here
REGULATORY & APPEALS COMMITTEE

Date: 13.06.2017

Total capital cost £
Enter Council or Cabinet here

Financial Services Comments

Value for Money Efficiency

| This FP is valid for 3 months from FP date | If this FP is no longer required please advise Finance | If there are changes to the original report it may invalidate this document, it must be reviewed by Finance |